

Joseph Biggs Additional Sentencing Arguments

The evidence at trial demonstrated that Biggs was a vocal leader and influential proponent of the group's shift toward political violence. Biggs's close relationship with Tarrío made him among the most trusted of the MOSD leaders, and Biggs's outsized public profile provided a platform from which the conspirators could project their message and rally support. Biggs employed his military experience to direct and control large groups of men under his command.

Biggs brought all of these talents to bear as he prepared for and led a revolt against the government in an effort to stop the peaceful transfer of power. More than perhaps any other, Biggs appreciated the tactical advantage that his force had that day, and he understood the significance of his actions against his own government. Biggs understood that the outnumbered forces attempting to hold the Capitol would be powerless due to his side's overwhelming numbers. And he exploited that advantage over and over again at Breaches 1, 2, 3, and 4. Biggs recognized his own actions in the days following January 6 for what they were—an act of terrorism. *See Ex. 611-D* (In a podcast filmed days after the event, Biggs explained that January 6th was a “warning shot to the government – look, we started this country this way and we’ll fuckin’ save it this way” and he went on to explain that people forget that the founding fathers were “considered terrorists.”).

Biggs's guidelines range—after the application of the adjustment for Biggs's crime of terrorism—rightly reflects the seriousness of his assault on our government and Biggs's leading role in it. Biggs's conduct warrants a sentence of 33 years of incarceration.

I. Sentencing Guidelines Analysis

Joseph Biggs was convicted of Counts One through Six. The Sentencing Guidelines are applied for each of the convictions as follows:

Count One (Seditious Conspiracy)**Count Two (Conspiracy to Obstruct an Official Proceeding)****Count Three (Obstruction of an Official Proceeding)****Count Four (Conspiracy to Use Force, Intimidation, or Threats to Prevent Officers of the United States from Discharging Their Duties)**

Base Offense Level:	14	§2J1.2(a)
Specific Offense Characteristic	+8	§2J1.2(b)(1)(B) (physical injury)
Specific Offense Characteristic	+3	§2J1.2(b)(2) (substantial interference)
Specific Offense Characteristic	+2	§2J1.2(b)(3)(C) (extensive in scope, planning, or preparation)
Adjustment	+4	§3B1.1(a) (aggravating role—organizer or leader)
Adjustment	+2	§3C1.1 (obstruction)
Total	33	

Count Five (Interference with Law Enforcement During a Civil Disorder)

Base Offense Level:	14	§2A2.4(c) → §2A2.2
Specific Offense Characteristic	+2	§2A2.2(b)(1) (more than minimal planning)
Specific Offense Characteristic	+6	§3A1.2(b) (official victim)
Adjustment	+4	§3B1.1(a) (aggravating role—organizer or leader)
Adjustment	+2	§3C1.1 (obstruction)
Total	28	

Count Six (Destruction of Government Property)

Base Offense Level:	6	§2B1.1
Adjustment	+26 → 32	§3A1.4 (terrorism) (increase by +12 or to level 32)
Adjustment	+4	§3B1.1(a) (aggravating role—organizer or leader)
Adjustment	+2	§3C1.1 (obstruction)
Total	38	

All of these counts group. Accordingly, the total adjusted offense level for Biggs is 38 for the federal crime of terrorism in Count Six. As explained in the government's Sentencing

Memorandum , under Section 3A1.4(b), Biggs’s Criminal History Category is increased to VI, which results in Guidelines range of 360 months to life of incarceration.

The application of the terrorism enhancement under Section 3A1.4 captures the severity of Biggs’s actions and the danger posed by Biggs and his co-conspirators’ conduct on January 6. A sentence within these Guidelines would be justified and entirely appropriate.

A. Biggs’s Sentence Should Reflect the Adjustment for a Federal Crime of Terrorism

Biggs’s crimes were “calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.” U.S.S.G. §3A1.4. Biggs arrived at the Capitol to lead a revolution against a government that he viewed as illegitimate. Like Tarrío and Nordean, Biggs viewed himself and his movement as a second American revolution where he and the other “patriots” would retake the government by force.

The jury’s guilty verdicts on Count One (seditious conspiracy) constitute a specific finding—beyond a reasonable doubt—that Tarrío, Nordean, Biggs, and Rehl “conspired or agreed with at least one other person with the goal of opposing by force the authority of the Government of the United States” *and* of “preventing, hindering, or delaying the execution of any law of the United States by force.” ECF 767 (Jury Instruction) at 21; ECF 804 (Verdict Form) at 1. This finding, consistent with the facts accurately summarized in the draft presentence report, plainly establishes that the defendants’ crimes were calculated to influence or retaliate against the government by force or coercion. *See United States v. Dowell*, 430 F.3d 1100, 1110 (10th Cir. 2005).

Perhaps more than any other defendant, Biggs promoted the use of force against the government. Beginning in the days after the election, Biggs declared that the country could face “civil war” because the “left” was “radicalizing people by stealing th[e] election.” Ex. 603-1 and

-2. Biggs told his followers that it was “time for fucking War if they steal this shit.” Ex. 603-4. Biggs steadily escalated his calls for political violence. During an episode of the “Warboys” podcast with Tarrío and Nordean in late November, Biggs demonized the “party” that was telling the public to accept the result of the election. Biggs closed his diatribe by saying that “they are evil scum and they all deserve to die a traitor’s death.” Biggs Ex. 1. Biggs’s comment prompted Nordean to calmly lean toward his microphone and say, “the day of the rope.” *Id.*

Biggs’s calls for political violence escalated throughout the fall, and he consistently called for war while characterizing his enemies (which included government actors such as the police) as traitors. The critical issue to Biggs was the stolen election, and he tied his calls to violence to the election. For example, in late November, in a post on his social media, Biggs warned officers in Michigan (a state won by Biden) that if they stopped electors from casting a vote for Trump, the people would “treat your thin[] blue line like we do antifa . . . get in our way and get walked over.” Ex. 603-33. Biggs declared that the officers would be “tried for treason” and that “[w]e aren[‘t here to play games. This is war.” *Id.*

Throughout the fall, Biggs celebrated election-related violence by the Proud Boys. In November, Biggs posted a video of a woman being knocked unconscious with a helmet to the face and he separately proclaimed that the Proud Boys had “one hell of a day” in which they had “whipped commie ass.” Ex. 603-13 and -14. In the leadup to the December rally, which Biggs attended, Biggs posted that he was “ready to rumble.” Ex. 603-27. Immediately after the rally, Biggs declared that the Proud Boys had “whooped their asses.” Ex. 603-32. Biggs then complained about the vilification of the Proud Boys, and he called for action: “The time is now. Will you submit. Obey and kneel. Or will you stand with us and fight back. We are the future. We are 1776.” Ex. 603-32.

Biggs's calls for action accelerated as January 6 approached, and Biggs well understood the pivotal importance of January 6 to the election process. Ex. 603-44, -50, and -53 (commenting on anticipated objections to the certification). Biggs encouraged Tarrío to "get radical and get real men" just hours after former President Trump announced plans for a rally on January 6. After episode upon episode of violence by the Proud Boys, Biggs knew that taking on the government would require "real men." Ex. 525-5.

With the Ministry of Self Defense and those "real men" in place, Biggs encouraged action against the government. In an exchange with other leaders of the Ministry of Self Defense on January 1, other leaders called for the Proud Boys to re-evaluate their "disposition toward the police" with another leader saying he was "ready for the escalation." Ex. 501-50. In a chilling comment given the attack that Biggs would soon lead, Biggs agreed with others that the Proud Boys could have "ran [police] the fuck over" during their last visit to D.C. *Id.* Biggs told the others that he wanted to "fuck shit up" and that he was "ready to just be the Zamboni [and] roll over mother fuckers." *Id.* The very next day, Biggs was again on social media expressing vitriol at "most law enforcement departments in metropolitan areas" that were not on the side "of the people." Ex. 603-54. Biggs said those law enforcement were protecting left-wingers and "enforce[ing] tyranny." *Id.*

Biggs's comments were not limited to the police, and he hinted at something larger. In an exchange on December 23, 2020, he told another user that he was not "gonna say things that'll put me in jail tonight" but that "[w]e all know what needs to be done." Ex. 603-39. Shortly after the new year, Biggs announced on social media that 2021 was the year that "we take back America." The next day, Biggs expressed his anger at every law makers that breaks their own laws, Biggs

stated that they “should be dragged out of office and hung.” Biggs declared that the “government should fear the people. Not the other way around.” Ex. 603-55.

On January 6, Biggs played a central role in the attack. As Nordean, Biggs, and Rehl led the men to the Capitol, Biggs and Nordean addressed the men through a megaphone—telling them that the police and their government had failed them. *E.g.*, Ex. 1000 at 4:10-5:33. Nordean, Biggs, and Rehl led the men to Peace Circle, at the edge of the restricted portion of Capitol grounds, at approximately 12:50 p.m. Prior to their arrival, Peace Circle was uncrowded and relatively peaceful. Ex. 1001 at 00:10-00:32. Biggs led the crowd in chants that included “Whose house? Our house!” and “Whose Capitol? Our Capitol!” *Id.* at 4:17-4:40 & 6:25 *et seq.* These chants had not been used on January 6 by the defendants prior to that moment. *E.g.*, Tr. 5493:11-14 (Greene); *see also* Nordean Ex. 301.

Biggs acted as the tip of the spear throughout the attack on January 6. He was among the first wave across the First Street barrier, he tore down the fence at Breach 2, he repositioned himself and charged up the scaffolding at Breach 3, and he was among the first rioters into the Capitol at Breach 4. And his effort did not end there. It is particularly noteworthy that Biggs re-entered a second time through the Columbus Doors on the east side of the Capitol and traveled directly to the Senate Chamber on his second entry. Finding the Chamber empty of Senators, Biggs must have believed it was mission accomplished. It was not until later that night, when Congress resumed, that Biggs acknowledged the failure of his actions—he posted on social media “R.I.P. America 1776 – 2021.” Ex. 603-64.

Were there any remaining doubt as to Biggs’s intent during the attack, Biggs recorded a podcast-style interview that he had saved as “CivilWar.mp4” in which he made clear that his actions were intended to send a message to the government. Biggs called January 6 a “warning

shot” to the government that showed them “how weak they truly are” after being “bitch-slapped on their own home turf.” Ex. 611-B and -D. Biggs reiterated that it had been “a warning shot to the government – look, we started this country this way and we’ll fuckin’ save it this way” and he went on to explain that people forget that the founding fathers were “considered terrorists.” Ex. 611-D. And Biggs also acknowledged the brilliance of the strategy in storming the Capitol with a large crowd—explicitly rejecting that police had let people in. Ex. 611-B. Biggs explained that “when you’re holding a position like a fort and you’re being overrun . . . and you’re outnumbered 100 to 1” the best thing you can do is stand aside. *Id.*

Biggs committed a crime of terrorism on January 6, and the Court should not hesitate to impose a sentence that reflects the seriousness of the crime and its threat to our nation—as reflected in the Sentencing Guidelines.

B. Biggs’s Sentence Should Reflect a Four Point Leadership Adjustment

The Court has ample evidence to apply a four-level enhancement to Biggs as a leader of the criminal enterprise. Tarrío hand-selected Nordean and Biggs to act as the leaders of the newly created Ministry of Self Defense (“MOSD”). Nordean and Biggs took command of the MOSD following Tarrío’s arrest. Biggs told the other leaders that he was organizing the men on the ground and had just spoken with Tarrío. Ex. 509-23 (“We just had a meeting w[i]th a lot of guys”; “I was able to rally everyone here together who came *where I said*” (emphasis added)). And Biggs assured the other leaders that Tarrío’s phone was secure. *Id.*

Biggs maintained his leadership position throughout the day on January 6. He and Nordean were the unequivocal leaders on the ground. Biggs and Nordean held sway over not only their men, but also members of the public revered them and saw them as heroes. *See* Tr. 14791 (Block) (“People in the conservative movement . . . have certain things that we appeal . . . [like] big strong men.”). As Biggs and Nordean marched their men away from the planned speeches on the Mall,

Biggs used the megaphone to rally his men to action. Biggs encouraged his men to march through “this fucking city that’s our goddamn city,” and Biggs directed “let’s go fucking kick some goddamn ass.” Ex. 1000 at 5:00 *et. seq.* The march culminated at the Capitol at 12:50 p.m., where Biggs again took the megaphone and led the angry crowd in chants: “Whose Capitol? Our Capitol!” Ex. 1001 at 6:25 *et. seq.*

Biggs continued to lead the men on the grounds of the Capitol. He led them up the First Street walkway. *See* Ex. 404-D. He led them in destroying the black metal fence. Ex. 445-Bx at 0:30 *et. seq.* (calling out to “Rufio” to join him to tear apart the fence). He led them to regroup on the lawn. Ex. 404-LL; Tr. 12378:2 – 12379:10 (Miller). He climbed the concrete stairs and then turned to face Nordean and others on the lawn, waving and pointing for them to come up using the same stairs. Ex. 414-Ax. Biggs then led two other Proud Boys into the building. Biggs exited and took selfies with a group of other Proud Boys and filmed a video in which he declared, “we’ve taken the Capitol.” *See, e.g.,* Ex. 405-I. Biggs then made a second entry into the Capitol through the Columbus Doors as part of a tactical line with other Proud Boys. Ex. 433-C, 172x. Biggs led his men to the Senate Gallery. Tr. 12577-579 (Miller).

Biggs served as an instigator and leader of his men in the attack on the Capitol. Throughout the attack, Biggs maintained command over others and led them in a relentless effort to send a “message” to the government that he and his men were prepared to “save” the country by force. Through his actions in preparing for and carrying out the attack, Biggs earned a four-point leadership adjustment under §3B1.1(a).

C. Biggs obstructed justice by lying to federal officers about his conduct at the Capitol

The PSR correctly applies a two point adjustment for obstruction of justice. Biggs PSR ¶ 100. Biggs engaged in two separate interviews with the FBI prior to his arrest on January 20,

2021. He flagrantly lied to protect himself and others from prosecution, and his lies were purposefully calculated to obstruct the investigation.

During his first interview with the FBI on January 8, 2021, which was summarized in an FBI 302, Biggs acknowledged that he was present at the protests, but claimed that he never made entry inside the Capitol building itself. Biggs Ex. 2. In fact, Biggs entered the Capitol twice.

On January 17, 2021, a tranche of videos that were taken during the attack and posted to the social media site Parler were made public.¹ One of those videos showed Biggs's entry into the Capitol and recorded him saying, "this is awesome!" Ex. 448. Biggs contacted the FBI on January 18, 2021, and made plans to meet with the FBI the same day.

The interview on January 18 was audio recorded. Biggs Ex. 3. Biggs was explicitly advised that lying to a federal officer is a crime. *Id.* at 0:45 *et. seq.* Biggs lied repeatedly to protect himself and others:

- Biggs denied being with anyone he knew while he was inside the Capitol. *Id.* at 19:50 *et. seq.* (Q: "were you with anybody?" A: "No. I was lost. Like I didn't know where to fucking go. I was by myself and I was scared shitless.")
- Biggs was asked again later in the interview whether there was anyone else with him. Biggs again claimed that he was separated and didn't see anyone else he knew until after he left the Capitol. *Id.* at 25:45 *et. seq.* (Q: "Was there anyone else in your group that was in the Capitol?" A: [Pause] "Um, I mean, there had to have been." Q: "You said you got separated, right?" A: "Yeah. I got separated. I didn't see people until afterwards. I finally found people scraggling [sic] around running, you know, looking for people like me.")
- After initially denying breaking anything, Biggs was asked again whether there was anything else that was "worth sharing." Twenty-four minutes into the interview, Biggs acknowledged "shaking" a black metal fence, but he claimed that he was only doing it because people were getting "pinned [] against it." *Id.* at 24:25 *et. seq.* (Biggs: "I was shaking [the fence] at one point to get it loose so people could move and wouldn't get pinned up against it" Biggs: "There was one guy who was pinned up against the fence like literally screaming; the pole was dug into his belly, and there was so much force

¹ ProPublica, What Parler Saw During the Attack on the Capitol (Jan. 17, 2021), *available at* <https://projects.propublica.org/parler-capitol-videos/> (last accessed Aug. 17, 2023).

from all the people around him, he couldn't even breath . . . I thought that dude was gonna get hurt bad.”)

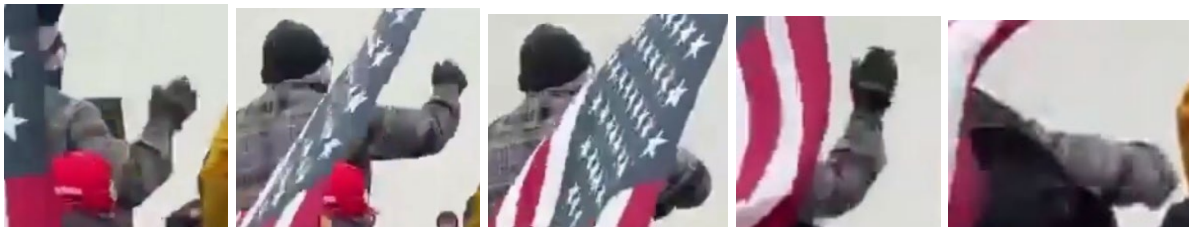
II. Section 3553(a) Factors

The government's specific recommendation for Biggs of a sentence of 33 years of incarceration is further justified by the nature and circumstances of Biggs's individualized conduct, his personal history and characteristics, and the need to protect the public from future crimes by Biggs.

A. Nature and Circumstances of Biggs's Conduct.

As explained above, Biggs was a leader of the charged conspiracies and deserves a 4-point enhancement for his role in the offense. This guideline application, however, only partially captures the aggravated role that Biggs played in the overall events of January 6.

Apart from being a leader of MOSD, Biggs also played a critical role in the broader riot. Video footage from moments before the first breach shows Biggs with a megaphone leading the crowd in chants like “Whose Capitol? Our Capitol!” *See* Ex. 1001 at 6:25 *et. seq.* His subsequent actions show that this was not metaphor. As the riot progressed, Biggs continued to play a leading role in propelling the crowd forward. He, along with Nordean and others, tore down the black metal fence that cleared the way to lower west terrace at Breach 2. Then, with the fence trampled underfoot and the crowd surging forward, Biggs moved toward the building while waving his right hand forward in a sign of encouragement. *See* Ex. 417x at 1:00:



Similarly, after reaching the upper west terrace in the wake of Breach 3, Biggs moved to top of the wall where he triumphantly raised his fists and signaled to the cheering crowd below

what route they should take to join him up there. *See* Ex. 414-Ax; Tr. 12505 (Agent Miller: “He’s pointing in the direction of the same set of stairs he just climbed.”).



Biggs is the only defendant in this case who entered the building twice: first on the heels of the initial wave of rioters to enter at the Senate Connecting Corridor, and then again as part of the violent breach of the Columbus Doors on the east side. During that second entry he brushed past a Capitol Police officer, showing zero regard for the members of law enforcement who were trying desperately to stem the flow of rioters into the building. Biggs is also the only defendant in this case to enter one of the legislative chambers: he entered the Senate gallery with a group of his men and took a “selfie” photo to commemorate their achievement. *See* Ex. 405-AA.

In his travels through the building, Biggs continuously showed callous disrespect for the symbol of our democracy. Almost immediately upon entering, he stole an energy drink from an unattended cantina area. Ex. 409-A. Later, while moving through a corridor, he casually knocked down a rope barrier while walking past it. Ex. 129x. And, much like Nordean, he joined with his accomplices to steal a flag: in Biggs’s case an American flag from outside the Senate Chaplain’s office. Ex. 130. These instances of theft and vandalism are not defining features of the offense—

far from it—but they do speak volumes about Biggs’s disdain for the Capitol building and the government that it represents.

B. Biggs’s Personal History and Characteristics

One of the core aspects of Biggs’s biography (and a central part of his trial presentation²) is his military service. *See* Joint Ex. 1 (Stipulation Regarding Joseph Biggs Biographical Details); Biggs PSR ¶ 163. Service to one’s country deserves recognition, and when the Court considers Biggs’s personal history and characteristics, it can rightly consider the sacrifices and contributions he once made as a member of the armed forces.

By the same token, however, the Court must give due consideration to the ways Biggs’s military record aggravates his culpability. For starters, and to put it bluntly, Biggs should have known better. Regardless of one’s background, seditious conspiracy represents a betrayal of country, but that treachery is even more grave when the perpetrator once swore to “support and defend the Constitution of the United States” and “bear true faith and allegiance to the same.” 10 U.S.C. § 502 (enlistment oath). Biggs was once entrusted to use of deadly force to defend Americans’ freedoms, and he spent formative years absorbing the civic virtues that come with military training and experience. Biggs knew firsthand that a heavy price is exacted, generation after generation, for the preservation this country’s democratic institutions. And he knew the value of those institutions, having served in countries less fortunate than our own—places where the use of politically motivated violence has sadly been endemic. It was with this perspective that Biggs likened his group’s actions at the Capitol to one of the most notorious episodes in American history, the attack on Pearl Harbor, when he twice described January 6 as a day that would live in infamy. *See* Exs. 509-37; 404-LL.

² *See, e.g.*, Tr. 14380 – 14381 (opening statement: “Joe Biggs put his life on the line for [pointing at jurors] you, for you, for you, for you, for each and every person in this room.”).

Biggs's military background also conferred on him status and abilities that made him a more effective participant in this offense. More than most of his accomplices, Biggs understood the tactical aspects of moving in groups and leveraging strength in numbers. *See* Ex. 611-B (Biggs describing impossibility of "holding a position, like a fort" when "you're outnumbered 100 to 1").

It was also evident from his self-presentation, and from others' reactions to him, that Biggs's Army service gave him substantial cachet within the Proud Boys. In the words of defense witness Hendrick Block, Biggs was "a very big deal. . . . He's an American hero." Tr. 14997. Biggs used this prominence to spread inflammatory, pro-violence rhetoric—often to the chagrin of other members of the group. Along with the many examples cited above, the trial evidence included Biggs's public response to the "stand back and stand by" comment, which he took as a directive from the President to "go fuck [Antifa] up!" Ex. 603-66. Almost immediately, multiple Proud Boy Elders expressed serious concern that Biggs needed to "shut up or guys are gonna get hurt." Ex. 500-3; *see also* Ex. 500-8 ("I'm worried about guys having to explain Biggs."). Despite the membership's continuing unease toward Biggs, *e.g.* Ex. 514-36, Tarrío chose him as one of MOSD's senior leaders. This decision was not without cost: one of the Elders predicted, "I can see you getting a shit load of pushback and drama if you stick biggs near those positions," Ex. 500-69, and another explained, "I voted no on the chapter because of Biggs," Ex. 500-72. But Tarrío persisted, defending his selection: "Biggs helps me organize...always has... While we're at events I depend on him and Rufio to make decisions." Ex. 514-37.³ The elevation of Biggs to MOSD's top-tier leadership, especially in the face of so much opposition, sent an unmistakable message

³ Tarrío had previously defended Biggs's promotion of violence as the same "shit we've always said." Ex. 500-8.

about the new chapter's purposes and expectations. When prospective members were told to "fit in or fuck off," it was Biggs's pro-violence philosophy that they were meant to "fit in" with.

C. The Need to Protect the Public from Further Crimes by Biggs

The weeks preceding and following January 6 showed an unmistakable pattern of radicalization on Biggs's part; in fact, he himself used the word—"Let's get radical"—in his planning talks with Tarrío on the eve of MOSD's formation. Ex. 525-5. More than any of his co-defendants, Biggs constantly invoked the language of "war," and in one such discussion with Tarrío about being "ready to war," Biggs boasted that he possessed "thousands of rounds and guns." Ex. 525-1. Although Biggs's actions on January 6 thankfully did not involve firearms, they nonetheless show that his near-constant advocacy of violence in the leadup to the certification was not idle talk. When the opportunity came for Biggs to act, he did so.

After the attack on the Capitol, there is no indication that Biggs reversed his commitment to political violence; indeed, the opposite seems to be true. In the "CivilWar.mp4" interview discussed above, he made described January 6 as a "warning shot" that portended worse violence to come. Ex. 611-D. Moments later, Biggs glorified the "founding fathers" while observing that they "were considered terrorists" in their day. *Id.* For Biggs, history's lesson was simple: sometimes "st[anding] up for what [you] believe[] is right" means "kill[ing] a bunch of fucking retards," even if doing so causes your contemporaries to regard you as "the worst of the worst." *Id.* This brief monologue encapsulates Biggs's terribly misguided—and demonstrably dangerous—attitude toward the use of political violence. And it shows why specific deterrence will be so difficult in his case. A conviction for serious felonies, and the accompanying substantial prison sentence, might unfortunately only redouble Biggs's commitment to embracing extreme measures to achieve his political aims. The Court must accordingly impose a sentence long enough

to prevent Biggs from leading another violent conspiracy against the government while he is still motivated and equipped to do so.

Conclusion

Considering all of the factors and the nature and circumstances of Biggs's crime, Biggs should be sentenced to 33 years of incarceration.