IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ENRIQUE TARRIO - 5,

Defendant.
_____/

Criminal Action
No. 1: 21-175

Washington, DC
September 5, 2023

2:03 p.m.

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE TIMOTHY J. KELLY
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

THE COURTROOM DEPUTY: This is criminal matter 21-175, United States of America versus defendant 5, Enrique Tarrio.

Present for the government is Jason McCullough, Erik Kenerson and Conor Mulroe. Present from the United States Probation Office is Crystal Lustig. Present for the defendant are Nayib Hassan and Sabino Jauregui.

THE COURT: All right. Good afternoon to everyone. We are here for Mr. Tarrio's sentencing. I have received and reviewed the presentence report and sentencing recommendation from the probation office. Again, my thanks to the probation office for turning these around quickly. I know your office was under a lot of -- you had more work than you had people these days, so I appreciate it.

Those are ECF numbers 865 and 866. And sentencing memorandum from the government and the defendant, I think those are represented by 855, 855-1 and 874 and letters on the defendant's behalf that are on the docket at 880-2.

Are there any other documents or materials for me to review, may I ask the government first?

MR. MULROE: I don't think there are any other documents, Your Honor, just in terms of the docket numbers. I do have also accompanying the government's sentencing memorandum are the Tarrio specific exhibits at ECF 856 and

then, I may have missed it, but I believe the defendant's sentencing memorandum was 862. The government's response was 874. And then I believe that there was no specific defense response. However, the defendant adopted the response of codefendant Nordean, which was docketed at ECF 864.

THE COURT: All right. Anything further from the defense?

MR. JAUREGUI: No, Your Honor.

THE COURT: All right. Very, very well.

Mr. Tarrio, our sentencing today will proceed in four steps. And the first step is for me to determine whether you have had time to review the presentence report. And to see if 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 to your case, based on your criminal history and considering any factors that may warrant a departure under the sentencing guidelines manual. So regardless of whether I follow the guidelines, I have to correctly calculate them.

The third step is then 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 requires me to fashion a just and fair sentence in light of the factors congress has set forth under 18 United States Code section 3553(a). As part of this last part of the proceeding

today, I will actually impose the sentence as well as other consequences -- required consequence of the offense.

So turning to the presentence report. The final presentence report and sentencing recommendation were filed in this matter on August 23rd of this year. Does the government -- and, obviously, we are putting aside issues of calculating the guidelines for purposes of what I am asking you now. We are going to talk about that, obviously, in a moment. But does the government have any objection to any of the factual statements set forth in the report?

MR. MULROE: No, Your Honor.

THE COURT: Mr. Tarrio, before I ask the same question of your lawyers, are you satisfied with your attorneys -- Mr. Jauregui, Mr. Hassan if you could -- perfect.

First, are you satisfied with your attorneys in this case, sir?

THE DEFENDANT: Absolutely, Your Honor.

THE COURT: And have you had enough time to talk with them about the papers the probation office has filed in this case and the papers the government has filed?

THE DEFENDANT: As much as the jail has allowed, yes.

THE COURT: All right. But you are prepared to proceed today with sentencing?

THE DEFENDANT: I am, Your Honor.

THE COURT: All right. So if you move the microphone

now down to Mr. Hassan and Mr. Jauregui. Let me ask whoever is going to be speaking today from Mr. Tarrio, I know you noted a number of objections in the report that at least as of when the final report was generated were outstanding. Some of them struck me as really sort of objections to inferences about, which you all are going to argue to me about with regard to, does this specific offense characteristic apply or does it not? Does this adjustment apply or does it not? Are there things though as factually that you want to point out to me that are unresolved that we need to resolve now?

MR. JAUREGUI: Good afternoon, Your Honor. Sabino Jauregui on behalf of Henry Tarrio. With Your Honor's permission, I am going to be addressing the objections and Mr. Hassan will be addressing the 3553(a) factors.

THE COURT: Very well.

MR. JAUREGUI: I think Your Honor is correct. A lot of it is inferences that we are still going to be arguing. We will stand on the pleadings we have already made and we provided to the government. But, yes, much of the factual objections are going to be inferences on how we think the trial progressed and, you know, inferences that the probation office conducted themselves basically.

THE COURT: Okay. I mean, fair enough. But if there is -- if there are facts in here that you think are not correct that you want me to strike from this -- again, we are going to

be arguing. You know, you can see a situation where there is fact 1, fact 2 and fact 3. And the government is going to argue -- based on that he was a leader, just take one example. And you are going to argue no, no, no, Judge, that doesn't mean that. But if there is -- fact 1 or fact 2 or fact 3 that they say here is accurate and that you all want to -- you know, and that you all have an objection to, I need to resolve that factual objection before we progress further.

MR. JAUREGUI: I understand, Judge. Our main objections are going to be as to many of the enhancements and your aggravators. And we can get into that. A lot of the objections that we have and we have reduced to paper don't really specifically address those issues or they are encompassed in the objections we are going to make to the aggravating enhancements.

THE COURT: So let's put it this way, you would -- I don't want to put words in your mouth, but you would at the moment -- you don't have any objections to present to me on factual matters except insofar as we go ahead further and discuss a particular, you can -- let me put it this way: I will accept this as my findings of fact now, with the caveat that as we go through each part, some fact plays in the analysis, if you have an objection at that time and say, Judge, not only do we object to whatever that characteristic, but look here on page whatever in paragraph whatever of the report, we

object to that as a matter of fact. And then I will take it up at that point.

MR. JAUREGUI: Yes, Your Honor.

THE COURT: Is that a reasonable way to proceed?

MR. JAUREGUI: Yes, Your Honor, that is reasonably fair.

THE COURT: Let me ask the government if that is acceptable to you.

MR. MULROE: That is fine with the government.

THE COURT: So that is what I will do. I will just for the moment accept the facts as stated in the presentence report. And the report will be part of my findings of fact for the purposes of this sentencing, with the caveat that as we go through this, just to sort of save analytical energy as we get to a particular enhancement that turns on a particular fact and you want to object, that is not a fact that should be relied on by me and included in the PSR, I will hear your objections.

MR. JAUREGUI: Yes. Thank you, Your Honor.

THE COURT: All right. Very, very well. All right.

So next we turn to the determination of the guideline. And I will incorporate the facts and inferences which I laid out last week in denying the Rule 29 and 33 motions, which I do find proven to a preponderance. And, again, you all can talk to me about -- we will talk about specific facts and inferences from those facts that link up to

the different guidelines as we go through them. The presentence report does lay out the sentencing framework that applies in this case to a large degree. So let's -- let me go ahead and kind of walk through where I think -- well, in this case, we have where the parties are and where my analysis has been already with regard to resolving some of these matters already. And you all can decide whether you think you want to -- not reargue, but make any points that are specific to Mr. Tarrio or be heard otherwise regarding some of these guideline calculations.

So the first piece of this is the guidelines for Counts 1 through 4. I don't think -- no one questions that 2 and 3, it is 2J1.2 applies. And then as to Counts 1 and 4, there was an issue that I heard argument on in the omnibus hearing we had last week about whether that -- about what the appropriate guideline is for Count 1 and Count 4. There is nothing specific to Mr. Tarrio in that calculation. And I have already explained with regard to other -- my calculation of the guidelines for Mr. Tarrio's codefendants that I have concluded the guideline for Counts 1 and 4 is also 2J1.2, just like 2 and 3. I have put my reasoning on the record.

Again, I heard argument in the omnibus hearing we had. I have put my reasoning on the record for both of those conclusions. It is a legal conclusion that has nothing particular to do with Mr. Tarrio. So I will just conclude for

our purposes here again, incorporating my reasoning with regard to Mr. Tarrio's codefendants, that the base offense level will be 14 for Counts 1, 2, 3 and 4.

All right. The next set of sort of legal issues surrounding the guidelines are these three specific offense characteristics under 2J1.2. They are 2J1.2B12 and 2J1.2B2 and 2J1.2B3, specific offense characteristics for each one.

With regard to the first one, B12, we have heard argument -- I heard argument and evidence already about the question of whether the phrase administration of justice is sufficiently broad to cover congress' certification proceeding, which was required by law. Again, I have heard argument about this from multiple defendants. I don't think it is a major part of your papers, quite candidly, although I know you adopted some of the arguments that Mr. Nordean laid out. But I think it -- I will hear from you on that front if you want to. But otherwise I am inclined to conclude for all of the reasons I put on the record before, that the phrase administration of justice is so broad as to cover congress' certification proceeding.

However, there are some -- I know there are some arguments you will want to make to me particular to Mr. Tarrio on that specific offense characteristics. And the same may be for the other two, which are whether the offense resulted in substantial interference with the administration of justice and

whether for B3 the offense was extensive in scope, planning or preparation. Again, the administration of justice shows up on B2 as well. But why don't I hear from you then, Mr. Jauregui, on those three specific offense characteristics and any argument you want to make to me about that they do not apply to Mr. Tarrio.

MR. JAUREGUI: Thank you, Your Honor. We don't think they apply, neither of the three apply. I think factually specific as to my client, Mr. Tarrio, I know I have told Your Honor before, my client wasn't there on January 6. He participated in Telegram chats. He spoke to his buddies in the Proud Boys. And they made a plan to travel to DC. That was the plan and the only plan. There was no extensive planning on my client's part. They had a chat group. They decided to come to DC. And that was the end of it.

He was then out of commission. He followed the Court order. He left DC. He went to Baltimore. And that was the end of his involvement.

I don't think congress administers justice. I don't think they ever have, so we object to that. So we have got no planning. Congress does not administer justice. And as to the specific offense characteristics under 2J1.2B1B, Judge, my client was in Baltimore the whole time. He was out of any kind of communication with his alleged co-conspirators, who were here in DC with the leaders of what was going on on January 6,

Nordean and Biggs. There is no evidence adduced at trial that my client had any direct communication with anybody on the ground or that he orchestrated it or planned what happened on J6 or that he directed it in any way, shape or form. There was one phone call that was dropped. There was no expert evidence or testimony that that call ever even connected or that there was any actual communication before that chaos ensued and what happened that day.

He was in Baltimore. Did he say some things he shouldn't have, did he celebrate? Was he being a keyboard ninja like we alleged during the trial? Sure, he did that. But he did not have any direct influence, any direct orders to go and knock over a black fence or to touch a black fence. My client had no way to know that those things were going to happen, that a window was going to be broken, that a black fence was going to be trampled and thrown around. He had no personal knowledge. He did not touch that fence. He could not have reasonably foreseen all of those things happening.

And Your Honor sat during this trial and I saw Your Honor paid close attention every single day, every single day as we fought for hours. And Your Honor knows that he could not control the Proud Boys in the previous rallies. That was the problem. He could not control them in the previous rallies. All of a sudden, he is going to have complete and utter control of the Proud Boys on January 6? It is just not possible, Your

Honor. It was not reasonably foreseeable that what happened on J6, that he could have reasonably foreseen it, even under Pinkerton.

THE COURT: Let me just -- I understand your argument, obviously. And I will hear from government in response in a moment. But let me just give you the opportunity to respond to this which is to say: I understand your argument and it as you just alluded, that is the argument you made to the jury. And the jury didn't believe it. So where we are in the process right now, one way or the other, is that he is -- he was convicted on certain counts, not convicted on other counts. But the reality is, he is convicted and he stands before me today for sentencing convicted of Count 1, seditious conspiracy; Count 2, conspiracy to obstruct an official proceeding; Count 3, obstruction of an official proceeding; Count 4, conspiracy to prevent an officer from discharging his duties; Count 5, obstruction of law enforcement during a civil disorder; and Count 6, destruction of government property and aiding and abetting.

So I understand your argument, but I -- you know, the Lord knows, you made those arguments to the jury and to me in various contexts. But I don't know that they carry things very far here today when I have to apply the -- when I am sentencing him for the crimes that, in fact, the jury did convict him of, number 1. And number 2, that when I look at what the jury did,

and when I look at what the evidence is, all I have to do is, for example, as to -- well, take for example the fence. He is convicted of the offense. So I don't even have -- it is not even a question of me trying to figure out what was foreseeable and what was not. The jury thought it was. So any response to that, before I hear the government perhaps say the same thing?

MR. JAUREGUI: Well, Judge, you have a certain limited gatekeeper role even with the jury's verdict. I mean, the verdict was a little contradictory in that I think they hung on the window, but then they found him guilty of the fence. So Your Honor still retains a sort of gatekeeper function, even though respecting the jury's verdict, as we do -- I think that having heard the evidence throughout the trial, I think it is very difficult to argue or to say or to know that it was reasonably foreseeable what was going to happen with that fence. I would submit to Your Honor that it was not -- he did not -- could not have possibly reasonably foreseen that. The plan all along was to confront Antifa -- that was the plan -- and to protest.

If Your Honor remembers, something I tried to drill into the jury's mind throughout the trial, my client said over and over again that they were never going to be the first ones to cross a police line. They were never going to be the ones to attack the police. My client always said these things. My client was always pro law enforcement. Sure, there were a

bunch of Telegram chats and messages that were brought in from other Proud Boys that were chatting up from their mother's basement somewhere. But my client never did that. My client was never pro attacking the police. And he said over and over again, we respect law enforcement. We are never going to be the first ones to cross the police line. If anything, the intent was to confront Antifa on that day. That was my client's intent. This client -- to confront Antifa, to protest the election. But everything that happened after that, that was not my client's intent. That was not my client's plan. My client's plan was not to go and destroy government property or to assault law enforcement.

Even after the fact, even after what happened, he denounced the attacks against law enforcement. Even after that, he tried to help the people that he knew had assaulted law enforcement, he surrendered them. He went through law enforcement for that to happen. So at no point, could we say that he planned to destroy government property or that he planned to assault law enforcement. No evidence of that was ever developed during the trial.

THE COURT: What part of denouncing it was when someone asked, what should we do now? And he said, do it again. What part of that was denouncing what happened that day? I am really confused about that.

MR. JAUREGUI: Judge, that wasn't in an interview,

Judge. That was a statement --

THE COURT: I am aware of that.

MR. JAUREGUI: That was a response he did on a chat.

THE COURT: That was private, not public.

MR. JAUREGUI: Right. That was a response that he gave in a chat to his group of people there. That happened right there and then when he did not know the extent of the damage. He did not know the extent of the injuries to law enforcement. Once he realized that -- and while he wasn't the only one. A lot of people were watching that live. We didn't know the extent of what was going on immediately as it was happening. Him and the American people discovered little by little, after the fact --

THE COURT: Let's not worry about the American people, let's worry about him.

MR. JAUREGUI: What I am trying to say is, he realized the severity of what happened that day in the hours and days afterwards. Once he realized that law enforcement was attacked, once he realized that government property was destroyed, he denounced over and over again. And at no point before the chaos had ensued there did he ever say that he wanted to attack law enforcement, that he wanted to destroy -- and most importantly, he didn't ask the Proud Boys to do that either, most importantly, Your Honor.

THE COURT: We are getting a little far from this --

we are previewing things that we are going to be arguing about in the future, for sure. In the future, I mean later in our proceeding today. But it is a little beyond I think the specific offense characteristics. Why don't I hear from the government, anything you would like to say in response?

MR. MULROE: Your Honor, I think you put it quite well in your question and response to Mr. Jauregui. I certainly won't repeat all of that. But I think the jury's verdicts are dispositive on this question. And the Court certainly does have a gatekeeping or role as a backstop here. But Your Honor fully exercised that last week when you issued a comprehensive ruling on the defendant's Rule 29 and Rule 33 motions and laid out the many, many, many facts supporting this defendant's conviction on conspiracy counts and his convictions on various substantive counts, on which the jury really could only have found a co-conspirator liability theory. So for those reason under the guidelines principle of jointly undertaking criminal conduct, we do think all of these guidelines apply. And unless Your Honor has any questions, I will leave it at that.

THE COURT: All right. So with regard to these specific offense characteristics, the question is whether an 8 level enhancement under 2J1.2B1B applies because "The offense involved the causing or threatening to cause physical injury to a person or property damage in order to obstruct the

administration of justice." So we'll put aside the legal question about the phrase, the administration of justice. As I said, we'll just rely on the analysis and reasoning I have given in not just Mr. Tarrio's codefendants' cases, but in other cases to why I do think that phrase is broad enough to include congress' certification proceeding, which is the over -- the conclusion of the overwhelming number of judges in this district, although not every single one of them.

Putting that aside, kind of as for the factual issue, Mr. Tarrio objects. And he mentions here today that he was not present on January 6 and that there is no evidence that he directed anyone to commit an assault or battery or cause or threaten physical injury to anyone. But in convicting him of seditious conspiracy, the jury found that Mr. Tarrio joined an agreement to forcibly oppose the government's authority and to forcibly interfere with the execution of law. Especially on the evidence admitted at trial, that agreement alone represented a physical threat to congress and the Capitol building in its administration of the electoral count. And even beyond that, as I mentioned a moment ago, the jury found the evidence sufficient to convict Mr. Tarrio on Counts 3, 5 and 6, obstruction of an official proceeding, obstructing officers during a civil disorder and property destruction. And I have ruled the evidence was sufficient for them to have done that. As I mentioned, I incorporate all of the facts and

inferences I laid out in denying the Rule 29 and 33 motions. And I adopt them as proven to a preponderance for purposes of our proceeding here today.

So even if we just stop there, I think this specific offense characteristic would be appropriate. And additionally, Mr. Rehl's assault on the west front is relevant conduct for Mr. Tarrio as to this enhancement. As I found in earlier proceedings, a preponderance of the evidence shows that Mr. Rehl, one of Defendant Tarrio's codefendants shot some sort of chemical irritant at officers. And it is relevant conduct under the jointly undertaken criminal activity provision in the guidelines. That is 1B1.3A1B. Looking at the distinctive clothing Mr. Rehl was wearing that day and all of the clear shots of him in the video footage spraying something from a small canister, I haven't had any trouble concluding from a preponderance that he shot some sort of bear spray or pepper spray at the officers that day.

I find that this is relevant conduct for Mr. Tarrio under 1B1.3. For an act or omission of another to be relevant conduct, it must have been within the scope of the jointly undertaken criminal activity, in furtherance of that criminal activity and reasonably foreseeable in connection with that criminal activity. It is sort of the guidelines version of Pinkerton liability. And Mr. Rehl's conduct easily satisfies the standard that I just articulated. Using force was part of

the agreement for the seditious conspiracy. And the group routinely discussed using force against law enforcement specifically. The act was in furtherance of the agreement to disrupt the proceedings, because it aimed to overtake officers protecting the building.

And as for being reasonably foreseeable, again, to a preponderance, I find that is the case. Mr. Tarrio listed pepper spray on the basic gear list he sent to the MOSD leaders -- the MOSD meaning ministry of self-defense leaders chat a few days before the 6th. That is Government Exhibit 501-45. So this assault also offers an independent basis to apply the enhancement. So by a preponderance of the evidence, I do find that these acts, including the ones for which the jury convicted Mr. Tarrio, were intended to obstruct the administration of justice, within the meaning of this enhancement. The very object of the conspiracies for which the jury convicted Mr. Tarrio was to interfere with the electoral count happening inside the Capitol. So all and all, this enhancement applies.

With regard to 2J1.2B and B3, those two additional enhancements or -- I'm sorry -- specific offense characteristics to be clear, the first one is whether the offense resulted in substantial interference with the administration of justice. As for this one, it is -- it is difficult to imagine a more substantial disruption to the

1 administration of justice than January 6th's events. An entire
2 branch of government was brought to heel for a period delaying
3 proceedings designed to facilitate the transition of
4 presidential powers in part by the defendant. And that was all
5 brought about in part by the actions of the defendant and his
6 co-conspirators.
7 There is an interesting question about whether
8 because the specific offense characteristics says -- the words
9 are resulted in, that -- an argument that Mr. Tarrio has
10 adopted here that -- in which I believe Mr. Nordean argued
11 there has to be but for causation. In other words, that
12 essentially this enhancement could not be applicable unless the
13 government proved to a preponderance that the defendant or his
14 co-conspirators' actions were a but-for cause of the
15 substantial interference. I do think it is an interesting
16 argument. It would mean basically that this particular -- for
17 whatever it is worth, it would mean that this particular
18 enhancement probably wouldn't apply to any January 6 offense.
19 But I did have in the past, with regard to all of
20 Mr. Tarrio's codefendants, laid out why I think I find Judge
21 Mehta's analysis of this in the Rhode's case persuasive that
22 the standard for causation is not but for, but it is a more
23 relaxed standard as he described. So for that reason, I will
24 apply B2.
25 Under B3, I do find a preponderance of the evidence

that the offense was extensive in scope, planning and preparation by a combination of what the jury, in fact, found and reasonable inferences that could be found from a preponderance of the evidence. I do find by a preponderance that the defendants and Mr. Tarrio in particular began planning for January 6 as early as December 19th, by taking the following steps in furtherance of the conspiracies for which they were convicted: By creating a special invite only chapter within the Proud Boys and setting clear codes of conduct and a command structure for that chapter; by planning for chapter members not to wear, for example, Proud Boys' colors, to bring, as I mentioned, particular gear on January 6 and recruiting chapter members who agreed to follow orders. So for all of those reasons and incorporating my earlier findings, I do find this enhancement applies, which adds two levels to the analysis and to the offense level.

So what that all means is for Counts 1 through 4 add 8, 3 and 2, we get to 27 for the offense level.

The next question that the parties have sort of litigated before me -- not so sure you all have made individual arguments about Mr. Tarrio, but I will certainly hear from you, if you want to be heard -- is this issue about whether the aggravated assault cross-reference for Count 5, whether that applies. It ends up getting somewhat swallowed by the terrorism adjustment we are going to talk about in a moment.

But I have got to calculate the guidelines properly. So I applied that in other -- with regard to Count 5 regarding Mr. Tarrio's codefendants. But if you all want to be heard on if there is any wrinkle with regard to Mr. Tarrio, I will hear from you now.

MR. JAUREGUI: There is no specific wrinkle, Your Honor. I am familiar with the argument that Mr. Smith made and we would adopt that statement argument as to 2A2.4. But, I think, Your Honor, there is no specific factual thing that we can argue, just standing on the law as previously argued, Your Honor.

THE COURT: Okay. And that will be -- that will be certainly noted. I will then just quickly lay out -- I think there are, because I have to connect Mr. Tarrio here to some of this, I think I do need to just walk through for the record the basis here for why I will apply it. So the government has asked me to apply 2A2.4, the guideline for obstructing or impeding officers, to Mr. Tarrio's conviction on Count 5 for violating 18 United States Code section 231. Counsel for, in particular, Mr. Nordean challenged the application of the cross-reference to the aggravated assault guidelines.

So let me just detail briefly why I think the cross-reference applies even to Mr. Tarrio. Everyone seems to agree that applying guideline 2X5.1, that section 2A2.4 is the most analogous guideline. But 2A2.4C instructs that, "If the

conduct constituted aggravated assault, apply section 2A2.2." That guideline, in turn, defines aggravated assault in relevant part as "A felonious assault that involved an intent to commit another felony." The government listed a number of incidents that they think supports applying the cross-reference. And after considering this, I have indicated I found too persuasive Mr. Rehl's assault and Mr. Charles Donohoe's assaults on law enforcement that day. As to the other acts that they have identified for various reasons I have already described, I don't think they fill the bill.

However, I do find that Mr. Rehl's assault on law enforcement with pepper spray and Mr. Donohoe's assault on law enforcement by throwing a water bottle at a line of officers warrant applying the cross-reference to aggravated assault. By a preponderance of the evidence, I find that both acts constitute at least part of the 231(a)(3) violations as acts obstructing or interfering with law enforcement officers during a civil disorder. I won't restate the facts about Mr. Rehl's assault, because I have already walked through it, especially in other cases and why I think it -- and I have ventured why I think it conducts relevant offense conduct to Mr. Tarrio.

As for the Donohoe incident, the jury did hang on the 111(a) count based on this assault. That is not the same as acquitting the defendants of the assault. The evidence showed that during the attack on the Capitol, as the riot pushed

forward toward the building, Mr. Donohoe hurled a full water bottle at a line of law enforcement like a weapon. I find that evidence at trial showed to a preponderance that Donohoe was these defendants' co-conspirator -- that Mr. Tarrio's co-conspirator included. His role in the MOSD -- he had a role in the MOSD. And he was active in the MOSD chat groups and the planning session. He took on a prominent leadership role in the crowd. And Mr. Donohoe has pled guilty to conspiring to obstruct an official proceeding, with among others, Mr. Tarrio. I further find the assault was in the scope and in furtherance of Donohoe's jointly undertaken criminal activity with the other defendants, including Mr. Tarrio. And it was reasonably foreseeable to them for the same reason as Rehl's assault.

The object of the conspiracy was to stop the electoral count happening inside the Capitol as found by the jury. And overcoming law enforcement's defenses was a necessary step to do so.

I further find that both Mr. Rehl and Mr. Donohoe's conduct attributable to Mr. Tarrio is relevant offense conduct constituted activated assault. To the extent I haven't been 100 percent clear about this with regard to all of the defendants, they were felonious assaults, because I do find to a preponderance that they involved physical contact with a victim. And then they are aggravated assaults under the 2A2.2 application note because I find to a preponderance that

Mr. Rehl and Mr. Donohoe committed these assaults with the intent to commit another felony, that is the substantive 1512(c)(2) obstruction offense.

So on the whole, I find this cross-reference applies too. So I calculate the base offense level for Count 5 as 14 under 2A2.2. The government has asked me to enhance this level further in various ways that I have denied as I have laid out with respect to other defendants. So I will just rely on the reasoning I have laid out in those cases to again deny the government's additional enhancements they have asked for with regard to Count 5 -- or enhancements, specific offense characteristics to be technically correct.

All right. So then we move to, for Count 6, which is the piece of this that plays a very big role in what the guidelines end up looking like for Mr. Tarrio and his codefendants. And that is the terrorism adjustment for Count 6. I already walked through this before with regard to Mr. Tarrio's codefendants. But I will certainly -- and I have applied it, although as you all know, I varied downward from its application for various reasons. I do think, again, in calculating the guidelines, as I mentioned before, I don't actually -- I guess for part of the analysis, I have no choice. It is -- Mr. Tarrio was convicted of one of the enumerated offenses in the statute. And the other part is about what the mental state of the person has to be to make it a federal crime

of terrorism, which is that whether it was calculated to influence or effect the conduct of government by intimidation or coercion or to retaliate against government conduct. You know, I will just be candid, I don't think it is a very close call here, especially given the offenses that the jury convicted Mr. Tarrio of. So let me hear whether you want to make a specific argument as to him.

MR. JAUREGUI: Yes. Thank you, Your Honor. And I know that Your Honor has applied this to the other defendants, Judge. I would say, Judge, my client is no terrorist. My client is a misguided patriot. That is what my client is. This is not some foreign national waging war against the United States. My client thought that he was saving this country, saving this republic. He went to protest. And I can see the thinking -- pepper spray, the gear. But I want to make clear that the pepper spray and the gear list was to fight Antifa, Your Honor. That is what the list was for. And that is clear from the Telegram chats that the pepper spray was for Antifa, the armor was for Antifa, the helmets were for Antifa. Did they engage in these brawls with Antifa on the street? Sure, they did, many times. And they thought they were going to engage in those brawls on J6. But the pepper spray and the armor were not for the police. That was never my client's intention. It was never my client's intention to intimidate or coerce or retaliate against the United States government.

Judge, my client comes from a country where there are no rights. There is nothing. Okay. He was trying to protect this country, as misguided as he was. But that is what he was, a misguided patriot. He was no terrorist. It was not his job -- it is not his intention to bring down the United States government or overthrow the United States government.

THE COURT: I guess, again, we are going to -- let me just say this: Again, I don't think, given what the jury found here, that there is really much wiggle room on this. Again, even if there was, we are going to come back to this and be arguing about it I am sure later in our proceeding. But when you say he was misguided, I guess I am kind of confused. Because you said earlier he was just there to protest. So what was he misguided about?

MR. JAUREGUI: He was misguided as to --

THE COURT: That is not what the jury found, to be clear.

MR. JAUREGUI: Judge, I think that Your Honor, respectfully, still like I argued to you earlier, you have a gatekeeper function. Okay. Just because this jury found certain facts based on the evidence they foresaw that was open to interpretation, for example, Your Honor made a point of Rehl getting this pepper spray and spraying the officers. Was that reasonably foreseeable to my client? I would submit to Your Honor that it was not. It was so unreasonably foreseeable that

the government didn't even know it happened until Rehl took the stand.

THE COURT: I don't think that --

MR. JAUREGUI: That was never charged in the indictment. They found out after the fact, so not even the government knew of that fact.

THE COURT: Clearly. On that, that is why I do have to make separate findings regarding that. But regarding kind of the overall -- but I don't have to -- when looking at, for example, whether the terrorism -- whether this adjustment applied -- and let me just press pause and say, you say my client is no terrorist. To be clear, I said this in other sentencings. It is not my -- here is what my job is, as I know you know, to apply the guidelines. They call it a terrorism adjustment. You can call it whatever you would like. What it means is, was there one of these enumerated crimes on the one hand? And was it calculated to influence or effect the conduct of government by intimidation or coercion on the other hand? So I leave that -- it is not my job to label anybody a terrorist. And nothing I do here today does that one way or the other. I do have to calculate the guidelines properly. I do have to assess and I do have to -- as we have said, sort of, account for the jury's -- what the jury found here with regard to, for example, all of the counts of conviction, but in particular the seditious conspiracy conviction. And so,

anyway, when you say he was misguided, I guess, I am unclear about what you mean by that.

MR. JAUREGUI: Judge, could I have 30 seconds with my client, if that would be all right?

THE COURT: Yes. Sure.

(Pause.)

MR. JAUREGUI: Thank you, Your Honor. Judge, what I wanted to discuss and after consulting with my client as to the black fence specifically --

THE COURT: Uh-huh.

MR. JAUREGUI: I think Your Honor would agree with me after sitting in trial with us all of these months, that my client reiterated over and over again that the Proud Boys were never going to be the first ones to cross police lines.

THE COURT: Well, it is funny that you -- I know you keep saying that. And, again, the jury convicted of seditious conspiracy. Even if I wanted to respond to your point on its own terms, I recall the evidence where someone -- I recall someone said to your client, well, gee, I had a plan or we -- that is right. We could have rolled over the police on one of these prior occasions. And your client said, oh, I had a plan for that, but someone talked me out of it. So I guess, again, I hear your argument. I don't think it gets very far in the context of a case in which the jury has convicted him of seditious conspiracy. But even if I did think so, to say, oh,

my goodness, there is no evidence of his -- that he would be willing to take up arms against the police or to take up arms to use force or violence against the police, I don't think that reflects the state of the evidence in the trial.

MR. JAUREGUI: Well, as Your Honor knows, there were never any arms --

THE COURT: I know that.

MR. JAUREGUI: -- with the Proud Boys that -- my client never advocated taking arms. My client never advocated taking up arms against law enforcement or any federal agents.

THE COURT: Fair.

MR. JAUREGUI: And unlike other members in those Telegram chats that Your Honor remembers, there were some horrible messages on those Telegram chats, of which my client -- he never approved those messages. I think the evidence was clear that he didn't read most of those messages to begin with. He wasn't online when those messages were being sent.

As to the black fence, Your Honor. The black fence was a means to an end. It was a barrier that was there. There was no intent by my client, any kind of intent or direct knowledge or direct instruction from my client to anybody on the ground on January 6 to either traverse a black fence, to attack a black fence, to dismember a black fence. I guess what I am trying to argue to Your Honor is how many layers removed

1 does my client have to be to still be found responsible for
2 these other people's actions? Because at this point, he is
3 already out of commission. He is out of DC. He is not
4 directly instructing anybody on what they could do. And as
5 Your Honor remembers, there was that message between Biggs
6 where Biggs said something to the effect of, I have a plan or
7 Tarrio has a plan, but we are going with my plan. Okay. I
8 don't know if Your Honor recalls that. I am not using the
9 exact same words. But something to the effect that my client's
10 plan was different than what they were going with.
11 THE COURT: Early in the day.
12 MR. JAUREGUI: Earlier in the day, remember. And
13 beyond that, there is no evidence of any other communication
14 whatsoever. So how many layers far removed does my client have
15 to be? He is not only not physically present. Number 2, he is
16 not having any direct communication with anybody. And there is
17 no evidence whatsoever that there is any kind of direct
18 communication between him and people on the ground to do
19 anything to that fence. So he has got no knowledge and he has
20 got no intent. And I hate to argue the same thing, it is not
21 reasonably foreseeable, what was going to happen to that fence.
22 So I don't see how the terrorism offense can apply in this case
23 respectfully, Your Honor.
24 I know you have applied it to the other people. But
25 those people were there. They were following a chain of

command of people that have already testified at sentencing that they were the leaders that day, that they said I was the leader that day. And they followed me and I shouldn't have done that. My client was not there. And there is no evidence whatsoever, so what are we going to do? Are we going to speculate as to the absence of evidence? I would submit that Your Honor should not do that.

THE COURT: All right. Let me hear from the government on this particular -- on the terrorism adjustment vis-a-vis Mr. Tarrio.

MR. MULROE: Your Honor, I think that much like the section 2J1.2 adjustments, the jury's verdicts resolve this question. He was found guilty of the destruction of that fence. And that is an enumerated offense, so the terrorism adjustment applies. I think given that and given Your Honor's exhaustive treatment of the facts last week and the Rule 29 ruling, it is not necessary to get into a blow-by-blow recitation of the facts here, unless the Court wants to hear it.

But I do want to respond to one thing that you heard earlier and we are hearing again from Mr. Jauregui, this notion that Mr. Tarrio was completely incommunicado on the 6th. I just don't think that is what the evidence reflected. There was evidence throughout the trial, beginning with his release from custody on the 5th that he was speaking to co-conspirators

on the phone, by FaceTime, in the Nick Quested video, there was references to calling Rufio, there was a FaceTime with Mr. Bertino. He was then re-added to the chats, was active in those chats on the evening of the 5th, on the morning of the 6th. He is talking about getting livestreams on the morning of the 6th, so that he can keep up with the action from afar. And then in Exhibit 653-1, I think contrary to what he heard earlier, there was in fact a completed call between Mr. Tarrio and Mr. Biggs that lasted 42 seconds. And that was described during the trial at transcript page 12,646. I think Your Honor also noted it last week in the Rule 29 ruling, transcript page 138.

So I mean all of that, I don't think, you know, really is necessary, given the totality of the evidence in this case and given the jury's verdicts. But I do want to make sure that the record is clear on what the evidence did and did not show.

THE COURT: I am going to do what you are going to do, Mr. Jauregui, which is to say that the evidence at trial showed the phone connected for 42 seconds, but didn't reflect the content of any communications.

MR. JAUREGUI: And, Your Honor, the timing of the call, I think it was like 2:55 so it was after -- it was already after the entrance to the Capitol. So even at that point, it had already happened.

THE COURT: Fair enough.

MR. JAUREGUI: Thank you, Your Honor.

THE COURT: All right. So I will also note -- so let me -- on Count 6, the applicable guideline is 2B1.1. And the base offense level is 6. No special offense characteristics apply here. However, as to this offense only, the government asks to apply the terrorism adjustment under 3A1.4.

Briefly I will just note that last week I rejected counsel for Nordean's argument that I should apply a clear and convincing evidence standard to this enhancement instead of the preponderance standard. There is no authority for me to do so in this circuit. But even if there were, I don't think it is a close call, so I would still find the enhancement applies even if there was a clear and convincing evidence requirement.

So section 3A1.4 provides both a 12-level enhancement and to the defendant's criminal history category when the offense was "A felony that was involved but intended to promote a federal crime of terrorism" as that term is defined in 18 United States Code section 2332(b)(G)(5).

Looking to that statute then, a federal crime of terrorism is one that is "Calculated to influence or affect the conduct of government by intimidation or coercion or to retaliate against government conduct." And is one of the enumerated offenses under that statute.

So first in his sentencing memo, Mr. Tarrio discusses

other January 6 cases where judges have refused to apply the 3A1.4 in January 6 cases. But I am in a very different position on that issue than those judges, because as I mentioned numerous times last week -- and it is a highly technical point, but still a point that matters when properly calculating the guidelines. Those judges were considering only whether to depart upward under the guidelines range or from the guidelines range pursuant to comment 4 of the guideline, a question committed to those courts' discretion.

Here, the government seeks to apply the actual enhancement or the actual adjustment, I should say, to the defendant's -- to Mr. Tarrio's 18 United States Code 1361 conviction. And that offense is an enumerated offense under the relevant statute. So unlike the courts in those other cases, I am not really just in a position to just decide not to apply it if I -- assuming I conclude the facts otherwise warrant its application.

Mr. Tarrio makes a bunch of arguments here that the offenses -- that this kind of offense -- and I think by arguing -- his argument that he is not a terrorist is sort of an argument that the conduct here, whatever one thinks of it and whatever one thinks of what the jury concluded, is undoubtedly not the same as things we might all very colloquially think of as terrorism, blowing up a building or receiving training to go confront the United States military on

the battlefield. So we'll talk about those things later.

But the reality is that is a variance argument. It is not an argument that this terrorism adjustment should not apply. And with that, I do find that the adjustment applies to Count 6. So I will add 12 levels to that count. And here is the way we get there where I feel it is appropriate to get there. Mr. Nordean's and Mr. Biggs' participation in the destruction of that black fence is a federal crime of terrorism under 2332(b)(G)(5). Section 18 United States Code section 1361 is one of the enumerated offenses referenced in that provision. And I find by preponderance of the evidence that the offense was "Calculated to influence or affect the conduct of government by intimidation or coercion." To be clear, this latter element is a specific intent element.

On these facts, I do think a preponderance of the evidence shows that Mr. Nordean and Mr. Biggs participated in that fence destruction with the requisite intent to constitute a federal crime of terrorism, even though the government is not asking me to apply the adjustment to the -- even aside from how this may play out with regard to other convictions, the seditious conspiracy conviction in particular, reveals the jury's conclusion that the defendants had conspired to use force to "Influence or affect the conduct of government," specifically by forcibly opposing its authority and preventing, hindering or delaying the execution of a law. The use of force

would amount to intimidation or coercion.

So the only real question is whether I can find that the destruction of the fence specifically was calculated to advance that broader purpose. And for reasons I already discussed, I do think it -- I do find that it was. I have explained the evidence showing the defendant's apparent calculation and deliberation of taking down the fence or participating in that, the fence held the crowd back. Tearing it down allowed the entire mob to overwhelm law enforcement, advance on the Capitol and ultimately bringing the proceedings to a halt. So taking down the fence directly furthered the defendant's unlawful agreement and took them one step closer to the objective the jury concluded that they shared.

So, again, I just don't think this is actually a close call.

What that means for Tarrio, as I have already explained, he is equally responsible for Mr. Biggs' and Mr. Nordean's conduct with respect to the fence. The jury concluded as much by convicting him for violating section 1361 himself, presumably under Pinkerton liability. That is enough to apply the enhancement to his conviction on Count 6 too. In that sense Mr. Tarrio's responsibility for this conduct stems from his own intent, found by the jury to enter an agreement to use force against the government. So even though Mr. Tarrio did not directly participate in the fence's destruction, his

intent on seditious conspiracy, as found by the jury, supports the application of this adjustment.

Thus, for those reasons, the -- with the 12 level -- before I get to that, I will just say the government has asked me to depart using the application note 403A1.4. I put on the record with regard to Mr. Tarrio's codefendants why I am not going to do that. And, of course, again I am not going to do that for those same reasons here. I will just incorporate my prior analysis.

What that brings us to then with regard to Count 6 is that the offense level moves to a 32 with a criminal history category of 6. I do agree with the PSR parenthetically that otherwise Mr. Tarrio's criminal history category would be 3 unlike his codefendants, but in any event it goes to 6.

The only other two meaningful things we need to discuss -- and they are meaningful, assuming there is no real argument on -- about the grouping analysis or about some of the other departures the government has asked me to undertake that I have declined with regard to the other defendants is the role -- is two other adjustments that would apply jumping off from an offense level of 32 and a criminal history category of 6, which would be the sort of lead count.

The first is the role in the offense adjustment. The PSR and the government requests a 4-level enhancement for Mr. Tarrio's role in the offense. I think in some ways, I feel

like before we get to obstruction of justice, maybe, Mr. Jauregui, your arguments are sort of -- we have almost already covered them. I mean, I think, you know, your point that he wasn't there and the rest is -- I feel like I have heard you already. But I want to give you the opportunity to say whatever you want to say on this one as well.

MR. JAUREGUI: Thank you, Your Honor. And I will try and be concise. I think that my client was the leader of the Proud Boys. He was definitely not the leader of what happened on January 6. What happened that day was not his plan, was not his idea. It was not what he wanted. And he was definitely not the leader of the events on January 6.

THE COURT: Okay. You raise a good point. And I will address it in a moment I think or a point that I think warrants me saying a few other things about. I do find that by a preponderance of the evidence that Mr. Tarrio was an "Organizer or leader of criminal activity that involved five or more participants or was otherwise extensive." So the 4-level enhancement is appropriate. It is an enhancement that again I gave to Mr. Nordean and Mr. Biggs. Now that I think about it, not that it is relevant really here, but did not I don't think object to that enhancement.

I do think the evidence of Mr. Tarrio's leadership was, quite frankly, evident throughout the trial from the creation of the MOSD less than a day after there was a call for

former President Trump supporters to come to Washington on January 6. And Mr. Biggs suggested to Mr. Tarrio that it was time for them "To get radical and get real men." I think Mr. Tarrio set the rules. He pitched the chapter to the Proud Boys elders. He led the call for members. Furthermore, I think these chats were full of instances where Mr. Tarrio organized meetings among the leaders and otherwise directed the group's conduct. And even though his arrest ultimately kept him from the Capitol grounds on the 6th, I think there was evidence and in part what Mr. -- what the government, Mr. Mulroe, mentioned a moment ago that Mr. Tarrio still exercised leadership over the MOSD and the Proud Boys leading up to the event.

Even as of the morning of the 6th there was the chat or the email that counsel for Mr. Tarrio mentioned, which Mr. Biggs is saying, I have spoken with Tarrio. And I think there is numerous -- the government has laid out those things, has just articulated some of those things where Mr. Tarrio was still either in contact or attempting to be in contact with the folks on the ground that day. And, you know, again, if for no other -- there was scattered evidence of that throughout the early part of the -- well, before then. But if for no other reason than we have Mr. Tarrio -- and we'll get to some of these things, you know, saying that, let's see what happened -- later in that day, publicly posting, Proud of my boys and my

country and don't fucking leave while the Capitol was being overrun.

Sometimes not all contact between co-conspirators needs to be concealed. Sometimes it can happen right out in the open. So I do think -- but Mr. Tarrio I think makes the point that just being a leader of the Proud Boys doesn't make him a leader under this guideline or quite candidly a leader for the way I am to consider the offense here. And I think undeniably he is right.

But that is not what -- the jury did not convict him of being associated with the Proud Boys. The jury convicted him of seditious conspiracy and conspiracy to obstruct congress proceedings. And quite apart from his role in the Proud Boys generally, the evidence showed quite clearly he was a leader of the conspiracies for which the jury found him guilty. And for which I might add, I think it is a reasonable inference from the evidence at trial that there were plenty of Proud Boys members -- members of Proud Boys chapters across the country that had no role in what happened that day at all.

Mr. Tarrio also argues that he didn't direct anyone to enter the Capitol specifically. But, again, I just mentioned that I think his leadership was in evidence throughout the evidence of the trial, including as I mentioned, his instruction on social media, don't fucking leave. So I do find that a preponderance of the evidence shows that Mr. Tarrio

was the top of the command structure in the regard of planning and organizing the offense. And with that, I will find a 4-level upward adjustment for role of the offense.

That brings us to a 36. And the last is obstruction of justice adjustment under 3C1.1A. The PSR recommends a 2-level enhancement for Mr. Tarrio for willfully obstructing or impeding the administration of justice with respect to the investigation, prosecution or sentencing of these offenses.

Importantly, according to application note 7, I am not supposed to apply this adjustment to offenses under 2J1.2. So Counts 1 through 4 here, unless "A significant further obstruction occurred during the investigation, prosecution or sentencing of the offense itself."

So let me hear from the government on these. I must say, for some of these, I am not sure -- the government sort of throws a number of different factual scenarios at this and argues that I should enhance for obstruction of justice. I guess, the first issue was this issue of Mr. Tarrio trying to keep his communications and social media from law enforcement after his arrest in some way. I am not sure that would count here because that seems like that is conduct that was going on while the offense of conviction was underway. The other thing the government argues -- they cite Government Exhibit 500-107. It is some communications between Mr. Tarrio and others including Mr. Nordean, in which he sort of advises other

1 members of a particular Proud Boys chat that they are going to
2 arrest Mr. Nordean. So this is in February. They are going to
3 arrest Mr. Nordean soon. And he says, he is keeping his phone
4 away and we need to remove him. And then they remove him from
5 that chat. I am not sure simply conceptually someone who is
6 about to be arrested, making sure the government -- that
7 strikes me as different than deleting -- in theory deleting
8 evidence -- just simply saying we are going to remove him from
9 chats going forward.
10 And I will skip over for the moment the question of
11 Mr. Pezzola's testimony at trial about a voicemail from
12 Mr. Tarrio. And I will just say, I have also listened to the
13 exhibit that the government put forth regarding what Mr. Tarrio
14 was saying about Proud Boys sort of cooperating with the
15 authorities or not cooperating. And I am not sure that makes
16 it either. It is kind of an elliptical announcement that seems
17 to just sort of say, we have all got to hang together in some
18 way, let's put it that way. And I am not sure it gets you
19 obstruction.
20 I do think to me the strongest argument is the one I
21 skipped over which is the voice note that Mr. Pezzola testified
22 to that it was a -- he received a voice note through
23 Mr. Bertino through Mr. Tarrio instructing him to tell law
24 enforcement that he was not affiliated with the Proud Boys.
25 That strikes me as your strongest argument. But so because it

is the government's burden to make the case for one of these adjustments, let me hear from the government first. And then I will hear from counsel for Mr. Tarrio.

MR. MULROE: Certainly. Your Honor, I think the Court would be well within its discretion to apply this adjustment based on the totality of the defendant's conduct. With that said, I think it is not one that we will spend a lot of time trying to change your mind on given its likely role in the overall 3553(a) factors.

Just a factual thing with respect to the removal of Mr. Nordean and how that might be distinct from the deleting of messages. My recollection was that the testimony at trial said that when you removed someone from a chat, that would also remove that chat from their phone. And if I am right about that, then removing him from the chat would, in fact, be tantamount to deleting the records of that chat from the phone that was sort of bound for possession of law enforcement at that point.

But, you know, not something we are going to hang a lot of weight on there. Appreciate this concealment of the messages was something that was sort of common to all of the defendants. And Your Honor has not applied it across the board. So we won't argue that he is necessarily very differently situated. Although, as the leader he does carry extra authority in that vector.

The message put out to kind of a large group I think is the inference about hanging together and the guy has got to know that we are holding tight, kind of paraphrasing here. I think that, frankly, we don't know what we don't know in terms of the effect that had on the overall investigation. As Your Honor appreciates, this offense involved numerous participants. There was close to 200 of them on the ground in the marching group. And then there was a partially overlapping but also separate and separately quite large group that was in the planning chats in the lead up to the 6th.

So if the message from the leader of the conspiracy reaches them that the guys in jail need to know that we have got their backs, I mean, it seems to me that the most natural reading of that is don't cooperate. And whether that had any effect, we really can't prove the negative there. But that is something we think factors in.

And, finally, the third one --

THE COURT: Can I just press pause on that? Because I do find this interesting. If one codefendant says to another codefendant -- you know, the word cooperate can mean all sorts of different things, I guess. If one codefendant says to another codefendant after an offense is completed, hey, don't talk to the police, is that obstruction? I mean, every person has the right to talk to the police or not talk to the police. I just -- that to me is -- I am not saying it is crazy for the

government to think that this might have had that effect or let me put it this way: It is crazy for the government to think that this might have made it harder for the government to investigate this crime. But, sure, that is -- there is a line between telling someone, don't talk to the police, which every citizen is free to not do if they are -- if within -- voluntarily. Obviously, there are subpoenas and other methods. But my point is just an interview, any citizen is free not to talk to the police if they would not like to. So I think it is a harder inference to make in a situation like this.

MR. MULROE: I think that is fair. I think we would go to the language of the guideline commentary application of 4A. And it adds qualifiers which are threatening, intimidating or otherwise unlawfully influencing someone in their decision to provide information or not provide information. So the unlawfully, I think we are maybe even getting 1512 and back to corruptly. And that is just not necessarily for us to wade into today. But I think it does, you know, constitute part of this pattern of conduct that is the basis for our asking for the adjustment.

But in term of the one that Your Honor finds most persuasive, I do think that getting this message to Codefendant Pezzola to provide a material falsehood is, which is different, not just declining to provide information, but affirmatively providing false information is more in the heartland of what

the guideline is meant to address. So we think that that would get us over the line. But respecting there is room for disagreement.

THE COURT: Okay. Mr. Jauregui.

MR. JAUREGUI: Thank you very much, Your Honor. Judge, I disagree with my friend from the government. I think that the testimony of the expert -- of the computer expert was extremely wishy-washy. If Your Honor recalls, I cross-examined her very hard. She didn't even know what version of Telegram that they were working with. And she testified --

THE COURT: Let me focus you. I am only considering the one with Pezzola so --

MR. JAUREGUI: Let me focus on that one, Judge.

Judge, I think that the testimony deduced at trial from Mr. Pezzola, I think there is no independent evidence of that, of what he testified to of this communication with the -- this alleged communication with Bertino. I do not think it rises to the level of significant obstruction. So I think Your Honor should not apply that enhancement. I really don't think it is to that level. I think it was something to the effect of that my client told him to say that he wasn't a Proud Boy. That is my recollection. But I don't think that is a --

Yeah. And we don't even know if that was to law enforcement or to the media that was seeking comment. So I don't think that is significant obstruction to rise to the

level of adding his enhancement, Your Honor.

THE COURT: Where were we? This came up with another defendant. And I just want to make sure I am applying this -- there is nothing in the basic 3C1.1 that requires it to be significant, is there? I mean, we talked about this in terms of -- I think it came up with regard to -- I know it came up with regard to Mr. Biggs -- an interview Mr. Biggs had given. That is a little different. And as I recall, although I am looking at the guideline right now, I couldn't -- I think the -- if I recall there was -- the word significant was part of the analysis of where we needed to be for it to apply.

MR. MULROE: Your Honor, I think that would be application of 4G. And this involves material false statement to law enforcement officer that is significantly obstructed or impeded the official investigation.

THE COURT: Right. But this is a little different. The -- this doesn't -- there is no significant qualifier here. Would you agree with me? Under --

MR. MULROE: Under 4A.

THE COURT: Go ahead.

MR. MULROE: There is -- right. I think the absence of that is significant.

THE COURT: All right. Anything further?

MR. JAUREGUI: Judge, he still had to willfully obstruct and impede. And it is unclear from Pezzola's

1 testimony what he, I guess, allegedly instructs him. Who is he
2 trying to instruct Pezzola to willfully impede the
3 investigation of at that point. We have no other independent
4 evidence of that.
5 THE COURT: Well, I mean, you know, in many cases
6 when we are trying to figure out whether enhancements or
7 adjustments apply, we are, you know -- the government has to
8 prove this to a preponderance. We actually have trial
9 testimony which is, you know, I mean a more significant level
10 of proof I would say than -- hold on one second. Well, I am
11 also looking at -- hold on. Let's just make sure -- the other
12 note that is here is an application note. If the defendant is
13 convicted of an offense covered by a contempt, obstruction,
14 et cetera, et cetera, this adjustment is not to be applied to
15 the offense level for that offense except if a significant
16 further obstruction occurred during the investigation,
17 prosecution or sentencing of the obstruction offense itself.
18 So, you know, well, of course, this -- for that
19 reason, I am not going to apply it. I am not going to apply
20 it. So I will decline to -- I will decline to on any of those
21 bases, add an obstruction of justice adjustment.
22 So we do have then an offense level of 36, a criminal
23 history category of 6, which puts Mr. Tarrio at a guideline
24 sentence range of 324 months to 405 months incarceration. As I
25 calculated as all of the things we have just gone through here,

is there any objection to that guideline sentence calculation?

MR. MULROE: Not from the government.

MR. JAUREGUI: Noting all of the other objections that we have already done, thank you, Your Honor.

THE COURT: All right. Absolutely.

We have also -- the government has also asked me to in their memo depart in various ways under 5K2.7 and 5K2.0A3. I have already indicated I am not going to depart upward on -- for any of those reasons. I have indicated it on the record in the other cases. And I will just rely on what I have said with regard to Mr. Tarrio's codefendants in explaining why I am not going to depart for either one of those grounds.

Thus, we end up with a framework as follows: The penalties for Count 1 through 3 -- statutory penalties are 20 years; for Count 4, 6 years; for Count 5, 5 years; and for Count 6, 10 years. For supervised release, under the statute, I may impose a term of supervised release of not more than 3 years per count. And the guideline range for a term of supervised release is 1 year to 3 years per count. The maximum fine under the statute is $250,000. Under the guidelines the recommended fine is between 40,000 and 250,000. There is also a mandatory special assessment of $100 per felony conviction under 18 United States Code 3013(a)(2)(A).

So, again, have I stated accurately the statutory and guidelines framework in order which we are operating in regard

to this case, subject to all of the objections that have already been made, from the government?

MR. MULROE: I believe so, Your Honor.

MR. JAUREGUI: I believe so as well, Your Honor.

THE COURT: All right. Very well. I must now consider the relevant factors that congress set out under 18 United States Code section 3553(a). And I must 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. 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 before I turn to the parties to hear them on the 3553(a) factors, let me ask our court reporter whether -- you are good to go. And our intrepid court reporter will continue.

So let me hear then from the government to start on the 3553(a) factors and the government's sentencing recommendation.

MR. MULROE: Your Honor, Enrique Tarrio was the leader of this conspiracy. He was on a tier of his own in playing a role qualitatively different from that of the others. The United States is requesting a sentence of 33 years. We recommend that the Court not vary downward. However, if Your Honor is inclined to vary downward, he should still be sentenced well above all of his codefendants for the reasons that we will argue.

Turning to the 3553(a) factors and beginning with the nature and circumstances of this offense, I think it was the end of last week, Your Honor, you summed it up perfectly. If we don't have the peaceful transfer of power, we don't have anything. That is exactly right. This defendant and his co-conspirator targeted our entire system of government. That is the gravamen of this offense. And that is something that I am going to return to later.

But I think it is also important to recognize the immediate, tangible effects of what this defendant and his co-conspirators did. This crime hurt people. It hurt a lot of people. We heard last week from three of the officer victims. Officer Cooney testified -- she talked about the heartbreak of fighting for her life against fellow citizens who claimed to be

patriots. Inspector Loyd told us about the horrifying experience of seeing his officers knocked unconscious and being seriously injured at Peace Circle then going down to fight alongside of them on the west front.

Officer Ode described the physical agony he suffered, as well as the memories, what he called the deep marks that never fully heal. And beyond that our sentencing memorandum, included quotes from the trial testimony of a handful of other officers. But as Your Honor knows, there were countless others alongside them, enough probably to form a line back from this podium out the courtroom and all of the way out the doors to this courthouse.

Every single one of them has their own scars now. Every single one of them has their own story of how they served that day. And they represent the best of American law enforcement, law enforcement that this defendant portrayed as the enemy of the people. Gestapo forces is the phrase that he used after the 6th when his investigation began.

This offense also involved extensive damage to property. There was a fence that was one of the counts of conviction and millions of dollars of broader damage to the building and grounds. At trial, Jason McIntyre from the Architect of the Capitol told us about that. He also testified about the building and its history and its place in American life. And you could hear the reverence in his voice when he

1 described the Capitol, not only as the place where the
2 legislature does business, but also a place where the American
3 public can come visit and be inspired by what they see.
4 Mr. Tarrio's subordinates as part of the conspiracy that he
5 orchestrated, they defiled that place. And he celebrated that.
6 Your Honor, all of this took place because of a
7 critical mass of people. It started small, but it was a
8 critical mass of people. That tried to use force and violence
9 to unlawfully impose their view of what was right for the
10 country. And that brings us to the central role that was
11 played by Enrique Tarrio and by those who fell under his
12 leadership.
13 Now, many of the images of January 6 are just a huge
14 sea of rioters where the actions of any one individual or group
15 might just seem like a drop in the bucket. But that is not
16 true of the group that he organized. The Proud Boys marching
17 group was not a drop in the bucket. They were a tidal wave of
18 force that had such a dramatic effect on the day's events. We
19 can think of the scene at Peace Circle, breach number 1 that
20 started it all. Your Honor accurately described that in the
21 Rule 29 ruling last week. You told us about the video that
22 showed that that scene of Peace Circle was sparse and peaceful
23 before they arrived. This large group of men ready to fight.
24 As Your Honor explained, they had an integral role in that
25 first breach.

That is not just Nordean, Briggs, Rehl and Pezzola but the many other members of the marching group as well. And Agent Nicky Miller when she testified showed us the video, she pointed out how many members of the marching group made up that first wave of rioters crashing over those barricades.

Just imagine what takes place at Peace Circle if that group had not done what they did there -- a dramatically different outcome. And it was Mr. Tarrio with the assistance of his codefendants who brought that group together and imposed a structure on them, directed them to bring gear, ordered them not to wear colors, summoned them to Washington, DC, launched them at the Capitol and then celebrated and congratulated them for what they did there.

Proud of you all, he said. Do it again. The actions of that group were absolutely pivotal to what happened on January 6th. And it followed directly from the plotting and the planning of their leader, Enrique Tarrio.

Now, Your Honor, that leadership is, obviously, relevant to the offense conduct. But the way that he led the Proud Boys, the way he exercised his powers as chairman, it goes beyond the offenses of conviction and that broader pattern of leadership is relevant to his history and characteristics. Now, respecting what Your Honor said before, this is not the fact that he was chairman of the Proud Boys. This is the way he exercised that leadership.

The refrain from the defense since the case began is the Proud Boys are nothing more than a drinking club with a politics problem, harmless. That is probably true for some of the members at some times. But this defendant, Enrique Tarrio, promoted a very different direction. And I think Your Honor recognized that in the Rule 29 ruling last week.

His leadership over the Proud Boys was violence and manipulation. He demonized his perceived adversaries. He glorified the use of force against them. He distributed violent propaganda to his thousands and thousands of followers. He elevated the street fighting element, the so-called rally boys. And he practiced and he endorsed the use of misinformation, plausible deniability, as Your Honor mentioned last week; deceiving the public; cultivating fear, those are his words. He compared himself to Joseph Goebbels in his use of these techniques. And for all of those reasons he is unique among his codefendants in the extent of his toxic influence over others.

He is also unique for his criminal record. This defendant has a prior federal conviction from 2013 involving the misbranding and sale of more than $1 million in stolen medical supplies. That is reflected in PSR paragraph 127. And that prior conviction for a federal conspiracy, that sets him apart, not only from all of his codefendants in this case, but I would venture from virtually all January 6 defendants across

the board. And that is hugely significant as it relates to specific deterrence -- prior federal conspiracy conviction.

So when he was organizing with his codefendants, when he was joining together with them, he knew what a conspiracy was. He knew what he was doing. He did it anyway.

More recently, he committed the offenses that are summarized at paragraph 128 of the PSR. And those included the burning of the Black Lives Matter banner that belonged to a historic black church. This episode, it reveals so much about the character of Enrique Tarrio. This was a callous and violent act that was made worse by his actions afterward when he bragged about it. He made fun of the idea that this had racial aspects. He said, he was proud and would do it again. And true to form, he used it as a marketing opportunity to rile up his followers in advance of January 6th.

So all of those T-shirts we saw on the video, all of those T-shirts saying Enrique Tarrio did nothing wrong, that is the visible manifestation of his influence spreading the message that using force against your political enemies is justified. And in his words, fuck the law.

And meanwhile his communications with the Metropolitan Police Department lieutenant about the ongoing investigation, those showed how successful he could be in manipulating sympathetic law enforcement officers to advance his own interests. The way he put it to his co-conspirators

was we got the jump on the banner burning narrative, thanks to his connection at the MPD.

I want to briefly respond to something Mr. Jauregui said earlier and that is Mr. Tarrio helped law enforcement by I think his words were by surrendering others to police in the aftermath of January 6th. Respectfully, I do not think that is an accurate description of his conduct. And Your Honor has the trial exhibits, the chats between Mr. Tarrio and Lieutenant Lamond, I think that those reveal that he offered up a single name of a single person who was involved. Suffice to say, she was not a defendant in this case. Suffice to say, she was not a Proud Boy at all. So this was not an attempt to help law enforcement. This was just like everything else he did. He was trying to help himself and his friends.

So, Your Honor, it is clear in hindsight that there was no genuine remorse for any of Mr. Tarrio's prior offenses. And it is clear that there has been none for this offense. In the immediate aftermath of the riot, he made that litany of public statements saying, never apologize. I am not denouncing shit. You are the resistance and so on and so on.

Sometime later after his codefendants were arrested, he posed for a photo holding a lighter up to the Capitol as if he were burning it, wearing a T-shirt that said free the Proud Boys by any means necessary. And then even in the middle of his own trial, while the jury was out deliberating, he gave an

interview to tens of thousands of listeners in which he said, the Proud Boys did nothing wrong. I would note that was in violation of the jail's rules against three-way calling, not that that is what is important about that. But "The Proud Boys did nothing wrong" while that jury is out.

The defendant's sentencing memorandum cited a CNN interview that he gave in February of 2021. And I don't know whether they will show any clips from that or not. But if the Court is considering relying on that at all, I hope the Court has had time to actually watch the whole thing. It was given about 7 weeks after January 6. And I submitted it was transparently an attempt at public relations and damage control in light of all of the negative publicity. Even in that posture, he was unapologetic. Some other quotes from that interview, I am not going to cry about people who don't give a crap about their constituents. I am not going to sympathize with them. That is how he responded when the interviewer asked whether he had any sympathy for the terrified members of congress hiding for their lives in the house chamber.

He said, I will celebrate the moment government does fear the people.

And he said, I will never regret something that I said.

So never regretting things that he said, brings me to this idea of denouncing -- I don't know whether we will hear

more about denouncing, but Mr. Jauregui earlier said that Mr. Tarrio denounced what happened on January 6. I just want to respond to that by directing the Court to Exhibit 600-75. I wasn't going to read this verbatim, but I think it is worth doing at this point. This is from January 9 at 3:30 p.m. He posted to his Parlor after 48 hours of wall-to-wall press coverage, probably the lead story on every news outlet worldwide. His words two days after the riot were, "I am not denouncing shit. I am not denouncing anything on the right. I am done giving concessions. Not a single ounce of virtue signaling will be shown. So you can fuck right off. Denounce this dick."

Your Honor, everything about this defendant's history and characteristics weighs in favor of a sentence substantially above that of his codefendants. I just highlight for example Joseph Biggs. When Your Honor handed down Mr. Biggs' sentence, one of the reasons that you articulated for the downward variance was Biggs' personal background, his military service. His personal heart. His service to the country.

You just don't have anything like that here. Back in 2012 when Biggs was putting on a uniform to defend the country, Mr. Tarrio was engaged in a federal conspiracy involving multiple felonies.

And the last factor we would ask the Court to consider is deterrence, in particular how important it is that

the sentence afford adequate general deterrence in this case. Your Honor has said a number of times at prior sentencings the events of January 6th cannot happen again. And we hope that they don't. But the fact is that there are today and there will always be those who contemplate using force to shape our politics. Some of them are isolated individuals. And others, like Mr. Tarrio, have influence over others.

The leaders of this conspiracy made a series of decisions to do what they did. And they were not blind to the potential consequences. You heard that in Ethan Nordean's podcast when he referred to the possible consequences of using force against the government. You heard about it in Jerry Bertino's testimony, when he said there would have been no consequences if only they had been successful in the revolution.

So Your Honor was right during the sentencing of Mr. Biggs and I think again this afternoon to say that this offense involved calculation and deliberation and that means it can be deterred. So we need to make sure that the consequences are abundantly clear to anyone who might be unhappy with the results in 2024 or 2028 or 2032, or any future election for as long as this case is remembered. Because as the guidelines properly recognize, this was a calculated act of terrorism.

Now, the issue that we grappled with last week is how to measure this offense against maybe more familiar terrorism

offenses that involve extremely lethal means. And the defense sentencing memorandum makes this point and they have made it already today. This offense is not like September 11th, it is not like the Oklahoma City bombing. And that is true, this crime is different. But that difference does not detract from the gravity of what Mr. Tarrio and his codefendants did.

I think that there are two different ways that you can look at these offenses of terrorism. On the one hand, you can look at the proximate harm that they caused or they threated, the actual or potential lives lost. And from that perspective, of course, there is no comparison between this crime and something like 911, Oklahoma City. On the other hand, we can also look at these crimes on the terms of the threat that they pose to the long-term survival of our institutions. And on that vector, this offense is as bad as any. That is what makes January 6 so frightening. They came so close to succeeding.

There was a very real possibility that we were going to wake up on January 7th in a full blown constitutional crisis with the federal government in complete chaos, 300 million Americans having no idea who the next president would be or how that would be decided and all of the terrifying implications for control over the military and law enforcement, a collapse of the rule of law. That is what revolution means. And that is what he openly pursued. And that is what he very nearly

achieved. And it didn't take rifles and explosives.

Now, that absence, Your Honor, of extremely lethal means, no guns, no bombs, now that does in a sense, that mitigates this offense, no question. But in another important sense, that increases the long term threat of this defendant's conduct. Because the brand of violence that he promoted was one that was made palatable to some, appealing to so many. Political violence that if we are not careful can become normalized. And that is marketing.

Enrique Tarrio used his abilities to attract followers by the thousands. And Your Honor has sentenced some of them in this case and other cases. These are men who would never dream of strapping a bomb to their chest or signing up for some training camp in the desert. But they were thrilled at the notion of traveling from city to city and beating their adversaries unconscious in a street fight.

Mr. Tarrio could take someone like Dominic Pezzola and entice him to get in his car, leave behind his wife and daughter, and become a lord of war. That is how you get Dominic Pezzola, a 43-year-old man who owns his own business calling Enrique Tarrio boss. So Your Honor asked I think three times last week for Rehl, for Pezzola, for Nordean, how did we get from point A to point B?

I submit a large part of it is the man sitting at that table, this defendant increased his own stature, his own

power by fanning the flames of violence, political violence that is utterly corrosive to the rule of law and that leads our society down a very dark path. And the party atmosphere that accompanied that violence doesn't mitigate it in the least. It only makes it more seductive to those that might fall under its spell. You remember what he told Biggs right before they formed MOSD, "The drinking stuff helps us mask and recruit."

Your Honor, that is while Mr. Tarrio's sentence, even more than any of the others, needs to reflect the reality of their conduct. Street violence, organized on a national scale, and then brought to bear against the seat of government. That isn't frat boy antics, that isn't razzle-dazzle. That is not as they said this morning or this afternoon, it is not misguided patriotism. It is dangerous. It is unacceptable and it needs to be punished appropriately. That is why the United States respectfully requests a sentence of 33 years imprisonment.

Recognizing that the Court last week has calibrated the other sentences somewhat below our recommendations, we do stress that this sentence should at the very least be substantially greater than either Ethan Nordean's, reflecting his much, much, much greater leadership role in the offense and his aggravating factors and his history and characteristics. And a sentence substantially above Nordean's would also ensure proportionality with the sentence received by Stewart Rhodes,

the other conspiracy leader. And that is given the far greater impact that this conspiracy had on the events of January 6th, as I believe Your Honor acknowledged last week. Your Honor, that is our recommendation. Unless the Court has questions, thank you for your attention.

THE COURT: All right. Very well. Thank you, Mr. Mulroe. Let me check in with our court reporter. Is now time for a break?

We can proceed. All right.

Let me hear from counsel for Mr. Tarrio then.

MR. HASSAN: Good afternoon, Judge. Nayib Hassan on behalf of Enrique Tarrio, Judge.

Judge, the Court when it initially went into this as far as discussing the 3553 factors, I think the Court highlights the pertinent points as far as what we need to look at when determining what is an appropriate sentence that is sufficient but not greater than necessary for Mr. Enrique Tarrio, Judge.

In doing so, we need to look at certain things. The Court looked at it, quite frankly, and the Court highlights the nature and circumstances of the offense and the history and characteristics of the defendant. Judge, when we go into the nature and circumstances of the offense, we go into -- we went into great detail regarding the sentencing memorandum and as far as the actions of who did what and where individuals were.

And we listened to Mr. Mulroe here stand before the Court and talk about who was where on January 6th. And a missing component in all of that -- my colleague did an ample opportunity -- and I see the Court nodding, Judge. Mr. Enrique Tarrio was not in Washington, DC on January 6th, Judge.

The government tries to make best efforts to represent him as a general controlling his soldiers. But the problem is that the general didn't have communication with his soldiers on January 6. Judge, we look at it and then we compare it. And we have got to look at sentencing disparities. I will get into that later. When we look at Oath Keepers and Stewart Rhodes, we have to compare that as well. And part of the sentence that was imposed there, when we look at a leader of another organization, Judge.

Judge, I will lead by where I want to end, Judge. And the sentence that I would ask the Court to impose is no greater than 15 years in this case, Judge.

When we look at the actions of Enrique Tarrio, he -- although he was ordered to stay away from Washington, DC, he did exactly that as ordered by the DC Circuit Court. He left the jurisdiction. By sentencing him to a greater sentence of 18 years, we are sentencing him and putting him on the same plateau as Mr. Rhodes, which was present on Capitol grounds on January 6, Judge. We also look at interviews that transpired subsequent to January 6, Judge.

And the government goes into great highlight to highlight a statement that Enrique Tarrio made on January 9th. But yet when we discuss an interview that he conducts two weeks after that on January 17th on CNN, the government tries to push that aside. During that CNN interview, he clearly notes that some of his co-conspirators that sat in the trial with him, after the Court had the opportunity to review that video, he said Mr. Pezzola was absolutely, unequivocally wrong for doing what he did and using that shield to go into the Capitol. He even goes so far as saying that the other participants on January 6 are also guilty of the action of trespass, Judge.

THE COURT: Why did he compare them to the Founding Fathers then?

MR. HASSAN: Judge, as far as --

THE COURT: That is what he said about Mr. Pezzola. He compared him to George Washington.

MR. HASSAN: That was --

THE COURT: Not in that interview, to be clear, not in that interview.

MR. HASSAN: Not in that interview, that is correct, Judge, not during the course of that interview.

THE COURT: I understand.

MR. HASSAN: That was made at other times. He made statements. Were they wrong? Yes. I said it during my closing arguments, he likes to talk trash. He is -- we say it

in our Spanish language, Judge, and there is particular notation because he is from Cuban heritage. But they talk -- the exact reference is we talk shit. And that is exactly what he was doing. He was fluffing himself up. But that is exactly what he did that day and that is what he did at prior times, Judge.

THE COURT: He should keep George Washington out of it.

MR. HASSAN: Judge, I would agree with you completely. But nonetheless, Judge, when we are making comments, Judge, which he is just making comments straight out of his head. They are not anticipated to cause what transpired on January 6, Judge.

Judge, we go so far and we have continued along and we are looking at the history and personal characteristics of the defendant, Judge. The Court had ample opportunity to see his family throughout the whole trial. Multiple members from his family stood in the trial, stood in the gallery for 5 months and observed the trial every single day, including his mom which is here present to make a statement to the Court. His aunt and his significant other, Judge, they were there during the whole time.

THE COURT: And I have read all of the letters.

MR. HASSAN: Judge, I appreciate that. In fact, there is one individual that can't be present, she provided a

statement. She was here last week on Wednesday, but due in part to the Court's issue, she can't be present. But with the Court's opportunity, I will read that in just a moment.

Judge, we follow that up with history and personal characteristics. His employment history. This is an individual that at one point had a steady job, Judge. He had a 6-figure salary in a company making over $100,000 at one point during his life. So can he make himself right? Can he not go back to this? Absolutely, Judge. And when he has denounced his position at Proud Boys, when he separated himself completely from the Proud Boys, when he is not the national chairman, when all of this place is beside him and he terminates his sentence, this is an individual which absolutely can go back to society and be a normal, working individual in society, Judge.

Now, we look at something else in particular, Judge, the history and cooperation of Mr. Enrique Tarrio cooperating with law enforcement. And the government shines light regarding the 2013 case, Judge. But it didn't shine light regarding his cooperation with law enforcement during that time period. And he assisted individuals which were then arrested and prosecuted for very serious crimes. And I highlighted those in my sentencing memorandum, Judge.

Subsequent to January 6th, he communicated with Officer Lamond. And the government makes note of this

regarding the other individual, which is Nicole Roberson, which she is willing to surrender to law enforcement if they were looking for her. The government said, well, Nicole Roberson wasn't in charge here. Yet Nicole Roberson was listed as a government witness in this actual case. And at some point in time, she would have testified against these five individuals, more so against Mr. Enrique Tarrio. So for the government to now slice the bone and say, she wasn't part of the conspiracy knowing, in fact, she was going to testify potentially in this case.

Looking at also when we talk about cooperation with law enforcement agencies, he himself said there were -- they were guilty of certain officers, Judge, and that they were wrong for their issues.

Additionally, Judge, during the pendency of this case, there were discussions between the government and counsel, Judge, regarding potential resolutions in this case. Those didn't come to fruition. But I do want to highlight to the Court, those discussions were actually entertained between counsel for the defense and counsel for the government.

Another issue that the government notes is the law enforcement officers that were on the ground that day and that were affected. And there is much ado regarding Officer Ode. But if the Court notes and recalls the testimony that transpired during Officer Ode's testimony, it was at the

request of Mr. Tarrio that I approach and I thank him for his service, Judge, and that I apologize for his actions, Judge. I could have gone into lengthy questioning with Officer Ode on that day. But, yet, it was at Mr. Tarrio's request that I stand up there and appreciate him for his work and I appreciate him for his service on January 6 and for what he had to undergo that day, Judge.

Judge, Mr. Tarrio also has an insurmountable amount of volunteer and charitable work throughout his time. During Hurricane Harvey the relief efforts that transpired in Texas, he drove from Miami, Florida, approximately 16 hours into Texas and assisted families and individuals that were suffering as a result of the catastrophe in Texas, Judge. He was on boats. He was helping families leave their residences. He was helping save their pets at times, Judge.

This goes to show who Mr. Enrique Tarrio is outside of what transpired on January 6, Judge. We also look at some of the other things he has done, his involvement with Toys for Tots and helping children. We also look at the collection donations for gift cards to buy for disadvantaged youth with the Curley's House Food. They are all things that go to Mr. Enrique Tarrio's individual.

Judge, another thing that we highlighted during our sentencing memorandum is the fact that during the period when he was moved to Washington, DC and started his trial and

through which should be late in October through now, Judge, he has been in what I would say not your normal circumstances being incarcerated in jail. Normally when individuals are incarcerated, they are incarcerated, they have free time, they walk out. They can have free time. Enrique Tarrio and I believe some of the other codefendants have sat in similar circumstances where they have been housed for 22 hours and only have 2 hours outside. This would be considered severe punishment. So, Judge, I want to take that -- I want to ask the Court to take that into note.

Judge, when I looked at sentencing disparities in consideration of speaking before Your Honor, the one I wanted to focus on was on Stewart Rhodes. And we see other individuals that have been sentenced to the charges in this case, Judge, seditious conspiracy. And we look at individuals as the Court notes that had mass casualties, that individuals severely suffered. I don't take away from the officers that suffered trauma in this case. We don't take away from that. There is severe trauma that officers involved on that day had. But we have got to separate ourselves from that to what transpired in this case and the only individual that we can place Mr. Enrique Tarrio similar to looking at the facts in this case would be Stewart Rhodes.

When looking at Stewart Rhodes, we look at Stewart Rhodes through Rhodes was in Washington, DC on January 6.

Stewart Rhodes assembled an arsenal of firearms in Virginia for his followers. Stewart Rhodes himself had an arsenal of firearms in the trunk of his car. On January 6th, he had a Signal chat for his followers where he egged the Oath Keepers leaders on into January 6.

And even though he didn't go into the Capitol himself, he was on Capitol grounds, Judge. He assembled the firearms for himself and others after January 6. That is not the position that we see here from Mr. Enrique Tarrio. Subsequent to the release of -- Judge, we are talking about January 6th. Enrique Tarrio wasn't -- he wasn't taken into custody until March of 2022, a year and 3 months. The rhetoric of Mr. Enrique Tarrio for a year and 3 months had completely changed, completely changed. I expect when you hear the rhetoric from Mr. Enrique Tarrio, when he speaks, you are going to be able to see the same rhetoric. And it is not the individual that is trying to sugar coat and trying to take away from his efforts. That is the same individual that made the statements to CNN just 11 days after January 6th.

Now, I know the Court is going to note and I believe the government is going to highlight this if the Court gives him another opportunity, what about the August -- what about the August picture where he has the lighter and he has a lighter to the Capitol? Judge, what we can note is that there were Proud Boys being detained for 22 hours a day. Mr. Enrique

Tarrio knew this. And he felt bad for those individuals that were detained for 22 hours a day.

Judge, should Enrique Tarrio be sentenced more severe than Stewart Rhodes, absolutely not, Judge. That is my point, Judge.

THE COURT: Can I stop you, Mr. Hassan, for one moment?

MR. HASSAN: Absolutely, judge.

THE COURT: You know, we are arguing back and forth about -- not arguing, you -- the government is pointing me to certain statements your client made. You are sort of prebutting something they might have said. You are arguing to me, no, no, look at the CNN interview. I guess, so far you have argued to me that with regard to, for example, whether specific -- we are talking about specific offense characteristics or we are talking about certain enhancements or we are talking about the nature of the offense, I feel like we are kind of dancing around a key point. You are arguing to me he didn't do the crime the jury convicted him of. So, I guess, my point is, I -- I will, of course, consider what he comes up here and says to me.

But, you know, if someone is convicted of a very serious offense and a lesser offense they come up and say, jeez -- I guess my point is, I don't understand how you can be arguing to me that he is remorseful when he doesn't acknowledge

the crime for which he was convicted or several of the more important crimes for which he was convicted. How do I -- how am I supposed to grapple with that? How am I supposed to consider that?

MR. HASSAN: I am going to ask the Court to listen to him and consider his statements when grappling with that. At the end of the day, it is going to be his statements in and of themself -- they are going to make a statement to the Court, Judge. I can highlight to the Court, Judge, that our position has always maintained that he wasn't in DC, Judge. I get the Court's inference, Judge. That doesn't take away from the fact that he was convicted of the action, Judge.

THE COURT: That is your position and it is correct. No one is arguing anything other than he wasn't in DC. We all know where he was when he was. But that is an entirely separate question from the fact that the jury convicted him of seditious conspiracy. So anyway, I am not disputing he wasn't here. The government is not. We all know where he was at given times. But I guess, again, to argue, look at this statement on CNN, look at this, look at that, okay. I mean, I think I weigh all of those things for whatever they are worth. I mean, I have got to say, it is certainly a very -- his statements while the offense was basically going on are quite revealing about his mindset at that time. But if you are here to argue to me, no, Judge, look many times -- we have many

months have gone by and look at this, his attitude is different, okay. I mean, I will hear him. But you all have not certainly laid the groundwork for him to step up and say, I am so sorry for committing seditious conspiracy. So I guess I will see what he says.

MR. HASSAN: Judge, the one thing I will note for Court and I see where the focus of the Court is, Judge. But nonetheless another focus of the Court should be sentencing disparities. When he focus, Mr. Rhodes --

THE COURT: That is a different argument and I am hearing you on it. Just to me, we are kind of dancing around a kind of important point. We are talking about, well, this statement and that statement. Anyway, but, yes, I have to consider unwanted sentencing disparities and I will do that.

MR. HASSAN: Judge, that is one of the main focuses we need to focus on. Because the Court last week imposed various sentences. Those sentences ranged from 18 years down to 10 years depending on what the Court made considerations of. And we have an individual that is now scoring 360 to life, unlike other defendants which the Court has previously sentenced in this case in and of itself. And those individuals were on the grounds at January 6 and did cause the actions for which Mr. Tarrio was convicted of, Judge.

THE COURT: Yes.

MR. HASSAN: And we take from those individuals which

1 were on the ground on January 6, which had similar rhetoric to
2 which Mr. Tarrio leading up to January 6 had in Telegram posts
3 and their statements leading up to and their involvement
4 regarding the hierarchy, where they were in the hierarchy of
5 the Proud Boys. Even in the MOSD, however the Court wants to
6 interpret the MOSD and what the structure was for. But then we
7 take that structure where the Court has already imposed
8 sentences and compare that with the Oath Keepers where those
9 individuals had firearms. And that is where I am asking the
10 Court to rest their position on what an appropriate sentence
11 is.
12 Because if we are not talking about seditious
13 conspiracy, then we are in a whole different ballgame; right?
14 We are talking about different guidelines. We are talking
15 about everything completely -- so we take what we have, the
16 facts that are imposed in this case and we determine a sentence
17 which is sufficient but not greater than necessary. So,
18 therefore, when making those considerations -- Judge, we have
19 all had the opportunity to look at what other sentences were
20 imposed in this case and similar cases similar to this one.
21 And, therefore, that is where I came up with my range that it
22 be a sentence not greater than 15 years, Judge.
23 Judge, I don't know if the Court wishes to hear from
24 the individuals at this point in time. I mean, I do intend to
25 bring up individuals.

THE COURT: Let me check with the court reporter -- if you are done speaking to me and we are turning to hearing from Mr. Tarrio or anyone else, let me just check with the court reporter. Do we need a break, sir? Or madam, I'm sorry. I can't see you from here. All right. Wow. I am going to take a 5-minute break. All right. If the court reporter -- this is first time this has ever happened. All right. Why don't we take a 5-minute break. I will come back and hear from Mr. Tarrio and any other witnesses and then we'll proceed from there.

MR. HASSAN: Thank you, Judge.

(Recess taken at 4:17 p.m.)

THE COURTROOM DEPUTY: We are back on the record in criminal matter 21-175, United States of America versus defendant 5, Enrique Tarrio.

THE COURT: All right. Mr. Hassan, you can proceed however you would like in terms of whether you have Mr. Tarrio speak or a witness or two, you also want to speak or -- I think you also indicated you are going to read a statement as well.

MR. HASSAN: Judge, that is correct, Judge. With the Court's permission, if I can read into the record the statement that was made by his aunt, Judge.

THE COURT: Yes.

MR. HASSAN: Judge, it reads -- and this is from Gladys Pardo. She was here during a portion of the case,

Judge. And it reads in part, Good morning, Your Honor. And this was written for the morning sentence that was supposed to transpire on Wednesday at 10:00 a.m.

Thank you for granting me the opportunity to speak here today. My name is Gladys Pardo. Not only am I the aunt of Henry Tarrio, but I am also his godmother, a role that I hold dear to my heart, but more than these titles, Henry is more like my first born. Henry is a man that always cherished the family moments. We are not a big family, but we are very united. We have stood together while this has all developed letting him know that our family is not whole until he is home. He holds his family above all else. Through all that has transpired, he powers forward and provides a stable and secure spirit for his family.

From our conversations it is evident that he has learned so much in the past months. He has commented to me that friends and country may have a place in all of our lives. But nothing compared to building memories with a family and a financial future for his own family.

Your Honor, Henry is not a monster or a bad person like he has been made out to be. This all may be based on the political situation. But we may see through this individual involved here. We must be seen as a person with extensive human values. Henry has family values and will always help and analyze, understand and overcome all that has happened.

He has already missed so much, a grandmother's funeral, my own daughter's wedding, the birth of a niece and many other events that he has missed being part of. Those moments will never come back, which in itself is punishment.

Henry and I have a tradition of taking a selfie at Thanksgiving dinner every year and I post it on my fridge until the following year when it gets changed. We have had the same picture there for two years. I ask of you to please give this family an opportunity to reunite soon. He has meant so much and has also learned. And she puts a lot of Os after so much.

Your Honor, I am asking you to consider leniency for my nephew. Let this all be over and may the world move on.

Thank you, Gladys Pardo, Judge.

With that said, Judge, I will ask the Court to allow his sister, Alexzandra Padron, to come forward, Judge, and make a statement for the Court. Does the Court want me to remain here or do you want me to return to my seat, Judge?

THE COURT: You can return to your seat, as long as if she will just introduce herself and her name for the record before she begins speaking.

MS. PADRON: Hi. My name is Alexzandra Padron. Judge Kelly, I put my name Alexzandra Padron. I am Henry Tarrio's younger sister. I stand before you today to plead for your leniency on the fate of my brother's life. Henry and I share an almost 13-year age difference. For most siblings,

that is a big enough gap where it would make sense not to be as close. But I am lucky enough to call Henry my best friend. Henry and I are two very different people. That has never made us love each other any less. We have shared different views, different opinions about pretty much everything in life. But he has always listened and respected and never tried to steer me from what I believe is right.

Henry is the type of person to give the shirt off his back. He is very loyal and very loving. And to truly know the real him is to love him. Henry is the piece that completes our family. He is the glue that keeps us together. And just the idea of him not being around for all of the milestones is a thought too painful to bear. My brother is far from perfect, but he is a good person who deserves a chance. The last year and a half that he has been away from us have been the hardest of our lives. Watching the pain that this has caused our family, I know has changed my brother for the better and forever. Given the opportunity, I know Henry will show everyone the man he truly is. Your Honor, I kindly ask you to consider giving me my brother back.

Thank you for the opportunity to stand before you today.

THE COURT: Thank you for your statement.

MR. HASSAN: Judge, we would also ask Shelia Maqueria to come to the stand.

MS. MAQUERIA: Good afternoon. My name is Shelia Maqueria. I am here today to talk about who Henry really is, not the man portrayed through media or the man portrayed through trial, but who he is to me. I have known Henry for a decade now to various capacities, as a friend, a confidant and currently as his fiance. Our relationship made 8 years this June, which I celebrated alone. I understand the importance of this moment and the weight of the decision you are about to make. And I hope that my words can offer you deeper insight into Henry's character.

Throughout our years together, I have observed Henry's admirable qualities that truly define his nature. He is a person who exudes warmth and kindness. He has a natural ability to connect with others, always lending an ear and a helping hand whenever it is needed. In simpler words, he is a people person. He cares for those who he spends time with. Henry is a loyal and caring friend. He has always gone above and beyond for those closest and dearest to him, the same way he did for a stranger he just met and needed help. We have taken in strays. He has he provided a roof over the head of a friend just trying to get back on his feet. He is the first to drop whatever he is doing to make time for something that is asked of him.

I'm sorry.

THE COURT: It is okay. Take your time.

MS. MAQUERIA: If he thought it would help them in any way.

His incarceration has been a difficult period for both of us. And it has been particularly tough on Henry who has spent so much of it with limited communication to the outside world, other than the books that I have sent him. During the 17 mouths away from home, he has missed many things, as they have already mentioned. But he has missed birthdays, anniversaries, holidays, his cousin's wedding, but most notably he missed the last couple of months of the woman who helped raise him, which was his great aunt.

During the 8 years of our relationship, we have lived under the same roof as his grandfather in Henry's childhood home for no other reason than to care for him and to be close to him. Among the many things Henry has had the time to reflect, upon his grandfather's frailty is on the top of his list. He just turned 91 years old. And like all of us, time starts to catch up. Henry's greatest fear as is mine is that something were to happen while he is incarcerated. I make it a point to spend more time at home and make sure that spirits are lifted during the traditional 9:00 a.m. coffee gatherings at the house. But I cannot take the place of his grandson.

During the five months of this trial, I have sat in this courtroom, alongside his mother watching Henry change. His time away from home has made him worry, yes, about what

lies for him tomorrow. But at the forefront, it has always been the ripple effect that it will cause me and his mother and those closest to him. As a result from today, it will have a direct effect on our plans for a family and our home together. And I ask that you take that into consideration during your deliberation.

Henry is a flawed man, as are we all. But he is not blind to it. This time of solitude has made him realize the many turns that he has taken that have led him to where we are today. I truly believe he has opened his eyes to the current situation and the many things he took for granted. I wholeheartedly vouch for this man's character, which is shaped by his kindless, loyalty and family values. I believe he learned from his experiences and will emerge from this chapter with a renewed commitment to live a life aligned with his true nature.

I thank you for your consideration to my perspective. And I trust that you will make the best decision for not only Henry, but also for myself, his family that wait for him. Thank you.

THE COURT: All right. Thank you.

MR. HASSAN: Judge, we would also ask for his mother, Zuny Tarrio, wishes to make a statement before the Court as well.

THE COURT: All right. Very well.

MS. DE TARRIO: Good afternoon, Your Honor. My name is Zuny Duarte de Tarrio. And the man sitting to my right in the orange jumpsuit is my only son, Henry Tarrio, not Enrique Tarrio, Henry Tarrio. That is the name his father and I gave him at birth.

My goal today is for Your Honor to know a little bit about the real person you are about to sentence here today. I have selected my words very carefully. Since this is probably the most difficult thing a mother can do in a lifetime. And words can get tangled in emotions, so I will try to get by in the next couple of minutes as best I can. As Your Honor may or may not know, I sat through this long trial every single day except for a few days that I was sick and returned to Miami.

It was important not only for Henry to turn to his right and see me in court every single day, but for everyone else to know that the man on trial had a family that cared and who would go above and beyond to stay here for him because we believed in him.

My son has been portrayed as a character to fit modern society, to fit the new culture we presently live in. Him and I have spoken several times how we got to his big chaos. And he has agreed that he has had to endure very difficult moments being away from his family, which is the thing he loves the most and seeing our pain. He has said to me, the future awaits a totally different Henry Tarrio. No

more politics, no more capes, just a simply family man doing good for our community, society and with much different views.

He is a self-educated individual. He has requested over 100 books during his 17 long months of incarceration. This is a man that will do good for the future, for others and society. The experience he has gained during this whole situation makes him cherish his life and those that actually care for him. I respectfully ask Your Honor to see beyond the politics, beyond the media. Your Honor, your decision here today can and will change the lives of so many people, but the most important life you are going to impact is Henry's life.

It surprised me to hear that he has no respect for law enforcement since in our family we have several officers of the law. And, also, during his work with my daughter, we saw many law enforcement officers come and go in our shop. He has always been very respectful. He was so respectful that when he was told to leave DC, he left. He didn't stay.

Judge Kelly, please, I kindly implore you to consider the fact that Henry is still young. And that he and his fiance want to start a family. Henry has family that needs him home, especially his grandfather. This case has not only convicted Henry, but has convicted our family that stands behind him truly knowing the person that he is and that he will be from today on.

There is a word, Judge Kelly, that is very difficult

for most people to even pronounce and it is the word beg. This mother stands before you today begging you for leniency for Henry. We need him home as soon as we can. And the Henry that came into this system is not the Henry that is here today. It is a different Henry.

Thank you, Judge Timothy Kelly, for all of the time that you have dedicated to this case. I know there has been times that have been very difficult. But today you said something that I hadn't heard before. You said the words, Lord knows. And it is true. Lord does know.

Thank you, Judge Kelly, for letting me stand before you today after so many months I looked at you from way back there. You have a great afternoon, Judge Kelly. Thank you.

THE COURT: Thank you for your statement as well.

MR. HASSAN: Judge, Mr. Tarrio wishes to make a statement. I have certain recommendations that I am asking the Court to do. I don't know if the Court wants to hear them now or after his statement, Judge, to the Court.

THE COURT: Afterward.

MR. HASSAN: That is perfect, Judge. So at this time, Judge, Mr. Tarrio. I know don't know if the Court wishes him to remain there or --

THE COURT: No. He should come to the podium and you may come with him.

THE DEFENDANT: Your Honor, thank you for this

opportunity to address the Court. First of all, I want to voice to this Court and Your Honor, and those present, how sorry I am for the events that occurred on January 6th.

I want to start by addressing those affected. At the forefront of those affected are the men and women of law enforcement who bravely and selflessly responded on that horrible day. I have heard some people villainize and degrade these office by using words like traitors or un-American. These characterizations are so far removed from reality. These officers deserve nothing but praise respect and to be honored as the heroes that they are. I am extremely ashamed and disappointed that they were caused grief and suffering. I will have to live with that shame and disappointment for the rest of my life.

I always -- I always tried to hold myself to a higher standard and I failed. I failed miserably. I thought of myself morally above others. And this trial has humbled me and showed me how wrong I truly was to believe that.

This has been an extremely tough pill to swallow. Those police officers deserve better. I have always held the badge in high regard. And I hope one day I can make amends directly to them.

There is another group of individuals who also deserve an apology and haven't been spoken for. Those individuals are the citizens of the District of Columbia. I

want to be dead honest with you, Your Honor. When I came before you on December 14th and met some of the citizens of the District, some of which would later become the members of the jury I believed at the time they would be biased. After listening to their stories and accounts of that day, I realize that it was I, the one with the bias.

I noticed that at the time that I failed to consider how the local population had been affected. I should have put myself in their shoes. How would I feel if someone came to my home and turned it upside down?

The citizens of DC deserve better. What happened on January 6 was a national embarrassment. To the citizens of DC, I am profusely sorry for what happened to you that day.

Your Honor, I spent the last year and a half trying to figure out how I arrived at this podium before you. On election day, November 3rd, something happened that I didn't expect, my candidate lost. The following morning, I couldn't believe it. I felt as if something was stolen from me personally. Every medium I turned into told me that my anger was justified, but it wasn't. I should have stopped and rationalized. I posted my feelings with no regard as to how others would react.

Then on November 14th, what I believed -- I came to protest what believed to be a stolen election. I will say, quite frankly, I also came with the intention of protecting

Trump supporters from people I believe wanted to harm them. I coordinated with local law enforcement to minimize unnecessary altercations as much as possible.

I clearly see now how my public statements of anger clouded my judgment while in the District. I continued to spout these words throughout the month of November. At the end of the month, I went to an election-related rally in Georgia. At that event is where I noticed how out of hand things can get. During the event, a counter-protestor aimed a rifle at me. Although that enraged me, I began to reevaluate things. After this interaction, I began to have doubts about the election being stolen and how dangerous and volatile some of these events were becoming. I mentioned these doubts to those close to me and I was met with insults and ridicule. Even with all of my doubts, I persisted in attending yet another rally in DC on December 12th.

Your Honor, as my attorneys and some of the witnesses claim, I do enjoy the spotlight. But on the morning of December 12th, I turned the corner expecting to see maybe a crowd of 200 rally goers and was surprised to see a crowd of over 1500. I felt what could only be described as dread and anxiety. I no longer wanted to be in the spotlight. I knew on that very morning something was going to go wrong. I would have given anything to be proven wrong, but I wasn't. That night four people I knew and cared about got stabbed.

I believed these four to be victims. It wasn't until I saw the video in this very courtroom that I saw that the man was acting in self-defense. Regardless of who was to blame, I blamed myself. This was a tragedy for all of those involved, a tragedy that could have been avoided. In anger, a BLM banner was burned that night. Later that month, I created a sub-group I believed would mitigate the issues that occurred on December 12th and some of the violence that occurred.

Looking back, I regret even suggesting we go to yet another rally in the District. But, Your Honor, yet again, through all of that, I persisted. We did our first video chat before the announcements of January 6 in reference to the creation of MOSD. There was an extremely heated argument about my views on rallying and my publically stated belief in mid-December that the election was not stolen. My views were in the minority of the club. Although unapologetic free speech was the norm, I decided not to bring up that subject any further. There was enough arguments being had.

Law enforcement from multiple agencies reached out to me in reference to the burned BLM banner from the 12th. I came clean about it. But then again I used my social media against my better judgment. Your Honor, here again, I persisted where I should have been the voice of reason.

With January 6 swiftly approaching I did see the temperature rising. In an attempt to ease those tensions, I

reached out to multiple law enforcement agencies, including the Metropolitan Police Department, the FBI and the Secret Service.

I also reached out to leadership of DC BLM groups to discuss how groups can protest without having tension or counter-protesting each other. With BLM groups, I set a date of January 5th for a meeting and a barbecue. But these two attempts were futile because of the things I was saying publicly and privately. I was my own worst enemy.

My stupidity on December 12th got me arrested on January 4th. And my hubris convinced me I was a victim and was targeted unfairly.

Your Honor, nothing could be further from the truth. All of my actions leading up to this point, consisted of two choices, a fork in the road. I had the choice multiple times to calm things down and I didn't. I persisted when I should have calmed. Come January 6 watching the events at the Capitol unfold on TV, I, again, chose not to be the voice of reason. Looking back at all of the posts and commentary, I regret my words.

Your Honor, you mentioned how I compared Dominic Pezzola to George Washington just a little while ago. And I want to say that that was wrong and I shouldn't have. There is no comparing anybody that was there, including myself, with George Washington or any of the Founding Fathers. We invoked 1776 and the constitution of the United States and that was so

wrong to do. That was a perversion.

The events of January 6th is something that should never be celebrated. In a gradient way, I started to realize how terrible that day was from the hotel room. As the night progressed, I started to see more images and videos that were staying with me. This gave me a full picture of the gravity of the situation on the ground. This was not something I was okay with. This was not something I wanted to happen.

I voiced that to many people. Although in the following days, I admit of saying a whole bunch of things that contradict that and telling the guys that I was proud of them. I believe I made these statements to appease them.

I was receiving major backlash from all avenues. First, I received backlash from working with law enforcement before these rallies, which led to half of the organization disavowing me. I received backlash for simply going to DC on January 6. And I received backlash for publicly stating the election was not stolen and disavowing the violence of that day. Again, I tried to appease them privately.

Your Honor, this in no way is me making a victim out of myself. I am not making any excuses because there is none. I just wanted to explain myself in front of you. The past two years of my life have been extremely difficult and eye opening. I have suffered tragedies and hardships, as well as enlightenments and moments humbling self-reflection. Most of

the two days were spent either in transit or in solitary confinement on 23-hour lockdown. Again, Your Honor, it has been extremely difficult. My mental health has suffered.

I recently lost one of the most important people in my life, someone who raised me to be a better person. I feel I failed them standing here before you today. I would like to thank you, my attorneys and the prosecutors for attempting to allow me to attend her funeral. I don't think I will ever forgive myself for not being there. Something that has been extremely difficult, hard for me is the separation from my family. Me causing them heartaches and financial ruin weighs on me every day. My mother and fiance have been a bright light in my life to have sat through the entirety of the trial. Standing before you today, I feel as if I failed as a son, and a fiance, as a brother, as a nephew, as a son.

I will always regret not making decisions that put them first. I have been selfish. I have taken care of my grandfather for most of my life and now I have also failed him.

I have made strides to be a better man during my incarceration. I have enrolled in and taught many classes and programs in the facilities that have offered it. I have taught courses in English for Spanish speakers, literature and math, while taking classes myself on substance abuse, behavioral management and meditation. I also enrolled in a construction certification course, which I unfortunately couldn't finish. I

plan on finishing something similar when I get back home. I have lost friends. I have lost businesses. I have had to reanalyze some of my beliefs and change the way of thinking. I have matured. However, the cost of that maturity has been steep. Because of my decisions, this is going to follow me negatively for the rest of my life. I had multiple opportunities to avoid this fate and my deepest regret is how others were affected.

At this time, I want to again address those that were affected. To the men and women of law enforcement who answered the call that day, I'm sorry.

To Officer Ode, Officer Cooney, Inspector Loyd, I am so sorry. There is also members of law enforcement behind me. I want to apologize to them also. I know they have had it very, very rough.

To the citizens of DC, that saw their city turned upside down, I'm sorry.

To the lawmakers, their staff and those present that day that had to endure the events of that day, I'm sorry. I posted a quote that said when the government fears the people, there is tyranny. And when the people fear the government -- I'm sorry. I messed that up. But there is no place for fear in any of the sides whether it is in government or for us as citizens, this country.

This is the beacon of light for the world.

To Your Honor, my lawyers, and the prosecutors who worked diligently and professionally, I'm sorry.

I want to apologize to my family, some of which are in the audience. There is no harder feeling for me than knowing I have disappointed not only myself but those I love.

Your Honor, there are things that I want to clear with the Court.

Although, I respect them, I fundamentally disagree with the some of the prosecutors' characterizations of me. I am not a political zealot. Inflicting harm or changing the results of the election was not my goal. I didn't even think it was possible to change the results of the election.

I went to DC with the goal of speaking at an event, supporting the President of the United States at the time and supporting my friends. I do not have to agree with their views 100 percent to support them. I do not think what happened that day was acceptable. And with everything inside of me, I wish what happened that day at the Capitol never happened.

Where I also disagree with the prosecutor wholeheartedly is this notion that upon my release, I would want to propagate and promote some of the same environment that brought us here today to begin with. When I get back home, I want nothing to do with politics, groups, activism or rallies, not that there is something wrong with these things done peacefully. When you walk out that door, Your Honor, I won't

be saying anything other than that.

After deep discussions with my family, the only focus in my life I want is them. Having spent so much time away from them has made me realize that I focused too much on my selfish endeavors while neglecting them. Today I stand before you a different man. I find peace in communicating this publically. A man that still has many flaws and that has much to improve on.

I wish to be a positive member of my community. I wish to reorient and refocus my life purpose. I wish to get married and experience the God-given joys of starting a family. I want to rejoin my local church and to be an active part in helping others. I wish to get back home so that I can continue to care for my elderly grandfather as he struggles with various health conditions.

I hope that Your Honor can hear the sincerity in the words that I am reading to you. I plead with you, I humbly and respectfully ask you for leniency. Please show me mercy. I ask that you not take my 40s from me. Allow me to prove to you how much I have grown through this and to prove to you I can be a better and more productive member of society.

Thank you, Your Honor, for this opportunity to address you and those that have been affected. I pray and hope for unity in our country. God bless this entire Court.

Thank you, Your Honor.

THE COURT: Thank you, sir.

All right. You may return to your seat.

And, Mr. Hassan, if you had a few other requests you wanted to make.

MR. HASSAN: Judge, the recommendations that I was going to ask the Court to make and upon the Court issuing a sentence, Judge, I was going to ask that the Court make the recommendations that were already found in the PSR as it is. Number 1, that he partake in the RDAP program, the residential drug abuse program, Judge. Also that he be housed in a facility closest to the Southern district of Florida, FCI Miami or any other facility closest to the Southern District of Florida as possible, Judge.

THE COURT: I didn't hear the facility you mentioned.

MR. HASSAN: FCI Miami. But, Judge, quite frankly, if the Court makes certain recommendation to the facility and it doesn't pan out, I would ask the Court to make a recommendation to Florida, the recommendation, Judge. Additionally, that he be allowed to partake in any programs associated with the First Step Act. And there is one -- that is it, Judge. That is all of the recommendations I have for the Court, Judge.

THE COURT: All right. Very well.

MR. HASSAN: I don't know if the Court has any questions for myself.

THE COURT: I do not.

MR. HASSAN: Thank you, Judge.

THE COURT: All right. We are going to take a 10-minute recess and I will come back and impose sentence.

(Recess taken at 5:00 p.m.)

THE COURTROOM DEPUTY: We are back on the record in criminal matter 21-175, United States of America versus defendant 5, Enrique Tarrio.

THE COURT: All right. I have assessed the particular facts of this case in light of the 3553(a) factors. And I now want to provide my thoughts for the record, for you, Mr. Tarrio, for counsel, about my considerations in regard to the nature of the offense, your history and characteristics and all of the other things I have to consider when imposing sentence under 3553(a).

So let's start with the nature of the offense. And I want to be very clear that we are talking about the nature -- in all of those January 6 cases I have -- all of us, all of the judges here have to consider both the sort of overall January 6 event and then the nature and circumstances of the particular defendant, the particular defendant's offense. So let me just say a few things about the overall January 6th event. I have said many of these things before, so those of you who have been with us through a sentencing of all of the defendants in this case, this will sound familiar.

What happened on January 6th physically damaged property and hurt people. I want to pause there. Because I think probably I have probably skipped through that a little too much sometimes in getting to things I think are unique and intangible and difficult to quantify and ultimately very important about thinking about January 6. But I think it was right of the government to pause and acknowledge that. I have heard now victim impact statements in this case from three different -- from multiple law enforcement officers.

And we should pause to acknowledge the damage to the building that was done in the millions and to acknowledge the law enforcement officers, those who provided testimony in this case and all of the officers who stood in harm's way that day. They have physical injuries from what happened that day. No doubt they have -- many of them have struggled mentally as per the statements I have received. They suffered and they are suffering. They continue to suffer. They are heroes. And they do deserve our debt of thanks for all of us for protecting an essential process of our government on that day.

But in addition to all of that and what I do mention in every January 6 case that I have to sentence someone for is that what happened that day damaged an important American custom that helps support the rule of law and the constitution. That day broke our previously unbroken tradition of peacefully transferring power, which is truly among the most precious

things that we had as Americans. And that previously unbroken tradition is broken now. And it is going to take time and effort to fix it. It is kind of hard to put into words how important that peaceful transfer of power is.

Our country was founded as an experiment in self government by the people. But it cannot long endure if the way we elect our leaders is threatened with force and violence. So what happened that day didn't honor the founders. It was the kind of thing they wrote the constitution to prevent. Of course, many Americans, about half the country, didn't like the outcome of the election that day. And some had questions about the way the election proceeded in some states. And many of those Americans protested. They spoke out. Some filed lawsuits.

But even though what happened on January 6 was bad enough, we can take heart in the vast, vast majority of the people who were dissatisfied with that election in one or the other didn't resort to force or violence. And an even smaller number of people led an organized effort to do so. And that brings us to the specifics of what the jury convicted Mr. Tarrio of.

You know, I have got to say, this is what the jury convicted Mr. Tarrio of: Of participating in a conspiracy to oppose by force the authority of the government of the United States and to prevent, hinder or delay the execution of any law

of the United States by force.

So seditious conspiracy, before we even get to the details, is a serious offense. And as we have been debating and discussing and the parties have made their arguments to me about it, Mr. Tarrio was the ultimate leader of that conspiracy. I don't really think this is super debatable. We have -- I won't rehash the evidence here. But I do think the evidence supports the inference that Mr. Tarrio was the ultimate leader, the ultimate person who organized, who was motivated by revolutionary zeal. He received documents outlining all sorts of schemes to have individuals take over government buildings on January 6.

He, right after there was a rally for January 6th, announced formed the ministry of self-defense as his codefendant, Mr. Biggs, urged they should get radical and get real men. He instructed these people, the folks who ended up signing up for that chapter not to wear their colors, which obscured their identification by law enforcement. He told them to bring certain tools and items to prepare for that day. And then that ended up -- that conspiracy ended up with about 200 men amped up for battle encircling the Capitol physically led by his codefendants.

And a group of men that were seemingly present and played a role in so many of the important breaches of the day including Mr. Pezzola's smashing of the Capitol window allowing

everyone outside to stream in.

I don't know -- you know, the government wants me to -- sort of argues to me to go further and conclude that, you know, they -- this came so close to succeeding or conclude that these defendants were the most -- Mr. Tarrio was the most responsible person for what happened that day. And I don't really know I need to conclude either of those things to conclude that it was a very -- that the people he assembled, the people that were there, again, played critical roles, important roles. Were they but-for causes of any particular breach, who knows? But they played important roles at breach, after breach, after breach. And I haven't seen any other case, in fact, similar to this case in that regard. No party has raised any January 6 case with sort of similar evidence and sort of similar facts.

He wasn't present, as his lawyers have mentioned and as we all know. And I don't blame them for mentioning it and trying to do what they can with that fact. But the reality is, his not being present did serve some strategic purposes. It did allow his lieutenants to rile up the crowd that day. And it did, from his perspective, insulate him in just the way he is arguing now -- insulate him and distance himself from what, in fact, unfolded that day. And that is useful to someone as smart as Mr. Tarrio.

And then before the day was out, publically putting

on social media, one, I am proud of my boys and my country. Two, don't fucking leave, don't fucking leave as our -- and I don't know how close -- again, the government argues to me we were so close to not completing the transfer of power that day. I don't know how close we came or didn't come. But, again, I don't know that I have to conclude how close to say that what happened was extremely serious and a disgrace. And I have Mr. Tarrio publically putting out there on social media, don't fucking leave and privately to another member of his -- to another close confidant, make no mistake, we did this. Make no mistake, we did this.

And then even later, they should have sat in. When asked what would have happened if he had been there he said, God didn't put me there for a reason. We would still be there. So it is a serious offense. And it is a series of serious offenses for which Mr. Tarrio has been found guilty that had an outsized impact on the events of the day. And with events of the day that were very important in terms of undermining our tradition of the peaceful transfer of power and ultimately the rule of law and constitution.

Mr. Tarrio's personal history and characteristics are another collection of things I have to consider, his characteristics as an offender. And here, I must say, unlike some of his codefendants, it is not at all all positive. As I think both parties had mentioned, at least a number of

Mr. Tarrio's codefendants served in the armed forces. Of course, the government like everything wants to -- you know, will argue that makes it all the worse, Judge, they should have known better.

But the reality is, if I want to give any credit to service like that, difficult service, wartime service to the United States, I don't have the ability to do that with Mr. Tarrio. In fact, the reality is, I have the opposite. I have him having been found guilty of some serious federal felonies for selling stolen testing supplies, number 1. And then the offenses here in DC, which were not, you know, the most serious of offenses, but were additional crimes that he committed in terms of possessing the large capacity ammunition feeding device and burning the flag, the BLM flag. Look, I think we'll talk about these things in a moment in terms of deterrence, but this is not personal history and characteristics that cover Mr. Tarrio in glory.

He is 39 years old, divorced, has a young son, has been employed in various small businesses. And his lawyers mention all of the good deeds he has done -- some good deeds he has done for charity. I guess, I would just -- and I heard today both in terms of the letters that have been provided to me and statements provided to me by Mr. Tarrio's family. It is clear he has support in the community. It is clear he has a family that loves and needs him. And it is, you know -- it is

tragic that someone of his obvious intelligence and savvy and charisma has not once, but twice, landed himself on the end of a federal criminal -- more than that if you count the DC offenses. But on so many occasions, found himself on the wrong end of criminal prosecutions. And now for this most recent offense a very, very serious one indeed, especially when someone, frankly, so intelligent and savvy. And no judge looks at someone for sentence and can't help but often think what -- if things had turned out differently what kind of success this person would have in lawful endeavors.

I also have to consider -- the government has asked me to consider his -- the way he -- I think they said the way he exercised his leadership of the Proud Boys apart from the facts of this case. Look, I don't put too, too much weight on that. Obviously, I think his capabilities as a leader are something that when we talk about deterrence play a role. I do think -- I don't have -- I think the evidence about how -- it played a role in the trial the way he conducted and led the organization generally. But to some degree, this kind of bleeds into his ability to speak on issues. And at the end of the day, while there was some evidence of this at the trial, you know, it is not -- none of that is going to play too, too much of a major role in his sentence. Again, other than the fact that I do think his capabilities going forward are relevant in terms of deterrence.

And so let's talk about deterrence, which is another thing I have to consider here, both specific and general deterrence. I think I have kind of beaten a dead horse on general deterrence generally with regard to January 6th, given how I have articulated how I see it and how it played a role in damaging our traditions and our customs regarding the peaceful transfer of power. It can't happen again. It can't happen again. So, you know, the -- and as far as general deterrence goes, the need for that is quite strong. And I think the reality is, the argument for deterrence, specific deterrence with regard to Mr. Tarrio is also quite strong.

Now, why do I say that? Well, first, we have his statements after what happened on January 6th. First of all, we start with the fact that the nature of the offense here is a conspiratorial offense, which by definition is more difficult to detect and in need of more deterrence.

But even putting that aside, again, we have talked about it a number of times. Mr. Tarrio has on many occasions before today expressed absolutely no remorse for what happened that day. And, in fact, again, when asked what do we do? What do we do next by a confidant, his response was, we do it again. We do it again. We took credit for it and we do it again. So and then when we look at, again, in terms of deterrence, the fact that he has another federal crime that, again, he hasn't been deterred from engaging in crime for that one. And then

with regard to the DC offenses in particular, the reality is, Mr. Tarrio taunted law enforcement in connection with those offenses. He all but said, I will do it again. The meme he put on social media said, I am going to do it again. And so, you know, look, those -- that offense is not the same as this offense, obviously. But in terms of him having expressed remorse or learned a lesson, all of these things weigh against considering that -- weigh against concluding that he has learned a lesson. And there is no need for deterrence.

A couple of other things I want to say on that -- I mean, another thing, again, he has apologized today. We will get to his statement here today. But I must say, comparing what Dominic Pezzola did to George Washington, where to begin?

George Washington, the man who helped encourage the notion of a peaceful, orderly transfer of power from one president to the next by relinquishing power to let someone else be chosen. Now, what Dominic Pezzola did, it is not only not an apt comparison, it slanders the father of our country to speak that way.

So that is another comment that I think shows the need for deterrence. And, again, Mr. Tarrio and -- and his family members have spoken here today. And I feel like I need to address what they told me. You know, I have had so many family members come to me last week and talk about how the given defendant in that case isn't going to be involved in

1 politics anymore. The jury didn't convict anybody for engaging
2 in politics. They convicted Mr. Tarrio and others for
3 seditious conspiracy. It is a pretty different thing. And it
4 is really a non sequitur to talk about not engaging in politics
5 anymore. I am glad for Mr. Tarrio's statement here today. But
6 I have got to say, it was -- and I am glad he has -- I am glad
7 he is sorry for what happened to the law enforcement officers
8 that day.
9 But, again, I think we are talking a little bit past
10 each other in many ways. Because he -- there -- I don't have
11 any indication that he is remorseful for the actual things that
12 he was convicted of, which is seditious conspiracy and a
13 conspiracy to obstruct the election, obstruct the counting of
14 the electoral votes. So while his statement, I suppose, is
15 better than nothing, it is not something that I can really -- I
16 think given the depth of his beliefs as laid out in all of the
17 evidence in this case, you know, and the fact that he hasn't
18 really -- he didn't -- he hasn't really expressed remorse for,
19 in fact, what he was convicted of. And there is only so much
20 that statement can go towards assuring me that deterrence is
21 not warranted.
22 I also have to consider the guidelines. And we have
23 talked about the guidelines and what they come out to be in
24 this case. As we calculated them here today, slightly
25 different than what we came in considering. It was 324 to 405

1 months. And I have to consider those. As we all know, I don't
2 have to sentence Mr. Tarrio within those guidelines. And with
3 regard to all of his codefendants, I have varied downward in
4 each case. And I am going to vary downward again in his case
5 today. But I am going to say a few reasons why I am doing
6 that.
7 One is while I have to consider the guidelines, I do
8 have to consider their -- I do have to consider whether they
9 overstate the conduct, even if it is very serious conduct. And
10 I appreciate the government took the weekend to, I think,
11 tailor its arguments to sort of how I have expressed thinking
12 about this case and the government gave me more to think about.
13 You know, and this is exactly -- this is in some ways what I
14 think we all should be as citizens and I as the sentencing
15 judge, have to think through about how we think of that day.
16 I do think, as I have said before still, I don't
17 think Mr. Tarrio intended to kill anyone. And I don't think he
18 chose a means that was particularly likely to result in
19 someone's death or a mass casualty event. No doubt he intended
20 to use force. No doubt there was a risk -- a significant risk.
21 And there was a lot of violence that day. But I do think it --
22 it overstates things -- the application of the terrorism
23 enhancement does overstate what his intent was and what his
24 chosen means were. Again, not trying to minimize the violence
25 of that day.

The other thing I have to consider is unwanted sentencing disparities. And, you know, I have looked a lot at, you know, the kinds of cases. The government is asking for 33 years of incarceration. I have looked closely at most of the types of cases that they -- in which courts have handed out sentences like that. And they really are akin to things like blowing up buildings and also training to go on the battle field to shoot at United States troops.

And, you know, again, you try to put a -- trying to weigh what January 6th cost us, it is hard. In some ways, when you are looking at these things, it is an -- these are difficult comparisons to make. But, again, so while I think a serious sentence is appropriate, I am not going to go as high as the government has asked here.

I have also considered the sentences of the Oath Keepers. And I think I have talked about -- while I agree that the firearms issue weighs sort of in favor of that conduct being more serious, I do think the sheer number of people involved over here, not as co-conspirators but in terms of the marching group and the roles those people -- the marching group played in various breaches -- go through the evidence -- weighs on the other side of it. And in some ways makes this case more serious than that case.

I have also -- and I have also looked at January 6th sentences across the board. I think it is worth just sort of

1 noting -- I don't know what the overall numbers are, but, you
2 know, obviously, a case like this, seditious conspiracy, is an
3 outlier among all of the January 6 cases that have been
4 prosecuted and are being prosecuted in this courthouse. And a
5 very substantial percentage of the cases that I have had to
6 sentence someone for, for January 6, I have sentenced the
7 person to no jail time whatsoever over the government's
8 objection and, as I said, in a substantial number of the cases
9 before me.
10 So, you know, you have to look at everything, even
11 though this case is such an outlier in terms of the conspiracy
12 and the charges, looking at the whole of January 6 is something
13 I have done as well.
14 I have to consider, as I said, the guidelines. I
15 mentioned what those were. I have to consider the government's
16 request, which is for 33 years. I have to consider the
17 probation, which their request was 17 and a half years.
18 Mr. Tarrio asked for a variance on the papers. They didn't say
19 specifically, but has asked for no more than 15 years in their
20 request to me now.
21 So those are all of the things I have to consider.
22 Can I have Mr. Tarrio and his counsel please approach
23 the podium and I will impose the sentence.
24 All right. After considering all of the 3553(a)
25 factors and considering what is sufficient but not greater than

1 necessary to comply with the purposes of sentencing, I am going
2 to sentence Mr. Tarrio to an aggregate sentence of 22 years
3 incarceration and 36 months supervised release.
4 We'll go through how that will work in terms of
5 different counts, but that will be the sentence. So pursuant
6 to the Sentencing Reform Act of 1984 and in consideration of
7 the provisions of 18 United States Code 3553, as well as the
8 advisory sentencing guidelines. And before I even do this, let
9 me just note, for the record, that is a downward variance of 11
10 years from what the -- from the government's request and 5
11 years from the top of the guidelines.
12 So pursuant to the Sentencing Reform Act of 1984 and
13 in consideration of the provisions of 18 United States Code
14 3553, as well as the advisory sentencing guidelines, it is the
15 judgment of the Court that you, Enrique Tarrio, are hereby
16 committed to the custody of the Bureau of Prisons for an
17 aggregate term of imprisonment of 264 months or 22 years, which
18 consists of concurrent terms of 240 months as to each of Count
19 1, 2 and 3, 72 months or 6 years on Count 4, and 120 months or
20 10 years on Count 6.
21 You will also serve a consecutive sentence on Count 5
22 of 24 months or two years, so for an aggregate sentence of 22
23 years.
24 You are further sentenced to serve a 36-month or a
25 3-year term of supervised release as to each of Counts 1, 2, 3,

4, 5 and 6, with such terms to run concurrently. In addition, you are ordered to pay a special assessment $100 per count for for a total of $600 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. These 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 fifteen days of placement on supervision and at least two periodic drug tests thereafter, as determined by the Court. You must cooperate in the collection of DNA as directed by the probation officer.

You must make restitution in accordance with 18 United States Code sections 3663 and 3663(a) or any other statute authorizing a sentence of restitution and pursuant to any order of restitution that I enter.

You shall also comply with the following special conditions: Substance abuse testing. You must submit to substance abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or

tamper with the testing methods. You must not associate, communicate or otherwise interact with any person or organization that advocates violence against the government. If you inadvertently associate, communicate or otherwise interact with such a person or organization, you must immediately report this to the probation officer.

You must seek the approval of the probation officer if you wish to access, view or use any online social media. You must not download any social media apps to your phone or computer. You must not access any social media on any other device not approved by the probation office. Social media includes social media sites, chat services, blogs, instant messages, SMS, MMS, digital photos, video sharing websites, emails or any other interactive online or electronic communication applications or sites.

You must not access, view, use or possess any materials produced by any person or organization that advocates violence against the government. If you inadvertently access, view, use or possess any such material you must immediately report this to the probation officer.

To ensure compliance with the computer monitoring condition, you must allow the probation officer to conduct initial and periodic unannounced searches of any computers as defined in 18 United States Code 1030(e)(1) subject to computer monitoring. You must allow the probation officer to install

computer monitoring software on any computer. This includes laptops, desktops, mobile devices, smart watches, gaming systems, private servers or any other high speed data processing device performing logical, arithmetic or storage functions. These searches shall be conducted to determine whether the computer contains any prohibited data prior to installation of the monitoring software, whether the monitoring software is functioning effectively after its installation and whether there have been any attempts to circumvent the monitoring software after its installation. You must warn any other people who use these computers that the computers may be subject to searches pursuant to this condition.

A probation officer may conduct a search pursuant to this condition only when reasonable suspicion exists that there is a violation of a condition of supervision and that the computer or device contains evidence of this violation. And any search will be conducted at a reasonable time and in a reasonable manner.

You must not use any services designed to encrypt, disguise, mask or anonymize your online activity, such as TOR I2P, Freenet, Freepto, Tox, virtual private networks or other anonymizing applications services or sites. You shall not use any online gaming systems or services including mobile device applications. You shall not use any telecommunications application, software product such as Skype, Discord,

TeamSpeak, Battle.net, Steam, Xbox Network, PlayStation Network, Nintendo Switch online or any other software that specializes in providing chat and voice calls between computers, tablets, mobile devices, gaming consoles and smart watches.

You must provide the probation officer access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the United States Attorney's Office.

Reentry progress hearing, within 45 days of release from incarceration, you will appear before me for a reentry progress hearing. The United States Probation Office in the district in which you are supervised will submit a progress report to the Court within 30 days of the commencement of supervision. And upon receipt of the progress report, I will determine if your appearance is required.

I do find that you do not have the ability to pay a fine. And, therefore, I waive imposition of fine in this case. Restitution payment 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 H2-205-B, Washington, DC 20515. The amount of loss is to be determined. The financial obligations are immediately payable to the Clerk of the Court of the US

1 District Court 333 Constitution Avenue Northwest, Washington,
2 DC, 20001.
3 Within 30 days of any change of address, you shall
4 notify the Clerk of the Court of the change until such time as
5 the financial obligation is paid in full.
6 The probation office shall release the presentence
7 investigation report to all appropriate agencies, which
8 includes the United States Probation Office in the approved
9 district of residence in order to execute the sentence of the
10 court. The treatment agency shall return the presentence
11 report to the probation office upon the defendant's completion
12 or termination from treatment.
13 I will recommend that he be screened for and if found
14 eligible for the -- and if he is found eligible to participate
15 in the RDAP program, number 1. Number 2, I will recommend that
16 he be placed at a facility -- the closest possibility facility
17 to the Southern District of Florida. And number 3, I will
18 recommend that he be screened for and if found eligible
19 participate in any program related to the First Step Act.
20 Mr. Tarrio, you have the right to appeal your
21 convictions of guilt to the US Court of Appeals for the DC
22 Circuit. And pursuant to 18 United States Code section
23 3742(a), you also have the statutory right to appeal your
24 sentence to the DC Circuit under certain circumstances,
25 including if you think the sentence was imposed in violation of

law or as a result of incorrect application of the sentencing guidelines or is more severe than the maximum established in the guideline range. You may also appeal your sentence if you believe you received ineffective assistance of counsel at sentencing. Any notice of appeal must be filed within 14 days of the entry of judgment or within 14 days of the filing of a notice of appeal by the government. If you are unable to afford the cost of an appeal, you may request permission from the Court to file an appeal without cost to you. On appeal, you may also appeal for court-appointed counsel.

Are there any objections to the sentence I imposed that are not already noted on the record, from the government?

MR. MULROE: Your Honor, from the government no objection to the sentence. I would just ask if the Court is inclined to make a finding that the 3553(a) factors would have resulted in the same aggregate sentence, even if the substantial guidelines disputes had gone the other way.

THE COURT: I will take care of that in a moment.

MR. HASSAN: Judge, I will be objecting to the Court making an inference regarding what would have occurred had the Court made another determination. I will be objecting to that at this point, Judge.

THE COURT: I am going to -- how I have handled that -- you all have probably heard. There are certain things that I am willing to make that finding about. It doesn't --

obviously, if you all -- there are all sorts of things that could happen going forward. Many of those things, I am not making any finding that would affect how things would play out. So I going to make the finding I have made with regard to all of Mr. Tarrio's codefendants and nothing further than that. I understand your objection. It is noted.

Any objection to the sentence I have articulated, other than the ones you all have noted on the record already?

MR. HASSAN: Other than those previously noted, no, Your Honor.

THE COURT: Do I have a motion from the government regarding any outstanding -- well, let's see. In Mr. Tarrio's case, are there any charges to be dismissed?

THE COURTROOM DEPUTY: Yes.

THE COURT: Thank you, Ms. Harris. Let me hear that motion from the government.

MR. MULROE: Yes, Your Honor. The government at this time would move to dismiss the second superseding indictment as it relates to Mr. Tarrio.

THE COURT: All right. I will grant that motion. And then, last but not least, again, as I have indicated, with regard to Mr. Tarrio's codefendants, if only one of the following things were -- or if the following things were different, I would not -- the 3553(a) factors would have led me to impose the same sentence I have imposed on Mr. Tarrio.

One, is with regard to the terrorism adjustment. Even if that for some reason wasn't applicable, I would have -- I would have varied in a way that would have led me to impose the same sentence I did. Two, there are a number of specific offense characteristics that have the administration of justice as part of the -- that only apply in circumstances with the administration of justice at issue, even if those things did not apply. I would still have adjusted the sentence to account for something that I think if it didn't -- if it wasn't part of that adjustment -- well, I am -- there would be good reason to vary to still reflect something similar.

And then the third is the cross-reference for Count 5, with regard to aggravated assault. Again, on that -- these three narrow issues, if I had come out differently, I still would have imposed the same sentence on Mr. Tarrio. But, you know, any other scenario that comes down the pike, I am not making a finding regarding.

Is there anything else from the government at this time?

MR. MULROE: No, Your Honor.

THE COURT: Anything else from the defense?

MR. HASSAN: Nothing else, Your Honor.

THE COURT: All right. Mr. Tarrio, as I said to everyone else, any judge who tells you that the most difficult thing they have to do and they point to something other than

criminal sentencings as the most difficult thing they have to do are lying to you. This is the most difficult part of my job. And I wish you -- I think this is an absolute proper sentence.

But, nonetheless, if you do seek a path away from where you were on January 6th, I wish you the best on that path. And I wish your family the best including your young child as well.

If there is nothing further then the parties are dismissed.

(Proceedings concluded at 6:01 p.m.)

C E R T I F I C A T E

I, SHERRY LINDSAY, Official Court Reporter, certify that the foregoing constitutes a true and correct transcript of the record of proceedings in the above-entitled matter.

Dated this 7th day of September, 2023.

Sherry Lindsay, RPR
Official Court Reporter

**MR. HASSAN: [26]** 66/11 68/14 68/17 68/20 68/23 69/9 69/24 75/8 76/5 77/6 77/15 77/25 79/11 79/20 79/24 82/24 85/22 88/15 88/20 99/5 99/15 99/24 100/2 120/19 121/9 122/22
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**MS. DE TARRIO: [1]** 86/1
**MS. MAQUERIA: [2]** 83/1 84/1
**MS. PADRON: [1]** 81/21
**THE COURT: [83]** 3/9 4/6 4/9 5/12 5/18 5/22 5/25 6/15 6/23 7/16 8/4 8/7 8/10 8/19 13/4 15/21 16/2 16/4 16/14 16/25 17/21 23/12 28/7 28/16 29/3 29/7 30/5 30/10 30/15 31/7 31/11 32/11 33/8 34/18 35/1 35/3 40/13 46/18 48/4 48/11 49/2 49/16 49/20 49/23 50/5 51/5 52/5 66/6 68/12 68/15 68/18 68/22 69/7 69/23 75/6 75/9 76/13 77/10 77/24 79/1 79/16 79/23 81/18 82/23 83/25 85/21 85/25 88/14 88/19 88/23 99/1 99/14 99/23 100/1 100/3 100/9 120/18 120/23 121/11 121/15 121/20 122/21 122/23
**THE COURTROOM DEPUTY: [4]** 3/2 79/13 100/6 121/14
**THE DEFENDANT: [4]** 5/17 5/21 5/24 88/25

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**$1 [1]** 57/21
**$1 million [1]** 57/21
**$100 [2]** 51/22 115/2
**$100,000 [1]** 70/7
**$250,000 [1]** 51/20
**$600 [1]** 115/3

## 1

**10 [3]** 51/16 77/18 114/20
**10-minute [1]** 100/4
**100 [2]** 87/4 97/16
**100 percent [1]** 25/21
**1014 [1]** 2/6
**1030 [1]** 116/24
**107 [1]** 43/23
**10:00 a.m [1]** 80/3
**11 [2]** 74/19 114/9
**11-449 [1]** 1/17
**111 [1]** 24/23
**11th [1]** 63/3
**12 [2]** 37/5 39/3
**12,646 [1]** 34/10
**12-level [1]** 35/15
**120 [1]** 114/19
**127 [1]** 57/22
**128 [1]** 58/7
**12th [5]** 91/16 91/19 92/8 92/20 93/9
**13-year [1]** 81/25
**1301 [1]** 1/13
**1361 [3]** 36/12 37/10 38/19
**138 [1]** 34/12
**14 [4]** 10/3 26/5 120/5 120/6
**14th [2]** 90/2 90/23
**15 [3]** 67/17 78/22 113/19
**1500 [1]** 91/21
**1512 [2]** 26/3 47/16
**153 [1]** 2/2
**16 [1]** 72/11
**17 [3]** 84/7 87/4 113/17
**175 [4]** 1/4 3/3 79/14 100/7
**17th [1]** 68/4
**18 [15]** 4/24 23/19 35/18 36/12 37/9 51/23 52/6 67/22 77/17 114/7 114/13 115/3 115/18 116/24 119/22
**1984 [2]** 114/6 114/12
**19th [1]** 22/6
**1B1.3 [1]** 19/19
**1B1.3A1B [1]** 19/12

## 2

**2-level [1]** 43/6
**20 [1]** 51/14
**200 [3]** 46/7 91/20 103/20
**20001 [2]** 2/14 119/2
**20005 [1]** 1/14
**2012 [1]** 61/21
**2013 [2]** 57/20 70/19
**2021 [1]** 60/7
**2022 [1]** 74/12
**2023 [2]** 1/5 124/10
**2024 [1]** 62/21
**2028 [1]** 62/21
**2032 [1]** 62/21
**20515 [1]** 118/23
**20530 [2]** 1/18 1/20
**209 [1]** 2/3
**21-175 [4]** 1/4 3/3 79/14 100/7
**22 [6]** 73/7 74/25 75/2 114/2 114/17 114/22
**23-hour [1]** 95/2
**231 [2]** 23/19 24/16
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