

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

UNITED STATES OF AMERICA

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Case No.: 1:22-cr-00069 (TFH)

v.

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JEFFREY SCHAEFER,

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Defendant

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DEFENDANT’S SENTENCING MEMORANDUM

COMES NOW, the Defendant, JEFFREY SCHAEFER (“Mr. Schaefer” or “Defendant”), by and through his undersigned counsel, and respectfully files his Sentencing Memorandum to aid this Court in its determination of the sentence to be imposed in this matter at the Sentencing currently set for November 18, 2022, and states as follows:

Not just by his words alone, but more importantly, by his actions, Jeffrey Schaefer has demonstrated his profound recognition of the magnitude of his actions and the actions of others on January 6 on behalf of President Donald Trump and his co-conspirators to stop the peaceful transfer of power that is the cornerstone of American Democracy.

The Defendant respectfully submits this memorandum in anticipation of his sentencing following a plea of guilty to a Class B misdemeanor, Parading, Demonstrating, or Picketing in a Capitol Building, in violation of Title 40, U.S.C., Section 5104(e)(2)(G). The Government will dismiss the remaining counts of the Indictment at the time of sentencing. There is no mandatory minimum; the maximum sentence of imprisonment is six months and the sentencing guidelines do not apply. Mr. Schaefer signed a detailed “Statement of Offense” prior to his plea on August

2, 2022, in which he admitted that he entered the U.S. Capitol building through a Senate Wing door at 2:50 p.m. He walked through some hallways and into a few unoccupied rooms. While walking in the Capital, he was soon instructed to leave by Capitol Police. He then walked out of the building. Mr. Schafer's exit was captured on surveillance camera and clearly shows him leaving in the presence of capitol police on his own accord. He did not resist and did not need to be physically removed from the building. Mr. Schaefer did not cause any damage, nor did he engage in any acts of violence. He did not enter the Senate Room floor, nor did he enter any private offices.

1. THE EVENTS LEADING UP TO JANUARY 6, 2021

After the November 2020 presidential election, Donald Trump falsely claimed the election was rigged and refused to concede. In doing so, Donald Trump showed himself willing to undermine confidence in the democratic process, and in time, managed to convince nearly three-quarters of his supporters (Jeffrey Schaefer among them), that the loser was actually the winner. Prior to what has become known as the January 6, 2021 insurrection, Donald Trump hired a lawyer, John Eastman, who wrote a detailed memo that can only be described as a road map for a coup. A Senate investigation documented frantic efforts by Donald Trump to bully government officials to overturn the election.

Before the January 6 attack on the Capitol, Trump White House officials and members of the right-wing House Freedom Caucus strategized about a plan to direct thousands of angry marchers to the Capitol building. On the planning call were Mark Meadows, the White House Chief of Staff, Rudolph Giuliani, President Trump's personal lawyer, and Representative Jim Jordan, Republican of Ohio, among others. The nearly two-mile march from the then President's

“Stop the Steal” rally at the Ellipse to the Capitol was not accidental. It was well-planned, with President Trump and Mr. Giuliani urging the crowd to violence.

On January 2, 2021, thirteen United States Senators as well as one hundred Republican members of the House of Representatives stated that they would object to the election. Mr. Schaefer and thousands, if not millions, of Americans heard these statements as a call to action on behalf of Donald Trump. They trusted United States Senators and they trusted members of the United States Congress and that trust was abused and exploited. Mr. Schaefer was one of the many manipulated and used by Donald Trump and his acolytes for his own selfish purposes. These, among others, were the findings of federal Judge David O. Carter of the Central District of California, in *Eastman v. Thompson*, case No. 8:22-cv-00099-DOC-DFM. The Court found that Donald Trump and Mr. Eastman likely had committed felonies, including obstructing the work of Congress and conspiring to defraud the United States. The Court wrote, “As the courts were overwhelmingly ruling against President Trump's claims of election misconduct, he and his associates began to plan extra-judicial efforts to overturn the results of the election and prevent the president-elect from assuming office (footnote omitted). At the heart of these efforts was an aggressive public misinformation campaign to persuade millions of Americans that the election had in fact been stolen.” (pg.5). The opinion continues, “The President nevertheless continued to insist falsely through January that he had “won the election in a landslide.” And despite being repeatedly told that his allegations of campaign fraud were false, the President continued to feature those same false allegations in ads seen by millions of Americans.” (footnote omitted, pg.7). As we have learned since the events of that day many groups including the self-described “Oath Keepers” and “Proud Boys” were coordinating with experienced and sophisticated

political manipulators like Roger Stone and Steven Bannon to use violence to derail American Democracy in their service to Donald Trump's personal political aspirations.

On January 5th at 8:57 a.m., Steve Bannon called Donald Trump and they spoke for eleven minutes. After the phone call, Bannon addressed his podcast audience: "All hell is going to break loose tomorrow. We're on ... the point of attack ... strap in."

2. JEFFREY SCHAEFER'S CONDUCT ON JANUARY 6, 2011

Mr. Schaefer walked to the Capitol and entered the Capitol building at about 2:50 p.m. While Mr. Schaefer accepts responsibility for his actions, he was guided and urged every step of the way by no less of an authority than the President of the United States and a majority of Republican Senators and Congressman that continued to repeat the 'Big Lie' that the election had been stolen by the Democrats. Mr. Schaefer was a committed supporter of the former president.

When Mr. Schaefer entered the Capitol, he was part of a larger group. Although he saw signs of a violent confrontation at other points of entry, he did not witness any violence towards the Capitol Police where he entered. In fact, he saw many overwhelmed officers standing back and letting people through. He concluded that they had decided to let the protestors enter and make their demonstration and then leave. Mr. Schaefer walked around and participated in some chanting. Mr. Schaefer never engaged in assaultive behavior, nor did he destroy any property while in or around the Capitol. The first time Mr. Schaefer was directly approached by the police and told to leave he did so at approximately 3:18 pm.

3. JEFFREY SCHAEFER'S BACKGROUND

Mr. Schaefer asks the court to incorporate his background information contained in his Pre-Sentence Report.

4. A SENTENCE OF PROBATION IS ADEQUATE IN THIS CASE

Of the many cases decided by the judges of this District Court relating to charges of violation of 40 U.S.C. 5104 (e)(2)(G), about a third of the cases were resolved with a sentence of a term of probation, community services and the mandatory \$500. fine. Another third were resolved with a sentence of a period of home detention, probation and the mandatory fine; the final third were resolved with some period of incarceration, probation and the fine. In this instance, a sentence of probation, some community service and the agreed upon \$500 in restitution is an adequate sentence, taking into consideration all of the 3553(a) factors.

In terms of collateral consequences, Mr. Schaefer has been subjected to public ridicule and scorn for his participation in the Capitol riots. The well-financed organizers of the riots did not pay for Mr. Schaefer's counsel. President Trump did not offer Mr. Schaefer a pardon. Mr. Schaefer was left to fend for himself when he was no longer of use to the people who groomed him to believe he was saving Democracy.

In its Sentencing Memorandum the Government lists the sentences of other January 6 defendants as a way to inform the Court of what they believe is a proper sentence. The defense asks this Honorable Court to take a wider view of the events of that day. Conspicuously absent from those listed by the government were any politician who planned and executed the riot. As of the writing of this Memorandum, no politician has been held accountable for their actions.

The Government seems to think that sentencing Mr. Schaefer to a period of incarceration would serve as deterrence to future similar conduct. This ignores the fact that Department of Justice has yet to hold any person in a position of power responsible for their acts. For refusing to testify, Steven Bannon was sentenced to jail and immediately released pending appeal. Congress voted to hold Peter Navarro and Dan Scavino in contempt for refusing to cooperate with the January 6 Commission and the Department of Justice deemed them not worthy of

prosecution. Steven Bannon issued a direct call to violence on January 5th and the Department of Justice has yet to charge him with any crime. It should be noted that on June 21, 2022, Mr. Schaefer gave a voluntary interview to the FBI.

On January 6th at 9:00 a.m. the rallies commenced at The Ellipse. Among the speakers was Representative Mo Brooks (R-AL), who said it was time to “kick ass” and goaded the crowd by asking “Will you fight for America?” Rep. Brooks has faced no consequences and experienced no “deterrence” for his call to violence and sedition.

At 10:47 a.m., Rudy Giuliani spoke at The Ellipse and demanded “trial by combat” on behalf of Donald Trump. Mr. Giuliani has faced no consequences and experienced no “deterrence” for his call to violence and sedition.

At 11:57 a.m., Donald Trump begins speaking at The Ellipse. He continues to stoke the crowd for approximately an hour. The violence would begin before the speech was over. At 12:16 p.m., Donald Trump told his crowd “We fight. We fight like hell and if you don’t fight like hell you’re not going to have a country anymore.” The Commander and Chief of the United States directly told his adherents that America was under an immediate existential threat and then sent them to the Capitol to confront his perceived enemy, The Government of the United States of America. Despite his attempt to overthrow the government of The United States of America and install himself as a dictator the Department of Justice has yet to come to conclusion that Donald Trump needs “deterrence”.

5. Analysis

A sentence of incarceration would be unduly harsh considering Mr. Schaefer’s actions, and not necessary to serve the ends of justice. Mr. Schaefer has taken full responsibility for his actions. He has suffered and will continue to suffer for his role in what transpired that day. In the

span of less than two years, Mr. Schaefer has gone from being so involved in politics that he was inside The Capitol on January 6th to not even bothering to vote in the mid-term elections. With the benefit of hindsight, he has grown to learn how he allowed himself to be manipulated and used by those who hold power and will never face any consequences.

Respectfully Submitted,

/s/ Joshua Insley (pro hac vice)
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CERTIFICATE OF SERVICE

I HEREBY certify that on the 15th day of November, 2022, a copy of the foregoing was served upon all parties listed on the Eelectronic Case Filing (ECF) System.

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