

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**HENRY TARRIO,**

**Defendant.**

**Case Nos.:       2021 CF2 000105  
                      2021 CMD 000106**

**Honorable Harold L. Cushenberry, Jr.**

**Sentencing:       August 23, 2021**

**GOVERNMENT’S MEMORANDUM IN AID OF SENTENCING**

The government respectfully asks the Court to sentence Defendant Henry “Enrique” Tarrío to **(i) in 2021 CF2 000105, a sentence of 180 days’ imprisonment, execution of sentence suspended as to all but 45 days; (ii) in 2021 CMD 000106, a consecutive sentence of 180 days’ imprisonment, execution of sentence suspended as to all but 45 days; and (iii) in both cases, concurrent 18-month terms of supervised probation.** The government also requests that the current order requiring Tarrío to stay away from the District of Columbia in its entirety remain in effect as a condition of probation. The facts and circumstances of these cases call for a sentence that will balance the competing needs for a just punishment and strong deterrence (both for Tarrío and others who might seek to follow his path), and the government’s recommendation—90 days’ imprisonment, 270 days’ suspended time, and a lengthy period of probation coupled with a continued stay away order—is tailored to achieve those goals.

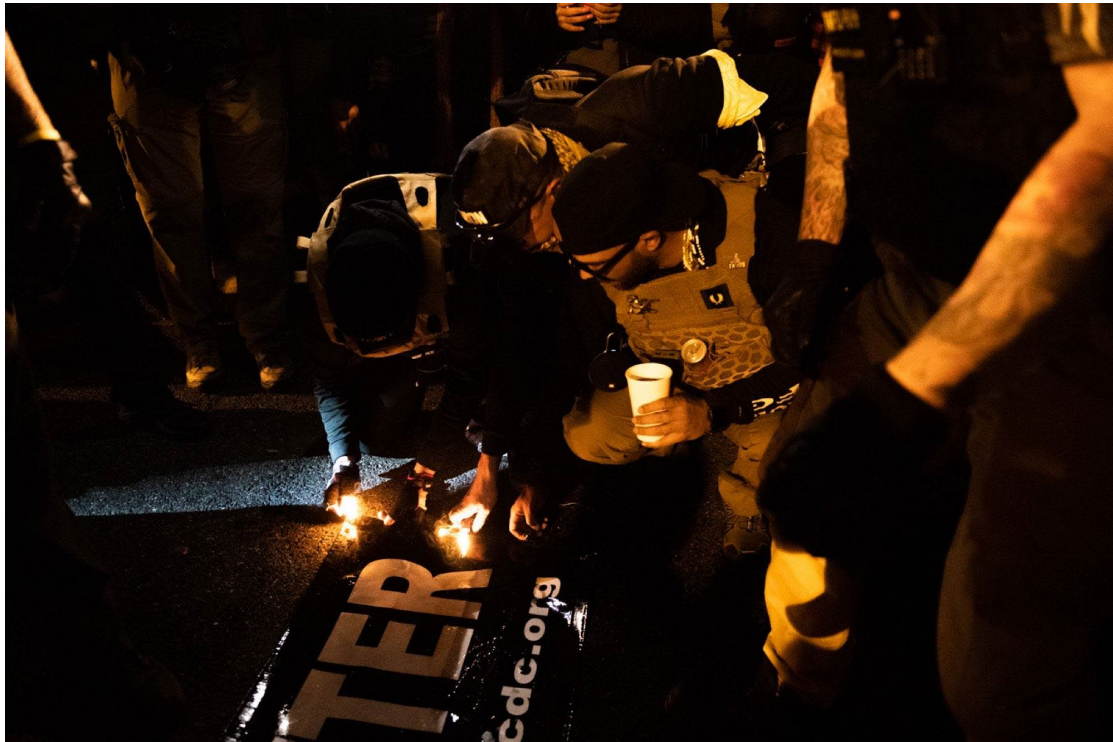
**NATURE OF THE OFFENSES**

On December 12, 2020, the District of Columbia was engulfed by civil unrest as individuals including members of Proud Boys<sup>1</sup> violently clashed with counter-demonstrators over

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<sup>1</sup> As explained in an article recently published by the Combating Terrorism Center at West Point, the Proud Boys “describe themselves as ‘Western chauvinists who refuse to apologize for creating the modern world’ and claim to be

the results of the 2020 Presidential Election.<sup>2</sup> Tarrío—then reputed to be the Proud Boys’ national chairman—had come to the District with many of his followers. Tarrío was present during the Proud Boys’ theft of a Black Lives Matter banner from Asbury United Methodist Church, a historically Black church that has been located at 11th and K Streets NW since its inception in 1836. Tarrío took part in burning the banner, which was broadcasted on social media.



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primarily a libertarian-oriented fraternal drinking club. In reality, the Proud Boys serve as a radicalization to violence vector that seeks to ‘red pill’ recruits and sympathizers from mainstream conservatism. The group’s narratives amplify latent anti-Marxist and anti-communist sentiment in certain ideographs of American patriotism, and distorts those sentiments by mixing in misogynistic, fascistic, and ethno-nationalist worldviews. The group has long held a ‘permeable barrier’ with white supremacist groups . . . as well as neo-Nazi accelerationist terror groups . . . , fighting alongside them at protests and sharing members.” Matthew Kriner & John Lewis, *Pride & Prejudice: The Violent Evolution of the Proud Boys*, CTC Sentinel, July/August 2021, <https://ctc.usma.edu/pride-prejudice-the-violent-evolution-of-the-proud-boys/> (footnotes omitted).

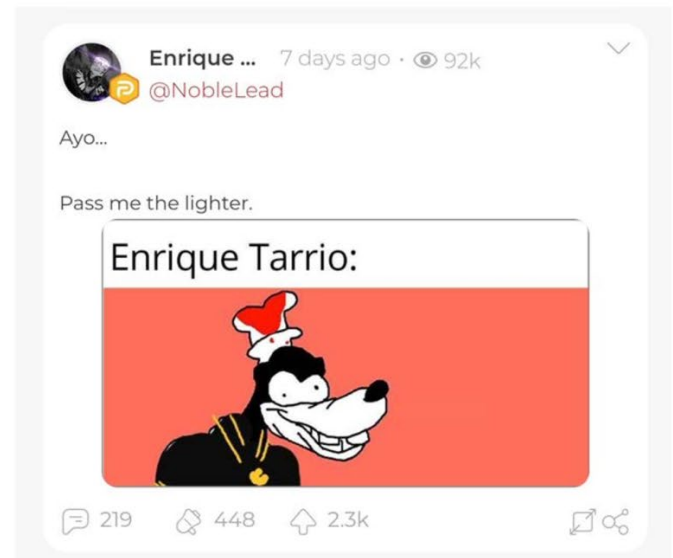
<sup>2</sup> See, e.g., Peter Hermann et al., *Pro-Trump rally descends into chaos as Proud Boys roam D.C. looking to fight*, Wash. Post (Dec. 13, 2020, 9:50 p.m.), [https://www.washingtonpost.com/local/public-safety/proud-boys-protest-stabbing-arrest/2020/12/13/98c0f740-3d3f-11eb-8db8-395dedaaa036\\_story.html](https://www.washingtonpost.com/local/public-safety/proud-boys-protest-stabbing-arrest/2020/12/13/98c0f740-3d3f-11eb-8db8-395dedaaa036_story.html) (“Nearly three dozen people were arrested during a night of unrest in downtown Washington that began Saturday with rallies supporting President Trump and descended into chaos and violence as a group with ties to white nationalism roamed the streets looking to fight.”).



He bragged openly about his role in burning the banner in interviews with major media outlets and on his “Parler” social media account. On social media, he said, “I’M DAMN PROUD I DID IT!” and threatened to “F\*\*\*ING DO IT AGAIN.”

FBI: "NOOOO you can't burn a BLM banner! thas a hate crime!"

Enrique Tarrio:



Less than a week after the offense, Tarrío wrote on his Parler account:

*As I said on @WarboysTV The FBI is currently the investigating a supposed “hate crime” perpetrated by the ProudBoys. They’re even offering a reward.*

*I’m here to tell you that there was no hate crime committed. The only hate there is in my heart is for communism and an authoritarian government. BLM is a Marxist movement. It isn’t about the color of someone’s skin.*

*Against the wishes of my attorney I am here today to admit that I am the person responsible for the burning of this sign. And I am not ashamed of what I did because I didn’t do it out of hate...I did it out of love. Love for a country that has given my family SO MUCH. The burning of this banner wasn’t about race religion or political ideology it was about a racist movement that has terrorized the citizens of this country. I will not standby and watch them burn another city.*

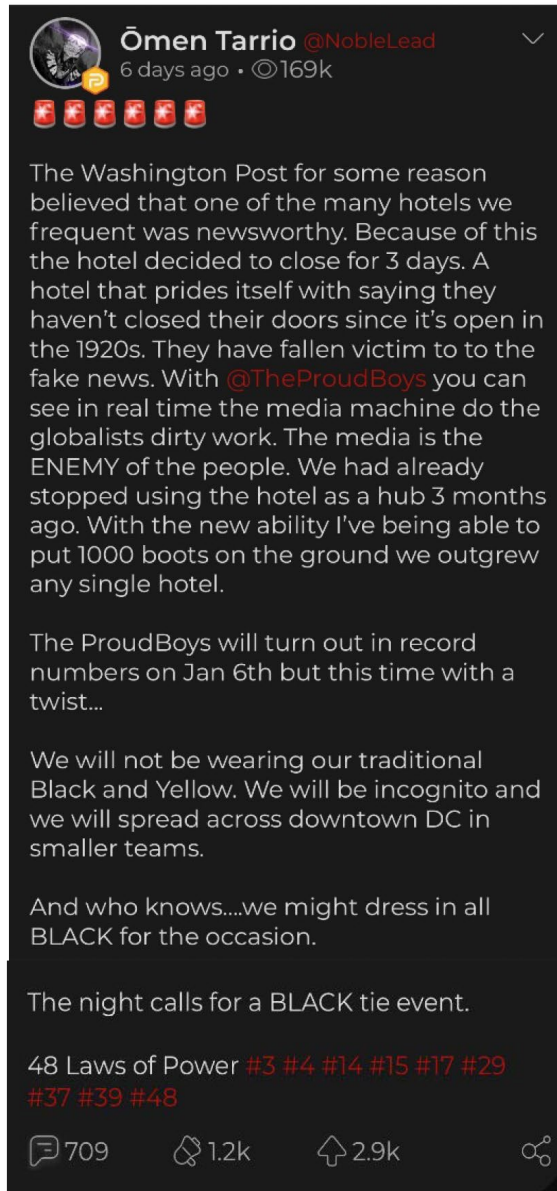
*So let me make this simple. I did it. Come get me if you feel like what I did was wrong. We’ll let the public decide.*

*Forever PROUD.*

*-Enrique*

Tarrío made very clear that he was proud of his crime. He sought to exploit and profit from his criminal conduct in an apparent effort to bring himself and the Proud Boys increased media attention. It was also certainly foreseeable to Tarrío—if not his intended goal—that the degree to which he boasted of his crime sent his followers the message that traveling to Washington, DC, to engage in violent and destructive criminal activity was not only acceptable but encouraged.

At the same time Tarrío was boasting about burning Asbury’s banner, he was overtly threatening future violence in the District. On December 29, 2020, Tarrío made the following post on Parler:

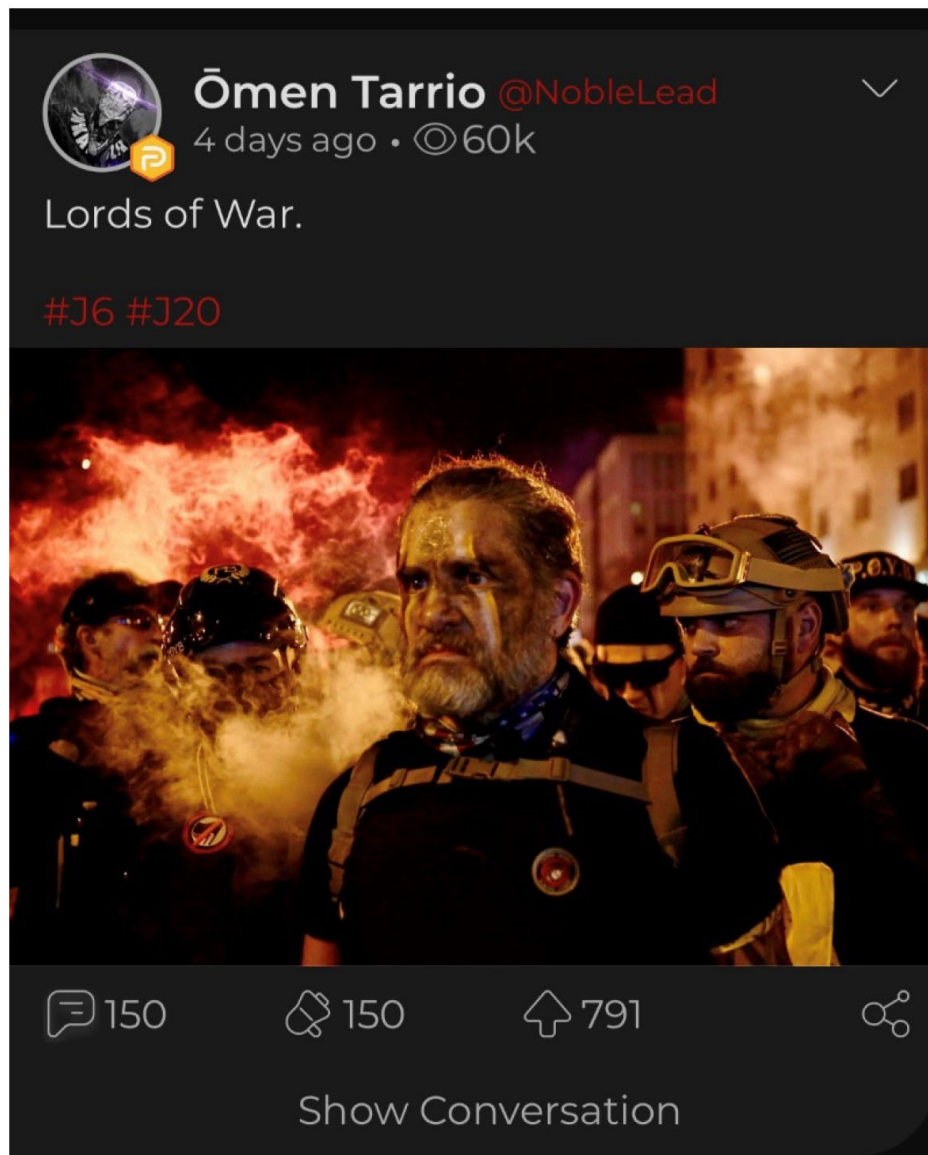


In relevant part, Tarrio wrote:

The ProudBoys will turn out in record numbers on Jan 6th but this time with a twist...We will not be wearing our traditional Black and Yellow. We will be incognito and we will spread across downtown DC in smaller teams. And who knows...we might dress in all BLACK for the occasion. The night calls for a BLACK tie event.



On December 31, 2020, Tarrio made the following post on Parler:



The post contains a picture of several men apparently affiliated with the Proud Boys standing in a smoke-filled street. Above the photo, Tarrio wrote “Lords of War” with the hashtags #J6 and #J20—apparent references to Congress’s certification of the 2020 Presidential Election results on January 6, 2021, and the Presidential Inauguration on January 20, 2021.

It is against this backdrop that, on January 4, 2021, Tarrio returned to the District of Columbia for the January 6 protests and committed another crime: He brought with him two

large-capacity magazines, which were emblazoned with the Proud Boys' insignia. Law enforcement found the magazines when Tarrio was arrested on an outstanding warrant for the December 12, 2020, burning of Asbury's banner. After his arrest, Tarrio admitted that he possessed the magazines, claiming he intended to transfer them to a customer of his online store who was also planning to be in the District.

The magazines, which are compatible with AR-15/M4 semiautomatic rifles, were unloaded and had capacity of thirty (30) rounds each, for a total capacity of sixty (60) rounds of ammunition.



In recognition of their increased dangerousness and destructive capacity, the District of Columbia has proscribed the possession, sale, or transfer of even unloaded high-capacity

magazines, which the statute defines as having a capacity of more than ten (10) rounds of ammunition. *See* 7 D.C. Code § 2506.01(b). In 2019, the District elevated the classification of the offense from a misdemeanor to a felony. Such magazines enhance the destructive capacity of weapons designed to maim and kill, and they have no legitimate purpose in a city plagued by escalating levels of gun violence. Tarrio—a convicted felon—had no business bringing these high-capacity magazines into our city, which is widely known to have strict gun laws. No good purpose motivated this criminal act.

Tarrio's decision to bring these magazines into the District is even more troubling when considered in the context of January 2021. Tarrio had, along with his followers, engaged in violent and destructive criminal activity on his last visit to the District just weeks before. At a time when many of Tarrio's followers were converging on the District to protest Congress's final certification of the 2020 Presidential Election results—and when Tarrio was openly encouraging criminal behavior and violence on social media—it was not unforeseeable that these magazines could have been used destructively. Indeed, Tarrio's followers were among those who engaged in even more extreme acts of violence on January 6 when the protests planned for that day morphed into a violent riot and attack on the United States Capitol. By bringing these magazines into the District in the powder keg-like climate he had helped to foster, Tarrio jeopardized public safety without showing due regard for the risk of his actions. His conduct demands a measure of punishment through incarceration.

### **RELEVANT PROCEDURAL HISTORY**

On December 30, 2021, a Superior Court Judge signed an arrest warrant for Tarrio charging him with the December 12, 2020, destruction of Asbury United Methodist Church's banner. On January 4, 2021, Tarrio returned to the District and was arrested on the warrant.



On January 5, 2021, the government charged Tarrio in 2021 CF2 000105 with two felony counts of Possession of a Large Capacity Ammunition Feeding Device, in violation of 7 D.C. Code § 2506.01(b), and in 2021 CMD 000106 with one count of Destruction of Property, in violation of 22 D.C. Code § 303. Because Tarrio had threatened to commit future crimes in the District (both implicitly and explicitly), the government requested that he be ordered to stay away from the District of Columbia in its entirety. Also on January 5, 2021, the presentment judge granted the government's request, calling it "reasonable," and both Judge Okun (the calendar judge for 2021 CF2 000105) and the D.C. Court of Appeals have refused to disturb the stay away order. *See* Order at 3, *Tarrio v. United States* and *In re Henry Tarrio*, Nos. 21-CO-74 and 21-OA-12 (D.C. Apr. 6, 2021) ("The evidence of [Tarrio]'s conduct and statements in this case evince an inability to appreciate the difference between lawful protest and criminal activity under the laws of the District of Columbia; he has telegraphed his intentions to incite or participate in further criminal activity if permitted to return to the District (he resides in Florida)."), attached as **Exhibit A**.

On July 19, 2021, pursuant to a plea agreement, Tarrio pleaded guilty in 2021 CF2 000105 to one count of Attempted Possession of a Large Capacity Ammunition Feeding Device, in violation of 7 D.C. Code § 2506.01(b) and 22 D.C. Code § 1803, and in 2021 CMD 000106 to one count of Destruction of Property, in violation of 22 D.C. Code § 303. The maximum penalty for each offense is 180 days' imprisonment and/or a \$1,000 fine.

### **VICTIM IMPACT**

Tarrio's brazen burning of Asbury United Methodist Church's banner has had a profound emotional and psychological effect upon the Church and its members. The government has had an opportunity to confer with Reverend Dr. Ianther M. Mills, Asbury's Senior Pastor. Asbury does not display a Black Lives Matter banner for any of the reasons Tarrio claims motivated this

criminal act. As Reverend Mills has explained, Asbury is an aging Church that last saw its congregation grow significantly during the Great Migration of the twentieth century. The Church does not display a Black Lives Matter banner to promote a Marxist political agenda or to “terrorize[] the citizens of this country.” Asbury is a storied institution with a rich history that it is proud to say has been intricately woven with that of African-American history. Since its founding in 1836, Asbury and its congregation have been continuously involved in every generation’s efforts to ensure African Americans equal treatment, protection, and justice under our laws. To Asbury, the display of a Black Lives Matter banner is self-evidently an affirmation of the equal dignity and worth of the Church and its congregation. Whatever Tarrío’s motivation for committing this crime, it does not alter or lessen the dignitary harm and trauma that he has inflicted upon the Asbury community. As Asbury explains in its Victim Impact Statement, for Asbury’s aging congregation, the burning of the banner is evocative of cross burnings and other atrocities committed against Black churches and people that until now had been distant memories of the South of a bygone era. The emotional harm that the burning of the banner caused to the Asbury community was a natural and probable consequence of Tarrío’s criminal act. Reverend Mills has explained to the government that, for Asbury, a genuine apology from Tarrío—to the extent he might be able to offer one—would likely do the most to heal the Church’s wounds.

Asbury has submitted a Victim Impact Statement that explains in its own words the psychological and emotional harm Tarrío caused, which the government attaches as **Exhibit B**. Reverend Mills intends to address the Court at sentencing so that the Church may further speak to the impact of Tarrío’s crimes in its own voice.

## **DEFENDANT’S CONDUCT AND ACCEPTANCE OF RESPONSIBILITY**

Tarrio traveled to the District of Columbia in December 2020 to engage in violent and destructive civil unrest. During those events, he participated in the burning of a Black Lives Matter banner he surely knew had been stolen from the property of Asbury United Methodist Church. On social media, he overtly threatened that the Proud Boys would engage in further destructive behavior in January 2021. Having publicly confessed to committing one criminal act in the District of Columbia, he came back to the District on January 4, 2021, and committed another crime: possession of two large capacity magazines designed for assault rifles that were emblazoned with the Proud Boys’ insignia.

While Tarrio admitted to his burning of the flag on social media and in interviews, he did so in a brazen and provocative manner, and in a way that appeared designed to bring him increased media attention. From the outset, he said that he was proud of his crime and would plead guilty if charged. And he suggested he would choose to do it again. His post-offense conduct amplified the trauma he inflicted upon Asbury and the community, and it demands just punishment.

Tarrio has yet to show sincere remorse and now denies knowledge of the banner’s owner despite contrary evidence. During the plea colloquy, while under oath, he told the Court:

I’m accused of the destruction of the banner; and to be completely honest with you, ***if I would have known that, that banner came from a church, it wouldn’t have been burned.*** I didn’t – I had nothing to do with the stealing of the banner or the taking down of the banner. ***I would never even consider doing anything to a church myself.*** When the banner was burnt, the #Black Lives Matter was on it, and the church’s website was on there, but it’s Asbury.com, and I’m not local in the area. ***I had -- I had no idea that, that was a church.***

*United States v. Tarrio*, Nos. 2021 CF2 000105, 2021 CMD 000106, July 19, 2021 Tr.

15:22–16:7 (emphasis added), attached as **Exhibit C**.

As quoted on page 5 of the Presentence Report, Tarrío repeated these claims to the Presentence Report Writer, stating:

It was [a] banner that was burned. I don't know how it came off the church. It was a whole bunch on the street and one was laying on the floor. I assumed it was someone else's. If I had known it was it was [sic] someone's that didn't want me to burn it I would not have. . . . The banner itself didn't have marking of the church. Had I known that it came from the church, I would have never have [sic] touched it because it was somebody's property. . . .

The Court should not credit Tarrío's claim of ignorance as to the banner's owner. Video shows Tarrío was on and around Asbury's property *as other members of the Proud Boys stole the Church's banner*. See News2Share, *Proud Boys Take, Burn BLM Banner from Asbury United Methodist Church in DC*, YouTube (Dec. 15, 2020), <https://www.youtube.com/watch?v=MObmZt79394>. As depicted in the below stills, unidentified members of the Proud Boys are seen walking in the 1100 block of K Street NW holding up two banners they had apparently just removed from Asbury's property. One of the banners is the Black Lives Matter banner that Tarrío ultimately destroyed, and the other appears to pertain to a Women's Day service:



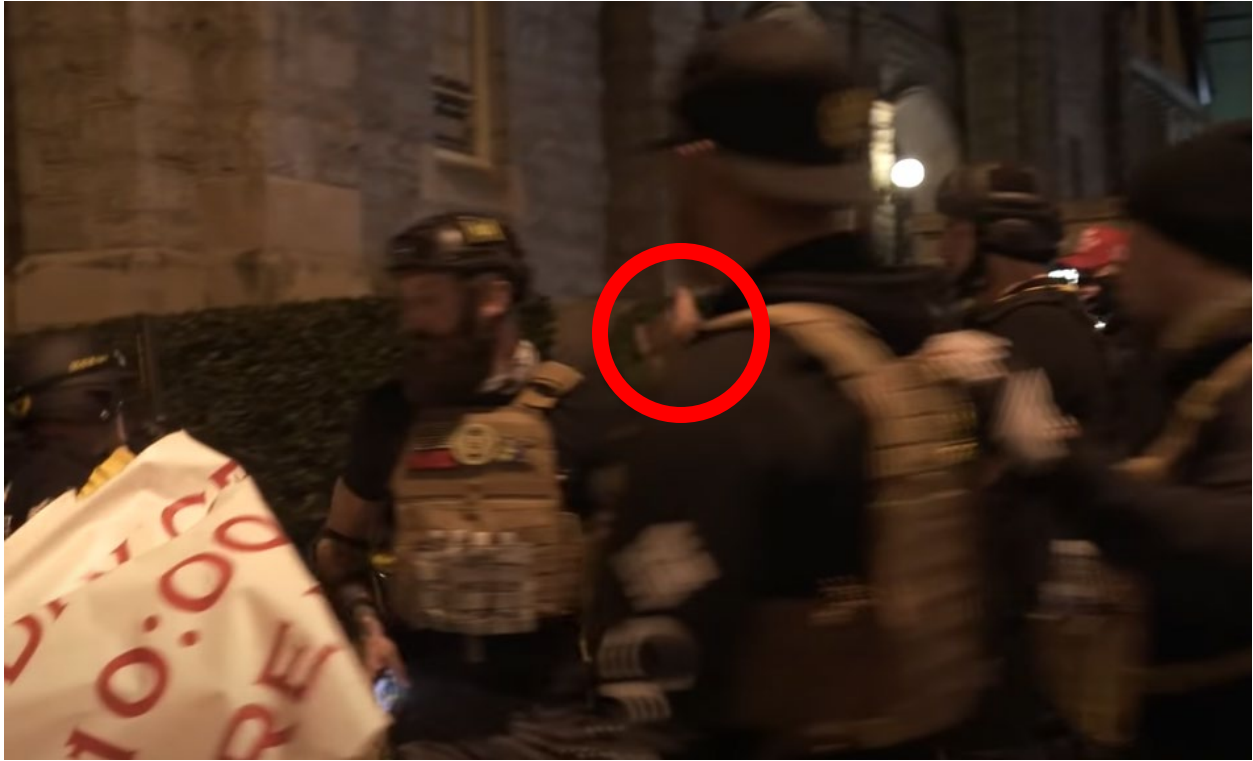
As the men with the banners round the corner into the 900 block of 11th Street NW, Tarrío is seen standing on the Church's property—right next to the Church itself and its brightly illuminated sign:



The man carrying the Women's Day banner tosses it in the air and it lands in the street. Proud Boys including Tarrío pick up the banner, and Tarrío is seen reviewing it:



Tarrio scoffs and shakes his head after reading the banner's message. As he walks away, he points towards Asbury—on whose lawn he had just been standing—and appears to say “Put it on there!”



Unidentified Proud Boys then appear to have discarded the banner on Asbury's lawn. Tarrio's suggestion that he just happened upon this banner among “a whole bunch on the street” is belied by the evidence, which shows that Tarrio stood on Asbury's lawn while Proud Boys members tore down two banners, and he reviewed one of the banners before apparently directing that it be put back on Asbury's lawn. He surely knew where he was and where the banner he burned—which had Asbury's name printed on it—had come from. Tarrio came to the District to engage in destructive unrest and he destroyed Asbury's banner as part of that effort. This crime is in no way the sort of naïve mistake that Tarrio now tries to portray it as.

In December, Tarrio was also reported to have made comments to the Washington Post in which he appears not to have disputed that he knew the banner had been taken from a church but



rather whether he had known the church is predominantly African American: “‘We didn’t Google the church and go, ‘Oh, it’s a Black church, let’s target it,’” Tarrio said. ‘The sign was taken down because of what it represents.’” Peter Herrmann, *Proud Boys leader says he burned Black Lives Matter banner stolen from church during demonstrations in D.C.*, Wash. Post (Dec. 18, 2020, 7:20 p.m.), [https://www.washingtonpost.com/local/public-safety/enrique-tarrio-proud-boys-black-lives-matter-sign/2020/12/18/c056c05e-415a-11eb-8db8-395dedaaa036\\_story.html](https://www.washingtonpost.com/local/public-safety/enrique-tarrio-proud-boys-black-lives-matter-sign/2020/12/18/c056c05e-415a-11eb-8db8-395dedaaa036_story.html).

In light of the evidence, Tarrio’s self-serving claim that he did not know the banner came from a church is implausible, and it suggests that—while he has admitted guilt—he has not yet fully accepted responsibility. Tarrio’s post-offense conduct and his refusal to accept responsibility—even in pleading guilty—demands punishment. And it should give the Court pause about Tarrio’s conduct upon his release from jail, as if Tarrio does not see his actions as wrong, there is no guarantee that he will not repeat them if permitted to return to the District. The Court should thus consider Tarrio’s apparent lack of remorse in fashioning a sentence that will impose a just punishment while still having the maximum deterrent effect. The government’s recommendation is specifically tailored to achieve these goals.

### **DEFENDANT’S CRIMINAL HISTORY**

The Court should also consider Tarrio’s criminal history. As reflected in the Presentence Report, Tarrio has a 2004 felony conviction from Miami-Dade County, Florida, for Dealing in Stolen Property and Grand Theft, and a 2014 felony conviction in the United States District Court from the Southern District of Florida for felony offenses involving his sale of stolen diabetic testing strips with falsified lot numbers. On the federal charge, Tarrio was ultimately sentenced to 16 months’ imprisonment. Tarrio’s prior contacts with the criminal justice system were apparently insufficient to deter his future crimes. The Court should impose the maximum sentences so that,

upon his release from jail, Tarrio faces a significant amount of suspended time to deter him from reoffending.

### **GOVERNMENT'S RECOMMENDATION**

The sentences the Court will impose in each of these cases must, among other factors, reflect the seriousness of the offense, promote respect for the law, and provide just punishment; afford adequate deterrence to criminal conduct; and protect the public from further crimes of the defendant. The outrageous nature of Tarrio's burning of Asbury's banner, followed by his inflammatory post-offense conduct, calls for some period of imprisonment. As does Tarrio's decision to bring large-capacity magazines into the District in January 2021, when conditions in the District were volatile—in large part on account of Tarrio's own efforts to incite violence here. In addition to being merited by Tarrio's actions, imprisonment serves the important goal of general deterrence—a custodial sentence will tell anyone who seeks to follow on Tarrio's path that there are real consequences to traveling to the District to commit crimes in such a brazen and public manner. Following his release from jail, the government's paramount concern is preventing Tarrio—who lives in Florida—from reoffending in the District of Columbia.

Accordingly, the government respectfully recommends the following sentences: **(i) in 2021 CF2 000105, a sentence of 180 days' imprisonment, execution of sentence suspended as to all but 45 days; (ii) in 2021 CMD 000106, a consecutive sentence of 180 days' imprisonment, execution of sentence suspended as to all but 45 days; and (iii) in both cases, concurrent 18-month terms of supervised probation.** The government requests that the Court order the sentences—which relate to separate events—to run consecutively.

Although Tarrio initially failed to check in with his Pretrial Services Officer and was not in compliance, he has now been in compliance with the conditions of his pretrial release for over

six months. He has abided by the stay away order. The stay away has been important to the continued protection of the District of Columbia and its citizens, for, as the Court of Appeals recognized, Tarrío has demonstrated an inability to distinguish between lawful protest and criminal activity. In order to ensure that Tarrío does not reoffend in the District of Columbia, the government is requesting that the Court make the stay away order a condition of his probation. The stay away order has proven to be effective, and when paired with a significant amount of suspended time and a lengthy period of probation, it will effectively ensure that Tarrío does not reoffend in the District upon his release from jail.

Finally, as detailed in its Victim Impact Statement, Asbury United Methodist Church requests restitution in the amount of **\$5,387.00** for the replacement of the banner (\$347.00) and for private security the Church felt compelled to hire on January 6, 2021, and January 20, 2021 (\$5,040.00), as a result of Tarrío's crime.

Respectfully submitted,

CHANNING D. PHILLIPS  
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# EXHIBIT A

**District of Columbia  
Court of Appeals**



**No. 21-CO-74**

HENRY TARRIO,  
Appellant,

v.

**2021 CF2 105**

UNITED STATES,  
Appellee,

and

**No. 21-OA-12**

**2021 CF2 105**

IN RE: HENRY TARRIO.

BEFORE: Glickman and Deahl, Associate Judges, and Nebeker, Senior Judge.

**O R D E R**

On consideration of appellee’s motion to dismiss this appeal as taken from a non-appealable order; appellant’s opposition requesting that, if the court deems the order on appeal—the denial of his motion to modify the stay-away order imposed as a condition of his pretrial release—to be non-appealable, then the court instead treat this appeal as a petition for a writ of mandamus; and appellee’s reply thereto stating that it does not oppose treating this appeal as seeking mandamus relief; appellant’s motion for summary reversal challenging the merits of the stay-away order, appellee’s opposition, and appellant’s reply thereto; and the record on appeal; it is

ORDERED that appellee’s motion to dismiss No. 21-CO-74 is granted and appellant’s motion for summary reversal is denied. While defendants have a right to appeal orders directing their pretrial detention, they generally do not have a right to appeal orders releasing them with conditions. *See Walls v. United States*, 364 A.2d 154, 155-56 (D.C. 1976) (holding that D.C. Code § 23-1324 does not authorize defendants to appeal pretrial release orders but that they may seek mandamus relief under the All Writs Act in an “extraordinary situation”). We held as much in *Walls*, and are unpersuaded that *Walls* has been overruled *sub silentio*, abrogated by statute, or substantially undermined by subsequent changes in the law, so it remains binding

## Nos. 21-CO-74 & 21-OA-12

on us. *See M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971) (“[N]o division of this court will overrule a prior decision of this court[.]”). It is

FURTHER ORDERED that appellant’s alternative request that we treat his motion for summary reversal as a petition for a writ of mandamus is granted. The Clerk shall file his motion for summary reversal as a petition for a writ of mandamus in No. 21-OA-12, shall file appellee’s opposition to the motion for summary reversal as a response to the petition, and shall file appellant’s reply to appellee’s opposition as a reply to the response. It is

FURTHER ORDERED that the petition for a writ of mandamus in No. 21-OA-12 is denied. *See In re Banov*, 694 A.2d 850, 857 (D.C. 1997) (requiring a party seeking a writ of mandamus to “show that his right is ‘clear and indisputable’”); *Bowman v. United States*, 480 A.2d 10, 12 (D.C. 1980) (stating that the writ of mandamus “is to be used sparingly in pretrial criminal cases, and that its primary use is to confine a court to a lawful exercise of its prescribed jurisdiction”) (cleaned up); *Walls*, 364 A.2d at 155 (making mandamus relief available for “patently unreasonable or unlawful conditions of continued release”).

Appellant challenges the trial court’s conclusion that a stay-away order from the District of Columbia, except on certain case-related business, is “the least restrictive condition consistent with public safety in light of the crimes that [appellant] has been charged with in his two pending cases, his prior criminal history, and his explicit and implicit warnings that he would reoffend if he returned to the District[.]” *See* D.C. Code § 23-1321(c)(1)(B) (2020 Supp.) (requiring the trial court to impose the “least restrictive further condition, or combination of conditions, that . . . will reasonably assure . . . the safety of any other person or the community”). The record supports the trial court’s conclusion that appellant poses a unique danger within the District, so that his release was reasonably conditioned on his staying outside of the District. *Cf. Pope v. United States*, 739 A.2d 819, 824 (D.C. 1999) (“This court will not substitute its assessment of a defendant’s dangerousness for the trial judge’s determination of that essentially factual issue, and we will therefore sustain the judge’s decision so long as it is supported by the proceedings below.”) (internal quotation marks omitted).

First, appellant is charged with misdemeanor destruction of property for burning a church’s Black Lives Matter banner and two felony counts of possessing a large-capacity ammunition feeding device based on the thirty-round magazines



## Nos. 21-CO-74 & 21-OA-12

recovered from his backpack upon his arrest, several weeks later, for the destruction of property incident. With respect to the former charge, the incident was captured in various videos that were uploaded to the Internet, and appellant—in a subsequent social media post whose authenticity he does not contest—admitted he was the person responsible for burning the banner. With respect to the latter charges, appellant acknowledged to officers both that the extended magazines were his and that he was bringing them to the District to sell them. Second, appellant’s social media posts—the authenticity of which he again does not contest—in the days after the banner-burning substantiate the trial court’s finding that he poses a particular danger within the District. Appellant’s posts (1) state that he was proud of having burned the banner and would do it again; (2) indicated that he is the “chairman” of the Proud Boys and would return to the District “incognito” while he and his confederates “spread out across downtown DC in smaller teams”; and (3) depicted Proud Boys in a smoke-filled street with the caption “Lords of War” and the hashtags #J6 and #J20 in apparent reference to the dates of the certification of the electoral college vote and the Presidential inauguration.

The evidence of appellant’s conduct and statements in this case evince an inability to appreciate the difference between lawful protest and criminal activity under the laws of the District of Columbia; he has telegraphed his intentions to incite or participate in further criminal activity if permitted to return to the District (he resides in Florida). Under these circumstances, and particularly in view of the purposes of mandamus, we cannot conclude the stay-away order in this case is “patently unreasonable” per *Walls* as a “restriction[] on personal associations, place of abode, or travel[.]” D.C. Code § 23-1321(c)(1)(B)(iv); *see also Cheney v. United States Dist. Court*, 542 U.S. 367, 380 (2004) (describing mandamus as “a drastic and extraordinary remedy reserved for really extraordinary causes” that “amount[] to a judicial usurpation of power or a clear abuse of discretion”) (internal citations and quotation marks omitted).

Appellant also challenges the stay-away order on the ground that it violates his constitutional rights of speech, association, assembly, access to the courts, and interstate travel. At no point does he explain how the stay-away order impermissibly abridges those rights given “[t]he government’s interest in preventing crime by arrestees is both legitimate and compelling.” *United States v. Salerno*, 481 U.S. 739, 749 (1987). Appellant’s failure to develop such arguments prevents him from showing a “clear and indisputable” right to mandamus relief. *See Comford v. United States*, 947 A.2d 1181, 1188 (D.C. 2008) (“Issues adverted to in a perfunctory

**Nos. 21-CO-74 & 21-OA-12**

manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones.").

Appellant's vindictive prosecution argument fares no better, as he fails to identify the source of his "clear and indisputable" right to relief despite the trial court's finding that he presented no evidence showing he was similarly situated to three defendants who were charged with rioting after President Trump's 2017 inauguration but were not subject to comparable stay-away orders. Trial courts have considerable discretion when tailoring pretrial release conditions to the particular defendant, and appellant has not substantiated that he has been treated more harshly than similarly situated defendants because of his political views. Appellant further fails to show a "clear and indisputable" right to an evidentiary hearing given the lack of a factual basis for his allegation. *See Simms v. United States*, 41 A.3d 482, 490 (D.C. 2012) (directing the trial court to decide "as a threshold matter whether the allegations as to a prosecutor's actions give rise to a realistic likelihood of prosecutorial vindictiveness").

**PER CURIAM**

Copies emailed:

Honorable Robert Okun

Director, Criminal Division

Copies e-served:

Lucas I. Dansie, Esquire

Elizabeth Trosman, Esquire  
Assistant United States Attorney

cml

# EXHIBIT B

## **Victim Impact Statement**

United States v. Henry "Enrique" Tarrío  
2021 CMD 000106

Asbury United Methodist Church ("Asbury") is an historic African American congregation located in downtown Washington, DC. Asbury was established in **1836**, and we have been continuously located, on the same site on the southwest corner of 11<sup>th</sup> and K Streets NW, for all of our **185** years. For all of our **185** years, Asbury has stood for social justice. We have been actively involved, as both supporter and participant, in every social justice movement and/or protest since our inception. Asbury's involvement has been noted, among other things, as a stop on the Underground Railroad, in the 1963 March on Washington, the protest against Apartheid in South Africa and the Black Lives Matter ("BLM") movement. In fact, Asbury's very founding grew out of a protest over a matter of social justice. When a small, brave group of Black congregants, dissatisfied with being relegated to the balcony for worship, decided to leave Foundry Methodist Church and start their own congregation, Asbury was born.

This brief summary of Asbury's history and our commitment to social justice lays the foundation of the impact of Mr. Tarrío's actions, an impact specifically felt by an African American congregation with strong social justice leanings. The impact can be measured in three distinct ways: physical, financial, and the emotional and psychological.

1. The physical impact of Mr. Tarrio's actions was actual damage to Asbury's property. Namely, Asbury's BLM banner was forever destroyed by its burning. This impact was negligible and finite.

2. The financial impact of Mr. Tarrio's actions was the cost incurred by Asbury in the wake of the December 12, 2020 incident. Asbury moved quickly to replace the BLM banner at a cost of three hundred forty-seven dollars (\$347.00). Additionally, in light of ongoing and future planned demonstrations/protests with no assurance that the church would not be the target of further violation, Asbury leadership took the cautionary step of engaging private security to protect the church and its property. The cost of said security was five thousand forty dollars (\$5,040.00). Accordingly, the total financial impact of Mr. Tarrio's actions was five thousand three hundred eighty-seven dollars (\$5,387.00).

3. The emotional and psychological impact of Mr. Tarrio's actions on a congregation with Asbury's composition and history is significantly more complicated to understand and/or explain. Asbury is an aging congregation, many of whom if not a part of it themselves, are direct descendants of individuals who traveled north during the Great Migration of the twentieth century. They migrated here in search of opportunity, but also to escape the stress, fear and anxiety of terror inducing acts of social and racial injustice. Imagine, if you would please, a marauding band of seemingly angry white men moving about the city, apparently looking for trouble. That group happens upon Asbury, a black church. They

proceed to rip down and burn the church's BLM banner on the street directly in front of Asbury.

The group further escalates this act of violence and terror, this demonstration of outright hatred and anger, by videoing the act and uploading it to various social media platforms for the world to witness. Now imagine the images conjured up in the minds of Asbury congregants as a result of these white men burning the BLM banner: visions of slavery, the Ku Klux Klan, cross burnings, and the post-Civil War Jim Crow south. Try, if you can, to imagine the stress, fear, anxiety, frustration, anger and terror this must create for them. How does one quantify this type of impact? How does one measure, in the short term, the ways this incident will influence the actions, decisions and interactions of the congregation with each other, the community and the world at large?

Mr. Tarrio, by his actions, caused immeasurable and possibly irreparable harm. His careless act of violence and hatred, targeted at a congregation of individuals with a lived history of social and racial injustice, had the presumably desired effect. Asbury was forced to reckon with the very tangible evidence that we continue to live in a world where people radicalize hate based upon race and skin color. We continue to live in a world where people feel free to exhibit and direct aggression and animus toward others simply for being different, looking different or having different opinions or values. However, we are hopeful that we also live in a world leaning toward justice and accountability. A world that will require bad actors to take responsibility for their behavior as well as suffer the consequences thereof.





926 11<sup>th</sup> Street, NW, Washington, DC 20001-4488  
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Asbury is a congregation of Christ-seeking individuals. We strive daily to be a radically inclusive community, empowered to spread God's love throughout the world. All are welcome at Asbury. Our doors are always open to all. Mr. Tarrio's actions sparked feelings of hurt, anger and even confusion. Despite this egregious offense to our membership, we will continue to love God, love one another, serve our community and transform lives. We are Asbury United Methodist Church, and we will survive and thrive.

Respectfully submitted,

Rev. Dr. Ianther M. Mills  
Senior Pastor



# EXHIBIT C

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION

-----X  
:  
THE UNITED STATES OF : Docket Number: 2021 CF2 000105  
AMERICA, : 2021 CMD 001106  
:  
:  
vs. :  
:  
HENRY TARRIO, :  
:  
Defendant. : **CORRECTED TRANSCRIPT**  
: Monday, July 19, 2021  
-----X Washington, D.C.

The above-entitled action came on for hearing  
before the HONORABLE HAROLD L. CUSHENBERRY, JR., Associate  
Judge, in Courtroom Number 116.

APPEARANCES:

On Behalf of the Government:

PAUL COURTNEY, ESQUIRE

Assistant United States Attorney

On behalf of the Defendant:

LUCAS DANSIE, ESQUIRE

Washington, D.C.

21-01164

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C O N T E N T S

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P R O C E E D I N G S

THE DEPUTY CLERK: The United States v. Henry Tarrio, 2021 CMD 1106.

MR. COURTNEY: Good afternoon, Paul Courtney for the Government appearing via Webex. This is going to be a global disposition that also involves a plea in 2021 CF2 105 to a misdemeanor charge in that case, so we're going to ask if the courtroom clerk could call that case as well.

THE DEPUTY CLERK: Could you repeat that case number for me please?

MR. COURTNEY: Sure, that's 2021 CF2 000105.

MR. DANSIE: And good afternoon, Your Honor. Lucas Dansie for Mr. Tarrio. I'm present by Webex video.

THE DEPUTY CLERK: All right. And now, I'm calling United States v. Henry Tarrio, 2021 CMD 105.

MR. COURTNEY: Paul Courtney, again, for the United States in that matter as well.

MR. DANSIE: Lucas Dansie for the defense.

THE COURT: Did we receive any paperwork on these cases, either the plea agreement or a trial waiver?

MR. COURTNEY: We did send a packet earlier in the day, and it appears to have been routed incorrectly, so I've just forwarded that to your clerk.

THE COURT: What are the terms of the plea agreement?





1 agreement.

2 MR. DANSIE: Yes, of course, thank you, Your  
3 Honor. The Government, as we understand it, is waiving  
4 step-back in this matter. They're waiving enhancement  
5 papers. They are reserving allocution.

6 **COMPETENCY TO PLEAD**

7 THE COURT: Okay. Mr. Tarrio, how old are you,  
8 sir?

9 THE WITNESS: Judge, I'm 37 years old.

10 THE COURT: And can you tell me a little about  
11 your educational background? How far did you go in school?

12 THE WITNESS: Judge, I -- I finished high school;  
13 and since then, I've been a business owner, so I seeked  
14 (sic) -- I do have some college credits. It was in the  
15 Marine Corps., so I -- I was attempting to join the Marine  
16 Corps., and I did take some college credits.

17 THE COURT: Okay. And this afternoon, are you  
18 under the influence of any alcohol or narcotic drugs?

19 THE WITNESS: Absolutely not, Your Honor.

20 THE COURT: I understand you wish to plead to two  
21 misdemeanor offenses, each of which carry a hundred and  
22 eighty days and a -- at least the misdemeanor destruction of  
23 property carries a thousand dollar fine or both.

24 What is the penalty for the attempt possession of  
25 a large-capacity ammunition feeding device? What's the fine

1 or --

2 MR. COURTNEY: That should also be a thousand  
3 dollars --

4 THE COURT: A thousand dollars.

5 MR. COURTNEY: -- Your Honor, it's the same.

6 THE COURT: I understand you wish to plead guilty  
7 to these two misdemeanor offenses based upon the plea  
8 agreement. Is that what you wish to do?

9 THE WITNESS: Yes, Your Honor.

10 **ADVICE OF RIGHTS**

11 THE COURT: By pleading guilty to these two  
12 offenses, you're giving up your right to have a trial. I  
13 understand that you have signed a written plea agreement,  
14 and I understand you also have signed the waiver of trial  
15 which explains to you your trial rights in writing, but I'm  
16 required to make an independent assessment and finding that  
17 you're making an knowing intelligent voluntary decision to  
18 waive your right to trial.

19 So let me just tell you what your trial rights  
20 are, and these obviously be -- will be repetitive of what  
21 you've signed off on in writing.

22 You're giving up the right to put the Government  
23 to its proof to have the Government prove the elements of  
24 these two offenses beyond a reasonable doubt by putting on  
25 witnesses and introducing testimony in a trial before a

1 judge.

2           You are giving up your presumption of innocence  
3 that you have now. At a trial you would be presumed  
4 innocent throughout the trial having no obligation to say  
5 anything or produce any evidence, and the Government which  
6 brought these charges against you, that burden of proof  
7 would never shift to you from the Government. They would  
8 always bear the burden of proof.

9           You would be giving up your presumption of  
10 innocence because I have placed you under oath, and I won't  
11 be able to accept your guilty plea unless you admit your  
12 guilt to these two offenses, so you will have to incriminate  
13 yourself; and had there been a trial, I couldn't have placed  
14 you under oath and demanded that you tell me anything about  
15 your alleged involvement in these offenses. The burden  
16 would always be on the Government to prove your guilt beyond  
17 a reasonable doubt.

18           You are also giving up your Sixth Amendment right  
19 of confrontation. That's the right to challenge the  
20 accuracy and reliability of the Government's proof against  
21 you to make sure they've met the legal standard of proof  
22 beyond a reasonable doubt. Because the Government won't  
23 have to introduce any evidence, you're giving up your right  
24 to have confrontation.

25           You are also giving up your right to put on a

1 defense. You don't -- don't have any obligation to put on a  
2 defense because the burden is on the Government to prove  
3 your guilt beyond a reasonable doubt; but by pleading  
4 guilty, you are giving up your right also to put on a  
5 defense, the right to testify in your own case, the right to  
6 have others testify, and to have testimony to be admissible,  
7 and the right of compulsory process. That is access to the  
8 Court's power and to have defense witnesses arrested, if  
9 that ever became necessary, to assure you got a fair trial.

10           You are also giving up what we call in Court an  
11 appellate right if a person doesn't get a fair trial, and  
12 the trial judge makes serious legal mistakes during the  
13 course of the trial. So, anyone who is convicted after a  
14 trial has a right to appeal and have any claims of error  
15 reviewed by the highest court of this jurisdiction, and that  
16 Court here is called the District of Columbia Court of  
17 Appeals.

18           If you couldn't afford an attorney for an appeal,  
19 one would be provided for you; however, if you confess under  
20 oath and admit you're guilty, admit you have no defenses you  
21 wish to present at a trial, then the law will conclude that  
22 your guilt has, in fact, been established fairly,  
23 accurately, and reliably beyond a reasonable doubt as to  
24 these two misdemeanor offenses.

25           So, you can't appeal anything unless I break the

1 law and give you an illegal sentence.

2 And did you understand the trial rights you're  
3 waiving as to each of these misdemeanor offenses?

4 THE WITNESS: I do, Your Honor.

5 THE COURT: Has anyone forced you or threatened  
6 you in any way to give up your right to a trial?

7 THE WITNESS: No, Your Honor.

8 THE COURT: Has anyone made any promises to have  
9 you give your right to a trial other than the agreement you  
10 worked out? Any other promises?

11 THE WITNESS: No, Your Honor.

12 THE COURT: Are you satisfied with the help and  
13 advice your lawyer has given you?

14 THE WITNESS: Yes, sir, Your Honor.

15 THE COURT: And have you had enough time to think  
16 about your decision to plead guilty to these two offenses  
17 and discuss that with your lawyer?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: The prosecutor is going to give me a  
20 brief statement of why the prosecutor believes they had  
21 evidence that would establish your guilt beyond a reasonable  
22 doubt as to each of these two offenses.

23 If there is a factual basis for your plea, and you  
24 will admit your guilt under oath, I will be able to accept  
25 your guilty plea. I will hear the proffer.

1 MR. COURTNEY: Before that, Your Honor, I just  
2 wanted to put two additional terms of the plea offer on the  
3 record if I may.

4 THE COURT: Uh-huh.

5 MR. COURTNEY: Those being paragraphs 7 and 8 of  
6 the agreement:

7 "The sole purpose of this plea agreement is to  
8 resolve the charges that are currently pending against Mr.  
9 Tarrío in these two cases. Nothing in the agreement is  
10 intended to prevent the Government from bringing different  
11 or additional charges against Mr. Tarrío based on his  
12 conduct on January 6, 2021 or at any other time."

13 And in paragraph 8:

14 "Mr. Tarrío agrees that the Government may use any  
15 statements made in this plea proceeding against him in any  
16 subsequent proceeding including subsequent proceedings in  
17 these matters if the plea shall later be withdrawn."

18 THE COURT: And do you understand those terms. I  
19 didn't have all the terms in writing to review myself, but  
20 have you discussed these terms with your attorney?

21 THE WITNESS: I have. I do have -- I don't know  
22 why January 6th would be specified in there, but I guess I  
23 do understand.

24 THE COURT: Well, it's not my agreement. It's  
25 your agreement, so if you have discussed and understand it,

1 then you have a -- an agreement. If you don't have an  
2 agreement, you don't have one. (Crosstalk 03:09:52) --

3 THE WITNESS: Would that -- well, I agree with it,  
4 Your Honor.

5 THE COURT: Okay. Now, I'll hear the Government's  
6 proffer.

7 **FACTUAL BASIS**

8 MR. COURTNEY: Okay. Beginning with 2021 CF2  
9 000105, and I'm reading from pages 5 and 6 of the July 19th  
10 plea offer letter.

11 "On January 4, 2021, Defendant Henry Tarrio was  
12 arrested within the District of Columbia pursuant to a  
13 Superior Court arrest warrant for the destruction of  
14 property offenses charged in Case No. 2021 CMD 000106.

15 "During a search of Defendant's bookbag incident  
16 to his arrest, officers of the Metropolitan Police  
17 Department recovered two high-capacity firearm magazines.  
18 The magazines which AR-15/M4 compatible have a capacity of  
19 30 rounds of 5.56 by 45-millimeter NATO or 223 Remington  
20 ammunition each for a total capacity of 60 rounds of  
21 ammunition. The magazines were not loaded. Each magazine  
22 bears insignia of the "Proud Boys," the organization of  
23 which Defendant is the national chairman. One magazine  
24 bears the initials "P.B." with a laurel wreath, a symbol  
25 frequently used by the Proud Boys. The other magazine bears

1 the words "Proud Boys," under left-facing rooster on a  
2 weathervane, another symbol used by the Proud Boys.

3 "Defendant consented to a custodial interview. In  
4 that interview, he told detectives that he sold magazines  
5 through an online store. He explained that he brought the  
6 magazines into the District of Columbia with the intention  
7 of transferring them to a customer who was also going to be  
8 present in the District of Columbia.

9 "Defendant's possession of the high-capacity  
10 magazines within the District of Columbia was intentional,  
11 on purpose, and not the result of inadvertence or mistake.

12 Would Your Honor like me to proceed to the next  
13 proffer or pause here?

14 THE COURT: You can pause here. Now, Mr. Tarrio  
15 heard what the Government said its evidence entailed. That  
16 you were knowingly in possession of these high-capacity  
17 ammunition feeding devices, and that you did so knowingly  
18 and intentionally, and it wasn't by a mistake or accident  
19 that you -- you were in possession. Is the Government's  
20 statement correct? Did you knowingly and intentionally  
21 possess these magazines?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: How do you wish to plead to the charge  
24 of attempted possession of a large-capacity ammunition  
25 feeding device? Are you guilty or not guilty?



1 THE WITNESS: Guilty, Your Honor.

2 **FINDING**

3 THE COURT: The Court find there is a factual  
4 basis for that plea and the defendant did knowingly and  
5 intelligently and voluntarily, and the Court will accept.  
6 I'll hear the proffer as to misdemeanor destruction of  
7 property.

8 MR. COURTNEY: Thank you. In Case No. 2021 CMD  
9 000106, had the case proceeded to trial, the Government  
10 would have proven beyond a reasonable doubt that:

11 "On the evening of December 12, 2020, a group of  
12 individuals apparently affiliated with the Proud Boys,  
13 including Defendant Henry Tarrio, were present in and around  
14 the intersection of 11th and K Streets NW in Washington,  
15 D.C. Asbury United Methodist Church is located at that  
16 intersection.

17 "Unidentified members of the group stole a banner  
18 from the church's property. The banner was black in color  
19 with white lettering that read, "#Black Lives Matter." The  
20 banner also contained the church's logo and website address,  
21 and the group walked southbound on 11th Street NW and took  
22 the banner to the intersection of 11th and E Streets NW.

23 "At the intersection of 11th and E Streets NW in  
24 Washington, D.C., the group burned the banner using lighter  
25 fluid and lighters. Numerous unidentified individuals

1 crouched down and applied lighters to the edges of the  
2 banner. Defendant crouched down at the bottom right corner  
3 of the banner while holding a lighter.

4 "Defendant posted a picture to his Parler social  
5 media account depicting himself crouched down in close  
6 physical proximity to two individuals holding ignite  
7 lighters in their hands. The photograph depicts Defendant  
8 holding an unlit lighter inches from the ignite lighters and  
9 the other two individuals' hands. The banner which has  
10 monetary value was ultimately engulfed in flames and  
11 destroyed.

12 "In the days that followed, Defendant admitted to  
13 burning the banner on social media and in comments to  
14 numerous media outlets. In a December 18, 2020 post on  
15 Parler, Defendant shared the above-described photograph and  
16 wrote, 'I am the person responsible for the burning of this  
17 BLM sign, and I did it.'"

18 "On an episode of *Warboys*, a podcast affiliated  
19 with the Proud Boys, Defendant stated, 'In the burning of  
20 the BLM sign, I was the one that lit it on fire. I was the  
21 person that went ahead and put the lighter to it and  
22 engulfed it in flames, and I damn proud that I did.'  
23 Defendant's participation in the burning of the banner was  
24 intentional, on purpose, and not the result of inadvertence  
25 or mistake."

1           THE COURT: Before I go any further, Mr. Tarrio, I  
2 wasn't aware until I just heard the proffer that this  
3 banner, the Black Lives Matter, banner was on the property  
4 of the -- the church, Asbury Methodist United Church.

5           My oldest daughter was actually baptized at that  
6 church, and I haven't really had any affiliation with the  
7 church. She's almost 40 now, and we attended with some  
8 regularity when she was young.

9           I am perfectly willing to recuse myself if you are  
10 concerned about the fact that, you know, my family did, you  
11 know, attend this church, has attended it in the past, and  
12 that's perfectly understandable. There are many judges.  
13 Someone else will rotate through this calendar and they  
14 would be -- could certainly handle the disposition.

15           So, if you want to go offline and talk to your  
16 lawyer to see whether or not you wish me to take your plea  
17 and to sentence you, then that's perfectly understandable  
18 that you might want another judge, but I'll -- I'll recall  
19 the matter. You can go -- go offline, talk to your lawyer,  
20 and tell me how you want to proceed.

21           THE WITNESS: Judge, that's not necessary. And  
22 just to -- to just, I guess, give some insight on this. I'm  
23 accused of the destruction of the banner; and to be  
24 completely honest with you, if I would have known that, that  
25 banner came from a church, it wouldn't have been burned.

1           I didn't -- I had nothing to do with the stealing  
2 of the banner or the taking down of the banner. I would  
3 never even consider doing anything to a church myself.

4           When the banner was burnt, the #Black Lives Matter  
5 was on it, and the church's website was on there, but it's  
6 Asbury.com, and I'm not local in the area. I had -- I had  
7 no idea that, that was a church. I live in Florida. I  
8 could tell the churches that are around my house, the church  
9 I attend, but it's -- it -- it -- you won't need to recuse  
10 yourself, Your Honor.

11           THE COURT: Okay. Then fine, then you heard what  
12 the Government said its evidence would show with regard to  
13 the misdemeanor destruction of property. How do you wish to  
14 plead to that charge?

15           THE WITNESS: That would be guilty, Your Honor.

16           THE COURT: The Court finds there is a factual  
17 basis for the pleas. Defendant did knowingly,  
18 intelligently, and voluntarily, and the Court will accept  
19 it.

20           Does Mr. Tarrio wish to proceed to sentencing  
21 today. I obviously, I normally sentence folks immediately  
22 in misdemeanor cases.

23           MR. COURTNEY: Your Honor, the Government would  
24 ask to set this matter out so that it comply with its crime  
25 victims obligations. Obviously, the victim in this case

1 isn't an individual person, it's a church, and so there is  
2 an entire congregation of people who have been hurt and  
3 affected by this crime, and so in order to ensure that we  
4 can meaningfully confer with the church leaders and present  
5 and appropriate victim and community impact statement, we  
6 would ask to set this out.

7           We would also ask the Court to order an expedited  
8 PSR given that the case came in as a felony, that Mr. Tarrío  
9 has criminal history that's largely, or if not entirely,  
10 outside of this jurisdiction, and that CSOSA can help verify  
11 information on restitution which may be an issue in this  
12 case.

13           THE COURT: Well, I'm not sure that individual is  
14 harmed to each member of the church congregation, but to the  
15 extent that members of the congregation were even advised  
16 that the flag would be there. So I'm a little concerned  
17 about, you know, hearing from every member of the  
18 congregation that they individually suffered some harm  
19 because --

20           UNIDENTIFIED SPEAKER: Oh --

21           THE COURT: -- of the taking of the banner other  
22 than their own political, you know, views about Black Lives  
23 Matter, and that's not an issue for me to decide in this  
24 case. So I'm willing to order a --

25           UNIDENTIFIED SPEAKER: And I -- and I --

1 THE COURT: -- pretrial -- well, pretrial services  
2 report and to get more background information on Mr. Tarrio,  
3 but I don't see --

4 UNIDENTIFIED SPEAKER: Your --

5 THE COURT: -- any reason to, obviously, detain  
6 him or do anything else at this point based upon what you  
7 have told me. But I will order a pre-sentence report , and  
8 I'm not -- not sure how long in this --

9 UNIDENTIFIED SPEAKER: Your Honor --

10 THE COURT: -- virtual environment that CSOSA is  
11 taking to -- to get them done in a misdemeanor case. It's  
12 probably going to be six weeks or so I would assume. But  
13 Mr. Tarrio will remain on his current conditions of release  
14 pending the preparation of a presentence report, and we  
15 will --

16 MR. DANSIE: Your Honor, if I just -- if I may be  
17 heard briefly on the -- on the matter of the --

18 THE COURT: Sure.

19 MR. DANSIE: -- of the presentence report? Thank  
20 you.

21 THE COURT: Sure.

22 MR. DANSIE: The -- this is a straightforward  
23 misdemeanor matter. Mr. Tarrio's very limited record is  
24 from Florida but would be easy to explain to the Court in  
25 our sentencing memo. It would not be, in our opinion

1 respectfully, a good use of Court resources to order a -- a  
2 PSR for -- for Mr. Tarrio as much as the Government may feel  
3 that he is somehow special because of his affiliations. We  
4 would respectfully object to that request.

5 **ORDER**

6 THE COURT: His political affiliations don't  
7 concern me one way or the other, only his alleged criminal  
8 conduct I'm concerned about, you know, his political  
9 views --

10 MR. DANSIE: And -- and --

11 THE COURT: -- or his political views only when  
12 they cross the line into criminal behavior do -- does it  
13 concern me.

14 In any event, you certainly can file -- if you  
15 wish to, you know, file an allocution memo, that's perfectly  
16 reasonable, and you can provide the information you think  
17 helps your client. The Government obviously can provide a  
18 sentencing memorandum, but I think it appropriate.

19 I didn't reach this agreement. There -- there  
20 this allusion to -- to the 6th of January. I'm not sure why  
21 the Government thought it important to reserve, you know,  
22 certain rights, I guess, to further investigate any  
23 potential involvement. I don't know if there is any  
24 evidence of that, or that they are still investigating that.

25 But obviously, I'll learn more when the matter

1 comes back before me. The matter will be continued for a  
2 presentence report. We'll come back in at least six weeks  
3 with a date, and the parties can file allocution memoranda.  
4 The defense can have two weeks from today's date to file the  
5 memoranda. The Government will have two weeks thereafter to  
6 respond.

7           Because we are operating remotely, I'll --  
8 normally would be the one who would handle the sentencing of  
9 the case, but would not normally be the one who would do it  
10 because, you know, in -- in misdemeanor cases, most of the  
11 time, unless I retain jurisdiction, it simply goes to the  
12 next judge who is handling the case, you know?

13           Again, if counsel or Mr. Tarrío is all -- at all  
14 concerned about me retaining jurisdiction to handle the  
15 matter, just let me know by written motion. I'll take care  
16 of it. If you want another judge to actually review the  
17 materials and have that judge make the decision, I'm  
18 perfectly --

19           MR. DANSIE: Your Honor just to --

20           THE COURT: Go ahead.

21           MR. DANSIE: If I may just make two more brief  
22 points. The -- in terms of the expedited PSR, I did have a  
23 case -- I know the normal PSR takes six weeks. Mr. Tarrío  
24 is eager to resolve this, and we -- and I understand from  
25 another case I did where there was an expedited PSR, but it



1 only took 15 or 21 days to do -- that's all I'll say about  
2 that. I -- I don't know that we would need to wait that  
3 long.

4 And then the other thing I would say, Your Honor,  
5 is we would -- for efficiency reasons, we would prefer that  
6 Your Honor keep it, as you heard the plea, and we thank you  
7 for your consideration.

8 THE COURT: Okay. Well, I'll see if we can get an  
9 expedited report. I'm not aware of them being able to be  
10 done that quickly unless it's, you know, one where there is  
11 not extensive background interviewing and research of  
12 background and other social history. If it's simply a  
13 records check, something that's going to be done really  
14 quickly in terms of that, it can be turned around that  
15 quickly but at this point, I'll ask --

16 MR. DANSIE: That's okay. That's fine.

17 THE COURT: -- that the expedited (crosstalk  
18 03:24:15). Well, go ahead.

19 MR. DANSIE: I'm sorry, Your Honor. That --  
20 that's my understanding that the -- when it's just a  
21 guideline calculation which essentially is what the  
22 Government is interested in here, not the interviewing  
23 (crosstalk 03:24:31) --

24 THE COURT: Okay. Well, this -- this is --

25 MR. DANSIE: -- can be done more quickly and --

1 and --

2 THE COURT: I have other matters. I'm sorry to  
3 interrupt you, counsel, but this is not a guideline case.  
4 This is a misdemeanor case, so there are no sentencing  
5 guidelines applicable in this case. It's not a felony case  
6 that has sentencing guidelines. It's just a -- two  
7 misdemeanors. So (crosstalk 03:24:39) --

8 MR. DANSIE: You're right, Your Honor. I -- I  
9 meant to say that it's the (audio difficulties 03:24:46) is  
10 the purpose.

11 THE COURT: Okay. I'll order an expedited report.  
12 I don't know -- we don't normally have a CSOSA  
13 representative online to find out how long that will take.  
14 Let me tell you when I'm next going to be back handling  
15 these matters remotely. Let me check my calendar. I think  
16 it's in -- in August. I'll be -- August 23rd through the  
17 27th, I'll be handling this calendar remotely. Any time  
18 that --

19 MR. DANSIE: That's a good week for the defense.

20 THE COURT: Okay.

21 MR. DANSIE: Yes, Your Honor.

22 THE COURT: What -- what date is good for you?

23 MR. DANSIE: The -- may we have the 23rd or 24th?

24 THE COURT: Either date. We can check with the  
25 clerk what -- and in terms of the calendar, in terms of the

1 morning calendar or afternoon calendar --

2 MR. DANSIE: What courtroom would that be in --

3 THE COURT: -- (crosstalk 03:25:58) --

4 MR. DANSIE: -- Your Honor? Which courtroom would

5 that be in?

6 THE COURT: In this courtroom.

7 MR. DANSIE: Okay.

8 THE COURT: 116, this remote courtroom, 116.

9 MR. DANSIE: Perhaps, the afternoon would be

10 convenient.

11 THE COURT: Okay. There is a 2 o'clock and 3

12 o'clock calendar. Can I ask the clerk?

13 THE DEPUTY CLERK: Yes. We -- we talking August

14 23rd, correct?

15 THE COURT: Yes. I'm working again August --

16 MR. DANSIE: Yes, the 23rd at the moment --

17 THE COURT: -- (crosstalk 03:26:53) August 23rd

18 through the 27th. So any day that week would be fine and

19 the afternoon would be better for counsel.

20 THE DEPUTY CLERK: Yeah. The 23rd at the moment,

21 it -- it doesn't have anything scheduled right now in the

22 afternoon, so it's completely free.

23 THE COURT: Okay.

24 THE COURT DEPUTY: The 24th as well.

25 THE COURT: Is 2 o'clock okay with you?

1           MR. DANSIE: Thank you, Your Honor. That's a good  
2 time.

3           THE COURT: Okay. Two o'clock then.

4           Mr. Tarrio, you'll be contacted by the probation  
5 department, and they'll be interviewing you and getting some  
6 background information, and that will be provided to me and  
7 to the Government's counsel and your lawyer, and I'll use  
8 that information along with other information provided by  
9 the United States and by your attorney before I impose  
10 sentence in the case.

11           You are released upon your current conditions of  
12 release. Again, the hearing will be remote, so you don't  
13 have to come to D.C. for the hearing. Okay?

14           THE WITNESS: Understood, Your Honor.

15           THE COURT: Okay. You need to advise Mr. Tarrio  
16 of the penalties for failure to appear.

17           THE DEPUTY CLERK: Okay. Mr. Tarrio, so your next  
18 hearing is going to be on August 23rd at 2 p.m. If you --  
19 in 116 -- or if you fail to appear, you subject yourself to  
20 a fine of a thousand dollars, a hundred and eighty days in  
21 jail, or both simply for your failure to appear. Do you  
22 understand?

23           THE WITNESS: Yes, sir.

24           THE COURT: Okay. The parties are excused. Thank  
25 you very much.

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MR. COURTNEY: Thank you, Your Honor.

MR. DANSIE: Nice to see you, Your Honor.

Thank you.

(Thereupon, this concludes these proceedings.)

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CERTIFICATE OF TRANSCRIBER

I, SABRINA HAVARD, do hereby certify that in my official capacity, I prepared from electronic recordings the proceedings had and testimony adduced in the matter of: UNITED STATES OF AMERICA v. HENRY TARRIO, Docket Numbers: 2021 CF2 000105 and 2021 CMD 001106, in said Court on the 19th day of JULY, 2021.

I further certify that the foregoing 25 pages were transcribed to the best of my ability from said recordings.

In witness whereof, I have subscribed my name this the 28th day of JULY, 2021.

A handwritten signature in dark ink, appearing to read 'Sabrina', with a large, stylized loop and a long horizontal stroke extending to the right.

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SABRINA HAVARD, TRANSCRIBER