

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *

UNITED STATES OF AMERICA,)	Criminal Action
)	No. 21-517
vs.)	
)	
KEVIN LOUIS GALETTO,)	March 20, 2023
)	2:36 p.m.
Defendant.)	Washington, D.C.
)	

* * * * *

**TRANSCRIPT OF PLEA COLLOQUY
BEFORE THE HONORABLE COLLEN KOLLAR-KOTELLY
UNITED STATES DISTRICT COURT SENIOR JUDGE**

APPEARANCES:

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Official Court Reporter

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P R O C E E D I N G S

THE COURTROOM DEPUTY: Criminal Case 21-517, the United States versus Kevin Louis Galetto.

Counsel, would you please identify yourselves for the record, starting with the government.

MS. KLAMANN: Good afternoon, Your Honor. Kaitlin Klamann for the United States standing in for my colleague, AUSA Sean McCauley, who had a scheduling conflict this afternoon.

THE COURT: Okay.

MR. PORTALE: Good afternoon, Judge. Richard Portale of Portale Randazzo. To my right is Mr. Chad Mair, and to my left is Mr. Galetto.

THE COURT: All right. Good afternoon.

So we're here for a plea. I am going to leave you, Mr. Galetto, sitting where you are instead of standing because we need to have you speak into the microphone; I think it will be easier than having you to get up.

MR. PORTALE: Judge, if I may, we're going to share the microphone. We may have to pass it back and forth a bit.

THE COURT: That's fine. Most of it is going to be really what he has to say anyway, in terms of the inquiry.

MR. PORTALE: Okay, Judge.

1 THE COURT: But Mr. Galetto is compliant with his
2 pretrial conditions. The last version I received did
3 correct in the letter which counts he's pleading guilty to.
4 And the statement of offense evidently didn't have any
5 changes to it, ultimately.

6 MR. PORTALE: Right.

7 THE COURT: So let me have Ms. Patterson swear
8 Mr. Galetto in.

9 (KEVIN LOUIS GALETTTO, Defendant, was sworn.)

10 THE DEFENDANT: I do.

11 THE COURT: All right. So let me -- I want to
12 make sure you understand that you are now under oath. If
13 you don't answer my questions truthfully, you can be
14 prosecuted for perjury or for making a false statement.

15 Do you understand that?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: All right. In terms of the process, I
18 am going to be asking you some questions. And it will be --
19 I will set out what you have been charged with in the second
20 superseding indictment, what you are actually pleading to.
21 I will go over some background information relating to you.
22 I will go through your constitutional rights that you are
23 giving up by pleading guilty.

24 The government will state the evidence that they
25 would have presented by proffer if the case had gone to

1 trial, and they need to have facts that meet the elements of
2 the two counts you are pleading guilty to in order for me to
3 accept it. I will ask you if you agree with it, and I will
4 go through it. Again, you'll need to admit conduct that
5 meets the elements of the two counts that you are pleading
6 guilty to.

7 We'll then go through the plea letter. I am not
8 going to go through everything in the plea letter; it
9 doesn't mean it's all not important. I will go through what
10 I am required to under the rules as well as areas where,
11 sometimes, there might be some misunderstandings or it's a
12 little more complicated, to make sure that there are no
13 misunderstandings about exactly what you are pleading guilty
14 to and what the consequences are in terms of, particularly,
15 sentencing; then I will ask some questions about the
16 voluntariness of the plea. In the end, I need to make a
17 finding that you are entering it knowingly and voluntarily.

18 If I ask you questions and you don't understand
19 it, please stop me and ask. Don't just give me answers you
20 think I want to hear.

21 If I have explained things differently than your
22 lawyer did and you have a concern about it, speak up. I am
23 going to -- obviously, on some of this -- do it in a summary
24 form. You can consult with your lawyer at any time if you
25 wish to do so; that's not a problem at all.

1 I want to make sure that we have a meeting of the
2 minds of exactly what you are pleading to and what the
3 agreement actually means.

4 Do you understand?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: All right. So in terms of the second
7 superseding indictment, it has eight counts.

8 Count 1 is civil disorder.

9 Count 2 is obstruction of an official proceeding.

10 Count 3 is assaulting, resisting, or impeding
11 certain officers.

12 Count 4 is entering and remaining in a restricted
13 building or grounds.

14 Count 5 is disorderly and disruptive conduct in a
15 restricted building or grounds.

16 Count 6 is engaging in physical violence in a
17 restricted building or grounds.

18 Count 7 is disorderly conduct in the Capitol
19 grounds or buildings.

20 And Count 8 is act of physical violence in the
21 Capitol Building or grounds.

22 You are going to plead guilty to Count 1, which is
23 the civil disorder, and Count 3 which is assaulting,
24 resisting, or impeding certain officers. You also have
25 agreed to pay \$2,000 in restitution.

1 At sentencing, the other counts -- the other six
2 counts will be dismissed.

3 Is that your understanding of the basic agreement?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: You need to speak up so we make sure
6 the court reporter can get a record.

7 THE WITNESS: Is this better?

8 THE COURT: Yes. Perfect.

9 The government has also agreed that you can remain
10 in the community with the present conditions as long as you
11 are in compliance. They have also reserved allocution,
12 which means they have reserved the right to make
13 recommendations at the time of sentencing, as has your
14 counsel as well. And the Court will hear from you, if you
15 wish to address me, in making a decision. But the plea
16 letter does address some issues for sentencing.

17 So let me go into the background questions.

18 How old are you, sir?

19 THE WITNESS: I am 63 years old.

20 THE COURT: And what is your date of birth?

21 THE WITNESS: [REDACTED]

22 THE COURT: How far have you gone in school?

23 What is your highest level of education?

24 THE WITNESS: I have a master's degree in business
25 management.

1 THE COURT: Where were you born?

2 THE WITNESS: I was born in Montrose,
3 Pennsylvania.

4 THE COURT: All right. Have you taken any alcohol
5 or drugs or any kind of medication in the last 48 hours?

6 THE WITNESS: No, ma'am.

7 THE COURT: How did you go through the materials?
8 Did you read it yourself? Did your lawyer read it to you?
9 What was the process?

10 THE WITNESS: A little combination of both. They
11 provided me, ahead of time, the information. And then we
12 discussed it last night while I was here, and again this
13 morning -- or this afternoon, rather.

14 THE COURT: All right. Have you ever received any
15 treatment for any type of mental illness or emotional
16 disturbance?

17 THE WITNESS: No, Your Honor.

18 THE COURT: Have you received a copy -- did you
19 have a copy of the indictment, particularly the last one,
20 that sets out the pending charges against you?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Have you had a chance to look it over
23 and discuss it with your lawyer?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Are you completely satisfied with the

1 services of your lawyer in this case?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Have you had enough time to talk with
4 your lawyer and discuss the case and this plea offer and
5 whether or not you should accept it or go to trial?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: All right. In terms of your basic
8 constitutional rights, I am going to ask if you understand
9 your rights, and at the end, I will ask if you are willing
10 to give them up.

11 The first is: You have a right to plead not
12 guilty and have a jury trial. That means that citizens from
13 the District of Columbia would be summoned to the courtroom;
14 they would be asked questions by the Court and counsel to
15 determine whether they would be fair and impartial to both
16 sides. They would listen to them -- there would be 12 of
17 them. They would listen to the evidence; they would apply
18 the jury instructions. And they would determine your guilt
19 or innocence based on the evidence presented in the
20 courtroom.

21 Do you understand your right to a jury trial?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: Do you understand if you went forward
24 to trial you would have a right to be represented by a
25 lawyer at that trial, and if you could not afford one, one

1 could be appointed?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Do you understand that at a trial you
4 would have the right, through your lawyer, to confront and
5 cross-examine any witnesses against you?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: Do you understand that you would have
8 the right to present your own witnesses? And you would have
9 a right to subpoena them; in other words, to require them to
10 come and testify in your defense?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Do you understand that if there were a
13 trial, you would have the right to testify, present evidence
14 on your own behalf if you wanted to, but that you would not
15 have to testify or present any evidence if you didn't want
16 to because you can't be forced to incriminate yourself?
17 That is, to present evidence of your own guilt.

18 In terms of the jury, I would instruct them that
19 they should not hold that against you, nor infer any kind of
20 guilt based on the fact that you have asserted your
21 constitutional right.

22 Do you understand that?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Do you understand that unless and
25 until I accept your guilty plea, you are presumed by the law

1 to be innocent because it's the government's burden to prove
2 your guilt beyond a reasonable doubt? Until it does, you
3 can't be convicted at trial.

4 Do you understand that?

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Do you understand if you went to trial
7 and were convicted, you would have a right to appeal your
8 conviction to a Court of Appeals? That's a higher court,
9 three judges.

10 Again, you could have a lawyer help you prepare
11 your appeal if you could not afford one.

12 Do you understand that?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Now, let me discuss -- by pleading
15 guilty you give up your rights. In terms of appeal, there
16 is a particular provision in your plea letter. So I would
17 ask if you could open it up to page 8, Capital D.

18 Do you have it in front of you?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Let me go through it because it's a
21 little complicated.

22 You are agreeing to waive -- which means, of
23 course, give up -- insofar as such waiver is permitted by
24 law -- I will get back to that -- the right to appeal the
25 conviction in this case on any basis, including but not

1 limited to: One, claims that the statute under which you
2 are pleading guilty is unconstitutional; and, two, that the
3 admitted conduct doesn't fall within the scope of the
4 statute; in other words, not criminal.

5 Now, at the present time the statute is
6 constitutional; nobody has said otherwise. And at the
7 present time your conduct would fall within the scope of the
8 statute. So you are giving up your right to appeal.

9 Insofar as such waiver is permitted by law means:
10 If, at some later date, some other person takes it up on
11 appeal and the Court of Appeals decides that the statute at
12 issue in your case is unconstitutional or your conduct was
13 not criminal, then you can take a collateral appeal to
14 benefit from that Court of Appeals' decision.

15 Do you understand?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: All right. Further down -- that was
18 the conviction.

19 You also are agreeing to waive -- again, give
20 up -- the right to appeal the sentence, which includes but
21 isn't limited to a term of imprisonment, any fine,
22 forfeiture, award of restitution, term or condition of
23 supervised release, authority of the Court to set conditions
24 of release, and the manner in which the sentence was
25 determined. So you are giving up that, except if I sentence

1 you above the statutory maximum -- that would be an unlawful
2 sentence -- or above the guideline range, which could be a
3 lawful sentence; but you are reserving the right to be able
4 to take it up on appeal should I do so.

5 And then the last part is: Notwithstanding that
6 agreement to waive the right to appeal the conviction as
7 sentenced as I have explained it to you, you do retain the
8 right to appeal on the basis of ineffective assistance of
9 counsel but not on other issues.

10 Do you understand and agree?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: All right. Then let me get back to --
13 so with a few exceptions, any notice of appeal needs to be
14 filed within 14 days of judgment being entered.

15 Again, if you are unable to pay the cost of an
16 appeal, you can ask to have it filed without cost to you.
17 You can also ask to have counsel again appointed to help you
18 with your appeal without cost to you as well.

19 Do you understand?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: Do you want to plead guilty, give up
22 your rights to trial, your right to an appeal, and all of
23 the other rights that I have explained to you?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: All right. At this point we're going

1 to have the government state the offense. I would just read
2 the written proffer; I think it puts it in context and gives
3 the rest of the information.

4 I will ask, at the end, if there are any defenses
5 that needs to be specifically waived from counsel.

6 The government -- I would ask that you take the
7 facts in the proffer as to his conduct associated with the
8 elements of the offense. All right.

9 MS. KLAMANN: Your Honor, if this case were to
10 proceed to trial, the government --

11 THE COURT: You need to speak up a little bit.
12 Can you move the microphone more directly --

13 MS. KLAMANN: Sure, Your Honor.

14 THE COURT: There you go.

15 MS. KLAMANN: If this case were to proceed to
16 trial, the government's evidence would show that the
17 United States Capitol, which is located at First Street
18 Southeast, in Washington, D.C., is secured 24 hours a day by
19 United States Capitol Police.

20 Restrictions around the Capitol include:
21 Permanent and temporary security barriers and posts manned
22 by the United States Capitol Police. Only authorized people
23 with appropriate identification are allowed access inside
24 the Capitol.

25 On January 6, 2021, the exterior plaza of the

1 Capitol was closed to members of the public. On January 6,
2 2021, a Joint Session of the United States Congress convened
3 at the Capitol, which is located at First Street Southeast,
4 in Washington, D.C.

5 During the Joint Session, elected members of the
6 United States House of Representatives and the United States
7 Senate were meeting to certify the vote count of the
8 Electoral College of the 2020 presidential election, which
9 had taken place on Tuesday, November 3rd, 2020.

10 The Joint Session began at approximately 1 o'clock
11 p.m. Shortly thereafter, by approximately 1:30 p.m., the
12 House and Senate adjourned to separate chambers to resolve a
13 particular objection.

14 Vice President Mike Pence was present and
15 presiding, first in the Joint Session and then in the Senate
16 chamber.

17 As the proceedings continued in both the House and
18 the Senate, and with Vice President Pence present and
19 presiding over the Senate, a large crowd gathered outside
20 the Capitol. Temporary and permanent barricades, as noted
21 above, were in place around the exterior of the Capitol, and
22 United States Capitol Police officers were present and
23 attempting to keep the crowd away from the Capitol and the
24 proceedings underway inside.

25 At approximately 2 o'clock p.m., certain

1 individuals in the crowd forced their way through, up, and
2 above the barricades.

3 Officers of the United States Capitol Police were
4 forced to retreat, and the crowd had advanced to the
5 exterior facade of the building. The crowd was not lawfully
6 authorized to enter or remain in the building. And prior to
7 entering the building, no members of the crowd submitted to
8 security screenings or weapons checks as required by the
9 United States Capitol Police officers or other authorized
10 security officials. At such time, the certification
11 proceedings were still underway, and the exterior doors and
12 windows of the Capitol were locked or otherwise secured.

13 Members of the United States Capitol Police
14 attempted to maintain order and keep the crowd from entering
15 the Capitol. However, shortly after 2 o'clock p.m.,
16 individuals in the crowd forced entry into the Capitol,
17 including by breaking windows and by assaulting members of
18 law enforcement.

19 As others in the crowd encouraged and assisted
20 those acts, the riot resulted in substantial damage to the
21 Capitol requiring the expenditure of more than \$1.4 million
22 of repairs.

23 Shortly thereafter, at approximately 2:20 p.m.,
24 members of the House of Representatives and of the Senate,
25 including the President of the Senate, Vice President Pence,

1 were instructed to and did evacuate the chambers.

2 Accordingly, all proceedings of the United States Congress,
3 including the Joint Session, were effectively suspended
4 until shortly after 8 o'clock p.m. on January 6, 2021.

5 In light of the dangerous circumstances caused by
6 the unlawful entry of the Capitol, including the danger
7 posed by individuals who had entered the Capitol without any
8 security screening or weapons check, congressional
9 proceedings could not resume until after every unauthorized
10 occupant had been removed from or left the Capitol and the
11 United States Capitol Police confirmed that the building was
12 secured.

13 The proceedings resumed at approximately 8 o'clock
14 p.m. after the building had been secured.

15 Vice President Pence remained in the Capitol from
16 the time he was evacuated from the Senate chamber until the
17 session resumed.

18 The defendant, Kevin Galetto, traveled by plane on
19 January 5th, 2021, from his then home in Westminster,
20 California, to Washington, D.C., to attend the "Stop the
21 Steal" rally on January 6, 2021.

22 In December 2020, Galetto told a group of friends
23 via text that he was going to Washington to "Fight for their
24 freedom."

25 Around 2:40 p.m. on January 6th, the defendant

1 approached the lower West Terrace tunnel entrance. He was
2 wearing a black Trump baseball hat, a black headband, an ear
3 warmer, a tan jacket, and a gray hoodie as he entered the
4 tunnel. He was one of the first individuals inside the
5 tunnel, and was met with a large police presence denying him
6 and the larger crowd entrance into the Capitol Building.

7 The crowd in the lower West Terrace tunnel was
8 significant, and numbered well more than three individuals.
9 This assemblage, of which defendant was a part, confronted
10 the police officers in the lower West Terrace who were
11 attempting to hold the crowd from entering the Capitol
12 through the tunnel. Some members of this assemblage engaged
13 in acts of violence.

14 Evidence from body-worn camera of a Metropolitan
15 Police Department officer, B.S., captured the defendant at
16 the entryway doors of the lower West Terrace tunnel. At
17 approximately 2:43 and 26 seconds that afternoon, body-worn
18 camera captured the defendant with his arms extended and
19 pressed up against MPD officer shields.

20 At approximately 2:44 and 14 seconds that
21 afternoon, body-worn camera captured the defendant's body
22 pressed up against officer shields.

23 At approximately 2:46 and 20 seconds that
24 afternoon, the body-worn camera captured a scuffle involving
25 the defendant. Officer B.S. was knocked to the ground.

1 At approximately 2:46 and 28 seconds that
2 afternoon, body-worn camera captured the defendant on one
3 knee with a hand on the ground.

4 At approximately 2:47 and 2 seconds that
5 afternoon, the defendant rose to his feet and retreated from
6 the area of the tunnel.

7 As he made his way from the inside to the tunnel
8 entrance, the defendant shouted to the crowd outside, "More
9 people," in an attempt to summon more rioters to the tunnel
10 entrance.

11 Defendant remained at the tunnel for over an hour
12 and a half and was part of the -- one of the last pushes
13 against police officers, at approximately 4:15 p.m.

14 Defendant's extended presence in the tunnel and
15 his violent confrontation with officers as part of the crowd
16 presented an immediate risk of injury to person or damage to
17 property.

18 On the evening of January 6, 2021, the defendant
19 texted an individual on his cell phone noting that the
20 politicians, "need to be overthrown," and that Mike Pence
21 "is a trader [sic]."

22 Your Honor, with respect to the elements of the
23 two charges against the defendant, Count 1 charges a
24 violation of Title 18, United States Code,
25 Section 231(a)(3). The first element of that charge is that

1 the defendant knowingly committed an act or attempted to
2 commit an act with the intended purpose of obstructing,
3 impeding, or interfering with a law enforcement officer.

4 Paragraphs 12, 13, and 14 in the statement of
5 offense establish that element; namely, defendant's
6 interaction with Officer B.S. in the tunnel; defendant's
7 encouragement of other rioters to enter the tunnel and
8 further impede police; and defendant's participation in a
9 push against officers later that afternoon.

10 The second element of the violation of
11 Section 231(a)(3) is that law enforcement was engaged in the
12 lawful performance of his official duties incident to and
13 during a civil disorder. Paragraph 12 of the statement of
14 offense establishes that element. It speaks to a specific
15 member of the Metropolitan Police Department, Officer B.S.,
16 with whom the defendant had physical contact; and at the
17 time that that contact occurred, Officer B.S. was a member
18 of the Metropolitan Police Department.

19 The third element for a violation of Section 231
20 is that the civil disorder obstructed, delayed, or adversely
21 affected either commerce or the movement of any article or
22 commodity in commerce, or the conduct or performance of any
23 federally protected function.

24 Paragraphs 3 and 7 of the statement of offense
25 discuss the interruption of the certification of the

1 electoral vote. And that electoral vote -- the
2 certification of the Electoral College vote was a federally
3 protected function. So each of the elements of Count 1 are
4 established by the statement of offense.

5 Count 3 charges the defendant with a violation of
6 Title 18, United States Code, Section 111(a)(1). The first
7 element of that charge is that the defendant assaulted,
8 resisted, opposed, impeded, intimidated, or interfered with
9 any officer or employee of the U.S. -- of the
10 United States -- or of any agency in any branch of the
11 United States government.

12 Paragraphs 12 and 14 of the statement of offense
13 establish that element. Namely, paragraph 12 sets out an
14 assault of Officer B.S., and paragraph 14 discusses
15 defendant's participation in a physical push against the
16 officers in the lower West Terrace tunnel.

17 It's clear from the facts that the Metropolitan
18 Police Department was assisting officers of the
19 United States, namely, United States Capitol Police
20 officers, in defending the United States Capitol on
21 January 6th.

22 The second element of Count 3 is that the
23 defendant took that act with some use of force.
24 Paragraph 14 alleges that defendant took part in the last
25 push at the lower West Terrace tunnel and "presented an

1 immediate risk of injury to person or damage to property."

2 So the statement of offense also establishes the second
3 element of Section 111(a)(1).

4 The third element is that the defendant acted
5 while the officer or employee was engaged in or on account
6 of performance of official duties. Again, this is
7 established by paragraph 14 of the statement of offense,
8 which discusses defendant's actions with respect to --
9 actually, Your Honor, I'm sorry, it's paragraph 12 of the
10 statement of offense, and paragraph 14, both of which
11 discuss the defendant's actions with respect to a specific
12 officer, Officer B.S., from the Metropolitan Police
13 Department, as well as other officers that were defending
14 the lower West Terrace tunnel on January 6th.

15 The last and final element of Count 3 is that the
16 assault involved physical contact with the victim or the
17 intent to commit another felony. Once again, paragraphs 12
18 and 14 of the statement of offense also establish this
19 element in that they show that the defendant made physical
20 contact with Officer B.S. and pushed against officers at the
21 lower West Terrace tunnel.

22 Additionally, the statement of offense indicates
23 that he acted with the intent to commit another felony,
24 namely, civil disorder, which is the crime charged in
25 Count 1.

1 THE COURT: All right.

2 Mr. Galetto, do you have it in front of you?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Okay. So let me go through it. Let
5 me go through the background.

6 I assume that you will agree that the U.S. Capitol
7 is located in Washington, D.C., and it's secured 24 hours a
8 day by Capitol Police; that there are certain restrictions
9 and security barriers posted at various times; and that
10 appropriate identification is required in order to get into
11 the Capitol.

12 Would you agree with that?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Would you agree that on January 6,
15 2021, that the exterior plaza of the Capitol was closed to
16 members of the public?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Paragraph 3 is that: On January 6,
19 2021, there was a Joint Session of the U.S. Congress
20 convened at the Capitol. During the Joint Session, members
21 of the House of Representatives and Senate were meeting to
22 certify the vote count of the Electoral College of the 2020
23 presidential election, which had taken place on
24 November 3rd, 2020. They began at around 1:00 p.m. They
25 evidently -- they adjourned to separate chambers to resolve

1 a particular objection. Vice President Mike Pence was
2 present and presiding in the Joint Session, and then later
3 in the Senate chamber relating to the objection.

4 Would you agree to all of that?

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Paragraph 4 is: As the proceedings
7 continued in the House and Senate, and Vice President Pence
8 present and presiding over the Senate, that a crowd gathered
9 outside the Capitol.

10 There were temporary and permanent barricades
11 around the exterior, and Capitol Police officers were
12 present and were trying to keep the crowd from the Capitol
13 and from getting into the Capitol to disrupt the
14 proceedings.

15 Would you agree with that?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Paragraph 5 is: At about 2:00 p.m.,
18 some people in the crowd managed to get over the barricades.
19 U.S. Capitol Police officers were forced to retreat, and the
20 crowd advanced to the exterior of the building -- of the
21 Capitol Building. They were not lawfully authorized to
22 enter or to get into the building, and any of the security
23 or weapons checks were not able to be conducted.

24 Would you agree with that?

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: Six is: At the time that the
2 certification proceedings were still underway, the exterior
3 doors, windows of the Capitol were locked and secured.
4 Capitol Police was attempting to maintain order, keeping the
5 crowd from entering the Capitol.

6 But around 2:00 p.m., certain members of the crowd
7 forced entry into the Capitol, breaking windows, assaulting
8 members of law enforcement, as they were encouraged, and
9 substantial damage was required [sic] -- actually, it's
10 2.8 million at this point.

11 Would you agree with that?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: All right. And then, last, shortly
14 after that, around 2:20, members of the House and of the
15 Senate, including President of the Senate who was the Vice
16 President, were instructed, and did -- they evacuated the
17 chambers. All proceedings of Congress including the Joint
18 Session were suspended until after 8 o'clock on January 6th
19 because of the dangerous circumstances caused by the
20 unlawful entry to the Capitol. And the fact that there were
21 no security screenings and congressional proceedings could
22 not resume until later in the evening when the --
23 unauthorized occupants had been removed and the Capitol was
24 under control and secure again.

25 Would you agree with that?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: All right. In terms of your specific
3 participation, as I understand it, you traveled by plane on
4 the day before, on January 5th, from your home in
5 Westminster, California, to Washington to attend the "Stop
6 the Steal" rally on January 6th. "Stop the Steal" was a
7 rally of then-President Trump; is that correct?

8 THE WITNESS: That's correct, Your Honor.

9 THE COURT: In December of 2020, you told a group
10 of friends via text that you were going to Washington to
11 "Fight for their freedom."

12 Do you agree you did that?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: 10 -- paragraph 10 is: Around 2:40,
15 on January 6th, you approached the lower West Terrace, and
16 there is a tunnel entrance there that takes you into the
17 Capitol.

18 At the time you were wearing a black Trump
19 baseball hat, a black headband-ear warmer kind of thing, a
20 tan jacket, a gray hoodie as you entered the tunnel. You
21 were one of the first individuals going inside the tunnel,
22 and you met with a large police presence who were trying to
23 keep out you and the larger crowd from that tunnel entrance
24 which would give you entrance into the Capitol Building.

25 Would you agree with that?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: Paragraph 11 is: The crowd in the
3 lower West Terrace was significant and numbered well more
4 than three people, and you were part of that group.

5 You and others confronted the police officers in
6 the lower West Terrace in that tunnel entrance. And they
7 were -- the officers were attempting to hold the crowd from
8 entering the Capitol through the tunnel. In sum, there were
9 some that were engaged in acts of violence.

10 Would you agree with that?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Okay. And 12 is: Evidence from a
13 body-worn camera of an MPD -- Metropolitan Police Department
14 officer, a D.C. officer, initials B.S., captured you at the
15 entryway doors of the lower west tunnel.

16 At approximately 2:43:26, the camera captured you
17 with your arms extended and pressed up against MPD officer
18 shields that they were holding up.

19 Is that accurate?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: And at approximately 2:44 and
22 14 seconds p.m., the body-worn camera also captured your
23 body pressed up against the officer shields. And shortly
24 after that, at approximately 2:46 and 20 seconds p.m., the
25 body-worn camera captured a scuffle involving you and

1 Officer B.S., and Officer B.S. was knocked to the ground.

2 Would you agree with all of that?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: At approximately 2:46 --

5 MR. PORTALE: Your Honor, may I --

6 THE COURT: I'm sorry?

7 MR. PORTALE: May I just speak briefly.

8 THE COURT: Yes.

9 MR. PORTALE: I just wanted to just clarify. I
10 don't think it was ever alleged that -- because the way it's
11 written, it could be confusing. I just want to make sure
12 that the Court and the record is clear that Mr. Galetto was
13 not ever formally accused of knocking Officer B.S. to the
14 ground. It was that there was a scuffle --

15 THE COURT: And he was -- as a part of that, he
16 wound up on the ground.

17 MR. PORTALE: Yes. Correct.

18 THE COURT: That's the way I interpreted it.

19 MR. PORTALE: I just wanted to make sure that the
20 record is clear and that Your Honor is clear that the
21 government did not formally accuse him of being the person
22 who knocked Officer B.S. to the ground.

23 THE COURT: Is that correct, Government?

24 MS. KLAMANN: I believe so, Your Honor.

25 MR. PORTALE: Thank you, Judge.

1 I'm sorry to interrupt.

2 THE COURT: No problem.

3 At approximately 2:46:28 p.m., the body-worn
4 camera captured Mr. Galetto on one knee with a hand on the
5 ground. At approximately 2 minutes -- 2:47:02, you rose to
6 your feet and retreated from the area of the tunnel; is that
7 correct?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: So as I understand it, then, they
10 capture a scuffle involving you and the officer; the officer
11 falls to the ground. And you, basically, are also on one
12 knee as a result of this scuffle, I take it, with your hand
13 on the ground, and then you get up. Is that accurate?

14 MR. PORTALE: May I --

15 THE COURT: He has to say something, not you.

16 MR. PORTALE: Can I speak to him for a second?

17 THE COURT: No, no, no.

18 Let him speak. He can correct me if I'm
19 interpreting it wrong.

20 MR. PORTALE: Can I speak to him before he does?

21 THE COURT: Go ahead.

22 MR. PORTALE: Thank you.

23 THE WITNESS: Your Honor, I did not specifically
24 engage with this police officer. I was knocked to the
25 ground due to the crowd. The police officer was already on

1 the ground by the time I was on one knee. In actuality, I
2 was trying to help him back up because he was screaming,
3 "Help me, help me, help me," at the time. So I tried to --

4 THE COURT: Let me go over this again. In terms
5 of -- again, at approximately 2:44:14, the body-worn camera
6 captures your body pressed up against officer shields, the
7 plastic shields. Is that accurate?

8 THE WITNESS: That is accurate, yes, ma'am.

9 THE COURT: Okay. And then, shortly after that,
10 the camera captures what they have called a "scuffle"
11 involving you.

12 Is that correct or not?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: All right. And as I also understand
15 it, this one particular officer was knocked to the ground by
16 somebody else, or in this scuffle where there are other
17 people, he wound up on the ground?

18 THE WITNESS: That is correct.

19 THE COURT: Which is correct?

20 THE WITNESS: That he was knocked to the ground.
21 I was knocked to the ground. We were both on the ground at
22 the same time, but it was not as a result of me physically
23 putting him on the ground.

24 THE COURT: Is that acceptable to the government?
25 That's not the way I read this.

1 MS. KLAMANN: Your Honor, that's not what is
2 written in the plea agreement. As Your Honor read, it's
3 that the scuffle involved Officer B.S. falling to the
4 ground, and the defendant was also on the ground.

5 THE COURT: The way it's written, and I think the
6 way -- in terms of, frankly, doing the elements of the
7 offense, you have to have been involved in the scuffle with
8 B.S., which -- I don't know whether others were involved in
9 the scuffle, but in a scuffle with B.S. B.S. wound up -- I
10 am not suggesting you hit him, but he wound up -- as a
11 result of this, maybe he lost his balance or whatever -- but
12 he wound up on the ground. You also wound up on the ground
13 as well.

14 THE WITNESS: That's correct.

15 THE COURT: Would you agree with that?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Is that acceptable?

18 MS. KLAMANN: Yes, Your Honor. Thank you.

19 THE COURT: Okay. So paragraph 13 is: As you
20 made your way inside the tunnel entrance -- as you made your
21 way from the inside to the tunnel entrance, you had shouted
22 to the crowd outside, "More people," in an attempt to get
23 more people to come into the tunnel entrance. Is that
24 accurate?

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: 14 is, you remained at the tunnel for
2 over an hour and a half, and were part of the last pushes
3 against the officers at approximately 4:15; is that correct?

4 THE WITNESS: Yes, Your Honor.

5 MR. PORTALE: If I can just clarify that, too,
6 very briefly, if I may.

7 I just think that words are important; I want to
8 make sure because some of the way that these two paragraphs
9 are written are just a little confusing.

10 We have never alleged that Mr. Galetto remained in
11 the tunnel as part of a push for an hour and a half. He was
12 outside it or around it. He ended up going back into the
13 tunnel about an hour and a half later and was in the crowd
14 as the crowd pushed against officers. But Mr. Galetto was
15 never accused of or caught on camera pushing -- physically
16 pushing against officers, and I think that that is
17 important.

18 THE COURT: I don't think --

19 MR. PORTALE: He was not part of the crowd -- part
20 of that push.

21 THE COURT: Excuse me.

22 I didn't read this as he was -- I read it that he
23 was in the tunnel -- the tunnel is some distance -- for
24 around an hour and a half.

25 It doesn't say what you were doing there, but,

1 ultimately, you were involved in the last push at the
2 officers. Is that accurate?

3 THE WITNESS: Yes, Your Honor.

4 MR. PORTALE: Thank you, Judge.

5 THE COURT: All right. And your extended presence
6 in the tunnel and your violent confrontation with the
7 officers, both pressing against the shields and this
8 scuffle, part of the crowd presented an immediate risk of
9 injury to person or damage to property.

10 The injury would be to the Capitol Police officers
11 and MPD officers that were trying to prevent people from the
12 crowd getting into the tunnel, which would give access to
13 the Capitol.

14 Would you agree with that?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: And then on the evening of
17 January 6th, you sent a text to someone on your cell phone
18 noting that "Politicians need to be overthrown," and that
19 Mike Pence "is a trader," which I assume you meant
20 T-R-A-I-T-O-R.

21 THE WITNESS: Yes.

22 THE COURT: Yes? Would you agree?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: All right. So the civil disorder
25 knowingly -- in other words, you know what you were doing;

1 this wasn't some accident -- committed an act or attempted
2 to commit an act with the purpose of disrupting, impeding,
3 or interfering with a law enforcement officer. That would
4 be what occurred in paragraph 12, which is pushing against
5 the MPD officer shields, this scuffle, and then in 14, part
6 of the push -- the final push against them.

7 At the time of the act, the law enforcement
8 officer was engaged in his lawful performance incident to
9 and during a civil disorder. So he -- this would have been
10 the officers -- in particular, Officer B.S. -- who were
11 there to provide security and to keep the crowd from getting
12 through the tunnel into the Capitol.

13 The civil disorder is, basically, you are
14 obstructing or interfering with the officer, which we have
15 indicated; so it's both elements 1 and 2.

16 And three is the civil disorder: In any way or
17 degree obstructed, delayed, or adversely affected the
18 performance of a federally protected function. And the
19 performance of the federally protected function was the vote
20 of the Electoral College, which they were -- MPD and Capitol
21 Police officers were trying to protect the Capitol so that
22 those functions could go on and that the crowd would not be
23 able to get in.

24 Count 3, that the defendant assaulted, resisted,
25 imposed, impeded, intimidated, or interfered -- I think

1 paragraphs 12 and 14 talk about both the scuffle and the
2 push against the shields -- the officers who had put them
3 up, obviously, to prevent you from going in. And you
4 assaulted, you opposed, and you impeded and interfered with
5 their trying to keep the crowd from getting through the
6 tunnel into the Capitol; that you did it with some use of
7 force, which would have been both pushing against your body,
8 the shields, and the final push. In paragraph 14, that the
9 defendant did so while Officer B.S. was engaged in his
10 official duties which -- he was on duty to prevent the crowd
11 from getting into -- past the tunnel into the Capitol; that
12 the assault involved physical contact with the victim which
13 would have been, presumably, the scuffle as well as -- the
14 scuffle in paragraph 12, it seems to me; as well as,
15 potentially, 14; and the intent to commit another felony,
16 which would have been -- the felony would have been the
17 civil disorder itself.

18 So I'll find that the government then has evidence
19 beyond a reasonable doubt of the elements of both the
20 charges in Count 1 and 3, and that Mr. Galetto has admitted
21 conduct that meets the elements of that offense.

22 Now, in terms of the written letter that sets out
23 the plea agreement, did you go over it carefully?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Okay. What I am going to do is -- as

1 I told you, I would go through portions of it. I am going
2 to start with two things, which are consequences which
3 relate to the sentencing. Set out here, although I will
4 discuss it slightly differently.

5 By statute, penalties, crimes, and charges have
6 statutory maximums as to what the penalties can be. It's
7 unlawful to sentence above the maximums that are set out by
8 statute.

9 So for Count 1, it would be the civil disorder.
10 The maximum sentence for jail time is incarceration, five
11 years. The maximum fine is \$250,000 or two times the
12 pecuniary loss or gain.

13 Supervised release, if you are given a period of
14 jail time, you can be ordered to spend time supervised in
15 the community; it cannot be for more than three years. If
16 you are given jail time and then supervised release -- if
17 you commit a new crime or violate the supervised release, in
18 terms of its conditions, it can be revoked. If it is
19 revoked, then a new sentence is calculated based on statute
20 and the sentencing guidelines; then you will not get credit
21 for the period of time that you have already served on the
22 original offense; you would have to serve the full sentence.

23 Do you understand that?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: There is a special assessment which I

1 cannot waive; you need to pay \$100.

2 Do you understand all of that?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Now, in Count 3, which is the
5 assaulting, resisting, or impeding certain officers, the
6 maximum period of incarceration is eight years; the maximum
7 fine is \$250,000, or two times the pecuniary loss or gain.
8 Supervised release -- again, if you are incarcerated and you
9 are put in the community, you can be monitored; it cannot be
10 for more than three years; and, again, the same thing if
11 it's revoked; and another \$100 for the special assessment.

12 Do you understand and agree to all of that?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Now, in terms of the sentencing
15 itself, there are certain factors by statute, 3553(a), and
16 some other sections that the Court needs to consider; they
17 are very broad. They're basically your background
18 information, any rehabilitation needs, the seriousness of
19 the offense, just punishment, deterrence to you, deterrence
20 to others, those kind of broad things that the Court needs
21 to consider.

22 The probation office will prepare a presentence
23 report which will give -- set out the offense, give
24 background information about you. We can also make a
25 recommendation. And we'll also, importantly, do the

1 advisory sentencing guideline calculation; that will be the
2 official one that is done.

3 Once they do that, when this whole report is
4 prepared, it will be provided to your counsel and the
5 government; he can review it with you. And if there are
6 objections, either you disagree with how they have done the
7 calculations or some other factual information there, you
8 can indicate that and object to the probation officer, who
9 will either change the report or will leave your objection
10 and indicate why not -- why they haven't changed it. I will
11 resolve it before the sentencing goes forward.

12 So are you following me so far?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: So in terms of the advisory sentencing
15 guidelines, there is a commission that Congress set up that
16 is supposed to consider all of the things that a judge would
17 consider. And it comes up with numbers, basically, that
18 reflect those considerations, in terms of the seriousness of
19 the offense, and they give a number to that. Certain
20 characteristics of the offense may garner additional points,
21 or any of the other things that may reduce the points.

22 So for Count 1 the base offense is 10. Because
23 there was physical contact, there is an additional three
24 points, which means that the offense level is 13.

25 Count 3, the base offense is 14. Because there

1 was an official victim, which was the MPD officer, there is
2 an additional 6 points, which makes it 20. So, combined,
3 you take the two offenses and you take the larger number,
4 which is the 20.

5 Because you have no convictions in terms of
6 looking at the criminal history, you will be in criminal
7 history 1. The combined offense of 20 -- if you accept
8 responsibility, there can be a reduction of 2 points and
9 then an additional point if the government moves to allow
10 you that; so that is 17. So if you are in offense Level 17,
11 Criminal History Category 1, the range and sentencing is 24
12 to 30 months. The range of the fine is 10,000 to 95,000.

13 You should be aware that, in some circumstances --
14 although I am not sure in these types of offenses, if they
15 decide whether they are all connected, in which case you
16 would get -- I could not sentence you consecutively, it has
17 to be concurrent. Let me just say that it's either
18 concurrent so the two counts -- if the sentence runs
19 together, there is a slim possibility it's consecutive,
20 where the Court can sentence you for one count and, on top
21 of that, the second count. But I think because they're
22 related, the two offenses and counts, that it's probably
23 just going to be concurrent.

24 Now, the government has also indicated that there
25 is an enhancement which, so far, no judge has actually

1 imposed. I assume it's what is labeled the terrorism one.

2 Is that correct, Government?

3 MS. KLAMANN: Your Honor, I apologize.

4 Which portion of the plea letter are you referring
5 to?

6 THE COURT: It's in the -- let me show you.

7 Where is it? It's under -- page 5, second
8 paragraph under C, an upward departure.

9 MS. KLAMANN: Your Honor, I believe that just
10 refers -- I don't believe that refers to a specific
11 enhancement that the government plans to seek.

12 I'm sorry, I don't have my guidelines book with me
13 or else I would confirm that.

14 THE COURT: I assume that you spoke to -- Counsel,
15 you talked to your client. Which one is it?

16 I meant to look it up as well.

17 MR. PORTALE: Judge, I am 100 percent certain that
18 there has never been any mention of an upward variance or an
19 enhancement for anything.

20 THE COURT: It's in here -- it's in your -- look
21 at page 5, the second paragraph.

22 MR. PORTALE: Yes, Your Honor.

23 The way I see it, it says: The government
24 reserves the right to request --

25 THE COURT: Right. I am saying -- he should just

1 know that the government may request it.

2 I am just asking: What is it, the upward
3 departure?

4 MR. PORTALE: Judge, if I may, maybe we should
5 take a minute to just verify it; I think that's probably the
6 best idea, because it's not something that we discussed.

7 THE COURT: Well, what did you discuss with your
8 client?

9 Let me find it. I had meant to look at it
10 beforehand, and I didn't get a chance to.

11 MS. KLAMANN: Your Honor, I apologize. You are
12 correct. That is a reference to 381.4, a terrorism
13 enhancement.

14 THE COURT: Right.

15 As I said, no judge has imposed it so far.

16 You should just be aware that they may ask for it.
17 Which, if they ask for it, you obviously can object, and the
18 Court would be making a decision about it. But I wanted to
19 at least flag it so you are aware of it.

20 MR. PORTALE: Thank you, Judge.

21 THE COURT: All right. Then, in looking at the
22 guidelines, the sentencing guidelines, within that network
23 you can ask for a departure. They're very narrow because
24 the idea is the commission has come up with -- considered
25 everything that should be considered. So they have to be

1 somewhat extraordinary or out of the ordinary in some way.
2 The departures are -- you can depart upward; you can add
3 points or depart downward, which is what you would be most
4 interested in. As I said, they're very narrow. Also,
5 because these are advisory, the Court is not bound by them.

6 I do need to make the calculation, but I can
7 decide that I will vary the sentence. Obviously, I cannot
8 be above the statutory maximum, but I can vary either up or
9 down.

10 Now, according to our Court of Appeals, you have
11 to be very specific as to why the sentencing guideline range
12 does not satisfy the requirements of 3553(a) such that you
13 would move to a variance, but that is another option. So
14 you do the calculations, and then there is some opportunity
15 to argue for a slightly different sentence based on either
16 the departures or the variance.

17 So do you understand all of that?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: Is that something you talked about
20 with your attorney?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Okay. Did you have a discussion with
23 him about what the guidelines are like? How they apply?

24 Obviously, government counsel and defense counsel
25 came up with their best guess, in terms of what is in the

1 plea letter, but the official one is really going to be what
2 probation puts together.

3 Did you have that discussion?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Do you understand that I won't be able
6 to decide the advisory guideline sentence until after I get
7 the presentence report, after everybody has had an
8 opportunity to either object or not, and to basically make
9 whatever arguments that you and your counsel and the
10 government make me to decide what the official guideline
11 range is?

12 Do you understand and agree?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: And then, as I said, after I have
15 decided what guideline applies, I have the authority, in
16 some circumstances, to impose a sentence that's more severe
17 or less severe than what is in the advisory guidelines.
18 Those are those departures that I spoke about.

19 Also, I am also required to tell you this, that
20 parole has been abolished. So if you are sentenced to
21 prison, you actually serve the sentence. It used to be --
22 in the old days, you may have seen movies where people are
23 put on parole. You would get a sentence and part of the
24 sentence -- if the parole commission allowed you to -- would
25 be for you to serve it in the community; and that would be

1 part of your incarceration sentence, you would be on parole.
2 They have abolished that. Whatever sentence I give you of
3 incarceration, that's actually what you'll serve.

4 The Bureau of Prisons on its own, which has
5 nothing to do with me, has a program of good time credits.
6 And they may reduce, based on your good behavior, your
7 number of days but that's not something the Court does.

8 Do you understand that?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Do you also understand -- because the
11 offense as to which you are pleading guilty to are felonies,
12 if I accept your plea, that that may deprive you of valuable
13 civil rights: The right to vote, the right to hold public
14 office, the right to serve on a jury. It depends on where
15 you live. In some places it's a lifetime deprivation; other
16 places it's for a time period; in some places it doesn't
17 make any difference. It depends on where you are living as
18 to what effect having a felony offense will have on you.

19 Do you understand and agree to all of that?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: All right. Then let me move to the
22 letter itself, if you have it in front of you.

23 I am going to go and indicate the page and the
24 paragraph as I go through it. Page 1 sets out what you are
25 charged with. It sets out what the plea is and what the

1 statutory penalties are. We then get into the elements on
2 page 2 and 3.

3 You have also indicated, in paragraph 4 on page 3,
4 that you are agreeing to allow law enforcement agents to
5 conduct an interview with you regarding the events around
6 January 6th prior to sentencing; is that correct?

7 Is that what you have agreed to?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Additional charges -- you have
10 indicated that, obviously, the other charges that you are
11 not pleading guilty to will be dismissed. And that if you
12 have told them about any nonviolent criminal offenses that
13 you would have committed that they did not know about, they
14 will not charge you with those.

15 Moving to page 4, it sets out the guideline
16 calculations that we just talked about; the acceptance of
17 responsibility or being able to reduce it; the fact that the
18 estimated offense level, 17, after the -- if you do a
19 deduction of the 3 points for acceptance of responsibility.

20 And then on page 5, it talks about, under C, the
21 guideline range for that offense level and criminal history.
22 Paragraph second, more importantly: You are agreeing that
23 solely for the purpose of calculating the range neither a
24 downward nor upward departure from the guideline range is
25 warranted. The government does preserve its right about

1 that one particular potential departure.

2 You are also agreeing that neither party will seek
3 a different offense level calculation, but you are able to
4 argue for a different criminal history category should it
5 turn out to be different.

6 Do you understand and agree?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: Also, do you understand that the
9 estimated guideline range that has been set out is not
10 binding on the probation office or the Court?

11 Do you understand and agree to that?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Now, at the bottom of 5 -- obviously,
14 if you commit any conduct after this agreement that could
15 serve as an increase in your base offense or adjusted upward
16 departure -- obstructing justice, not appearing for court,
17 false statements, those kinds of things -- then you may wind
18 up with some increases to the base offense level.

19 Do you understand and agree?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: All right. Page 6, the top.

22 Importantly, 8, you have agreed that a sentence within the
23 estimated guideline range would be considered a reasonable
24 sentence under that statute 3553(a). But the parties agree
25 that either one of you may seek a variance that I spoke

1 about, and suggest the Court consider a sentence outside of
2 the guideline range based on those factors that I set out
3 under 3553(a). So both of you have reserved the right to
4 ask for a variance.

5 Do you understand and agree?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: All right. Under 9, on page 6, the
8 second paragraph, if you have agreed to something --
9 recommend something or not recommend something as part of
10 the plea, post sentencing -- so it's after the sentencing --
11 in front of the Bureau of Prisons or elsewhere, neither you
12 nor the government will be bound by those strictures that
13 have been put into the plea letter.

14 Also, the government is putting you on notice that
15 after sentencing they are not going to move to have your
16 sentence reduced for being cooperative, which would be this
17 Rule 35(b).

18 Do you understand and agree to all of that?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: All right. At the bottom of 6, it
21 indicates that I can impose a sentence all the way up to the
22 maximum. Obviously, above that would be an illegal
23 sentence.

24 Looking at page 7, again at the top, I want to
25 make sure you understand that you have no right to withdraw

1 the guilty plea if I impose a sentence set outside the
2 guideline range or if I don't follow the government's
3 sentencing recommendation or, frankly, your lawyer's
4 recommendation; and you and the government are bound by the
5 agreement regardless of the sentence that I impose. Any
6 effort on your part to withdraw the guilty plea because you
7 are unhappy with the length of the sentence that I could
8 impose would be considered a breach of the agreement.

9 Do you understand and agree?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: Conditions of release. We have
12 indicated that you can remain in the community as long as
13 you are compliant with the conditions. If that changes,
14 it's possible that you -- between now and sentencing, it's
15 possible that you could be picked up and held.

16 Do you understand and agree?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: At the bottom, in terms of statute of
19 limitations, this would only come up if the agreement is
20 vacated, in other words, made null and void. If that's the
21 case, then -- by statute, most crimes have a period of time
22 within which the government has to charge you. If they
23 charge you outside of that time period, you have a defense
24 saying they have charged you outside of the statute of
25 limitations and they can't do that; they can't proceed with

1 the prosecution.

2 So if at the time that we're entering this plea
3 the statute of limitations has not run, in other words, they
4 have charged you within that period of time but at some
5 later date the plea is vacated, made null and void, but the
6 government wants to go ahead and charge you again, you are
7 agreeing that you will not raise a statute of limitations
8 defense if, from the time of the plea and after it's
9 vacated -- if the statute of limitations has run.

10 Do you understand and agree?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: If you don't understand -- it's
13 basically to not have people plead guilty, it's vacated, and
14 then you try and withdraw the plea or have it vacated --

15 THE WITNESS: I see.

16 THE COURT: -- and then claim, oh, look; although,
17 originally, when you were charged, it was in the statute of
18 limitations, in the meantime, it has run. That's the
19 purpose of it.

20 THE WITNESS: So it's not the other way around,
21 they can charge me some other future charge that they didn't
22 come up at this particular plea bargain, correct?

23 THE COURT: Right.

24 THE WITNESS: Okay. I understand that.

25 THE COURT: All right. In terms of trial rights,

1 which is page 8, I have gone over them. The only one is the
2 second sentence: You are agreeing to forgo the right to any
3 further discovery or disclosure of information that has not
4 already been provided to you.

5 Do you understand and agree?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: The second paragraph under that is
8 Rule 11(f) of the Federal Rules of Criminal Procedure and
9 410, Rules of Evidence. Statements that you have made,
10 including the ones you have made today, that are admissions,
11 that if the plea is later withdrawn -- so if -- this is in
12 the circumstances it's withdrawn. Ordinarily, under those
13 rules, if any admissions you have made could be used to
14 impeach your credibility.

15 So if you got up on the stand and testified to
16 something different than, say, what you said today or some
17 other time, they could use those statements, your
18 admissions, against you. You are agreeing that they -- if
19 that occurs, that they can use it as direct evidence of what
20 you have said occurred.

21 Do you understand and agree?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: We went over the appeal rights.

24 Let's go to page 9, which talks about collateral
25 attack. So this is another way of appealing; it's usually

1 done at a later date.

2 You are giving up your right to challenge, again,
3 the conviction or sentence or attempt to modify or change
4 the sentence or the manner in which it was decided in any
5 collateral attack, which is an indirect attack on a
6 conviction or sentence at a later point.

7 Some examples are 2255s, which is a writ of habeas
8 corpus. Rule 60(b) is final judgment.

9 But there are exceptions. The exception is such
10 that if it's a motion based on newly discovered evidence or
11 you're claiming that you received ineffective assistance of
12 counsel, then you would be able to do the appeal in this
13 collateral way.

14 You are also reserving your right to file a motion
15 under Section 3582(c)(2). That is, if -- every once in a
16 while the commission revisits the advisory sentencing
17 guidelines. If they, at some later date, lowered it for
18 your type of offense -- it depends on whether they would
19 hold that it's retroactive or not. But if it was, you could
20 file to ask that the new guidelines which would give you a
21 lower sentence should be applied to you; but if it's denied,
22 then you can't take it up on appeal.

23 Do you understand and agree?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: All right. And we can do video for

1 everything but the plea, which we are doing now, and any
2 sentencing.

3 Do you understand and agree?

4 THE WITNESS: You said and any sentencing, so I
5 will have to --

6 THE COURT: Yes. For sentencing you will have to
7 come back; they are felonies.

8 THE WITNESS: I understand.

9 THE COURT: There are some differences with the
10 COVID procedures, but that has not changed. Statuses and
11 things we can do by videoconference, but not the plea or the
12 sentencing itself.

13 THE WITNESS: I understand.

14 THE COURT: All right. Page 10 is restitution.
15 You have agreed to restitution in the amount of \$2,000,
16 which goes to the repairs that need to be done to the
17 Capitol; they're made to the Clerk of the Court. And while
18 you have not paid the \$2,000 restitution, you are required
19 to submit a financial statement or a financial disclosure
20 form to the U.S. Attorney's Office so that they can see --
21 in terms of whether you have money and should actually be
22 paying. And you are authorizing the U.S. Attorney's Office
23 to get a credit report. Now, once you have paid that off,
24 then there is no reason for you to have to do disclosures of
25 your finances.

1 The Court can also set a schedule so you don't
2 have to pay it all at once; it can be over a monthly period
3 of time. The Court can do that. The government can still
4 pursue and try and collect it more as a lump sum.

5 Do you understand and agree?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: All right. Let's move to page 11.

8 THE WITNESS: Can I ask one question?

9 THE COURT: Sure.

10 THE WITNESS: So the financial disclosure, I
11 guess, it is --

12 THE COURT: Yes.

13 THE WITNESS: -- that's only if I cannot pay --

14 THE COURT: If you haven't paid it.

15 THE WITNESS: Okay.

16 THE COURT: In other words, they want to look at
17 your finances if you have not paid the -- until you have
18 paid the actual restitution. So it's not an ongoing thing
19 that -- while you are sentenced that you are going to be
20 providing them with your financial information; it's really
21 only until your financial obligations, whatever they are,
22 are actually fulfilled or satisfied.

23 THE WITNESS: I see. Thank you for the
24 clarification.

25 THE COURT: In terms of -- 15 is the breach of

1 agreement, if you break your end of the bargain.

2 Do you understand and agree that if you fail to
3 specifically perform or fulfill each of the obligations or
4 engage in any criminal activity before sentencing, you will
5 have been considered to have breached the agreement?

6 There are certain consequences. The government is
7 free from its obligations under the agreement. You will not
8 have a right to withdraw the guilty plea. You will be fully
9 subject to criminal prosecution for any other crimes if you
10 commit them, such as perjury or obstructing justice. The
11 government will be free to use against you, directly and
12 indirectly, in any criminal or civil proceeding, all
13 statements that you have made, any other information or
14 materials that you have provided, including what you have
15 done today or any other kinds of debriefings.

16 Do you understand and agree?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: In terms of the breach, the government
19 shall be required to prove a breach of the agreement only by
20 a preponderance of the evidence; so that is the standard in
21 Burton, which is at a civil lawsuit level; beyond a
22 reasonable doubt for criminal is, obviously, higher. So
23 this is a lower level to prove the breach. If the breach is
24 because you violated some federal, state, or local crime,
25 then they only have to prove it by probable cause to show

1 the breach; and that's even lower than preponderance of the
2 evidence.

3 Do you understand and agree?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: And then the paragraph -- the last
6 sentence in the third paragraph, under 15, you understand
7 that any perjury, false statements, declarations,
8 obstructing justice related to your obligations will be
9 viewed as a breach of the agreement; in other words, you
10 have broken your end of the bargain. If that happens, you
11 won't be able to withdraw your guilty plea.

12 Do you understand and agree?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Now, I want to make sure that we have
15 the full agreement, either in writing or what we have talked
16 about here. You can't come back in a week or so and say,
17 well, Judge, I thought this or that was part of the
18 agreement.

19 I want to make sure that this is the complete
20 agreement, that there is nothing out there that you think is
21 part of it that has not been -- I haven't gone over
22 everything, but that has not been brought up in court orally
23 or in writing.

24 Is there anything?

25 THE WITNESS: No, Your Honor.

1 THE COURT: It also binds the agreement -- the
2 criminal and superior court divisions of the U.S. Attorney's
3 Office here in D.C. doesn't bind the civil division or any
4 other U.S. Attorney's Office.

5 Do you understand and agree?

6 THE WITNESS: I agree.

7 THE COURT: All right. Now, my last question is
8 about -- goes to voluntariness of the plea.

9 Has anyone including your lawyer, law enforcement,
10 the prosecutor, or anybody else you have come in contact
11 with since your arrest promised or suggested to you that
12 just by pleading guilty that you are necessarily guaranteed
13 a lighter sentence?

14 Obviously, I will take into account your
15 acceptance of responsibility. But I want to make sure no
16 one has guaranteed you a specific sentence.

17 THE WITNESS: That's correct, no one has.

18 THE COURT: Nobody --

19 THE WITNESS: No.

20 THE COURT: -- has anyone forced, threatened, or
21 coerced you in any way into entering this plea of guilty?

22 THE WITNESS: No, Your Honor.

23 THE COURT: Do you understand that the agreement
24 reached in this case resulted from negotiations between your
25 lawyer and the government's lawyer?

1 THE WITNESS: Understood.

2 THE COURT: Has anyone made any promises to you in
3 connection with your guilty plea other than those in the
4 plea letter or what we have spoken about today in court?

5 THE WITNESS: The question is what? I'm sorry.

6 THE COURT: Has anyone made any promises to you in
7 connection with your guilty plea other than the plea letter
8 or what we have talked about here?

9 THE WITNESS: No, Your Honor.

10 THE COURT: Has anyone made any promises to you as
11 to what sentence I will impose in this case if I accept your
12 guilty plea?

13 THE WITNESS: No, Your Honor.

14 THE COURT: Do you understand that at this time I
15 don't know what sentence I will impose since I haven't heard
16 from the probation office or the attorneys?

17 Do you understand that?

18 THE WITNESS: Yes, I do.

19 THE COURT: Are you entering this plea of guilty
20 voluntarily and of your own free will?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: And are you entering this plea of
23 guilty because you are guilty of the two counts that you are
24 pleading to?

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: Anything you don't understand about
2 the proceeding or your plea?

3 Anything you want to ask me or your counsel?

4 THE WITNESS: No, Your Honor.

5 THE COURT: I want to make sure that this is the
6 decision that you wish to make because, again, you can't
7 come back in a month or two and say: I changed my mind,
8 Judge, I want to withdraw it.

9 I want to make sure this is what you want to do.

10 Are you sure that this is what you want to do?

11 THE WITNESS: Yes.

12 THE COURT: Then how do you, Kevin Louis Galetto,
13 plead to Count 1, civil disorder; guilty or not guilty?

14 THE WITNESS: Guilty. Guilty, Your Honor.

15 THE COURT: And to Count 3, assaulting, resisting,
16 or impeding certain officers; guilty or not guilty?

17 THE WITNESS: Guilty, Your Honor.

18 THE COURT: All right. I am satisfied the
19 defendant, Mr. Galetto, is fully competent and capable of
20 making a decision today, understands the nature and
21 consequences of what he is doing. He is acting voluntarily,
22 of his own free will, and it's an adequate factual basis for
23 his plea. Therefore, the plea is accepted.

24 The Court finds Kevin Louis Galetto guilty of
25 Count 1, civil disorder; Count 3, assaulting, resisting, or

1 impeding certain officers.

2 All right. I will leave your conditions of
3 release as they are now.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Let me sign the waiver of trial.

6 Dorothy, what is the presentence date? When would
7 be when it's done?

8 THE COURTROOM DEPUTY: June 18th.

9 THE COURT: 18th?

10 THE COURTROOM DEPUTY: Yes.

11 THE COURT: That's a Sunday. So let me give them
12 until June 23rd, we have quite a few cases, so they don't
13 ask for extensions.

14 Do you want the government to go first and then
15 you second, or do you want to file simultaneously?

16 THE WITNESS: What's the question, Your Honor?

17 THE COURT: It's for your lawyer.

18 Do you want to file simultaneously or have the
19 government go first and you second?

20 MR. PORTALE: Your Honor, I think that
21 simultaneous in this case is fine.

22 THE COURT: All right. Come up with a date.

23 June 23rd is when I get it. So you would have
24 looked at it beforehand, made any objections, done whatever
25 needs to be done.

1 From the 23rd -- how much time do you want after
2 that? Give me a date that you are going to stick to.

3 MR. PORTALE: May we have 30 days from there,
4 Judge?

5 THE COURT: Okay. So are you talking about
6 July 21st?

7 MR. PORTALE: Yes, Your Honor.

8 THE COURT: Give me another date if you want
9 something else. I would like you to stick to it as much as
10 possible.

11 MR. PORTALE: If it's going to be an issue -- if
12 we do need more time, maybe we should take August 4th, if
13 that pleases the Court.

14 THE COURT: No. As I said, I would rather you
15 file -- that you don't ask for extensions. I get a lot of
16 extensions; I would rather give you what you need.

17 So both the government and the defense memorandum
18 in aid of sentencing will be filed then. Let me see -- look
19 and see what's available for an actual sentencing date.

20 (Whereupon, the Court and staff confer.)

21 THE COURT: Do you have a preference of either
22 Monday the 7th or Tuesday the 8th for the sentencing? I
23 start a trial on the 9th. How about the 8th? Just
24 because -- the other one is finishing on the 4th, just in
25 case there is a little overlap.

1 MR. PORTALE: Judge, the month is August?

2 THE COURT: Yes.

3 MR. PORTALE: I don't have a preference, Judge.

4 THE COURT: Is that okay?

5 So August 8th.

6 Where are you all coming from?

7 THE WITNESS: Florida.

8 MR. PORTALE: New York.

9 THE COURT: I can do it in the afternoon, if you
10 want.

11 MR. PORTALE: Please.

12 THE COURT: 1:30. Does that work?

13 MR. PORTALE: Yes, Your Honor.

14 THE COURT: All right. So the presentence report
15 coming to me is June 23rd. Both counsel will file
16 simultaneously on August 4th a memorandum in aid of
17 sentencing. The sentencing is August 8th, at 1:30.

18 MR. PORTALE: Thank you, Your Honor.

19 THE COURT: What I would ask is, the government --
20 you, generally, have been providing me with videos, which
21 helps. If you would do it --

22 I forgot, Dorothy, what we want. How do we do it?
23 Do you remember.

24 (Whereupon, the Court and staff confer.)

25 THE COURT: If you can, give them to us on a thumb

1 drive.

2 MS. KLAMANN: Sure, Your Honor.

3 THE COURT: Along with -- if you can give it
4 before the sentencing, that would be great, because it's
5 very close between when you give your memorandum in aid of
6 sentencing.

7 MS. KLAMANN: Sure, Your Honor.

8 THE COURT: All right. If there is nothing else,
9 then the parties are excused.

10 Anything else that needs to be discussed?

11 MR. PORTALE: I did have one more thing. Forgive
12 me if you think I am being overly cautious or overly
13 worrisome --

14 THE COURT: Okay.

15 MR. PORTALE: -- but it's been, kind of, a pebble
16 in my shoe since we went through the allocution.

17 I just want to make sure that we're all on the
18 same page as to what Mr. Galetto admitted to with regard to
19 "physical contact." I think I understand, but I want to
20 make sure that Your Honor is clear and that we're all clear
21 on it.

22 THE COURT: I assume that the body-worn camera is
23 going to show what happened. No?

24 MR. PORTALE: Yes. It's going to show -- counsel
25 can feel free to chime in. It's going to show Mr. Galetto

1 clearly grabbing the officer's shield, and that that is the
2 understanding of -- that's what the physical contact is.

3 I just keep going back to where we were with
4 regard to that scuffle. And I am worried that it sounded
5 like Mr. Galetto was admitting to having made contact at
6 that time, and I want to make sure that that is clear.

7 I'm sorry if I should have interrupted you at that
8 time and I shouldn't have waited, but it's been, kind of,
9 sitting with me. I want to make sure --

10 THE COURT: Well, I thought we had clarified it on
11 the record, and I will go back and take a look at what we
12 have.

13 We have him pushing the shields.

14 MR. PORTALE: Yes.

15 THE COURT: And then we have what is described as
16 a scuffle between he and the officer which, I assume, shows
17 up.

18 MR. PORTALE: No. That's why I'm worried. That's
19 what I want to clarify.

20 THE COURT: One at a time. What are you defining
21 as a "scuffle"? I assume there is some physical contact.
22 It's clear he didn't hit him and knock him to the ground.

23 MR. PORTALE: I think what happened was that there
24 was a scuffle between many people. It's almost like a rugby
25 scrum, if you will. He was there -- not on camera. The

1 officer was there, not really on camera; they both go down.
2 It never has been alleged that he was -- that the officer
3 fell as a result of contact with Mr. Galetto. It's never
4 been --

5 THE COURT: There is -- some physical contact I
6 assume was had.

7 MR. PORTALE: With Mr. Galetto and the officer's
8 shield. That's clear. That's clear. We have done --

9 THE COURT: So separately, from pushing on the
10 shield. You are talking about the officer and Mr. Galetto
11 individually with the officer's shield; that's the scuffle.

12 MR. PORTALE: And that's the physical contact that
13 meets the element under the 111 element for physical
14 contact. I am so glad that I brought it back up, and I
15 apologize if I didn't do it sooner.

16 THE COURT: Does the government agree with that?

17 MS. KLAMANN: Your Honor, I think paragraph 17 of
18 the statement of offense clarifies that, and it speaks
19 directly to the elements of 111(a). Specifically, it says:
20 Defendant admits that he pushed up and against the riot
21 shield of MPD Officer B.S. So I think we're on the same
22 page. That is the physical contact for purposes of the plea
23 today.

24 To the extent there is additional physical
25 contact, I expect the government would prove that up at

sentencing.

THE COURT: Okay.

MR. PORTALE: That helps, Judge. And thank you.

Thank you for entertaining me.

THE COURT: No, no. It's much better to take care of it now than it is to get stuck at sentencing with arguments about what did or did not happen.

MR. PORTALE: Thank you, Judge.

I think I was mostly worried about if your understanding was one thing and us saying something else in our memo, and then it looking like we were trying to change things; that was my concern.

THE COURT: Okay.

MR. PORTALE: Thank you so much.

THE COURT: All right. The parties are excused.

MR. PORTALE: Thank you, Judge.

(Whereupon, the proceeding concludes, 4:00 p.m.)

CERTIFICATE

I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby certify that the foregoing constitutes a true and accurate transcript of my stenographic notes, and is a full, true, and complete transcript of the proceedings to the best of my ability.

This certificate shall be considered null and void if the transcript is disassembled and/or photocopied in any manner by any party without authorization of the signatory below.

Dated this 30th day of July, 2023.

/s/ Elizabeth Saint-Loth, RPR, FCRR
Official Court Reporter