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OPINIONS AND ORDERS

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**PER CURIAM ORDER,
U.S. COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT
(FEBRUARY 1, 2024)**

UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

JONATHON OWEN SHROYER,
ALSO KNOWN AS JONATHAN OWEN SHROYER,

Appellant.

No. 23-3152

September Term 2023
1:21-cr-00542-TJK-1

Before: KATSAS, RAO, and GARCIA,
Circuit Judges.

ORDER

Upon consideration of the motion to dismiss, the opposition there to, and the reply, it is

ORDERED that the motion to dismiss be granted. Appellant waived his right to appeal his sentence and "the manner in which [his] sentence was determined, except to the extent the Court sentence[d] [him] above

the statutory maximum or guidelines range determined by the Court," App.at 10, and the district court imposed a within-Guidelines sentence. Appellant does not argue that his appeal waiver was not knowing, intelligent, and voluntary, and he has not shown that the waiver is otherwise unenforceable. *See United States v. Guillen*, 561 F.3d 527, 530-31 (D.C. Cir. 2009). Consequently, this court will enforce the appeal waiver and dismiss this appeal.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven day safter resolution of any timely petition for rehearing or petition for rehearing *en banc*. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule41.

Per Curiam

MEMORANDUM ORDER, U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (OCTOBER 13, 2023)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

JONATHON OWEN SHROYER,

Defendant.

No. 21-542 (TJK)

Before: Timothy J. KELLY, U.S. District Judge.

MEMORANDUM ORDER

Owen Shroyer pleaded guilty to entering or remaining in a restricted building or grounds for his conduct at the U.S. Capitol on January 6, 2021. The Court sentenced him to 60 days' imprisonment, one year of supervised release, and $500 in restitution. Shroyer appealed that sentence, and he now asks this Court to defer his incarceration until his appeal is adjudicated. He says his appeal raises a substantial legal question: whether the Court "smothered" the First Amendment by considering things he said during and after his offense in selecting the appropriate sentence. But no court has ever interpreted the First Amendment the way he suggests—and he provides

no good reason why one should. Because he has not identified a substantial question that his appeal will present, the Court will deny his motion.

I. Background

A. Shroyer's Offense and Guilty Plea

The government charged Shroyer with four offenses arising from the events at the Capitol on January 6, 2021. *See* ECF No. 5. On that day, perhaps alone among those charged, Shroyer was already being prosecuted—in the Superior Court of the District of Columbia—for allegedly interfering with proceedings at the Capitol. In late 2019, he allegedly disrupted a House Judiciary Committee meeting, for which he was charged with two offenses. *See* ECF No. 46 at 3. To resolve that case, Shroyer had signed a deferred prosecution agreement, in which he agreed not to violate any laws and promised not to "utter loud, threatening, or abusive language, or to engage in disorderly or disruptive conduct" on the Capitol grounds with the intent to disrupt congressional proceedings. *See id.* (quotation omitted). That agreement was still in effect on January 6, 2021. *See id.* at 3-4.

But Shroyer *did* violate the law on January 6, 2021, and in pleading guilty to entering or remaining in a restricted building or grounds in violation of 18 U.S.C. § 1752(a)(1), he admitted the following facts. *See* ECF Nos. 38-39. A joint session of Congress met on January 6, 2021, to certify the Electoral College vote for the 2020 presidential election. ECF No. 39 ¶ 3. On that day, the exterior plaza of the Capitol was closed to the public. *Id.* ¶ 2. But crowds gathered nearby and headed for the Capitol grounds. *See id.*

¶ 12. Shroyer was among the crowds, and he addressed them with a megaphone, encouraging them not to accept the election of President Biden, whom he called a child molester and an agent of the Chinese Communist Party. *See id.* ¶¶ 12-13. Shroyer then entered the Capitol grounds. *See id.* ¶ 14. In doing so, he breached a restricted area and the grounds that were delineated in his deferred prosecution agreement. *See id.* He stood on the Capitol's west front and led hundreds of people in chanting "USA! USA! USA!" *Id.* Next, he walked to the Capitol's north side, passing downed barricades and a sign that read "Area Closed." *Id.* ¶ 15. Again, he stood with hundreds of others and led them in chants such as "USA!" and "1776!" *Id.* ¶ 16. Thus, as he admitted, he "knowingly entered and remained on restricted grounds without lawful authority to do so." *Id.* ¶ 19.

B. Shroyer's Sentencing Hearing

The Court sentenced Shroyer on September 12, 2023. There, the Court determined—and the parties agreed—that the applicable Sentencing Guidelines range was zero to six months' imprisonment. Sent'g Hrg. Tr. at 6. That was because the total offense level was 4 and Shroyer's criminal-history category was II. *Id.; see also* U.S. Sent'g Guidelines Manual § 5A (U.S. Sent'g Comm'n 2021) ("U.S.S.G."). The Guidelines also provided for a potential one-year term of supervised release. *See* U.S.S.G. §§ 5D1.1(b), 5D1.2(a)(3).

The government asked the Court to sentence Shroyer to 120 days' imprisonment, one year of supervised release, 60 hours of community service, and $500 in restitution. ECF No. 46 at 1. To support

its recommendation, the government cited Shroyer's "rhetoric in advance of January 6," which it characterized—because Shroyer hosts a show broadcast on the internet as his "stok[ing] the flames of a potential disruption of the certification vote by streaming disinformation . . . to thousands, perhaps millions." *See id.* at 5-7 (capitalization altered and emphasis omitted). It also relied on statements he made on and after January 6. For instance, it accused Shroyer of chanting "Death to tyrants!" "Stop the steal!" and "Trump won!" as he approached the Capitol grounds. *See id.* at 8-9. It noted that, while in the restricted area, Shroyer led others in chanting "USA!" and "1776!" as he had admitted in his statement of offense. *See id.* at 10-12. And it noted that, a few months after January 6, Shroyer said on his show, "We should have been proud of what happened on January 6. But they stole that from us." *Id.* at 14 (quotation omitted).

Shroyer asked the Court to sentence him only to supervised release or, alternatively, to fine him. *See* ECF No. 48 at 7-8. He emphasized that he had cooperated with investigators and argued that his case presented no need for deterrence, rehabilitation, or protecting society from further offenses. *See id.* at 3-8. At his sentencing hearing, he objected to the government's "focus," as he put it, on his "speech acts as aggravating factors." *See* Sent'g Hrg. Tr. at 27-31. He argued that his statements were protected under the First Amendment and claimed that punishing him for speaking would be improper. *See id.* at 27-29.

The Court sentenced Shroyer to 60 days' imprisonment, one year of supervised release, and $500 in restitution. *See* ECF No. 50. In determining the appropriate sentence, the Court relied on some but not all—

of the speech-related conduct the government identified. For instance, it expressly assigned no weight to Shroyer's statements before January 6, 2021, that the government argued had inflamed his audience. The Court explained that Shroyer had a First Amendment right to claim no matter to how many people—that the 2020 election was stolen and that these statements added little if anything to the nature and circumstances of the offense to which he pleaded guilty. *See* Sent'g Hrg. Tr. at 13-15.

The Court relied on two aspects of Shroyer's speech-related conduct to determine his sentence. First, it noted that he "play[ed] a role in amping up the crowd on the Capitol steps that day." Sent'g Hrg. Tr. at 43. But it also explained that the significant aspect of that conduct was its context—not its content. *See id.* at 30. In other words, the reason the Court relied on Shroyer's chanting on the Capitol steps was that in doing so, he exacerbated a highly treacherous situation for Capitol police officers, Congress, and the peaceful transfer of presidential power. Second, the Court concluded that Shroyer was not fully remorseful because, despite his guilty plea and his statement at sentencing, he publicly expressed pride well after January 6 about what happened at the Capitol that day. *See id.* at 43. Even so, the Court's calculation of the appropriate sentencing range gave Shroyer credit for accepting responsibility for his offense. *See id.* at 6.[1] The Court also relied on

[1] Indeed, had the Court not given Shroyer credit for accepting responsibility, his total offense level would have been 6. *See* U.S.S.G. § 3E1.1. With a total offense level of 6 and a criminal-history category of II, the applicable Guidelines range would have been higher: 1 to 7 months' imprisonment. *See id.* § 5A.

the fact that Shroyer's conduct at the Capitol on January 6 violated his deferred prosecution agreement resolving his *other* case stemming from his conduct there, underscoring the need to deter him from engaging in additional criminal conduct. *See id.* at 43.

C. Shroyer's Motion

Shroyer appealed the Court's sentence, *see* ECF No. 53, and he now moves for release from custody pending appeal, ECF No. 52. He says the Court considered statements that he deems "common chants of many a political rally" and, "in and of themselves," protected by the First Amendment. ECF No. 52 at 3. He also expressed concern that the Court—despite its explicit contrary statements at the sentencing hearing—was influenced by the government's references to his other statements. *See id.* at 3-4. For those reasons, he claims, his sentence is "substantively unreasonable" under the First Amendment. *See id.* at 6. And he thinks his appeal will likely succeed because the First Amendment "is not yet dead." *See id.* Thus, under 18 U.S.C. § 3143(b), he asks the Court to delay his obligation to report for sentencing until his appeal resolves. *Id.*

The government opposes his motion for two reasons. ECF No. 55. First, it argues the parties' plea agreement doubly forecloses this motion. *See id.* at 1-2. Second, it says the First Amendment does not bar the Court from basing part of its sentence on speech relevant to offense conduct. *See id.* at 3-6.

Shroyer filed a reply in support of his motion. ECF No. 56. But under Local Rule 47(d), he had "seven days after service of the memorandum in opposition" to file it. The government filed its memorandum on

September 27, 2023, under the briefing schedule the Court set. *See* ECF No. 55; Min. Order of Sept. 20, 2023. Thus, Shroyer's reply deadline was October 4, 2023, and he did not file his reply until several days later. *See* ECF No. 56.

II. Legal Standard

After a defendant is convicted and "sentenced to a term of imprisonment," the Court "shall" order him detained unless enumerated conditions are met. *See* 18 U.S.C. § 3143(b)(1). As relevant here, the Court must order Shroyer's release if it finds three conditions met. The first condition is that "clear and convincing evidence" shows Shroyer "is not likely to flee or pose a danger to the safety of . . . the community if released." *See id.* § 3143(b)(1)(A). The second condition is that Shroyer's "appeal is not for the purpose of delay." *See id.* § 3143(b)(1)(B). The third condition is that his appeal "raises a substantial question of law . . . likely to result in . . . a reduced sentence to a term of imprisonment less than the . . . expected duration of the appeal process." *See id.*[2]

As for the third condition, a substantial question of law is "a close question or one that very well could be decided the other way." *United States v. Perholtz,* 836 F.2d 554, 556 (D.C. Cir. 1987). A defendant has

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[2] Section 3143(b)(1)(B)(iii) also provides for release if the appeal is likely to result in a "sentence that does not include a term of imprisonment." That condition is irrelevant here because the Court would have sentenced Shroyer to a term of imprisonment even if it could not consider any of his speech-related conduct, largely because in committing his offense on January 6, he violated his deferred prosecution agreement, which underscored the need to deter him from engaging in additional criminal conduct.

the burden to show that his appeal presents a substantial question. *United States v. Ball,* 962 F.Supp.2d 11, 16 (D.D.C. 2013). This standard is demanding, and it is not satisfied just because "the issue raised is novel and there is a contrary interpretation of the law." *See United States v. Libby,* 498 F.Supp.2d 1, 4 n.4 (D.D.C. 2007). On the other hand, uniform caselaw rejecting the defendant's position can establish that the defendant has not identified a substantial legal question. *See United States v. Adams,* 200 F.Supp.3d 141, 146 (D.D.C. 2016).

III. Analysis

Shroyer has not approached his burden to show that his appeal raises a substantial legal question. Thus, the Court will deny his motion on that basis without considering any other statutory requirement or the effect of his plea agreement.[3]

An extraordinary claim underlies Shroyer's motion. He acknowledges his guilt and does not suggest the First Amendment gave him the right to shout into a megaphone while on restricted Capitol grounds on January 6. But he says some of his conduct cannot be considered "at a federal sentencing" because, in some other context, it would be protected political speech. *See*

[3] Still, the Court notes that by signing his plea agreement, Shroyer purported to waive any appeal of "the manner in which [his] sentence was determined, except to the extent the Court sentence[d] [him] above the statutory maximum or guidelines range determined by the Court." ECF No. 38 ¶ X(d). And the Court has sentenced him neither above the statutory maximum nor the applicable Sentencing Guidelines range.

ECF No. 52 at 5. That claim is extraordinary because, in free-speech questions, context is everything.[4]

To select an appropriate sentence for Shroyer, the Court had a statutory duty to consider, among other things, "the nature and circumstances of the offense." 18 U.S.C. § 3553(a)(1). In his motion, Shroyer provides no authority for the notion that it was unlawful or improper for the Court to have relied on the encouragement he gave the mob around him when fashioning his sentence. His position amounts to the claim that two trespassers on Capitol grounds on January 6—one who stood silently and the other who, steps from the Capitol building, shouted slogans into a megaphone that encouraged a mob of other trespassers—must be treated the same for sentencing purposes. That is nonsense.

To begin, "the Constitution does not erect *a per se* barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment." *Dawson v. Delaware,* 503 U.S. 159, 165 (1992). In *Dawson,* the Court identified a First Amendment problem because prosecutors had introduced evidence of only the defendant's racist "abstract beliefs," perhaps simply hoping "the jury would find

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[4] *See, e.g., Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio,* 471 U.S. 626, 637 n.7 (1985) (acknowledging that speech made in an advertisement "would be fully protected speech" if made "in another context"); *Tao v. Freeh,* 27 F.3d 635, 639 (D.C. Cir. 1994) (explaining that whether a public employee's speech is protected by the First Amendment "depends on its content, form, and context"); *Watts v. United States,* 394 U.S. 705, 708 (1969) (explaining that "context" was necessary to distinguish "political hyperbole" from a true threat).

these beliefs morally reprehensible." *See id.* at 166-67. But it acknowledged that "evidence concerning a defendant's associations might be relevant in proving other aggravating circumstances." *Id.* at 166. And in another case, the Court "held that it was permissible for the sentencing court to consider the defendant's racial animus in determining whether he should be sentenced to death" for a racially motivated murder. *See Wisconsin v. Mitchell,* 508 U.S. 476, 486 (1993) (citing *Barclay v. Florida,* 463 U.S. 939 (1983)). Thus, the question is not whether the Court may consider speech or beliefs that can trigger First Amendment protections, but whether that speech or those beliefs are "relevant to establish a forbidden animus or intent or . . . are relevant to another sentencing factor." *United States v. Schmidt,* 930 F.3d 858, 864 (7th Cir. 2019).[5]

The relevance of Shroyer's chants to the crowd on the steps of the Capitol to the nature and circumstances of his offense could hardly be clearer. Shroyer chanted *while* he committed the offense, just steps away from several entrances to the Capitol building, surrounded by a mob that eventually broke into the building, endangered members of Congress, and obstructed their ability to certify the Electoral College vote. The encouragement Shroyer gave the mob at that moment was something the Court could consider—more than

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[5] Indeed, Shroyer's belated reply brief acknowledges this. Citing *Barclay,* he says "[p]rotected speech and activity must bear some relationship to the offense conduct." ECF No. 56 at 3.

that, had *a duty* to consider—in arriving at an appropriate sentence for him, regardless of the political content of that encouragement.[6]

No case Shroyer's motion mentions casts doubt on this commonsense conclusion or otherwise helps him meet his burden to identify a substantial legal question raised by his appeal. His motion cites only four cases: *Brandenburg v. Ohio,* 395 U.S. 444 (1969) (per curiam); *Hess v. Indiana,* 414 U.S. 105 (1973) (per curiam); *NAACP v. Claiborne Hardware Co.,* 458 U.S. 886 (1982); and *Countennan v. Colorado,* 600 U.S. 66 (2023).[7] And he finds no support in any of them. Those cases address the circumstances under which speech can satisfy an essential element of a criminal offense or tort claim. In *Brandenburg,* the defendant was charged with broadcasting violent opinions forbidden by state law. *See* 395 U.S. at 444-45. In *Hess,* the defendant was charged with disorderly conduct for using vulgar language. *See* 414 U.S. at 105-07. In *Claiborne Hardware,* the plaintiff sought to hold the defendant liable for speeches that used

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[6] In a somewhat similar context, in assessing the nature and circumstances of a defendant's offense for pretrial detention purposes, courts have routinely considered whether a January 6 defendant "encourage[d] other rioters' misconduct." *See, e.g., United States v. Chrestman,* 525 F.Supp.3d 14,27 (D.D.C. 2021).

[7] Even if the Court were to consider the additional analysis in Shroyer's belated reply brief, doing so would not change the significance of this observation. Although he there cites more cases (alongside those mentioned above), he does that to support the same erroneous proposition: that the Court's considering his statements was "a direct assault on protected activity in an area political speech—that is at the core of any reading of what the First Amendment protects." *See* ECF No. 56 at 11-17.

violent imagery. *See* 458 U.S. at 926-29. In *Counterman,* the defendant was charged with repeatedly sending messages that caused the recipient serious emotional distress. *See* 143 S. Ct. at 2112.

But speech is not an essential element of the offense to which Shroyer pleaded guilty. In fact, his offense is not even "related to the suppression of free expression." *United States v. Caputo,* 201 F.Supp.3d 65, 71 (D.D.C. 2016). It requires only that he "knowingly enter[ed] or remain[ed] in any restricted building or grounds without lawful authority to do so." 18 U.S.C. § 1752(a)(1). For that obvious reason, Shroyer's case is nothing like those he cites. The question before the Court was not whether Shroyer was guilty of an offense —he pleaded guilty, after all but how to fashion an appropriate sentence. As explained above, because the encouragement he gave to the mob on the Capitol steps was relevant to the nature and circumstances of his offense, the Court properly considered it in doing so.

Turning to Shroyer's other statements: As explained above, the Court gave no weight to Shroyer's statements to his audience before January 6, despite the government's focus on them. As the Court noted, Shroyer had a First Amendment right to tell his audience the 2020 election was stolen, regardless of the truth of that claim, or even whether he believed it. And, the Court also reasoned, those statements added little if anything to the nature and circumstances of the offense to which Shroyer pleaded guilty, especially given that they were mostly duplicative of his conduct and speech on January 6 itself.

That said, the Court did rely on Shroyer's post-offense statements, and one in particular in May 2021, to evaluate his remorse. A defendant's remorse—or

lack thereof is a permissible sentencing consideration under the § 3553(a) factors, especially because it can affect the need for the sentence imposed to afford adequate deterrence and to promote respect for the law. *See 18* U.S.C. § 3553(a)(2). And the D.C. Circuit has described considerations of a defendant's remorse as "legally relevant (and constitutionally unobjectionable)." *See United States v. Jones,* 997 F.2d 1475, 1479 (D.C. Cir. 1993).[8]

Again, it is hard to imagine how the relevance of Shroyer's statements to an appropriate sentencing factor could be plainer. In May 2021, with months to reflect on what happened on January 6, Shroyer publicly derided the idea of expressing remorse for what happened that day. *See* ECF No. 46 at 1, 14. True, he later expressed remorse at sentencing, at least sufficiently for the Court to conclude that he had accepted responsibility for the offense to which he pleaded guilty. But the Court properly considered his public statement that shed light on the timeliness and cast doubt on the completeness of that remorse. Simply put, Shroyer cannot have it both ways by urging the Court to consider his statement at sentencing purportedly showing remorse but also urging it to disregard statements reflecting otherwise. And again, it does not matter that this statement had political overtones. As *Dawson* and *Mitchell* show, the First Amendment does not prevent courts from considering

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[8] Arguing otherwise would be self-defeating for Shroyer. The acceptance-of-responsibility reduction the Court applied in his Guidelines calculation *requires* remorse. *United States v. Dyce,* 91 F.3d 1462, 1469 (D.C. Cir. 1996).

speech and associations that are otherwise protected when assessing relevant sentencing factors.[9]

For all these reasons, Shroyer has not carried his burden to identify a close question that his appeal will present. *See Perholtz,* 836 F.2d at 555; *Ball,* 962 F.Supp.2d at 16.

IV. Conclusion and Order

Thus, it is hereby ORDERED that Defendant's Motion for Release Pending Appeal, ECF No. 52, is DENIED.

SO ORDERED.

/s/ Timothy J. Kelly
U.S. District Judge

Date: October 13, 2023

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[9] Shroyer's motion also reports that his appeal will compare the Court's consideration of his speech to a court's consideration of acquitted conduct at sentencing. *See* ECF No. 52 at 5. That comparison to acquitted-conduct sentencing is puzzling for at least two reasons. First, a sentencing judge in this Circuit *may* consider acquitted conduct. *United States v. Settles,* 530 F.3d 920, 923-24 (D.C. Cir. 2008); *United States v. Khatallah,* 41 FAth 608, 651 (D.C. Cir. 2022) (Millett, J., concurring) (recognizing that *Settles* remains good law). But to be clear, the Court did not rely on acquitted conduct here Shroyer pleaded guilty and does not deny the facts on which the Court relied. Second, it is far from clear that the questions of whether a sentencing court can consider acquitted conduct and whether it can consider expressive conduct have anything to do with one another. Shroyer's motion does not hint at the basis of his comparison.

JUDGMENT IN A CRIMINAL CASE, U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (SEPTEMBER 13, 2023)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JONATHON OWEN SHROYER

No. 21-CR-542 (TJK)

Before: Timothy J. KELLY, U.S. District Judge.

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Information filed 8/25/2021

The defendant is adjudicated guilty of these offense

Title & Section

18 U.S.C. § 1752(a)(1)

Nature of Offense

Entering and Remaining in a Restricted Building or Grounds

Offense Ended

1/6/2021

Count

1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☑ Count(s) 2, 3 and 4

☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United Stales attorney for this district within 30 days of any change of name, residence, or mailing address until all fines restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

9/12/2023
Date of Imposition of Judgment

/s/ Timothy J. Kelly
Signature of Judge

/s/ Timothy J. Kelly, U.S. District Judge
Name and Title of Judge

9/13/23
Date

[* * *]

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Sixty (60) days

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

as notified by the Probation or Pretrial Services Office.

[* * *]

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Twelve (12) months

[* * *]

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to

take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (*i.e.*, anything that was designed, or was modified for, the specific

purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13. You must follow the instructions of the probation officer related to the conditions of supervision.

[* * *]

SPECIAL CONDITIONS OF SUPERVISION

Firearm Restriction — You shall remove firearms, destructive devices, or other dangerous weapons from areas over which you have access or control until the term of supervision expires.

Restitution Obligation — You must pay the balance of any restitution owed at a rate of no less than $100 each month and provide verification of same to the Probation Office.

The Court authorizes supervision of this case to be transferred to the United States District Court for the Western District of Texas.

[* * *]

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

Assessment	$
Restitution	$ 500.00
Fine	$
AVAA Assessment*	$
JVTA Assessment**	$
TOTALS	$ 500.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, Pursuant to 18 U.S.C. § 3664(i), all nonfederal Victims must be paid before the United States is paid.

Name of Payee	Architect of the Capitol
Total Loss***	
Restitution Ordered	$ 500.00
Priority or Percentage	
TOTALS	$ 500.00

☑ Restitution amount ordered pursuant to plea agreement $ 500.00

☑ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the restitution.

* Amy, Vicky and Andy Child Pornography Victim Assistance Act of 2018. Pub. L. No. 115-299

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994. but before April 23, 1996.

[* * *]

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 25.00 due immediately, balance due

☑ in accordance with or ☑ F below; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

The financial obligations are immediately payable to the Clerk of the Court for the U.S. District Court, 333 Constitution Ave NW, Washington, DC 20001. Within 30 days of any change of address, you shall notify the Clerk of the Court of the change until such time as the financial obligation is paid in full.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period

of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, arc made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall he applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest. (4) AVAA assessment, (5) fine principal. (6) fine interest, (7) community restitution. (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

CRIMINAL COMPLAINT
(AUGUST 19, 2021)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JONATHON OWEN SHROYER
(AKA: Jonathon Owen Shroyer) DOB: XXXXXXX

No. 1-21-mj-00572

Assigned to: Faruqui, Zia M.

Description: Complaint W/Arrest Warrant

Before: Zia M. FARUQUI, U.S. Magistrate Judge.

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief. On or about the date(s) January 6, 2021 in the county of _____ in the _____ in the District of Columbia, the defendant(s) violated

Code Section *Offense Description*

18 U.S.C. § 1752(a)(1) and (2) – Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority,

40 U.S.C. § 5104(e)(2)(D) and (E) – Violent Entry and Disorderly Conduct on Capitol Grounds.

This criminal complaint is based on these facts:

See attached statement of facts.

☒ Continued on the attached sheet.

/s/ Clarke Burns
Complainant's Signature

Clarke Burns, Special Agent
Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone.

Zia M. Faruqui Digitally signed by Zia M. Faruqui
Date: 2021.08.19 22:58:28 -04'00'

Judge's signature

Date: 08/19/2021

City and state: Washington, D.C.

Zia M. Faruqui, U.S. Magistrate Judge
Printed name and title

PLEA AGREEMENT
(JUNE 23, 2023)

U.S. DEPARTMENT OF JUSTICE

MATTHEW M. GRAVES
United States Attorney

District of Columbia

Patrick Henry Building
601 D St., N.W.
Washington, D.C. 20530

VIA EMAIL
Norm Partis, Esq.
Counsel for Defendant Shroyer

Re: *United States v. Jonathon Owen Shroyer*
Criminal Case No. 21-cr-542 (TJK)

Dear Mr. Pattis,

This letter sets forth the full and complete plea offer to your client, Jonathon Owen Shroyer, (hereinafter referred to as "your client" or "defendant"), from the Office of the United States Attorney for the District of Columbia (hereinafter also referred to as "the Government" or "this Office"). This plea offer expires on June 23, 2023. If your client accepts the terms and conditions of this offer, please have your client execute this document in the space provided below. Upon receipt of the executed document, this letter will become the Plea Agreement (hereinafter referred to as "this Agreement"). The terms of the offer are as follows:

I. Charges and Statutory Penalties

Your client agrees to plead guilty to Count 1 of the criminal Information, charging your client with Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1).

Your client understands that a violation of 18 U.S.C. § 1752(a)(1) carries a maximum sentence of one (1) year of imprisonment; a fine of $100,000, pursuant to 18 U.S.C. § 3571(b)(5); a term of supervised release of not more than 1 year, pursuant to 18 U.S.C. § 3583(b)(3); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

In addition, pursuant to 18 U.S.C. § 3013(a)(1)(A)(iii), your client agrees to pay a special assessment of $25 per class A misdmeanor conviction to the Clerk of the United States District Court for the District of Columbia. Your client also understands that, pursuant to 18 U.S.C. § 3572 and § 5E1.2 of the United States Sentencing Commission, *Guidelines Manual* (2021) (hereinafter "Sentencing Guidelines," "Guidelines," or "U.S.S.G."), the Court may also impose a fine that is sufficient to pay the federal government the costs of any imprisonment, term of supervised release, and period of probation.

II. Cooperation with Additional Investigation

Your client agrees to allow law enforcement agents to review any social media accounts operated by your client for statements and postings in and around January 6, 2021 prior to sentencing.

III. Factual Stipulations

Your client agrees that the attached "Statement of Offense" fairly and accurately describes your client's actions and involvement in the offense(s) to which your client is pleading guilty. Please have your client sign and return the Statement of Offense as a written proffer of evidence, along with this Agreement.

IV. Additional Charges

In consideration of your client's guilty plea to the above offense, your client will not be further prosecuted criminally by this Office for the conduct set forth in the attached Statement of Offense. The Government will request that the Court dismiss the remaining counts of the Information in this case at the time of sentencing. Your client agrees and acknowledges that the charges to be dismissed at the time of sentencing were based in fact.

The Government will also move to dismiss your client's pending case in the District of Columbia Superior Court, case number 2020 CMD 00820, at the time of sentencing in this matter.

After the entry of your client's plea of guilty to the offenses identified in paragraph I above, your client will not be charged with any non-violent criminal offense in violation of Federal or District of Columbia law which was committed within the District of Columbia by your client prior to the execution of this Agreement and about which this Office was made aware by your client prior to the execution of this Agreement. However, the United States expressly reserves its right to prosecute your client for any crime of violence, as defined in 18 U.S.C. § 16 and/or 22 D.C. Code § 4501,

if in fact your client committed or commits such a crime of violence prior to or after the execution of this Agreement.

V. Sentencing Guidelines Analysis

Your client understands that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the Sentencing Guidelines. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties agree to the following:

A. Estimated Offense Level Under the Guidelines

The parties agree that the following Sentencing Guidelines sections apply:

U.S.S.G. § 2B2.3(a) Base Offense Level +4

U.S.S.G. § 2B2.3(b)(1)(A)
Trespass at a Restricted Building +2

Total 6

Acceptance of Responsibility

The Government agrees that a 2-level reduction will be appropriate, pursuant to U.S.S.G. § 3E1.1, provided that your client clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through your client's allocution, adherence to every provision of this Agreement, and conduct between entry of the plea and imposition of sentence.

Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1,

and/or imposition of an adjustment for obstruction of justice, pursuant to U.S.S.G. § 3C1.1, regardless of any agreement set forth above, should your client move to withdraw your client's guilty plea after it is entered, or should it be determined by the Government that your client has either (a) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice, or (b) engaged in additional criminal conduct after signing this Agreement.

In accordance with the above, the Estimated Offense Level will be at least 4.

B. Estimated Criminal History Category

Based upon the information now available to this Office, your client has at least the following criminal convictions:

Boone County 2011 Conviction Excessive BAC: 30 days suspended

Boone County 2011 Conviction DWI and Possession Marijuana: 180 days suspended

Accordingly, your client is estimated to have 2 criminal history points and your client's Criminal History Category is estimated to be II (the "Estimated Criminal History Category"). Your client acknowledges that after the pre-sentence investigation by the United States Probation Office, a different conclusion regarding your client's criminal convictions and/or criminal history points may be reached and your client's criminal history points may increase or decrease.

C. Estimated Guidelines Range

Based upon the Estimated Offense Level and the Estimated Criminal History Category set forth above, your client's estimated Sentencing Guidelines range is 0 months to 6 months (the "Estimated Guidelines Range"). In addition, the parties agree that, pursuant to U.S.S.G. § 5E1.2, should the Court impose a fine, at Guidelines level 4, the estimated applicable fine range is $500 to $9,500. Your client reserves the right to ask the Court not to impose any applicable fine.

The parties agree that, solely for the purposes of calculating the applicable range under the Sentencing Guidelines, neither a downward nor upward departure from the Estimated Guidelines Range set forth above is warranted, except the Government reserves the right to request an upward departure pursuant to U.S.S.G. § 3A1.4, n. 4. Except as provided for in the "Reservation of Allocution" section below, the parties also agree that neither party will seek any offense-level calculation different from the Estimated Offense Level calculated above in subsection A. However, the parties are free to argue for a Criminal History Category different from that estimated above in subsection B.

Your client understands and acknowledges that the Estimated Guidelines Range calculated above is not binding on the Probation Office or the Court. Should the Court or Probation Office determine that a guidelines range different from the Estimated Guidelines Range is applicable, that will not be a basis for withdrawal or recission of this Agreement by either party.

Your client understands and acknowledges that the terms of this section apply only to conduct that occurred before the execution of this Agreement. Should your client commit any conduct after the execution of this Agreement that would form the basis for an increase in your client's base offense level or justify an upward departure (examples of which include, but are not limited to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the probation officer, or the Court), the Government is free under this Agreement to seek an increase in the base offense level based on that post-agreement conduct.

VI. Agreement as to Sentencing Allocution

The parties further agree that a sentence within the Estimated Guidelines Range would constitute a reasonable sentence in light of all of the factors set forth in 18 U.S.C. § 3553(a), should such a sentence be subject to appellate review notwithstanding the appeal waiver provided below. However, the parties agree that either party may seek a variance and suggest that the Court consider a sentence outside of the applicable Guidelines Range, based upon the factors to be considered in imposing a sentence pursuant to 18 U.S.C. § 3553(a).

VII. Reservation of Allocution

The Government and your client reserve the right to describe fully, both orally and in writing, to the sentencing judge, the nature and seriousness of your client's misconduct, including any misconduct not

described in the charges to which your client is pleading guilty, to inform the presentence report writer and the Court of any relevant facts, to dispute any factual inaccuracies in the presentence report, and to contest any matters not provided for in this Agreement. The parties also reserve the right to address the correctness of any Sentencing Guidelines calculations determined by the presentence report writer or the court, even if those calculations differ from the Estimated Guidelines Range calculated herein. In the event that the Court or the presentence report writer considers any Sentencing Guidelines adjustments, departures, or calculations different from those agreed to and/or estimated in this Agreement, or contemplates a sentence outside the Guidelines range based upon the general sentencing factors listed in 18 U.S.C. § 3553(a), the parties reserve the right to answer any related inquiries from the Court or the presentence report writer and to allocate for a sentence within the Guidelines range, as ultimately determined by the Court, even if the Guidelines range ultimately determined by the Court is different from the Estimated Guidelines Range calculated herein.

In addition, if in this Agreement the parties have agreed to recommend or refrain from recommending to the Court a particular resolution of any sentencing issue, the parties reserve the right to full allocution in any post-sentence litigation. The parties retain the full right of allocution in connection with any post-sentence motion which may be filed in this matter and/or any proceeding(s) before the Bureau of Prisons. In addition, your client acknowledges that the Government is not obligated and does not intend to file any post-sentence downward departure motion in this

case pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure.

VII. Court Not Bound by this Agreement or the Sentencing Guidelines

Your client understands that the sentence in this case will be imposed in accordance with 18 U.S.C. § 3553(a), upon consideration of the Sentencing Guidelines. Your client further understands that the sentence to be imposed is a matter solely within the discretion of the Court. Your client acknowledges that the Court is not obligated to follow any recommendation of the Government at the time of sentencing. Your client understands that neither the Government's recommendation nor the Sentencing Guidelines are binding on the Court.

Your client acknowledges that your client's entry of a guilty plea to the charged offense(s) authorizes the Court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines range. The Government cannot, and does not, make any promise or representation as to what sentence your client will receive. Moreover, it is understood that your client will have no right to withdraw your client's plea of guilty should the Court impose a sentence that is outside the Guidelines range or if the Court does not follow the Government's sentencing recommendation. The Government and your client will be bound by this Agreement, regardless of the sentence imposed by the Court. Any effort by your client to withdraw the guilty plea because of the length of the sentence shall constitute a breach of this Agreement.

IX. Conditions of Release

Your client acknowledges that, although the Government will not seek a change in your client's release conditions pending sentencing, the final decision regarding your client's bond status or detention will be made by the Court at the time of your client's plea of guilty. The Government may move to change your client's conditions of release, including requesting that your client be detained pending sentencing, if your client engages in further criminal conduct prior to sentencing or if the Government obtains information that it did not possess at the time of your client's plea of guilty and that is relevant to whether your client is likely to flee or pose a danger to any person or the community. Your client also agrees that any violation of your client's release conditions or any misconduct by your client may result in the Government filing an ex parte motion with the Court requesting that a bench warrant be issued for your client's arrest and that your client be detained without bond while pending sentencing in your client's case.

X. Waivers

A. Venue

Your client waives any challenge to venue in the District of Columbia.

B. Statute of Limitations

Your client agrees that, should the conviction following your client's plea of guilty pursuant to this Agreement be vacated for any reason, any prosecution, based on the conduct set forth in the attached State-

ment of Offense, that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Government has agreed not to prosecute or to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against your client, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution of conduct set forth in the attached Statement of Offense that is not time-barred on the date that this Agreement is signed.

C. Trial Rights

Your client understands that by pleading guilty in this case your client agrees to waive certain rights afforded by the Constitution of the United States and/or by statute or rule. Your client agrees to forego the right to any further discovery or disclosures of information not already provided at the time of the entry of your client's guilty plea. Your client also agrees to waive, among other rights, the right to plead not guilty, and the right to a jury trial. If there were a jury trial, your client would have the right to be represented by counsel, to confront and cross-examine witnesses against your client, to challenge the admissibility of evidence offered against your client, to compel witnesses to appear for the purpose of testifying and presenting other evidence on your client's behalf, and to choose whether to testify. If there were a jury trial and your client chose not to testify at that trial, your client would have the right to have the jury instructed that your client's failure to testify could not be held against

your client. Your client would further have the right to have the jury instructed that your client is presumed innocent until proven guilty, and that the burden would be on the United States to prove your client's guilt beyond a reasonable doubt. If your client were found guilty after a trial, your client would have the right to appeal your client's conviction. Your client understands that the Fifth Amendment to the Constitution of the United States protects your client from the use of self-incriminating statements in a criminal prosecution. By entering a plea of guilty, your client knowingly and voluntarily waives or gives up your client's right against self-incrimination.

Your client acknowledges discussing with you Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. Your client knowingly and voluntarily waives the rights that arise under these rules in the event your client withdraws your client's guilty plea or withdraws from this Agreement after signing it.

Your client also agrees to waive all constitutional and statutory rights to a speedy sentence and agrees that the plea of guilty pursuant to this Agreement will be entered at a time decided upon by the parties with the concurrence of the Court. Your client understands that the date for sentencing will be set by the Court.

D. Appeal Rights

Your client agrees to waive, insofar as such waiver is permitted by law, the right to appeal the conviction in this case on any basis, including but not limited to

claim(s) that (1) the statute(s) to which your client is pleading guilty is unconstitutional, and (2) the admitted conduct does not fall within the scope of the statute(s). Your client understands that federal law, specifically 18 U.S.C. § 3742, affords defendants the right to appeal their sentences in certain circumstances. Your client also agrees to waive the right to appeal the sentence in this case, including but not limited to any term of imprisonment, fine, forfeiture, award of restitution, term or condition of supervised release, authority of the Court to set conditions of release, and the manner in which the sentence was determined, except to the extent the Court sentences your client above the statutory maximum or guidelines range determined by the Court. In agreeing to this waiver, your client is aware that your client's sentence has yet to be determined by the Court. Realizing the uncertainty in estimating what sentence the Court ultimately will impose, your client knowingly and willingly waives your client's right to appeal the sentence, to the extent noted above, in exchange for the concessions made by the Government in this Agreement. Notwithstanding the above agreement to waive the right to appeal the conviction and sentence, your client retains the right to appeal on the basis of ineffective assistance of counsel, but not to raise on appeal other issues regarding the conviction or sentence.

E. Collateral Attack

Your client also waives any right to challenge the conviction entered or sentence imposed under this Agreement or otherwise attempt to modify or change the sentence or the manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under 28 U.S.C. § 2255 or Federal

Rule of Civil Procedure 60(b), except to the extent such a motion is based on newly discovered evidence or on a claim that your client received ineffective assistance of counsel. Your client reserves the right to file a motion brought under 18 U.S.C. § 3582(c)(2).

F. Hearings by Video Teleconference and/ or Teleconference

Your client agrees to consent, under the CARES Act, Section 15002(b)(4) and otherwise, to hold any proceedings in this matter — specifically including but not limited to presentment, initial appearance, plea hearing, and sentencing — by video teleconference and/or by teleconference and to waive any rights to demand an in-person/in-Court hearing. Your client further agrees to not challenge or contest any findings by the Court that it may properly proceed by video teleconferencing and/or telephone conferencing in this case because, due to the COVID-19 pandemic, an in-person/in-Court hearing cannot be conducted in person without seriously jeopardizing public health and safety and that further there are specific reasons in this case that any such hearing, including a plea or sentencing hearing, cannot be further delayed without serious harm to the interests of justice.

XI. Use of Self-Incriminating Information

The Government agrees pursuant to U.S.S.G. § 1B1.8(a), that self-incriminating information provided by your client pursuant to this Agreement or during the course of debriefings conducted in anticipation of this Agreement, and about which the Government had no prior knowledge or insufficient proof in the absence of your client's admissions, will not be used by the

Government at the time of sentencing for the purpose of determining the applicable guideline range. However, all self-incriminating information provided by your client may be used for the purposes and in accordance with the terms identified in U.S.S.G. § 1B 1.8(b).

XII. Restitution

Your client acknowledges that the riot that occurred on January 6, 2021, caused as of October 14, 2022, approximately $2,881,360.20 damage to the United States Capitol. Your client agrees as part of the plea in this matter to pay restitution to the Architect of the Capitol in the amount of $500.

Payments of restitution shall be made to the Clerk of the Court. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, your client agrees to disclose fully all assets in which your client has any interest or over which your client exercises control, directly or indirectly, including those held by a spouse, nominee or other third party. Your client agrees to submit a completed financial statement on a standard financial disclosure form which has been provided to you with this Agreement to the Financial Litigation Unit of the United States Attorney's Office, as it directs. If you do not receive the disclosure form, your client agrees to request one from usadc.ecfflu@usa.doj.gov. Your client will complete and electronically provide the standard financial disclosure form to usadc.ecfflu@usa.doj.gov 30 days prior to your client's sentencing. Your client agrees to be contacted by the Financial Litigation Unit of the United States Attorney's Office, through defense counsel, to complete a financial statement. Upon review, if there are any follow-up questions,

your client agrees to cooperate with the Financial Litigation Unit. Your client promises that the financial statement and disclosures will be complete, accurate and truthful, and understands that any willful falsehood on the financial statement could be prosecuted as a separate crime punishable under 18 U.S.C. § 1001, which carries an additional five years' incarceration and a fine.

Your client expressly authorizes the United States Attorney's Office to obtain a credit report on your client in order to evaluate your client's ability to satisfy any financial obligations imposed by the Court or agreed to herein.

Your client understands and agrees that the restitution or fines imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States. If the Court imposes a schedule of payments, your client understands that the schedule of payments is merely a minimum schedule of payments and will not be the only method, nor a limitation on the methods, available to the United States to enforce the criminal judgment, including without limitation by administrative offset. If your client is sentenced to a term of imprisonment by the Court, your client agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically imposes a schedule of payments.

Your client certifies that your client has made no transfer of assets in contemplation of this prosecution for the purpose of evading or defeating financial obligations that are created by this Agreement and/or that may be imposed by the Court. In addition, your client promises to make no such transfers in the future until

your client has fulfilled the financial obligations under this Agreement.

XIII. Breach of Agreement

Your client understands and agrees that, if after entering this Agreement, your client fails specifically to perform or to fulfill completely each and every one of your client's obligations under this Agreement, or engages in any criminal activity prior to sentencing, your client will have breached this Agreement. In the event of such a breach: (a) the Government will be free from its obligations under this Agreement; (b) your client will not have the right to withdraw the guilty plea; (c) your client will be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice; and (d) the Government will be free to use against your client, directly and indirectly, in any criminal or civil proceeding, all statements made by your client and any of the information or materials provided by your client, including such statements, information and materials provided pursuant to this Agreement or during the course of any debriefings conducted in anticipation of, or after entry of, this Agreement, whether or not the debriefings were previously characterized as "off-the-record" debriefings, and including your client's statements made during proceedings before the Court pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

Your client understands and agrees that the Government shall be required to prove a breach of this Agreement only by a preponderance of the evidence, except where such breach is based on a violation of

federal, state, or local criminal law, which the Government need prove only by probable cause in order to establish a breach of this Agreement.

Nothing in this Agreement shall be construed to permit your client to commit perjury, to make false statements or declarations, to obstruct justice, or to protect your client from prosecution for any crimes not included within this Agreement or committed by your client after the execution of this Agreement. Your client understands and agrees that the Government reserves the right to prosecute your client for any such offenses. Your client further understands that any perjury, false statements or declarations, or obstruction of justice relating to your client's obligations under this Agreement shall constitute a breach of this Agreement. In the event of such a breach, your client will not be allowed to withdraw your client's guilty plea.

XIV. Complete Agreement

No agreements, promises, understandings, or representations have been made by the parties or their counsel other than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by your client, defense counsel, and an Assistant United States Attorney for the District of Columbia.

Your client further understands that this Agreement is binding only upon the Criminal and Superior Court Divisions of the United States Attorney's Office for the District of Columbia. This Agreement does not bind the Civil Division of this Office or any other United States Attorney's Office, nor does it bind any

other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against your client.

If the foregoing terms and conditions are satisfactory, your client may so indicate by signing this Agreement and the Statement of Offense, and returning both to me no later than June 23, 2023.

Sincerely yours,

/s/ Matthew M. Graves
United States Attorney

/s/ Kimberly L. Paschall
Kimberly L. Paschall
Troy A. Edwards, Jr.
Assistant United States Attorneys

DEFENDANT'S ACCEPTANCE

I have read every page of this Agreement and have discussed it with my attorney, Norm Paths, I fully understand this Agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Agreement fully. I am pleading guilty because I am in fact guilty of the offense(s) identified in this Agreement.

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this Agreement. I am satisfied with the legal services provided by my attorney in connection with this Agreement and matters related to it.

/s/ Jonathon Owen Shroyer
Defendant

Date: 9/21/23

ATTORNEY'S ACKNOWLEDGMENT

I have read every page of this Agreement, reviewed this Agreement with my client, Jonathon Owen Shroyer, and fully discussed the provisions of this Agreement with my client. These pages accurately and completely set forth the entire Agreement. I concur in my client's desire to plead guilty as set forth in this Agreement.

/s/ Norm Partis
Attorney for Defendant

Date: 6/23/23

GOVERNMENT'S SENTENCING MEMORANDUM (SEPTEMBER 5, 2023)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

JONATHAN OWEN SHROYER,

Defendant.

Case No. 21-cr-542 (TJK)

GOVERNMENT'S SENTENCING MEMORANDUM

In the months prior to January 6, Shroyer spread election disinformation paired with violent rhetoric to hundreds of thousands, if not millions, of viewers. He presciently warned in November 2020 that, if Joe Biden became president, "it's not going to be a million peaceful marchers in D.C." And, on January 6, 2021, Shroyer took to a megaphone before leading a crowd to the Capitol: "The Democrats are posing as communists, but we know what they really are: they're just tyrants, they're tyrants. And so today, on January 6, we declare death to tyranny! Death to tyrants!" Shroyer did not stop at the sight of tear gas or sounds of explosions on the west side of the Capitol. He

continued marching around to the top of the east steps chanting "1776!," where rioters would eventually violently breach the Capitol and its police line and halt the transfer of presidential power. Shroyer did not step foot inside the Capitol, he did not need to; many of those who listened to him did instead. In the aftermath, he has blamed "Antifa" and told his followers: "We should have been proud of what happened."

Shroyer helped create January 6. The government respectfully requests that this Court sentence him to 120 days of incarceration, 12 months of supervised release, 60 hours of community service, and $500 in restitution.

I. Introduction

Jonathon Owen Shroyer, host on the internet streaming program "The War Room" for the company InfoWars, enthusiastically 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 2.9 million dollars in losses.[1]

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[1] As of July 7, 2023, the approximate losses suffered as a result of the siege at the United States Capitol was $2,923,080.05. That amount reflects, among other things, damage to the United States Capitol building and grounds and certain costs borne by the United States Capitol Police. The Metropolitan Police Department ("MPD") also suffered losses as a result of January 6, 2021, and is also a victim. MPD recently submitted a total of approximately $629,056 in restitution amounts, but the government

Shroyer pleaded guilty to one count of violating 18 U.S.C. 1752(a)(1). As explained herein, a sentence of incarceration is appropriate in this case because Shroyer: (1) had an active order to stay away from the U.S. Capitol and its grounds on January 6, 2021 due to a pending case for disorderly conduct on those grounds; (2) stoked the fire of hundreds of thousands of his followers with violent rhetoric and disinformation about the election leading up to January 6 and during a march he helped lead to the restricted grounds, and (3) praised the actions of the rioters at the Capitol after January 6 on his online streaming show.

The Court must also consider that Shroyer'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. Here, the facts and circumstances of Shroyer's crime support a sentence of 120 days incarceration in this case.

II. Factual and Procedural Background

The January 6, 2021 Attack on the Capitol

To avoid unnecessary exposition, the government refers to the general summary of the attack on the U.S. Capitol. *See* ECF 39 (Statement of Offense), at 1-3.

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has not yet included this number in our overall restitution summary ($2.9 million) as reflected in this memorandum. However, in consultation with individual MPD victim officers, the government has sought restitution based on a case-by-case evaluation.

Defendant Shroyer's History of Unlawful Activity at the U.S. Capitol

A year before Shroyer's unlawful actions at the Capitol on January 6, 2021, Shroyer was arrested on December 9, 2019, in Washington, D.C., after disrupting a House Judiciary Committee meeting in the Longworth House Office Building by jumping out of his seat and shouting in a loud manner. *See* Dkt. 1 (citing Case Num. 2020 CMD 000820). On January 17, 2020, prosecutors charged Shroyer by a Criminal Information in the Superior Court of the District of Columbia with (1) Disorderly and Disruptive Conduct on United States Capitol Grounds, in violation of 10 D.C. Code § 503.16(b)(4); and (2) Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 10 D.C. Code § 503.16(b)(7). *See id.*

On February 25, 2020, Shroyer entered into a Community Service Deferred Prosecution Agreement ("DPA") with the government. *See* Dkts. 1, 8-3. As part of the agreement, Shroyer agreed not to violate any laws and to perform 32 hours of verified community service. *See* 8-3 at 2. Due to the nature of the offense, Shroyer also agreed to follow certain special conditions listed in an Addendum to the DPA:

1. The defendant agrees not to utter loud, threatening, or abusive language, or to engage in any disorderly or disruptive conduct, at any place upon the United States Capitol Grounds or within any of the Capitol Buildings with intent to impede, disrupt, or disturb the orderly conduct of any session of the Congress or either House thereof, or the orderly conduct within any such building of any hearing before, or any deliberations of, any committee

or subcommittee of the Congress or either House thereof.

2. The defendant agrees not to parade, demonstrate, or picket within any of the Capitol Buildings.

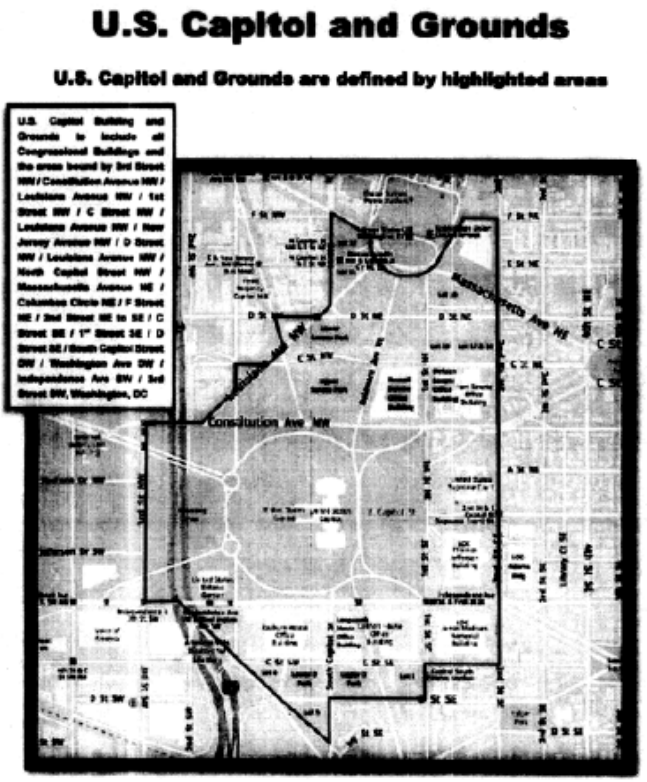
3. The term "Capitol Buildings" means the United States Capitol, the Senate and House Office Buildings and garages, the Capitol Power Plant, all subways and enclosed passages connecting 2 or more such structures, and the real property underlying and enclosed by any such structure.

4. The term "United States Capitol Grounds" means the areas delineated in the map below.

See id. at 5. As referenced, the DPA included a map that demarcated the "U.S. Capitol and Grounds," using the following boundaries:

> U.S. Capitol Building and Grounds to include all Congressional Buildings and the areas bound by 3rd Street NW / Constitution Avenue NW / Louisiana Avenue NW / 1st Street NW / C Street NW / Louisiana Avenue NW / New Jersey Avenue NW / D Street NW / Louisiana Avenue NW / North Capitol Street NW / Massachusetts Avenue NE / Columbus Circle NE / F Street NE / 2nd Street NE to SE / C Street SE / 1st Street SE / D Street SE / South Capitol Street SW / Washington Avenue SW / Independence Avenue SW / 3rd Street SW, Washington, D.C.

See id. at 6. The map also provided a visual representation of these boundaries, as seen below:



See id. Shroyer and his attorney signed the DPA on February 25, 2020. *See id.* at 4.

While the DPA was for a 4-month term, the COVID pandemic emergency tolled this time period for Shroyer to complete his hours. *See* Dkt. 1 (citing D.C. Superior Court Case Num. 2020 CMD 000820). As of January 5 and 6, 2021, Shroyer had not completed any hours of community service, and the DPA—and Shroyer's stay away order from the U.S. Capitol—was still active. *See id.*

Shroyer's Rhetoric in Advance of January 6

In the weeks before January 6th, Shroyer stoked the flames of a potential disruption of the certification vote by streaming disinformation about alleged voter fraud and a stolen election to thousands, perhaps millions, of viewers of his program on InfoWars,[2] and meeting disappointed Trump voters across the country on InfoWars' Stop the Steal caravan. *See* Exhibit 1, November 13, 2020, News2Share Million Maga Eve. On November 13, 2020, Shroyer bragged to a crowd in Washington, D.C. that InfoWars' Stop the Steal movement was able to get 40,000 followers on Parler in five days, and millions of streaming views, proving that "we are still in control of this country." Exhibit 2, November 13, 2020, Shroyer Social Media Views. The following day, on November 14, 2020, Shroyer spoke to another D.C. crowd through a bullhorn, stating that if the mainstream media did not want to "broadcast the American Revolution 2.0, then fine, InfoWars will take the exclusives," to raucous cheers from the crowd gathered around him. Exhibit 3, November 14, News-2Share.

On the November 18, 2020 broadcast of InfoWars, when talking about the Democrats who have "stolen your country," Shroyer stated that "maybe you deserve what's coming." *See* Exhibit 4, November 18, 2020 InfoWars broadcast, at 01:30 minutes. He added, "But let me tell you: if you steal this election from us and

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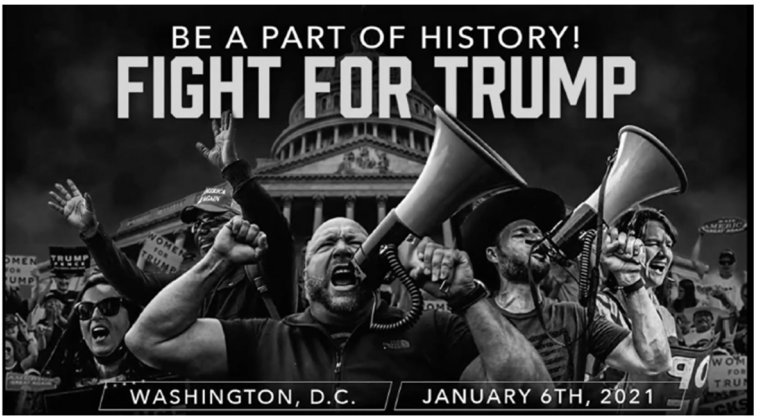
[2] According to SimilarWeb, a web traffic analysis site, InfoWars.com receives 6 million visits per month. *See* www.similarweb.com/website/infowars.com/#overview. Banned.Video, where the videos from InfoWars are streamed, receives 3.8 million visits per month. *See* www.similarweb.com/website/banned.video/#overview

you put in a U.N. communist corrupt criminal Joe Biden in the White House, it's not going to be a million peaceful marchers in D.C. No, no, no. No, it's not. No, it's not." *See* Exhibit 4, November 18, 2020 InfoWars broadcast, at 3:03 minutes.

By December 31, 2020, InfoWars had turned its sights specifically to January 6th, airing a poster with Shroyer depicted with other members of the InfoWars broadcasting team directly in front of an image of the U.S. Capitol, urging people to "Be A Part of History! Fight for Trump" in Washington, D.C., January 6, 2021. *See* Exhibit 5, December 31, 2020, InfoWars Broadcast.



Stillshot from Exhibit 5, at 00:01 minutes

January 5th Address to Crowds Gathered in D.C.

On January 5, 2021, Shroyer returned to Washington, D.C., where he broadcast from Freedom Plaza, stating "Americans are ready to fight! We aren't exactly sure what that's going to look like, in a couple of weeks, if we cannot stop the certification of this fraudulent election of Joe Biden." Exhibit 6, January

5, 2021 InfoWars. Shroyer continued "we are letting the crooks in Congress know, that we know Donald J. Trump won this election . . . and so the crooks in Congress had better know that we the people are here, and we're loud, and we are going to be here all week." Exhibit 6, January 5, 2021 InfoWars, at 00:19 minutes. "We are the new revolution!" Shroyer yelled. "We are going to restore and we are going to save the Republic, and all these great Americans are going to be the ones to do it," while gesturing to the crowd around him. Exhibit 6, January 5, 2021 InfoWars, at 1:08 minutes.

That day, Shroyer also called into another live broadcast on the InfoWars program, stating "What I'm afraid of is if we do not get this false certification of Biden stopped this week, I'm afraid of what this means for the rest of the month, I'm afraid of what this is gonna mean to these Trump supporters, and I'm afraid about what this is going to mean about January 21st . . . Everybody knows this election was stolen . . . Are we just going to sit here and become activists for four years or are we going to actually do something about this, whatever that cause or course of cause may be?" Exhibit 7, InfoWars Call In, 11:50 minutes.

In the evening January 5, 2021, Shroyer addressed a crowd at Freedom Plaza in Washington, D.C., on stage in front of a Stop the Steal flag: "For too long now, the people have feared the government. Well, in January 2021, that changes." Exhibit 8, January 5 Speech Freedom Plaza, at 00:10 minutes. He added, "And I can tell you, that the crooked politicians who occupy our Capitol, are in fear right now." Exhibit 8, January 5 Speech Freedom Plaza, at 00:23 minutes. "So, despite all the things that they've done to try to

destroy our morale, despite all the things they've done to gaslight us, confuse us, and try to keep us locked inside, we're here more powerful, more loud, and we're fightin' mad." Exhibit 8, January 5 Speech Freedom Plaza, at 1:28 minutes.

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

On January 6, 2021, Shroyer attended former President Donald Trump's speech at the Ellipse in downtown Washington, D.C. Early that afternoon, crowds of people began to gather and head toward the Capitol perimeter. Shroyer took to a megaphone in front of one of those crowds on Pennsylvania Avenue: "In 1776, the American patriots sent a loud message to the entire world: Tyranny will not exist in the West. And so now the Democrats are posing as communists, but we know what they really are: they're just tyrants, they're tyrants. And so today, on January 6, we declare death to tyranny! Death to tyrants! Death to tyrants! Death to tyrants!" Exhibit 9, Banned.Video January 6 Pennsylvania Ave Video, at 9:16 minutes.

Shroyer made it clear why he was headed to the Capitol: "Today we march for the Capitol because on this historic January 6, 2021, we have to let our Congressmen and women know, and have to let Mike Pence know, they stole the election, we know they stole it, and we aren't going to accept it." Exhibit 9, Banned.Video January 6 Pennsylvania Ave Video, at 4:19 minutes.

After hearing that people may have breached the Capitol, Shroyer, Person One,[3] and others began leading this large crowd down Pennsylvania Avenue toward the Capitol Building. Shroyer is encircled in red below with a megaphone, at the front of the crowd.

Stillshot from Exhibit 9, at 15:12 minutes

En route, Shroyer continued shouting to the crowd walking behind and around him through his megaphone: "The traitors and communists that have betrayed us know we're coming. We're coming for all you commie traitors and communists that have stabbed us in the back. You've stabbed us in the back one too many times!" Exhibit 9, Banned.Video January 6 Pennsylvania Ave Video, at 14:30 minutes. He continued, "We will not accept the fake election of that child-molesting Joe Biden, that Chinese Communist agent Joe Biden, we know where he belongs and it's not the White House!" Exhibit 9, Banned.Video January 6 Pennsylvania Ave Video, at 15:30 minutes. Throughout this time, Shroyer led chants of "Stop the steal!" and

[3] Person One is another person who actively participated in events on January 6 and addressed the crowd with a bullhorn, but has not been criminally charged.

"Trump won!" Exhibit 9, Banned.Video January 6 Pennsylvania Ave Video, at 17:19.

Shroyer Breaches the Perimeter and Enters the West Side of the Capitol Grounds

Just before the Joint Session got underway at 1:00 p.m., Shroyer entered the Capitol Grounds. He first positioned himself with others on the west side of the Capitol Building, within both the restricted area on January 6 and the broader Capitol Grounds boundaries on Shroyer's DPA map seen above. There, he stood on stacks of chairs and other equipment with Person One and led a crowd of hundreds of individuals on the Capitol grounds in chants of "USA! USA! USA!"[4] Exhibit 10, Parler Video West Front, at 00:22 minutes.

[4] *See* Dkt. 1 at 4 n.6 (citing https://banned.video/watch?id=5ff9df636756f238a5bf9124 (last accessed on November 12, 2021)).

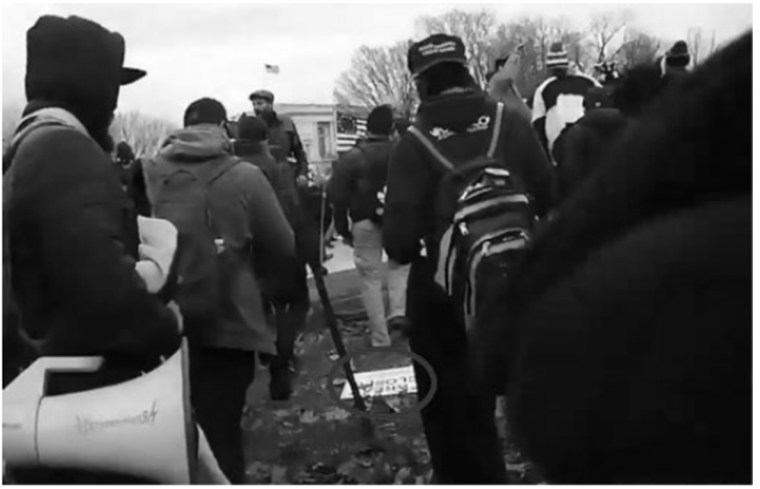
Stillshot from Exhibit 10, at 00:23 minutes

Shroyer Addresses the Crowd on the East Side of the Capitol

Eventually, Shroyer and others walked east along the Capitol lawn and around the north side of the Capitol Building. A purported security guard for Person One, wearing a body-worn camera, announced

to Shroyer and others, "Let's take a break right here. Let me talk to this cop and see if I can get [Person One] up there and deescalate the situation." Exhibit 11, Body Guard Body Cam, at 8:36 minutes. This body-camera individual then walked up to a uniformed police officer guarding the perimeter of the Capitol Building and engaged in conversations while tens of others surrounded the pair, including Shroyer. The police officer tried to get them to go back out through the area where other rioters had breached; the group did not do so. Exhibit 11, Body Guard Body Cam, at 9:20 minutes.

Subsequently, Shroyer, Person One, the body-camera individual, and others walked away from the officer, continuing east around the Capitol Building. As Shroyer and his group curved around the Capitol Building, the body-camera individual stated, "Here's an opening right here." Exhibit 11, Body Guard Body Cam, at 9:42 minutes. Shroyer and his group then walked toward where the body-camera individual pointed, passing downed and moved temporary barricades and stepping over at least one fallen sign that appeared to read "Area Closed," as seen below circled in red. Exhibit 11, Body Guard Body Cam, at 10:01 minutes.



Stillshot from Exhibit 11, at 10:01 minutes

Soon after stepping over that sign, the body-camera individual turned around and showed Shroyer, among others, walking with him on the Capitol Grounds in the restricted area. Exhibit 11, Body Guard Body Cam, at 11:08 minutes.

Stillshot from Exhibit 11, at 11:08 minutes

Once on the east side of the Capitol building, the body-camera individual again attempted to speak to

police officers guarding the perimeter of the Capitol Building to get Person One on the Capitol Building steps. After several attempts, and no positive responses from police to this request, the group decided to "just get him up there, just do it, but we know we might catch a bang or two." Exhibit 11, Body Guard Body Cam, at 17:50 minutes.

Shroyer, Person One, the body-camera individual, and others then approached and entered the Capitol Building's east steps with their hands on each other's backs and shoulders in a "stack," snaking through hundreds of other rioters and deeper into the restricted area. Exhibit 12, East Side Capitol Video, at 30:31 minutes. Once Shroyer and others nearly reached the top, he began to use his megaphone to lead the large crowd in various chants, including "USA!" and "1776!"—an apparent reference to the "first" American Revolution and a renewed need to overthrow the government.[5] Exhibit 12, East Side Capitol Video, at 33:41 and 34:35 minutes. Shroyer is seen below on the right standing near the top of the Capitol Building's east steps with his megaphone while leading one of the chants:

[5] *See* Dkt. 1 at 4 n.6 (citing https://banned.video/watch?id=5ff9df636756f238a5bf9124 (last accessed on November 12, 2021)).

Stillshots from Exhibit 12, at 33:38 and 33:41 minutes

Shroyer's Statements on InfoWars on January 6th

Soon after, on January 6, Shroyer broadcast on InfoWars and explained in an interview what his and others' actions were about, while rioters can be seen continuing to breach the Capitol Building behind him:

> We're here fighting for President Trump, we're here fighting for our elections, we're here fighting for the Republic. We want to use this day as we're seeing all the traitors in the Republican party and Congress, everywhere, stab us in the back . . . Trump is now a man on a mountain by himself, and he has we the people fighting for him . . . We want freedom, we want liberty, and when the government fears the people, we have that . . . We the people are not going to stand for their treason, and we the people are not going stand for rigged elections . . . We just want a send a peaceful message to . . . Mike Pence and the congressmembers, 'hey, we voted for Donald Trump, he won the election, you know it, you better do the right thing and not certify the fake vote for Biden.'[6]

See Exhibit 13, January 6 Broadcast, at 04:05 minutes.

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6 *See* Dkt. 1 at 4 n.5 (citing https://banned.video/watch?id=5ff634c2f23a18318ceb19f1 (last accessed on November 12, 2021)).

Spreading January 6th Misinformation Following January 6th

In the weeks and months that followed, Shroyer continued to peddle January 6th conspiracy theories on his Internet streaming show. On January 8, 2021, Shroyer had as guests on his show January 6th rioters Edward Badalian and Gina Bisignano.[7] Exhibit 14, January 8 InfoWars broadcast. While showing footage of Badalian on the Lower West Terrace of the Capitol, Shroyer shifted the blame for the destruction of property at the Capitol to Antifa, cheering Badalian (who was on using the code name Turbo) for valiantly stopping "Antifa," and stating that he deserved an award. Exhibit 14, January 8 InfoWars broadcast. Badalian has since been convicted at trial for Conspiracy, Obstruction of an Official Proceeding, and Entering and Remaining in a Restricted Building or Grounds, for entering the U.S. Capitol building through that exact window depicted on Shroyer's program. *See*, *United States v. Edward Badalian*, 21-cr-246-2.

On May 17, 2021, on his InfoWars broadcast, Shroyer stated that he "realized something about January 6th." Exhibit 15, May 17 InfoWars broadcast. While downplaying that "yeah, January 6 got a little out of control, yeah, there was some violence against

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[7] *See United States v. Edward Badalian,* 21-cr-246-2 (ABJ) and *United States v. Gina Bisignano*, 21-cr-036 (CJN). Badalian has been convicted at trial of three counts, to include Conspiracy, in violation of 18 U.S.C. 371, and Obstruction of an Official Proceeding, in violation of 18 U.S.C. 1512(c)(2). Bisignano plead guilty to 6 counts, including Obstruction of an Official Proceeding and Civil Disorder. She has since withdrawn her guilty plea to the count alleging violation of 18 U.S.C. 1512(c)(2), and is set for trial in April 2024.

the police, there was a little bit of violence to the building too, property damage," Shroyer stated that January 6 was "like a mouse that roared" compared to when Democrats riot. Exhibit 15, May 17 InfoWars broadcast, at 00:21 minutes. He went on to say "we should have rejected their narrative of January 6 and frankly, at a certain level, we should have been proud of it. We should have been proud of what happened on January 6. But they stole that from us." Exhibit 15, May 17 InfoWars broadcast, at 00:56 minutes.

On August 20, 2021, the day that Shroyer learned there was a warrant for his arrest based on his actions at the U.S. Capitol grounds on January 6, 2021, he broadcast on InfoWars about a "big story" on January 6th. *See* Exhibit 16, August 20 InfoWars broadcast. Shroyer stated that the FBI should be investigated for their role on January 6 and that "Democrats stood down security intentionally." *See* Exhibit 16, August 20 InfoWars broadcast, at 1:50 and 2:18 minutes. Shroyer implied that the government's investigations into the January 6th riots followed the policy attributed to Lavrentiy Beria, Stalin's secret police chief, "Show me the man, and I'll [show you the] crime." *See* Exhibit 16, August 20 InfoWars broadcast, at 3:18 minutes.

After his arrest, Shroyer raised almost $250,000 in an online campaign styled as "Emergency Owen Shroyer Legal Defense Fund" *See* Exhibit 17, Give Send Go Page.[8] The website included the photograph

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[8] *See* www.givesendgo.com/campaign/grabwidget?urllink=G27P2 (last accessed August 9, 2023). The government will not be seeking a fine in this case, as this website purports to help pay Shroyer's legal bills. But, the government believes this is relevant information for the Court to consider.

(below) of Shroyer holding a sign that stated, "Tech Companies Banned Me From Social Media. Democrats Are Trying To Ban Me From The Capital [sic]." Exhibit 17, Give Send Go Page.

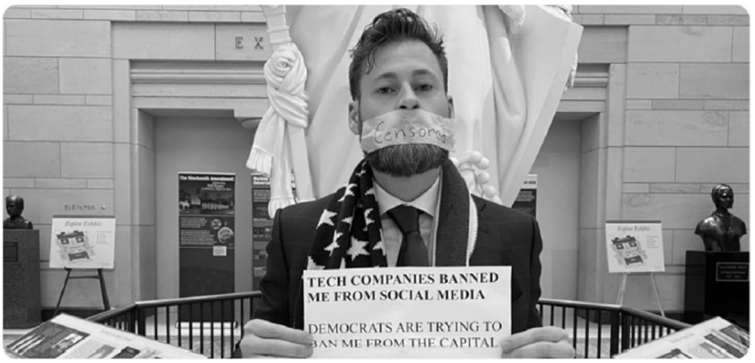

Exhibit 17

The Charges and Plea Agreement

On August 25, 2021, the United States charged Shroyer by a four-count Information with violating 18 U.S.C. 1752(a)(1), 18 U.S.C. 1752(a)(2), 40 U.S.C. 5104 (e)(2)(D), and 40 U.S.C. 5104(e)(2)(E). On June 23, 2023, pursuant to a plea agreement, Shroyer pleaded guilty to Count One of the Information, charging him with a violation of 18 U.S.C. 1752(a)(1). By plea agreement, Shroyer agreed to pay $500 in restitution to the Architect of the Capitol.

III. Statutory Penalties

Shroyer now faces a sentencing on a single count of violating 18 U.S.C. 1752(a)(1). As noted by the plea agreement and the U.S. Probation Office, Shroyer faces up to one year of imprisonment and a fine of up to $100,000. Shroyer must also pay restitution under the terms of his plea agreement. *See* 18 U.S.C. § 3663(a)(3);

United States v. Anderson, 545 F.3d 1072, 1078-79 (D.C. Cir. 2008).

IV. The Sentencing Guidelines and Guidelines Analysis

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

The government agrees with the Sentencing Guidelines calculation set forth in the PSR. According to the PSR, the U.S. Probation Office calculated Shroyer's adjusted offense level under the Sentencing Guidelines as follows:

Base Offense Level (U.S.S.G. § 2B2.3(a))	+4
Specific Offense Characteristics (U.S.S.G. § 2B2.3(b)(1)(A))	+2
Acceptance of Responsibility (USSG § 3E1.1(a))	-2
Total Adjusted Offense Level	**4**

See PSR at ¶¶ 33 to 42.

The U.S. Probation Office calculated Shroyer's criminal history as a level II. PSR at ¶ 46. Accordingly,

the U.S. Probation Office calculated Shroyer's corresponding Guidelines imprisonment range at 0 to 6 months. PSR at ¶¶ 81. Shroyer's plea agreement contains an agreed-upon Guidelines' calculation that mirrors the U.S. Probation Office's calculation.

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

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

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. The Section 3553(a) factors weigh in favor of 120 days' incarceration.

A. The Nature and Circumstances of the Offense

The attack on the U.S. Capitol on January 6 posed "a grave danger to our democracy." *United States v. Munchel*, 991 F.3d 1273, 1284 (D.C. Cir. 2021). The attack "endangered hundreds of federal officials in the Capitol complex," including lawmakers who "cowered under chairs while staffers blockaded themselves in offices, fearing physical attacks from the rioters." *United States v. Judd*, 21-cr-40, 2021 WL 6134590, at *5

(D.D.C. Dec. 28, 2021). While assessing Shroyer's participation in that attack to fashion a just sentence, this Court should consider various aggravating and mitigating factors. Notably, for a misdemeanor defendant like Shroyer, the absence of violent or destructive acts is not a mitigating factor. Had Shroyer engaged in such conduct, he would have faced additional criminal charges.

One of the most important factors in Shroyer's case is his access to and use of the platform that is his Internet streaming program, both before, during, and after January 6th. The events of January 6th did not happen in a bubble; individuals like Shroyer stoked the fires of discontent with the outcome of the 2020 Presidential election online, driving a mob of individuals to descend on Washington, D.C. on January 6th. Shroyer cannot light a fire near a can of gasoline, and then express concern or disbelief when it explodes.

And the First Amendment is no bar to the Court's consideration of Shroyer's words and actions at sentencing. "No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. § 3661. The Supreme Court has likewise "long recognized that sentencing judges 'exercise a wide discretion' in the types of evidence they may consider when imposing sentence and that '[h]ighly relevant—if not essential—to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.'" *Pepper v. United States*, 562 U.S. 476, 480 (2011) (citation omitted). "[T]he sentencing authority has

always been free to consider a wide range of relevant material." *Payne v. Tennessee*, 501 U.S. 808, 820-821 (1991).

Consistent with this principle, the Supreme Court has held that "the Constitution does not erect a *per se* barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment." *Dawson v. Delaware*, 503 U.S. 159, 165 (1992). Indeed, a court may impose a sentence "based on" a defendant's protected beliefs as long as those beliefs are "relevant to the issues involved," *id.* at 164, just as a court may permit "the evidentiary use of speech to establish the elements of a crime or to prove motive or intent." *Wisconsin v. Mitchell*, 508 U.S. 476, 485 (1993); *see also United States v. Alvarez-Nunez*, 828 F.3d 52, 55-56 (1st Cir. 2016) (conduct that otherwise may be "protected by the First Amendment may be considered in imposing sentence" if it is "relevant to the issues in a sentencing proceeding" including "the degree of the defendant's remorse, . . . the likelihood of reoffending, . . . or the extent of punishment needed for deterrence"). As the Second Circuit has recognized, the Court is "required to sentence a convicted defendant based in part on his or her 'history and personal characteristics,'" and "a person's history and personal characteristics can often be assessed by a sentencing court only or principally through analysis of what that person has said–in public, in private, or before the court." *United States v. Stewart*, 686 F.3d 156, 166 (2d Cir. 2012); *see also United States v. Schmidt*, 930 F.3d 858, 865 (7th Cir. 2019) (recognizing that "courts of appeals also have

upheld a sentencing judge's consideration of the defendant's protected associations, beliefs, or statements because that evidence was relevant to the sentencing factors set forth in 18 U.S.C. § 3553(a)"); *United States v. Fell*, 531 F.3d 197, 228 (2d Cir. 2008); *Kapadia v. Tally*, 229 F.3d 641, 648 (7th Cir. 2000) ("Nothing in the Constitution prevents the sentencing court from factoring a defendant's statements into sentencing when those statements are relevant to the crime or to legitimate sentencing considerations."); *United States v. DeChristopher*, 695 F.3d 1082, 1099 (10th Cir. 2012) ("[F]ar from punishing [the defendant] for the content of his . . . statements," the district court "simply relied on those statements to determine the sentence necessary to deter [the defendant] from future violations and to promote respect for the law.").

Shroyer's words and criminal actions surrounding January 6 are inextricably intertwined. Imposing a sentence of incarceration would not punish Shroyer for his beliefs or for any associations—it would punish him based on appropriate § 3553(a) factors. His statements and actions leading up to and on January 6, for example, evince the depth of his intent to stop the transfer of presidential power through sheer volume. The Court must consider that evidence to determine how best to enforce respect for the law and to deter Shroyer, specifically.

The fact that Shroyer was on release in a pending case for nearly the same conduct highlights how important his words and actions are in considering how best to specifically deter him moving forward. Shroyer had an active order to stay away from the U.S. Capitol and grounds because of his pending criminal matter in D.C. Superior Court. Unlike almost every other January

6th defendant, Shroyer had a map with clear delineations of not only what constituted the restricted grounds, but an admonition not to trespass there. His decision to do so anyway on January 6th shows both his contempt for the law and the depth of his motivation to join the mob overwhelming Capitol Police and stopping the Congressional activities of the day.

Finally, his statements and actions after January 6 illustrate his complete lack of remorse. To date, despite a number of opportunities he has taken to speak about the election and January 6, he has yet to sincerely demonstrate genuine remorse for his conduct. As recently as August 28, 2023, Shroyer continued to spread the conspiracy theories surround the 2020 Presidential election on his Internet streaming program for anyone with a computer to watch: that Donald Trump won the 2020 Presidential election, and he will win in 2024 unless there is fraud like there was previously.

In sum, the Court can and should consider the defendant's statements and conduct in determining an appropriate sentence, which should include incarceration in light of the nature and the circumstances of his offense.

B. The History and Characteristics

Shroyer's criminal history contains three prior arrests, at least two of which resulted in a conviction. PSR ¶ 44-48. While none of these arrests or convictions involve serious violent felonies, they do belie a lack of respect for law enforcement and a reckless disregard for the well-being of others.

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

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

D. The Need for the Sentence to Afford Adequate Deterrence

Deterrence encompasses two goals: general deterrence, or the need to deter crime generally, and specific deterrence, or the need to protect the public from further crimes by this defendant. 18 U.S.C. § 3553 (a)(2)(B-C), *United States v. Russell*, 600 F.3d 631, 637 (D.C. Cir. 2010).

General Deterrence

The 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).

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.

The gravity of these offenses demands deterrence. *See United States v. Mariposa Castro*, 1:21-cr-00299 (RBW), Tr. 2/23/2022 at 41-42 ("But the concern I have is what message did you send to others? Because unfortunately there are a lot of people out here who have the same mindset that existed on January 6th that caused those events to occur. And if people start to get the impression that you can do what happened on January 6th, you can associate yourself with that behavior and that there's no real consequence, then people will say why not do it again."). This was not a protest. *See United States v. Paul Hodgkins*, 21-cr-188-RDM, Tr. at 46 ("I don't think that any plausible argument can be made defending what happened in the Capitol on January 6th as the exercise of First Amendment rights.") (statement of Judge Moss). And it is important to convey to future potential rioters—especially those who intend to improperly influence the democratic process—that their actions will have consequences. There is possibly no greater factor that this Court must consider.

Specific Deterrence

Specific deterrence for this defendant drives much of the government's recommendation in this matter. First, a pending criminal case for strikingly similar conduct—disorderly conduct on the grounds of the U.S. Capitol with the intent to disrupt proceedings

there in—with an active stay away order was not enough to deter Shroyer from the conduct to which he has pled guilty here. Criminal convictions in the District of Columbia are not trophies, and this defendant needs to be deterred from returning to commit specifically this type of conduct ever again.

Second, Shroyer's use of his extensive platform on Infowars drastically amplified his thinly veiled calls to violence on January 6th. As noted above, since January 6th, Shroyer has downplayed, has obfuscated, and has told his viewers that "we should be proud of January 6." Exhibit 15, May 17 InfoWars Broadcast. In the 31 months since the January 6th attack on the Capitol, approximately 372 defendants have been charged with assaulting, resisting, or impeding officers or employees, including approximately 112 individuals who have been charged with using a deadly or dangerous weapon or causing serious bodily injury to an officer. *See*, https://www.justice.gov/usao-dc/31-months-jan-6-attack-capitol:~:text=Approximately%2011%20 individuals%20have%20been, res tricted%20federal% 20building%20or%20grounds. Approximately 140 police officers were assaulted on January 6th at the Capitol. *Id.* Approximately 64 defendants have been charged with destruction of government property, and approximately 51 defendants have been charged with theft of government property. *Id.* More than 310 defendants have been charged with corruptly obstructing, influencing, or impeding an official proceeding, or attempting to do so. *Id.* This is what Shroyer said to his audience of thousands is "a little out of control." This is the "narrative" he is encouraging his followers to reject. This is what he wants his viewers to take pride in.

As the Hon. Judge Lamberth noted in a recent memorandum opinion in *United States v. Jacob Chansley,* 21-cr-003, Dkt. 127, it is problematic when those who broadcast their message to large audiences repeat information "replete with misstatements and misrepresentations regarding the events of January 6, 2021 too numerous to count" and "explicitly question[] the integrity of this Court—not to mention the legitimacy of the entire U.S. criminal justice system." Dkt. 127, at 33. Citing George Orwell, Judge Lamberth expressed concern for calling on followers to "'reject the evidence of [their] eyes and ears,' language resembling the destructive, misguided rhetoric that fueled the events of January 6 in the first place." *Id.* This Court, however, need not reject the evidence before it.

E. The Need to Avoid Unwarranted Sentencing Disparities

As the Court is aware, the government has charged hundreds of individuals for their roles in this one-of-a-kind assault on the Capitol, ranging from unlawful entry misdemeanors, such as in this case, to assault on police officers, to conspiracy to corruptly interfere with Congress.[9] This Court must sentence Shroyer based on his own conduct and relevant characteristics, but should give substantial weight to the context of his

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[9] A routinely updated table providing additional information about the sentences imposed on other Capitol breach defendants is available here: https://www.justice.gov/usao-dc/capitol-breach-cases. To reveal that table, click on the link "SEE SENTENCES HANDED DOWN IN CAPITOL BREACH CASES." The table shows that imposition of the government's recommended sentence in this case would not result in an unwarranted sentencing disparity.

unlawful conduct: his participation in the January 6 riot.

Shroyer has pleaded guilty to Count One of the Information, which is a Class A misdemeanor. 18 U.S.C. § 3559. The sentencing factors set forth in 18 U.S.C. § 3553(a), including "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," 18 U.S.C. § 3553(a)(6), do apply, however.

Section 3553(a)(6) of Title 18 directs a sentencing court to "consider . . . the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct". So long as the sentencing court "correctly calculate[s] and carefully review[s] the Guidelines range, [it] necessarily [gives] significant weight and consideration to the need to avoid unwarranted disparities" because "avoidance of unwarranted disparities was clearly considered by the Sentencing Commission when setting the Guidelines ranges." *Gall v. United States*, 552 U.S. 38, 54 (2007). In short, "the Sentencing Guidelines are themselves an anti-disparity formula." *United States v. Blagojevich*, 854 F.3d 918, 921 (7th Cir. 2017). Consequently, a sentence within the Guidelines range will ordinarily not result in an unwarranted disparity.

Moreover, Section 3553(a)(6) does not limit the sentencing court's broad discretion "to impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing. 18 U.S.C. § 3553(a). After all, the goal of minimizing unwarranted sentencing disparities in Section 3553(a)(6) is "only one of several factors that must be weighted and balanced," and the degree of weight is "firmly committed to the discretion of the sentencing judge." *United*

States v. Coppola, 671 F.3d 220, 254 (2d Cir. 2012). The "open-ended" nature of the Section 3553(a) factors means that "different district courts may have distinct sentencing philosophies and may emphasize and weigh the individual § 3553(a) factors differently; and every sentencing decision involves its own set of facts and circumstances regarding the offense and the offender." *United States v. Gardellini*, 545 F.3d 1089, 1093 (D.C. Cir. 2008). "As the qualifier 'unwarranted' reflects, this provision leaves plenty of room for differences in sentences when warranted under the circumstances." *United States v. Brown*, 732 F.3d 781, 788 (7th Cir. 2013).

In cases for which the Sentencing Guidelines apply, "[t]he best way to curtail 'unwarranted' disparities is to follow the Guidelines, which are designed to treat similar offenses and offenders similarly." *United States v. Bartlett*, 567 F.3d 901, 908 (7th Cir. 2009). *See id.* ("A sentence within a Guideline range 'necessarily' complies with § 3553(a)(6)."). If anything, the Guidelines ranges in Capitol siege cases are more likely to understate than overstate the severity of the offense conduct. *See United States v. Knutson*, D.D.C. 22-cr-31 (FYP), Aug. 26, 2022 Sent. Hrg. Tr. at 24-25 ("If anything, the guideline range underrepresents the seriousness of [the defendant's] conduct because it does not consider the context of the mob violence that took place on January 6th of 2021.") (statement of Judge Pan).

Although all the other defendants discussed below participated in the Capitol breach on January 6, 2021, many salient differences explain the differing recommendations and sentences. While no previously sentenced case contains the same balance of aggravating

and mitigating factors present here, the sentences in the following cases provide suitable comparisons to the relevant sentencing considerations in this case.

Jennifer "Jenna" Ryan, 21-cr-50, traveled from Texas to the Capitol on January 6th on a private jet with other supporters. Ryan, a self-described "influencer," had broadcasts over various platforms including social media, YouTube, and radio, garnering thousands of followers and millions of views. *See* Government Sentencing Memorandum, Dkt. 48. On January 6th, she live-streamed her activities on Capitol grounds, which included entering the building past overwhelmed Capitol Police officers on the East side of the building. After the riot, she publicly and repeatedly communicated a lack of remorse in multiple television interviews and social media postings. After she pleaded guilty to one count of Parading, Demonstrating or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104 (e)(2)(G), Judge Cooper sentenced Ryan to 60 days incarceration.

Boyd Camper, 21-cr-325, entered the Capitol building on January 6th through the Upper West Terrace door, after getting tear gas in his eyes on the way to the door. *See* Government Sentencing Memorandum, Dkt. 30. After exiting the Capitol, Camper participated in a video interview with a CBS News reporter while still on or near Capitol grounds. In the interview, Camper acknowledged that he was inside the Capitol, stating, "I was on the front line." He further stated, "We're going to take this damn place. If you haven't heard it's called the insurrection act and we the people are ready." After Camper pleaded guilty to one count of violating § 5104(e)(2)(G), Judge Kollar-Kotelly sentenced him to 60 days' incarceration.

Frank Scavo, 21-cr-254, unlawfully entered the Capitol through the Rotunda Doors on January 6th while taking video of assaults on police with his cellphone. *See* Government Sentencing Memorandum, Dkt. 37. Scavo's participation in the breach of the Capitol drew attention from news media in his local community, and he gave an interview with a local news station after January 6, in which he described hearing "the first boom," observing "people up along the railing," and "tear gas and another series of flashbangs." *See* Government Sentencing Memorandum, Dkt. 37. Scavo changed his profile picture on Facebook to a political cartoon that was published in a local Scranton newspaper, portraying Scavo driving a bus named the "Sedition Express" to the Capitol on January 6. *Id.* After Scavo pleaded guilty to violating § 5104(e)(2)(G), Judge Lamberth sentenced him to 60 days' incarceration.

Similar to Ryan, Camper, and Scavo, Shroyer had a platform to tout his encouragement of and participation in the attack on the Capitol to thousands of people. Unlike those defendants, Shroyer had additional reason to know he should not be at the Capitol that day—his pending case in D.C. Superior Court with an active order to stay away from the Capitol grounds. That is a significant aggravator, deserving of a significantly higher sentence than those defendants.

The fact that Shroyer did not enter the Capitol should not deter the Court from considering imprisonment as a just and warranted sentence. As an initial matter, he breached the restricted grounds, Capitol steps, and stopped just short of the East Rotunda Doors. His conduct alone, let alone his statements to his followers, played a role in halting the proceedings

that day by helping to spread law enforcement officers thin. In any event, his conduct is, in part, accounted for in the charge and related sentencing guidelines he faces. And other courts have previously sentenced defendants who were not even in Washington, D.C. to imprisonment based on the totality of their conduct and surrounding circumstances on January 6. *See, e.g.*, *United States v. Edward Vallejo*, Case No. 22-cr-15-APM (Sentencing court imposed 36 months' imprisonment and 12 months' home confinement for the defendant's conduct in participating in the Oath Keepers "quick reaction force" on January 6 by remaining at the hotel with the firearms). While Vallejo's conduct may be more significant than Shroyer's, it is an example for this Court to consider in determining that a sentence of imprisonment can be, and is, warranted regardless of a defendant's lack of presence in the Capitol building itself.

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

sentence an appellate court might have imposed, and differently from how other district courts might have sentenced that defendant." *Id*. at 1095.

VI. Restitution

The Victim and Witness Protection Act of 1982 ("VWPA"), Pub. L. No. 97-291 § 3579, 96 Stat. 1248 (now codified at 18 U.S.C. § 3663), "provides federal courts with discretionary authority to order restitution to victims of most federal crimes." *United States v. Papagno*, 639 F.3d 1093, 1096 (D.C. Cir. 2011); *see* 18 U.S.C. § 3663(a)(1)(A) (Title 18 offenses subject to restitution under the VWPA).[10] Generally, restitution under the VWPA must "be tied to the loss caused by the offense of conviction," *Hughey v. United States*, 495 U.S. 411, 418 (1990); identify a specific victim who is "directly and proximately harmed as a result of" the offense of conviction, 18 U.S.C. § 3663(a)(2); and is applied to costs such as the expenses associated with recovering from bodily injury, 18 U.S.C. § 3663(b). At the same time, the VWPA also authorizes a court to impose restitution "in any criminal case to the extent agreed to by the parties in a plea agreement." *See* 18 U.S.C. § 3663(a)(3). *United States v. Anderson*, 545 F.3d 1072, 1078-79 (D.C. Cir. 2008).

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[10] The Mandatory Victims Restitution Act, Pub. L. No. 104-132 § 204, 110 Stat. 1214 (codified at 18 U.S.C. § 3663A), "requires restitution in certain federal cases involving a subset of the crimes covered" in the VWPA, *Papagno*, 639 F.3d at 1096, including crimes of violence, "an offense against property . . . including any offense committed by fraud or deceit," "in which an identifiable victim or victims has suffered a physical injury or pecuniary loss." 18 U.S.C. § 3663A(c)(1).

Those principles have straightforward application here. The parties agreed, as permitted under 18 U.S.C. § 3663(a)(3), that Shroyer must pay $500 in restitution, which reflects in part the role Shroyer played in the riot on January 6.[11] Plea Agreement at ¶ XII. As the plea agreement reflects, the riot at the United States Capitol had caused "approximately $2,923,080.05" in damages, a figure based on loss estimates supplied by the Architect of the Capitol and other governmental agencies as of July 2023. *Id.*

VII. Conclusion

Sentencing requires the Court to carefully balance the § 3553(a) factors, considering the totality of the defendant's conduct and the surrounding circumstances. Balancing these factors, the government recommends that this Court sentence Defendant to 120 days of incarceration, 12 months of supervised release, 60 hours of community service, and $500 in restitution. Such a sentence protects the community, promotes respect for the law, and deters future crime by imposing restrictions on his liberty as a consequence of his behavior, while recognizing his acceptance of responsibility for his crime.

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[11] Unlike under the Sentencing Guidelines for which (as noted above) the government does not qualify as a victim, *see* U.S.S.G. § 3A1.2 cmt. n.1, the government or a governmental entity can be a "victim" for purposes of the VWPA. *See United States v. Emor*, 850 F. Supp.2d 176, 204 n.9 (D.D.C. 2012) (citations omitted)

Respectfully submitted,

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GOVERNMENT'S SENTENCING EXHIBITS

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this notice of the following exhibits in support of the government's sentencing memorandum. The government has uploaded these exhibits for defense counsel and Chambers to the USAfx platform:

EX 1 Nov 13 News2Share Million Maga Eve.mp4

EX 2 Nov 13 Shroyer Social Media Views.mp4

EX 3 Nov 14 News2Share.mp4

EX 4 InfoWars November 18 2020.mp4

EX 5 InfoWars December 31 2020.mp4

EX 6 January 5 InfoWars.mp4

EX 7 banned-video InfoWars Call In.mp4

EX 8 Jan 5 Speech Freedom Plaza.mp4

EX 9 banned-video January 6 Pennsylvania Ave.mp4

EX 10 Parler Video West Front.mp4

EX 11 Body Guard Body Cam.mp4

EX 12 East Side Capitol Building.mp4

EX 13 January 6 Broadcast.mp4

EX 14 InfoWars January 8.mp4

EX 15 May 17 InfoWars Proud of J6.mp4

EX 16 Aug 20 InfoWars.mp4

EX 17 givesendgo.com.pdf

The government respectfully requests that these exhibits be made part of the record in this case.

Respectfully submitted,

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TRANSCRIPT OF SENTENCING
(SEPTEMBER 12, 2023)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JONATHON OWEN SHROYER,

Defendant.

CR No. 1:21-cr-00542-TJK-1

Before: The Honorable Timothy J. KELLY,
United States District Judge.

THE DEPUTY CLERK: This is Criminal Matter 21-542, United States of America v. Jonathon Owen Shroyer.

Present for the Government are Kimberly Paschall and Troy Edwards; present from the United States Probation Office is Aidee Gavito; present for the defendant is Norman Pattis; also present is the defendant, Mr. Shroyer.

THE COURT: All right. Good morning to everyone. Is there anything preliminary before we begin from the Government first?

MS. PASCHALL: Not for the Government, Your Honor.

THE COURT: All right. From the defense?

MR. PATTIS: No, sir.

THE COURT: All right. I—we are, obviously, here for the sentencing for Mr. Shroyer. I have reviewed everything, I think, pertinent on the docket which is the presentence report and the sentencing recommendation from the Probation Office—those are ECFs 44 and 45—the sentencing memoranda from the Government and the defendant and the defendant's reply—that's 46, 48, and 49 on the docket—as well as all the videos the Government has provided.

Are there any other documents or materials for me to review?

MR. PATTIS: Judge, I'd like the record to reflect I sent a note to chambers about submissions in this case. The submissions that you have mentioned are the submissions we rely on. I have not read other submissions that may or may not have found their way to you.

THE COURT: They have not. If I have not mentioned them, I have not—they have not made their way to me and I have not reviewed them.

MR. PATTIS: Thank you, sir.

THE COURT: All right. Anything else from the Government?

MS. PASCHALL: No, Your Honor.

THE COURT: All right. That has been a—in some cases, certainly, an issue that folks from the public think they should have a say in a criminal case when they haven't been invited to by either

side. I don't know if that's the case here, but in any event I—whatever that reference—you've referenced, I have not seen.

Mr. Shroyer, our sentencing hearing today—actually, before I do that, let me just make sure—well, we'll get to that in a moment.

Mr. Shroyer, our sentencing hearing today will proceed—you can have a seat, sir. You can have a seat.

Our sentencing hear today will proceed in four steps. And all the while, I want you to keep in mind the seriousness of why we are here. You committed and pled guilty to a federal crime, and today's hearing is about the consequences that you'll face as a result of your decision to commit that crime.

The first step of today's hearing is for me to determine whether you have reviewed what's called the presentence report and whether there are any outstanding objections to that report and, if so, to resolve those objections.

The second step is for me to determine what sentencing guidelines and sentencing range applies in your case based on your criminal history and considering any mitigating or aggravating factors that might warrant a departure under the sentencing guidelines manual.

The third step is for me to hear from the Government, from your counsel, and from you if you wish to be heard about sentencing in this case.

And the last step is for me to fashion a just and fair sentence in light of the factors Congress has

told me I have to consider in 18 United States Code Section 3553(a), and as part of that last step, I will actually impose the sentence along with any other required consequences of the offense.

So the presentence report in this case was filed—the final one—on September 5th of 2023. Does the Government have any objection to any of the factual statements set forth in that report?

MS. PASCHALL: No, Your Honor.

THE COURT: All right. Let me turn to you, Mr. Pattis. Does the defendant have any objection to any of the factual statements set forth in the report?

MR. PATTIS: Yes, Judge—

THE COURT: Mr. Pattis, can I just ask you to—I'll give you two possibilities. One is you may remain seated—you can move the microphone over and address me that way—or you can come to the podium. Either way, I need a microphone near your mouth.

MR. PATTIS: Judge, we have filed objections. I don't know if they found their way to the Court. I think they were a day or two late.

THE COURT: Well, they—if they're part of the presentence—in other words, the presentence report typically notes any outstanding objections—the final presentence report typically notes any objections that remain outstanding after you've talked with them about them, and this just says the

defendant, through defense counsel, filed clarifications of two paragraphs that have been included. So—

MR. PATTIS: Okay. That's—

THE COURT: —that sounds like there's no outstanding objections.

MR. PATTIS: Correct. That is the case, sir.

THE COURT: Okay. All right. Very well. If you can, Mr. Pattis, slide the microphone to Mr. Shroyer. Let me just ask him a few things. Mr. Shroyer, are you satisfied with your attorney, Mr. Pattis, in this matter?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. And have you had enough time to talk with him about both the presentence report and the papers the Government has filed in connection with sentencing?

THE DEFENDANT: I have, Your Honor.

THE COURT: All right. And you're prepared to go forward today?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Again, you may be seated.

All right. So I will accept the facts as stated in the presentence report and the presentence report will be my findings of fact for purposes of this sentencing.

Now, the next step is the guidelines. First, let me just lay out the, sort of, maximum under the law and how the guidelines apply in this case and then I'll ask the parties if they agree. I don't think

there's likely to be any material disagreement here.

First, as a preliminary matter, Congress has imposed a statutory maximum sentence for the offense to which Mr. Shroyer has pled guilty. The statutory maximum is one year. One year for this Class A misdemeanor.

As far as the sentencing guidelines go, the guideline for the offense conduct charged is 2B2.3, trespass. So it is a four. You add two for restricted grounds. You minus two for acceptance of responsibility. So the final offense level is a four. Mr. Shroyer has two criminal history points. So he is in Criminal History Category II for the sentencing guidelines. And thus, given an offense level of four and a criminal history category of II, the guidelines range is zero months to six months.

Are there any objections to this sentencing guideline calculation?

MS. PASCHALL: Not for the Government.

MR. PATTIS: None, sir.

THE COURT: All right. Having determined the applicable guidelines sentence, I usually have to consider any departures from the guidelines. I don't think —I think probably the plea agreement has committed both sides to not asking for any departures. So if that is—let's put it this way. If that's not the case, you can—someone can let me know. I'm going to assume for the moment, given your silence, that it is the case. So I will now discuss the remaining applicable penalties in the case, given

that guideline calculation I just mentioned before, in terms of supervised release, fines, and forfeiture.

Under the statute, I may—as far as supervised release goes, under the statute, I may impose a term of supervised release of not more than one year. That's 18 United States Code Section 3583(b)(2). And the guidelines range for a term of supervised release is one year, as well. That's 5D1.2(a)(3). Under the statute, the defendant is—just make sure of one thing here.

(Brief pause.)

Hmm. Under the statute, the defendant is eligible for up to five years' probation. And under the guidelines, if probation is imposed, it should be for at least one year.

As far as fines go, the maximum fine under the statute is $100,000. Under the guidelines, the recommended fine is between $500 and $9,500.

And the parties have agreed on restitution in the amount of $500.

There is also a mandatory special assessment of $25 under 18 United States Code Section 3013-(a)(2)(A).

Have I accurately stated the statutory and guidelines framework under which we are operating in regard to this case from the Government?

MS. PASCHALL: Yes, Your Honor.

THE COURT: Mr. Pattis?

MR. PATTIS: Yes, sir.

THE COURT: Okay. Now, we get to the heart of the matter, consideration of the statutory factors and Mr. Shroyer's opportunity to speak to me.

I must now consider the relevant factors that Congress set out in 18 United States Code Section 3553(a) and ensure that I impose a sentence sufficient but not greater than necessary to comply with the purposes of sentencing. These purposes include the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense. And the sentence should also afford adequate deterrence to criminal conduct, protect the public from future crimes of the defendant, and promote rehabilitation. And in addition to the guidelines and policy statements, I must consider the nature and circumstances of the offense; the history and characteristics of the defendant; the need for the sentence imposed to comply with the purposes I just mentioned; the kinds of sentences available; the need to avoid unwanted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and the need to provide restitution to victims of the offense.

So let me hear from the Government on application of the 3553(a) factors and to make a sentencing recommendation.

MS. PASCHALL: Thank you, Your Honor.

The Government recognizes it's a difficult thing for the Court and the parties to grapple with a specific defendant's culpability in the context of a larger event, particularly this event which looms

large over all of these sentencings but does not tell the whole story, nor does it tell the specific story of this defendant. The Government, by its allocution today, does not intend to attribute the events of January 6th to this particular defendant. And fortunately, we have the 3553(a) factors to consider in our analysis with this specific defendant.

That being said, we cannot ignore the impact of that event as a whole as we consider what is an appropriate sentence here, the impact on the officers who were present that day, the lawmakers who were there to do their job, and the institutions of our government that now hang more precariously in the balance than they did previously. Your Honor has noted in past sentencings that the damage done that day was both tangible and intangible. We will be talking more about the second here. And as Judge Kollar-Kotelly has previously noted, every drop adds to the flood. Every person who was illegally there that day plays a part. Every defendant added to the overwhelming effect of what is now this black mark in our nation's history.

I want to first address some things that were raised in the supplemental memo before turning to the Government's specific recommendations. And I'll start with the First Amendment arguments. Your Honor has very recently addressed this in the sentencing of United States v. Nordean, et al. It's not a completely frivolous argument. The safeguards of the First Amendment are incredibly important. But as you've repeated there, the argument that because speech is neither incitement

or a threat means that it's completely protected, it has no basis in the law.

THE COURT: So let me just push back on that just a little bit. I'm pushing back on my own quote. So take that of—what you will.

What—the issue in that case was—I think it was differently positioned in [sic] a couple of reasons. And Mr. Pattis knows we had many a conversation about this during that case. And throughout, given the types of charges at issue, I thought there was no doubt that statements—that someone's statements protected under the First Amendment—that someone could not be put in jail or prosecuted for those statements—that those statements can be evidence at a trial. Of course, we didn't have a trial here. But even the charge to which Mr. Shroyer has pled guilty doesn't have the kind of intent elements that the statutes at issue in that case had. And so I mean, obviously, we're not talking—these are separate questions about what I can consider at sentencing and what is—what might be admissible evidence at a trial. And I think, look, the Government cited a lot of cases that by and large, at sentencing, in theory, I can consider just about anything. I—it's really a question of what weight, it seems to me, to give whatever you're arguing to me. And I just think—I mean, I think that a statement that—let's just say—that the election was stolen, I, you know—that could be admissible evidence in a trial to show motive or intent to, then, do some—if it linked up with the mens rea that the Government had to prove, but when—it seems to me it's further afield when we're talking about a trespass

offense and, as Mr. Pattis says, Mr. Shroyer or any American has the right to believe and say things that—against all evidence. Let's put it that way. They have that right.

So I don't know how much—I feel a little differently about statements that are made the closer we get to the event. And, certainly, when we're talking about amping up the—I think there's been many, many January 6th cases in which judges have said, "Look, I find an aggravating factor the fact that someone was out there amping up the crowd." I—and I agree. Like, I don't think—whatever someone has said, someone amping up the crowd while on the steps of the Capitol, I think, is fair game. I just don't know how much, really, weight to give a statement made a month before or whatever that—or I shouldn't say I don't know how much weight to give it—my inclination is to give it little to no weight that someone postured like Mr. Shroyer is in a situation where he's pled to what is essentially a trespass offense a month before saying, in summary, "I think the election was stolen"—"I"—or "I"—whatever along those lines. I just—I'm uncomfortable giving much weight to that.

MS. PASCHALL: So several things.

First, with respect to the weight on evidence of the trespassing charge, I tend to agree; however, it would be a mistake, as I mentioned, to extract a trespassing charge from the entirety of Jan. 6th.

THE COURT: Agreed.

MS. PASCHALL: And so his statements with respect to what was happening on that day should be relevant for Your Honor's consideration.

Second, we draw your attention to those statements because of how heavily they bear on the 3553(a) factors. This defendant is unique in many ways. Primary among that, he already had a pending charge for this exact behavior. If Your Honor is meant to deter future crimes of this type from the defendant, we need to look at what his motivations and intents were for coming here to commit that crime in the first place. Those statements evince a depth of concern for the Government because of how regular they are and how many people heard them. Your Honor has probably had many people who have come before you in these January 6th cases and said something to the effect of, "I was repeating what I heard on the Internet. I got swept up in the crowd. I didn't know what I was doing." That isn't the case here because of those statements. It's abundantly clear that this defendant is intelligent, he's paying attention, and he knows what he's doing, and that's what's concerning to the Government. In other cases, we have asked for the court to look at an aggravating factor of giving interviews post hoc because of the spread of disinformation about what happened on that day and the concerns for general deterrence if information is getting out there that appears to be saying that these things are appropriate, they are okay, praising the events of that day.

THE COURT: Okay. And that's a—and then that's a distinction—I would just say, I agree with you

that to the extent someone is saying—someone is before me for committing a crime, and afterward, they say, "I would commit that crime again; that crime was great," no question, that's fair game and goes to their remorse. I would also say even a statement of overall what happened that day in—January 6th, Congress being overrun and the proceedings being halted by violence and the threat of violence, yeah, I think that's also fair game in terms of thinking about remorse—about—for the overall event, but I just—I make a distinction, again, between someone saying anything along those lines and someone saying—again, it's not before me. I'm not going to—I'm not adjudicating the question of whether the election was stolen here. Many other courts did that. Put it that way. But my point is someone saying after the fact, "I still think the election was stolen," look, it's an unfortunate thing. I'm not arguing with you. But I don't—I—to me, that kind of statement, I'm just not going to give—I'm not going to give a whole heck of a lot of weight to it, if any weight to it, in this or any sentencing because I just think—I mean, I—this is one area where I think I agree with Mr. Pattis. If we're not talking about violence, we're not talking about a crime—

MR. PATTIS: May I order that piece of the transcript on an expedited basis?

(Laughter.)

THE COURT: I do think people have that right and—more so than I have that right—let me put it this way. I don't think there's anything—unmarried to

violence, there's nothing particularly even aggravating about that. It's un—again, I would—my—from where I sit, it's an unfortunate thing, but I just—I feel a little uncomfortable weighing that very heavily.

MS. PASCHALL: And I take Your Honor's point with respect to any statements about the stolen election, but if we excise that statement that concerns Your Honor from the rest of the statements that the Government has submitted, the rest of the statements should give Your Honor pause. The statements leading up to the event concerning any calls for revolution, for violence, anything about "death to tyranny," chants of "1776," those are concerning. And the statements after the fact, bringing on other members of the mob to glorify their actions, stating that we should be proud of what happened that day, laying the blame for what happened that day at the feet of Antifa, these are not his opinions that can exist on their own and not affect Your Honor's decision-making with respect to the 3553(a) factors.

And to be abundantly clear, the Government is not in the business of convicting people for their beliefs. This defendant is not sitting here because of who he voted for, who he believes should be the leader of this country. He's convicted for his actions on that day. And any effect that the defense feels the Government's memo might have on the chilling nature of free speech is washed away by the fact that he sits here for what he did, not what he said.

Judge Mehta put that much more eloquently than I could in the Stewart Rhodes sentencing. He said

in this country, we don't paint with a broad brush, and shame on you if you do. Shame on you if you want to convict somebody because they supported the former president. That doesn't mean that they are a right-wing extremist or a criminal. They voted for the other guy. He voted for the other guy, and he encouraged other people to do so, and he had civic disagreements with those who did not. That is a bedrock of our democracy. We want that here. What we don't want is what he sits convicted of. We cannot have people who take the law into their own hands, join into a mob, foment others towards a revolution. That's distinctly different than if he had stayed at home and continued to express his views on his Internet streaming show.

I want to turn to that for a minute as well, because the defense supplement talks a lot about how he is a journalist who has pled guilty to this crime. The Government is not in a position to debate the merits of that. But what we do know is that on January 6th, he is not acting like a journalist. A journalist gathers news, reports on what they see. A journalist does not make themselves the story. In fact, there were many journalists who were there with press passes from the United States Capitol Police. They might carry videocameras, telephoto lenses, audio recordings, microphones. This defendant is carrying none of that. He's carrying a bullhorn and screaming "1776" to a crowd of thousands of people on the United States Capitol steps. This does not a journalist make. So we believe that argument to be a complete red herring.

I want to take a moment to focus on the effect of Mr. Shroyer's crime. He's not charged with destruction of property or assault on a police officer. Our sentencing recommendation would have been significantly higher if he had been. But I don't want to discount the effect that each individual had on the officers who were there that day doing their duty and on the lawmakers who were present inside. We submitted to Your Honor and to defense counsel a portion of testimony from Officer Carrion who testified in the Parker case, and his testimony about the east front where this defendant was located is particularly powerful because those officers woke up that morning with the intention of doing their jobs, to protect the building and the people inside of it, and for that officer to say that by the end of his tour, he was five men deep with hundreds of people in front of him outmanned and could easily be overpowered speaks to what this defendant did. He is one of those numbers. A mob does not have any effect if it doesn't have numbers.

And his prior crime, sort of, speaks to that; right? Because he has been charged with another offense that looks extremely similar to this one, but it doesn't have the same effect. One individual who comes and disrupts Congress has perhaps committed a crime, but, maybe, not one that makes national news; not one that causes the normal functioning of the democracy to stop; not one that causes, by estimation of Officer Daniel Hodges who spoke at the Patrick McCaughey trial, at least 50 police officers in the District of Columbia to leave their jobs in the months after January

6th, 50 police officers who cite at least in some part what the mob did to them that day—not just the people who assaulted them, damaged property; the mob—what those officers heard, what they understood to be happening, a historic and terrifying event for those individuals just because of the members of the mob who were yelling into bullhorns like this defendant did.

Your Honor mentioned briefly about how his other statements may play into his remorse, and we do want to focus on that. Your Honor addressed this in the Pruitt case after that defendant made a statement. And you noted that he had time to reflect on what had happened that day and had given interviews where he said that he had no regrets; essentially, that he really had done nothing wrong. That's not dissimilar to what has happened here. And you can consider that in weighing the sentence. You had hoped in the Pruitt case that any defendant who would make a statement would seek a complete disavowal of what he and the mob had done. And while we must credit the defendant for acknowledging his guilt and accepting responsibility, that is already baked into his guidelines calculation. I hope that Your Honor listens closely when defense counsel and if the defendant chooses to speak for those type of statements here to seek out whether there is a difference between the technical acceptance of responsibility under the law or a moral one so the Court can, then, feel comfortable and assured that this defendant is not going to take part in actions like this again because he fully accepts

responsibility. That's one of the 3553(a) factors that would give extra credit for remorse.

And finally, to talk a little bit about deterrence, I've already noted this defendant was not deterred by having one case for disruptive and disorderly conduct at the Capitol. He is probably the only January 6th defendant who actually had a map where he knew he was not supposed to be, and yet to continue that activity after he already had one case, I think, is a strong factor for Your Honor to consider in deterring this defendant from future crimes. Should he be granted leniency, who are we to say that he might not think the third time is the charm and to come back, once again, to commit crimes against this city?

And, of course, the general deterrence factor weighs very heavily. It does in all of our January 6th cases. It's the consistent drumbeat Your Honor has heard from the Government over and over that we seek harsh sentences in these cases because we do not want anything like this to ever happen again from anybody, regardless of who they voted for, their creed, their ideology. Nobody should come to this district, to this city, and to—expect to see no ramifications when they commit crimes therein. The Justice Department does not stand by on those occasions, and we want that to be incredibly clear with our allocution here. So that's why we've asked for 120 days of incarceration, 12 months of supervised release, and the agreed-upon restitution.

Are there any other factors I can address for Your Honor?

THE COURT: No, I think you've hit them all. Thank you, Ms. Paschall.

MS. PASCHALL: Thank you.

THE COURT: Mr. Pattis?

MR. PATTIS: Good morning, again, Judge. I think this will be it for you and I on January 6th cases. It's been a long year, and thank you for your many courtesies.

I listened carefully to the Government's argument and to your responses, and we are in a different posture, in my view, than we were in the Proud Boys case. As I took your rulings and the remarks you made at sentencing, it—they were as follows: In that case, I argued that otherwise protected speech ought not to count, as it were, to evaluate an element of the offense; that is, the intent to engage in seditious conspiracy. The Court concluded that it should and even said at sentencing in one of the cases—and I don't recall which—there—that may be an issue about some standard that may or may not be applicable that isn't in—currently in the law. If there's going to be one, I guess it's going to be my responsibility or others' responsibilities to create one on appeal. I get that. But we're here not—we're here not because this speech goes to show an element of the crime, but we're here because of the broad net that relevant offense conduct casts. And I was encouraged to hear the Court say that at least in some instances, little or no weight would be attached to the speech.

This is a case where Mr. Shroyer did appear on January 6th. He harbored—and perhaps still

harbors—a genuine belief that the election was stolen. The Government stands before you and says he didn't cause the events, but their sentencing memo suggested otherwise. And, candidly, I was delighted by the sentencing memo. It felt like a setup. After all that you and I had gone through in the Proud Boys, I now got a chance to argue—reargue the case on a playing field that was tilted, in my view at least, in my direction.

THE COURT: More so.

MR. PATTIS: More so, because I don't think it was at all at least based on your rulings in the Proud Boys case.

THE COURT: Well, the facts are tough things.

MR. PATTIS: They are, you know? They—and, you know, we dealt—that case is behind us and we're here on this one.

The Government argued speech, but it ignored other core First Amendment values; and that is, assembly, the ability to petition for redress of grievances. And there was an assembly on January 6th at the Capitol, and Mr. Shroyer did violate the DPA, and he'll address that in a moment. The Government seems to suggest in—that—it seems to suggest his—the notion that—they seem to ridicule the notion that he's a journalist. The Court is well aware there are no licensure requirements for journalists in the United States. That would be a prior restraint. It acknowledges that hundreds of thousands, if not millions, of people listened to Mr. Shroyer every day, as did 75 million listen to the president in the months up—leading up to January 6th, as did hundreds of thousands on

January 6th when he addressed a crowd at the ellipse.

Mr. Shroyer went to the ellipse. He went with a group of people, including Individual 1 who we all know to be Alex Jones. They marched. They had a permit to appear in Zone 8 that day and to speak. Mr. Shroyer violated—he entered Capitol grounds, and if he had it to do over again, he wouldn't do it, and he'll tell you about that in a moment, but he wasn't there to foment revolution. He was there to express his point of view and to cover an event that is unique in our nation's history. If it's a black mark, it's becoming one because of the manner in which the Justice Department has overreacted in this case. And I had harsh and tart words to say about the Government's sentencing memoranda, and notwithstanding my regard for my colleagues who have been nothing but polite and courteous to me throughout, I stand by each and every one of them and would stake my law license and my liberty as an American on them. We are a deeply divided country, these are hotly contested times, and every single United States Supreme Court case that I stand for recognizes the importance of protecting vituperative and even violent speech. Mere abstract calls for violence at some future date are protected. Even advocating violence is protected.

If the Government seriously believed that Mr. Shroyer was present on Capitol grounds on January 6th in order to foment violence, they should have, and could have, charged him with that, but they didn't. Instead, they chose their

charges, and they chose their charges against a man whom they regard as a repeat offender. He did disrupt the proceeding with Mr. Nadler who he thought was a criminal and he thought should have been impeached for his treatment of Donald Trump. Tens of millions of Americans believed that. And to my astonishment, given four indictments, he's still running neck and neck and in some polls ahead of Joe Biden. I don't know what the future holds, but that's not the function of this Court at sentencing in this case.

Mr. Shroyer comes to you today to be sentenced having accepted responsibility for what he did. And I would say, Judge, that among the most powerful mitigating factors is his conduct in the course of the litigation. I think you know full well that had Mr. Shroyer wanted to fight it every step of the way, I was fully capable of engaging in that sort of hand-to-hand conduct [sic]. I sat in front of you for four-and-a-half months in another case and did precisely that, because that was what the client required in that case.

In this instance, we waived an indictment. The Government called, suggesting that it might inure to Mr. Shroyer's benefit if he were to turn over his phones without a warrant. I—my initial reaction to that was, "I don't know anything about the charges. Let me see them." I looked at the charges and I thought, "Seriously? Seriously? This is what's going on in this country?" And now, I've learned, yeah, it is. We evaluated the case. We filed a motion to dismiss here based on a claim—

THE COURT: I—Mr. Pattis, I've got to say right there, I—when you say, "Seriously, this is what's going

on in this country," I'm not sure—are you—I—the Government's entitled to investigate crimes.

MR. PATTIS: No, I'm talking about the manner in which these cases are being prosecuted. I—but you know what, Judge? I could not have foreseen that on the riot that day, there would be 1,000 plus prosecutions. I get it now. And in the course of evaluating the evidence and seeing the weight that could be placed on the DPA, Mr. Shroyer agreed that it—a guilty plea was appropriate.

Okay. And what's more, we turned over the cell phones without a warrant. And the Government took, I believe, months—there were several delays where we—we talked about—we came before you and talked about doing stuff.

THE COURT: Yep.

MR. PATTIS: And that was so the agents could pore through his phone. Then Mr. Shroyer, again, showed extraordinary cooperation by sitting for a proffer in which he waived his right to remain silent and to submit himself to detailed questioning about the contents of his phone. No one has suggested he's been anything other than candid there. There was no adjustment for obstruction because he gave a false statement to the FBI. And the Court learned in other cases how low the standard is for seeking that obstruction-of-justice enhancement. So I think you can conclude that he was candid. What the Government sought to prove there is what they argue here, but they couldn't prove it there and they shouldn't be permitted to argue it or you shouldn't credit their arguments

here. Mr. Shroyer was not part of a broader conspiracy to subvert the authority of the United States Government. He was a journalist with opinions. He came; he violated his DPA; he went where he shouldn't have gone; he's pled guilty; and once he realized that he had no defense, he cooperated with the Government, giving them the information that was at his disposal, and there's not a person in this room who can say it wasn't truthful.

The suggestion that he ought to go to jail for this is frightening to me because what it suggests is that at the margins of every public event, there is the possibility that a person's going to go to jail not for what they did but because of what they said, and notwithstanding the argument that the Government made here, the Government does focus on these speech acts as aggravating factors, and they have a right to do so arguably under relevant offense characteristics, but if the First Amendment ever meant something, I think it means something here, and it's similar to acquitted offense conduct. You're aware of the cert petition where Judge—that was just denied in this recent term where the Court basically said to the Guidelines Commission, "Do something about relevant offense—acquitted offense conduct or we will."

THE COURT: Yes.

MR. PATTIS: And this is a First Amendment value.

THE COURT: But let me just—a couple things. This is—this has nothing to do with acquitted conduct. It's—nothing was—there was no—

MR. PATTIS: No, but it has to do with protected speech which is just as vital.

THE COURT: Okay. But what do you make of the idea—I understand your argument as to a lot of the statements that are more ancillary to the day. Let's put it that way. But what do you make of the idea that it's an aggravating factor that your client wasn't just present in an unlawful place that day but he—that he was present at that place on the steps of the Capitol while this attack was underway and he was leading the crowd in chants and amping them up in that moment? That's not—

MR. PATTIS: The Government—

THE COURT: That's not something I can properly—

MR. PATTIS: When he was—

THE COURT: —consider?

MR. PATTIS: —on the steps of the Capitol, he was standing next to Alex Jones who had a bullhorn and was urging people to turn away from the Capitol so that the Left wouldn't be given what they wanted which was ammunition to prosecute them. They talked to members of the—the police force on the Capitol steps, asked for permission to address the crowd on the steps. The Capitol Police officers acquiesced in that. I'm not going to go so far as to say they gave consent. That's an argument that others might make. I won't. Mr. Shroyer wasn't on the Capitol saying, "Go team, go team." He stood silently by while the lead personality in Infowars urged people to turn away.

THE COURT: At one point, but at another point, he did lead chants "USA, USA," and I don't remember whether it was "17"—

MR. PATTIS: "Death to tyranny"—right.

THE COURT: Whatever it was. But there—he did lead chants right on the steps; correct?

MR. PATTIS: I'm not sure about that on the—approaching the steps, he did.

THE COURT: No, I mean on the steps.

MR. PATTIS: Well, to chant "USA, USA" on the steps, is that incitement? What is that?

THE COURT: I'm not saying—I, you know—I know—again, this is where—I'm not saying it's incitement or not incitement. I'm saying that the Government—let me just be very clear where they say this, and I looked at the exhibit and it does appear to show it. I mean, the—

MS. PASCHALL: Your Honor—

THE COURT: It's Page—

MS. PASCHALL: —I believe it's Government's Exhibit No. 12 that was submitted.

THE COURT: Right. It's Exhibit-12 which is referenced on Page 13 of their memorandum that Mr. Shroyer is on the steps of the Capitol. I think it was—yeah—"USA" and "1776." I—whatever. The point is it's—it—he played a role in amping other people up, not just—not down the street; not two weeks before. Like, on the steps of the Capitol while this is going on. That doesn't—look, no one is here saying, you know—I think—

MR. PATTIS: Judge, jail—

THE COURT: We're talking about the margins here, but I can't imagine—are you arguing to me that that's not relevant?

MR. PATTIS: If it is, it's marginally so. I mean, jail for "1776"? That's King George II or III—

THE COURT: It—

MR. PATTIS: —talking, not you.

THE COURT: It doesn't matter to me what—I mean, I—the point isn't, I think, the particulars, but the point of the—what he said—

MR. PATTIS: I agree. I mean, look, he—it was an—I mean, what he will tell you—and I'll let him speak for himself, but I've reviewed what I think he's going to say and I think what he'll tell you is, look, if he had to do it again, he'd do it differently. He was caught up in the moment, it was a historic event, and it corresponded with his deeply-held views, but in the end when they got there, they reached the conclusion that the events were way out of control and that they needed to enlist the support of that crowd. And if you notice what he said, it was what—prelude to what Mr. Jones was saying. "Get away. Go to the other side. There's an event on the other side. Do not go in here. Do not give the Left what we [sic] want."

There's a reason Alex Jones—"that they want"—has not been prosecuted in this case, and that's precisely that. And Mr. Shroyer was there as an adjunct to Mr. Jones. Is it a factor you should consider? Yes. Does it tip the needle in favor of incarceration? In our view, it does not. In our

view, that wouldn't promote respect for the law. "Death to tyranny," "1776," I hope will always be cherished mantras, cherished remarks, cherished phrases at every protest in the United States because this is a country worth fighting and dying for, and Mr. Shroyer certainly engaged in that fight.

So I think, Judge, that our perspective is, you know, I—we would ask that the Court adopt the recommendations of the probation officer. I think that that's a more sensible response. Candidly, I was so outraged by the sentencing memo, I wanted you to punish the Government and just let him go home from here, saying, "Knock it off, you guys," you know, but I don't hear you doing that, but I think incarceration sends the wrong message in this case. I don't think that Mr. Shroyer is a recidivist, is a criminal—

THE COURT: Oh, he actually is a recidivist literally because we've—that's why probably we're even here; right? I mean, he's a recidivist because he got arrested before for disrupting Congress and signed an agreement, and now we're back here because he violated that agreement.

MR. PATTIS: Because he crossed the line. He crossed a geographic line. He didn't enter the building. He didn't encourage violence. He engaged in no violence. He committed trespass.

THE COURT: All right. Very well.

MR. PATTIS: So for all of those reasons, Judge, and, you know—we would ask the Court to impose no incarceration.

Mr. Shroyer would like to address you. And if I may remain here with him while he does?

THE COURT: Yes, sir. Mr. Shroyer, you may approach.

(Brief pause.)

THE DEFENDANT: Your Honor, first of all, I'd like to thank this Court, the judge, and the prosecution for their time and consideration to hear from me in what I know has been a difficult time for everybody involved in this case and the others. I would like to thank the prosecution for review of my personal effects to help their case and their professionalism in the investigation. It is my understanding that we were all operating in good faith throughout the process.

Now, the Government suggests I have no respect for the law, and I would like to tell you that that is not the case. And, in fact, I have enormous support for law enforcement. I have a public track record of such support, and I have used my platform multiple times to show my support for law enforcement and even have pro-police rallies when there were opposition rallies happening at the same time.

I think that I further demonstrated my support for law enforcement by waiving my indictment and voluntarily turning over my personal effects without any warrant. I was also on probation in this case for more than two years and have been on good behavior as is recognized by my Pretrial Services officers. I never missed a court date throughout this process and, as you know, there were many. I sat for a proffer with the Government and was fully transparent and honest. I'm glad I

did show—I'm glad I did so to show that I was not part of any larger plan for illegal activity or violence that day.

On the issue of remorse, to be clear, had I known the events of that day would have gone the way they did, I not only would have reconsidered my activities and speech for that day, but I certainly would have postured myself and my platform in opposition to how the events of that day ended up going down.

And if I may, to address the issues of the chants, the reason why we engaged in that was an attempt to get the attention of the crowd and draw them away. It was not to amp it up. It was not to support the activities. It was to get the attention and draw the crowds away.

Your Honor, I pled guilty to the offense because I was, and I own that. I should have considered more to heart what I was doing in D.C. that day and my probation, and I should have sought permission to cover this event as a journalist for my employer, but I didn't, and for that I am responsible. Your Honor, I ask that you consider my good behavior and my role as a journalist in your final decision in this case.

That is all, Your Honor. Thank you.

MR. PATTIS: Judge, there's one area that I forgot to mention. May I? I know it's unusual.

THE COURT: Yeah, it's okay.

MR. PATTIS: With respect to the community service requirement, Mr. Shroyer, on the 5th, through counsel, did provide to the Government a list of

his service and I request that the DPA be honored and dismissed. This was after January 6th. The Government notified us while there's an open investigation, "We will not be dismissing. And, oh, by the way, it was supposed to be 32 hours." Mr. Shroyer's response was not to say, "Well, never mind," but he went out and did a couple more hours and he—we never submitted the form because if the Government wasn't going to dismiss, you know, what's the point? But I mean, I think that goes to his respect for the law. And I can tell you that in the course of these proceedings, which has been very difficult because emotions are very high in Mr. Shroyer's world, Mr. Shroyer has been an outlier in every respect. He is respectful of the law, and I would ask you to take in—that into account in imposition of the sentence.

THE COURT: All right. You know, I think your overall clarification that he had done those hours was important. I think the Government had indicated, as I recall, that he hadn't or he hadn't completed them or I can't recall, but something along those lines.

Does the Government want to make any statement in response to Mr. Pattis's final comments and Mr. Shroyer's allocution?

(Brief pause.)

MS. PASCHALL: Your Honor, I don't think there's much to add here.

With respect to the First Amendment issues, Your Honor is well capable of addressing those. I think, you know, Your Honor's concerns about what was

said on that day are entirely appropriate. I understand the defense point of view as to what, you know, he thought he was doing, but I would also note—and we see this throughout the videos—he's a well-known individual particularly among this section of the population. What he does matters. His words matter. And so if it had really been their intent to move people to a place where they were appropriately supposed to be, I don't think the actions that we see on the videos reflect that, and his ability to garner a following from the crowd is something Your Honor should consider when thinking about those words.

THE COURT: All right. Very well. We'll take a 10-minute recess and I'll come back and impose sentence.

THE DEPUTY CLERK: All rise. This Court stands in recess for 10 minutes.

(Brief recess taken.)

THE DEPUTY CLERK: We're back on the record in Criminal Matter 21-542, United States of America v. Jonathon Owen Shroyer.

MS. PASCHALL: Your Honor, I apologize. If I could just have one brief indulgence? With respect to the community service hours, I don't think there's a discrepancy over the number of hours that Mr. Shroyer did. We do have documentation of that. It's just that all of those hours took place after January 6th. I think that's where the discrepancy lies.

THE COURT: Okay. Very well. But he wasn't—I mean, the agreement was still in effect at that time. So

he was perfectly entitled to do them at that point, but—

MS. PASCHALL: Correct, Your Honor.

THE COURT: All right.

MR. PATTIS: I know you don't want to hear endless tit for tat, but one of the reasons that it took so long to do it is COVID and it was hard to find a place.

THE COURT: I—you didn't even have to say it, but I definitely appreciated it.

All right. I have assessed the particular facts of this case in light of the relevant 33–553(a) factors and I now want to provide my thoughts for the record and for you, Mr. Shroyer, about my considerations in regard to the nature of the offense, your history and characteristics, and the other things I have to consider.

Let's—we'll first start as far as the nature of the offense goes. And this is, in some respects, the hardest thing my colleagues and I have to grapple with in these cases, the fact that we have to consider the entirety of the event, but—to some degree—but also consider you and what—and your involvement in the event. Your role—well, we'll get to that.

What happened that day was, in some ways, as serious an event as there can be, given that it threatened the peaceful transfer of power from one president to another. Your role was not the serious—most serious of those that day. That's for sure. And we'll get to that. But the overall events of January 6th insofar as I have to consider

the nature and circumstances of the offense were quite serious. Mr. Shroyer, our Constitution and our laws preserve for you rights that people in other countries would do just anything—just about anything for and that many of our—Americans who came before us fought and died for. You have the right to vote for whoever you want for president and, as you know, you have the First Amendment right to speak out in favor of your candidate, to go on TV, radio, the Internet, whatever you would like, and to try to convince all your listeners or followers to vote for that person. If you don't like how an event is being conducted, you can speak about that, too. You can call or write or try to meet with elected officials. You can try to get election laws changed. You can engage in peaceful, lawful protest. And you can even file a lawsuit in this court or in state courts across the country. That's why our courts are here.

But freedom means with those rights come responsibilities. And so what you cannot do is become part of a mob that used violence and the threat of violence to disrupt Congress's ability to fulfill its role that day to process the certification of the Electoral College vote for president. And one way or another, that is what you ended up doing. There's nothing patriotic about it no matter how much we don't like the process of electing our president is proceeding. Every four years, about half the country is—doesn't like the outcome and the losers don't have the right—even if they think they weren't the losers, they don't have the right to resort to violence or the threat of violence.

So what happened that day was really a serious blow against—a blow against the customs and practices that help support the rule of law and the Constitution. We had—I've said a bunch of times, we've had—we had in this country until that day a tradition—an unbroken tradition of the peaceful transfer of power, but we don't—that tradition has been broken and it's going to take some time and effort to try to get it back.

So let's talk about your role. Obviously, both sides agree, your role was not—well, the Government may argue that some of your speech beforehand fomented things that day, but as far as your role that day, it was limited. You didn't bring any weapons. You weren't, as you said, a part of some sort of organized effort to physically—to take on the Capitol Police and to violently interrupt what had happened—what—to violently interrupt Congress. You didn't even go inside the Capitol. But there are two things that separate you from just somebody who was—separate you from somebody who might happen to have been past the barricades toward the Capitol that day and—but did not go inside. And those two things are that you—in doing so, you violated a deferred prosecution agreement you had reached with the Government for engaging in unlawful conduct at the Capitol once before, number one. And, number two, you did play a role—during the break, I went back and watched the video of it—in amping up the crowd right outside the Capitol on the Capitol steps by chanting—I think it was "1776," but it doesn't—the point—and there's nothing wrong—the context is everything. There's nothing wrong with the phrase

"1776." And it really wouldn't that much had—matter to me what you did chant, but I—you did play a role at that moment in amping up the crowd with a bullhorn, and I don't believe that you were trying to distract the crowd or turn the crowd away from the Capitol. That's just not what that exhibit showed. So that's your—that's the nature of the offense in terms of your role.

Your characteristics as an offender. You're a college graduate, host of a show on the Internet, a journalist, although your status as a journalist doesn't —I—let's put it this way. It doesn't have—it doesn't play any role in my evaluation of things here, because I think nothing that you're being prosecuted for and nothing about your conduct that day really has much to do with your being a journalist. You had two misdemeanors from 2010, and then we've already indicated this issue about the deferred prosecution agreement and the conduct that you had in committing unlawful conduct at the Capitol once before.

I also have to craft a sentence that reflects the seriousness of the offense but also promotes respect for the law and provides just punishment for the offense. And it also has to afford adequate deterrence, both general and specific, you know? I heard—I listened to you speak before about your respect for law enforcement, and I think it's great that you have a respect for law enforcement, but respect for law enforcement is not exactly respect for the law. Those are slightly different things. Again, people who are in law enforcement deserve our respect in general, but respect for the law is something slightly different. It's not bound up in

anybody who has—what anyone is telling you in terms of somebody who has a badge and a gun, but it's abiding by the law. And here, we do have a situation where, again, I think you were given one chance by the Government to end up without a criminal conviction. At least that's the way deferred prosecution agreements usually work if you had not violated it. But I think it does show a lack of respect for the law that you weren't able to abide by that agreement.

And then we get to deterrence. And, again, as the Government indicated, this is—you are probably unique in January 6th defendants insofar as you had a map and insofar as you were on this—a deferred prosecution agreement for unlawful—alleged unlawful conduct at the Capitol. And so I do have to consider both specific—general deterrence in all these cases is important, but I do think there is an issue of specific deterrence here because I don't think—because you were given a chance. You were given a chance, and you decided to violate that agreement.

The Government wants 120—I have to consider—I also have to consider the types of sentences available. The Government wants 120 days. Probation recommends probation. You are asking for probation.

There are—and I have to consider unwanted sentence disparities as well and the need to provide restitution. I can tell you I've looked. If a judge really wants to knock themselves out, I've looked at a lot of January 6th defendants' sentences that have been handed out for this crime for, you know—you do stand out as a—kind of, a unique

case because of the deferred prosecution agreement. And so I have to weigh that and try to figure out what—where I think you fit into the overall hierarchy of the day. My—but I do weigh strongly the fact that you were given this opportunity and ultimately violated the agreement and didn't take advantage of it.

So if I can ask, Mr. Pattis, you and Mr. Shroyer to please approach the podium.

All right. So after considering all the 3553(a) factors and considering what is sufficient but not necessary to comply with the purposes of sentencing, I do believe the Government's sentence is far beyond what is needed here, but I do—I am going to sentence Mr. Shroyer to 60 days of incarceration, 12 months of supervised release, and $500 in restitution. My sentence is driven, really, by three things that interact with the 3553(a) factors in various ways. One is, as we've mentioned, that Mr. Shroyer had already been arrested for unlawful behavior at the Capitol and that he, then, violated the terms of his DPA; number two, that Mr. Shroyer was not merely a trespasser that day, although that was the nature of what he pled guilty to, but that he did play a role in amping up the crowd on the Capitol steps by leading chants that day, and I think that's something I can and should consider; and then, third, on the record before me as a whole—while I accept Mr. Shroyer's acceptance of responsibility, he gets credit under the guidelines for that, and all the rest, on the whole and on the entire record before me, including some of the statements the Government has brought to my

attention, I'm not sure that he has truly—let's put it this way. I'm not sure that he has disavowed in general the—what happened on January 6th in a way for me to give him even extra credit for remorse for those—for the day's events. So for those three reasons, that—those are the three things that drive my sentence.

So pursuant to the Sentencing Reform Act of 1984 and in consideration of the provisions of 18 United States Code Section 3553 as well as the advisory sentencing guidelines, it's the judgment of the Court that you, Jonathon Owen Shroyer, are hereby committed to the custody of the Bureau of Prisons for a period of 60 days on Count 1. You are further sentenced to serve a term of one year of supervised release on Count 1. In addition, you are ordered to pay a special assessment of $20 [sic] in accordance with 18 United States Code 3013.

While on supervision, you shall abide by the following mandatory conditions as well as all discretionary conditions recommended by the Probation Office in Part D, sentencing options, of the presentence report which are imposed to establish the basic expectations for your conduct while on supervision.

The mandatory conditions include, one, you must not commit another federal, state, or local crime.

Two, you must not unlawfully possess a controlled substance.

Three, you must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of placement on supervision

and at least two periodic drug tests thereafter as determined by the Court.

Firearm restriction. You shall remove firearms, destructive devices, and any other dangerous weapons from areas over which you have access or control until the term of supervision expired.

You are ordered to make restitution to the Architect of the Capitol Building in the amount of $500.

I have determined you do not have the ability to pay interest and, therefore, I waive any interest or penalties that may accrue on the balance.

Restitution payments shall be made to the Clerk of the Court for the United States District Court, District of Columbia, for disbursement to the following victim: Architect of the Capitol, Office of the Chief Financial Officer, Ford House Office Building, Room H2-205B, Washington, D.C. 20515. The amount of loss is $500.

You must pay the balance of any restitution owed at a rate of no less than $100 each month and provide verification of same to the Probation Office.

The financial obligations are immediately payable to the Clerk of the Court of the U.S. District Court, 333 Constitution Avenue, NW, Washington, D.C. 20001. Within 30 days of any change of address, you shall notify the Clerk of the Court of the change until such time as the financial obligation is paid in full.

The Probation Office shall release the presentence investigation report to all appropriate agencies

which includes the United States Probation Office in the approved district of residence. In order to execute the sentence of the Court, treatment agencies shall return the presentence report to the Probation Office upon the defendant's completion or termination from treatment.

Mr. Shroyer, pursuant to 18 United States Code 3742, you have the right to appeal the sentence imposed by me if the period of imprisonment is longer than the statutory maximum or the sentence departs upward from the applicable sentencing guideline range. If you choose to appeal, you must file any appeal within 14 days after I enter judgment.

Under some—you can also appeal your conviction to the U.S. Court of Appeals for the D.C. Circuit if you believe that your guilty plea was somehow unlawful or involuntary or if there was some other fundamental defect in the pleading—in the proceedings that was not waived by your plea agreement.

Pursuant to the D.C. Circuit's opinion, then, in United States v. Hunter, 809 F.3d 677, are there any other objections to the sentence that are not already noted on the record?

MR. PATTIS: Judge, as we would—we will be intending to take an appeal on the grounds of the fundamental defect because of the Court's reference to speech acts and we think that's inappropriate. So I note that for the record and in support of an application that he remain at liberty under the conditions of supervised release until such time as that appeal can be perfected.

THE COURT: What's the Government's position on that?

MS. PASCHALL: Your Honor, we have no problem with him remaining at liberty until the BOP would, you know, ask for him to come and serve his sentence. We would object to him remaining at liberty through the pendency of an appeal. I think we have pretty consistently taken that position.

And, second, it is not abundantly clear to me in this moment—though I would have to go back and look at the plea agreement—that that is a permissible grounds for him to appeal. Your Honor has not given an illegal sentence, which is a permissible grounds for appeal, but I'm not certain that what Mr. Pattis is suggesting now would be and, therefore, it would be inappropriate to remain at liberty until the end of the appeals process.

THE COURT: Yeah—

MR. PATTIS: On its face, Judge, the Government is correct. It falls within the parameters of the numbers we discussed. But because of the First Amendment issues in this case, the Government's use of them, the Court's reference on two occasions in its imposition of sentence—

THE COURT: What—

MR. PATTIS: —to speech acts—

THE COURT: Okay.

MR. PATTIS: —we do intend to—

THE COURT: What—

MR. PATTIS: —take an appeal.

THE COURT: What exactly, Mr. Pattis, are you talking about in terms of my reference to speech acts? Just so I understand—

MR. PATTIS: Not merely—

THE COURT: —and so the record's clear.

MR. PATTIS: —a trespasser. He played a role in amping up—

THE COURT REPORTER: I'm sorry. What? I can't hear you.

MR. PATTIS: He was not merely a trespasser. He played a role in amping up the crowd. And then the reference to his conduct on the whole, given the entire record and his statements. So I think on—it would be our intention to draw attention to that and to perfect the issue that, frankly, I'd raised in the Proud Boys case on a better playing field for the defense in this case.

THE COURT: So—

MS. PASCHALL: (Indicating.)

THE COURT: Go ahead.

MS. PASCHALL: And in the Proud Boys case, they chose to go to trial and not waive any of those appellate rights. So that is an appropriate forum for that. I do not think that's an appropriate forum here. But, again, I don't have the language of the agreement particularly in front of me, and Your Honor is allowed to consider those things under 3553(a). So regardless of whether or not he chooses to file the appeal—which, you know, he can make that determination—the Government's

position with respect to release until the perfection of that appeal would be that we oppose.

THE COURT: Okay. So there is a body of law—I know enough to know this. There is a body of law that exists that is—that sets out a standard under which a court can consider this kind of arrangement. In other words, keeping someone at liberty while an appeal is pending. I don't have that standard in front of me. So I'm not going to order that right now. But, Mr. Pattis, if you file a motion, I'll consider your motion. I don't want to make any more work for you. My inclination is that there—the standard is something about, you know, whether there's an—arguably—I don't know—a—it—there is a standard for when courts can consider that, and I think it—

MR. PATTIS: I think the standard runs something like it has to be more than a non-frivolous basis for the appeal.

THE COURT: Right.

MR. PATTIS: And we think we've met that, but I'll brief that.

THE COURT: Right. I don't know that you have, but I—if you file a motion, I'll consider it.

MR. PATTIS: Thank you, sir.

THE COURT: Okay. All right. This concludes my—

THE DEPUTY CLERK: Judge—

THE COURT: —judgment in this case.

THE DEPUTY CLERK: Judge, (indicating.)

THE COURT: Oh, all right. For—all right. Yes, I'll hear from you, ma'am.

THE PROBATION OFFICER: Thank you, Your Honor.

After the completion of the defendant's custodial sentence, would the Court be inclined to allow supervision to be transferred to the Western District of Texas?

THE COURT: I will allow transfer of supervision but not jurisdiction.

THE PROBATION OFFICER: Thank you, Your Honor.

THE COURT: All right.

MS. PASCHALL: And, Your Honor, at this time, the Government would move to dismiss the remaining counts that are in the information, Counts 2, 3, and 4. Also, pursuant to the plea agreement, the Government does intend to dismiss the pending matter in D.C. Superior Court. It may take a couple of days for my colleagues in that courthouse to effect that, but that is the Government's intention.

THE COURT: Okay. That motion, obviously, with regard to the other counts against Mr. Shroyer is granted.

Hold on one second.

(Brief pause.)

All right. I want to just go ahead and make sure. The—with regard to the special assessment, the—I don't have the statute in front of me, but the special assessment—is it $25 or $20? I may have said 25, because I think 25—

THE DEPUTY CLERK: It's 20 and it says 25.

THE PROBATION OFFICER: It should be 25 per statute, Your Honor.

THE COURT: 25 per statute.

THE DEPUTY CLERK: Mm-hmm.

THE COURT: Okay. So it is—and what I did say, Ms. Harris?

THE DEPUTY CLERK: 20.

THE COURT: 20? Okay. It's 25. 25 is the special assessment, to make that crystal clear.

MR. PATTIS: May I have one moment, Judge?

THE COURT: Yes.

(Brief pause.)

THE PROBATION OFFICER: And, Your Honor, for clarification, did the Court make a finding that the defendant is unable to make a—pay a fine in this case?

THE COURT: Well, I should have said that, and if I didn't, yes, I am making that finding—

THE PROBATION OFFICER: Thank you, Your Honor.

THE COURT: —that he does not have the ability to pay a fine and so, thus, I am not imposing a fine.

Thank you.

Anything further from the Government?

MS. PASCHALL: No, Your Honor. Thank you.

THE DEPUTY CLERK: I assume you're going to let him self-report.

THE COURT: Yes. Yes. Yes. Obviously, Mr. Shroyer—yes, Mr. Shroyer will not—to the extent I needed

to clarify that, Mr. Shroyer will not be detained today. Correct.

Anything from you, Mr. Pattis?

MR. PATTIS: Do we need to report to the marshals office or are we at liberty to leave?

THE COURT: No, I don't believe so, but why don't I have—you—he'll get instruction on when to report—when and where, but I don't think you have to report to the marshals office today.

MR. PATTIS: Thank you, sir.

THE COURT: All right.

THE DEPUTY CLERK: One more thing.

THE COURT: All right.

THE DEPUTY CLERK: I have to put it in the judgment. Will he be reporting at the direction of—

THE COURT: He—

THE DEPUTY CLERK: —Probation or at the direction of—

THE COURT: He—all right. He'll report at the direction of the Bureau of Prisons.

THE DEPUTY CLERK: Of the Bureau of Prisons? Thank you.

THE COURT: Correct, unless—and then that's unless and until that is changed by some motion that

Mr. Pattis might file. All right.

(Brief pause.)

Anything further, Mr. Pattis?

MR. PATTIS: No, sir.

THE COURT: All right. Very well. Until then, the parties are dismissed.

THE DEPUTY CLERK: All rise. This Honorable Court stands in recess.

(Proceedings concluded at 11:32 a.m.)