

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,)	Criminal Action
)	Nos. 21-cr-222-01
vs.)	21-cr-222-02
)	
JULIAN ELIE KHATER and)	January 27, 2023
GEORGE PIERRE TANIOS,)	1:12 p.m.
Defendants.)	Washington, D.C.
)	

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**TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE THOMAS F. HOGAN,
UNITED STATES DISTRICT COURT SENIOR JUDGE**

APPEARANCES:

FOR THE UNITED STATES:

GILEAD I. LIGHT
ANTHONY F. SCARPELLI
U.S. Attorney's Office
For the District of Columbia
601 D Street, NW
Washington, DC 20530
(202) 252-6880
Email: gilead.light@usdoj.gov
Email: anthony.scarpelli@usdoj.gov

FOR DEFENDANT KHATER:

CHAD SEIGEL
275 Madison Ave
New York, NY 10016
(212) 227-8877
Email: cseigel@tacopinalaw.com

FOR DEFENDANT TANIOS:

ELIZABETH GROSS
LINN RICHARD WALKER
Federal Public Defender Office
230 West Pike Street
Clarksburg, WV 26301
(304) 622-3823
Email: beth_gross@fd.org
Email: richard_walker@fd.org

(Appearances continued)

APPEARANCES (Continued):

AARON DAVID MOSS
Federal Public Defender Office
651 Foxcroft Avenue
Martinsburg, WV 25401
(304) 260-9421
Email: aaron_moss@fd.org

ALSO PRESENT: SHERRY BAKER, U.S. Probation

ELEANORA LANZONE, Paralegal

Court Reporter: Elizabeth Saint-Loth, RPR, FCRR
Official Court Reporter

Proceedings reported by machine shorthand.
Transcript produced by computer-aided transcription.

P R O C E E D I N G S

1
2 THE COURTROOM DEPUTY: Your Honor, this is
3 Criminal Matter 21-222, United States of America versus
4 Julian Elie Khater as Defendant 1, and George Pierre Tanios
5 as Defendant 2.

6 May I have counsel and probation approach the
7 lectern and state your appearance for the record, beginning
8 with the government.

9 MR. LIGHT: Good afternoon, Your Honor.
10 Gilead Light and Anthony Scarpelli for the United States.

11 THE COURT: All right. Thank you, Mr. Light and
12 Mr. Scarpelli. Good to see you.

13 MR. SEIGEL: Good afternoon, Your Honor.
14 For Julian Khater, Chad Seigel. And with me, from my
15 office, is Eleanora Lanzone; she's a paralegal.

16 THE COURT: All right. Thank you, Mr. Seigel. I
17 appreciate it.

18 MS. GROSS: Good afternoon, Judge.
19 Beth Gross on behalf of Mr. Tanios, along with
20 Richard Walker and Aaron Moss.

21 THE COURT: All right. Thank you, Ms. Gross,
22 Mr. Walker, and Mr. Moss.

23 THE PROBATION OFFICER: Good afternoon, Your
24 Honor. Sherry Baker on behalf of the probation office.

25 THE COURT: Thank you, Ms. Baker.

1 All right. We're here this afternoon for the
2 sentencing of Mr. Khater and Mr. Tanios.

3 To make sure people understand this process --
4 what we're doing here, because there are perhaps individuals
5 here -- and family members -- who aren't familiar with the
6 sentencing process. After a plea of guilty, the Court has a
7 presentence report prepared through the probation office by
8 probation officers who are officers of the Court whose
9 specialty is in criminology and have graduate degrees in
10 that area. They prepare a presentence report after
11 reviewing the charges, interviewing the defendant, talking
12 with the family members, doing other research about the
13 case, talking with the prosecutors, and prepare a
14 substantial presentence report that is given to the
15 parties -- that is, to the defendants -- who have an
16 opportunity to read it and review it, along with their
17 counsel, along with a recommendation as to the type of
18 sentence that should be given under the law. That is also
19 given to the defendants and to counsel.

20 Each side has an opportunity to object to the --
21 certain factors in the presentence report and the
22 determination of the sentence and the facts that are
23 reported in the report. The Court then makes a
24 determination of what to accept in a report or not if that
25 occurs. So there is rather complete transparency in the

1 preparation and returning to the Court the presentence
2 report. The parties, again, have an opportunity to review
3 it, comment on it, and then it's given to the Court.

4 Additionally, each side through their counsel can
5 offer memorandums in aid of sentencing, both on the law and
6 the facts of this case, which both sides obviously have done
7 in this case, and they can offer exhibits as part of that
8 sentencing memorandum. They may be letters from family and
9 friends supporting one side or the other. They may be
10 victims who are entitled to their views about the situation
11 or what they think is appropriate in the case. The Court
12 takes all of those into account.

13 I have received multiple letters on behalf of the
14 defendants which I have reviewed carefully. There is one
15 sealed exhibit from Mr. Khater I have reviewed, and medical
16 records.

17 Additionally, we have been advised by the
18 government -- we did a presentence status call a few days
19 ago, when I met with counsel and the defendants over Zoom,
20 and discussed proceedings in this matter. And as part of
21 that, I raised an issue about fines or not, and how that can
22 be considered -- additionally, as to proceedings today and
23 how we could best proceed.

24 I believe the suggestion was, by counsel, that we
25 proceed to take any witnesses who wish to be -- testify in

1 front of the Court as to their position. As I said,
2 "witnesses" meaning family members and victims of any
3 wrongdoing that wish to be heard.

4 So we'll proceed to do that first. Then I will
5 hear from counsel as to their positions, starting -- I
6 believe we had talked about starting with Mr. Tanios first?
7 I was trying to think about that.

8 Mr. Khater first?

9 MR. SCARPELLI: Khater first.

10 THE COURT: Khater first? All right. I will
11 accept that; I'm prepared either way.

12 So we'll talk about Mr. Khater's situation first
13 after we hear the witnesses, and we'll hear from counsel.
14 And then we will go forward, after that, with the sentencing
15 of Mr. Khater, and then we'll proceed to Mr. Tanios.

16 So with that background, I will see if the
17 government is ready to proceed with any victim testimony
18 they wish to call at this time.

19 MR. LIGHT: Thank you, Your Honor.

20 At this time the government is prepared to
21 proceed --

22 THE COURT: I'm sorry. Just one moment.

23 (Whereupon, the Court and staff confer.)

24 THE COURT: All right. Go ahead.

25 MR. LIGHT: Thank you, Your Honor.

1 We are prepared to proceed with our sentencing
2 today. And we have five individuals -- I'm sorry -- six
3 individuals who are prepared to offer victim impact
4 statements at this time. We have discussed with them Your
5 Honor's request that we avoid repetitiveness and maybe
6 condense some of these. But we do appreciate the Court
7 hearing from five members of Officer Brian Sicknick's family
8 who would like to address the Court, and Officer Caroline
9 Edwards after that. I am ready to proceed, and invite the
10 first victim to deliver an impact statement if the Court is
11 ready.

12 THE COURT: All right. I will do that.

13 I will just note on the Zoom conference, when we
14 had this -- when this was brought up, I did as Mr. Light has
15 suggested -- I asked they not be duplicative because I have
16 read -- each of their statements have already been
17 submitted, I believe, in the memorandum by the government on
18 the victim impact statements.

19 Additionally, there was one concern that I will
20 address at the time of sentencing, as to the beliefs
21 expressed in the victim impact statements, which I am going
22 to hear carefully, as to Mr. Khater's actions causing the
23 death of Officer Sicknick. But I ruled that they can be
24 heard today and the positions that they have as to the loss
25 of their family member. All right.

1 MR. LIGHT: Thank you, Your Honor.

2 We would ask Ms. Gladys Sicknick to approach the
3 lectern.

4 THE COURT: All right. Please come up.

5 Yes, Ms. Sicknick. You may go ahead.

6 Would you introduce yourself to the Court for the
7 record, please.

8 MS. G. SICKNICK: My name is Gladys Sicknick.

9 I am Brian Sicknick's mom.

10 THE COURT: Thank you.

11 MS. G. SICKNICK: Thank you.

12 Today I did not get dressed up because I dressed
13 up in Brian's -- this is Brian's shirt.

14 THE COURT: All right.

15 MS. G. SICKNICK: And I just thought it was
16 something I had to do.

17 THE COURT: I appreciate it, and I appreciate the
18 strain you're under. Can you please try to talk right into
19 the mic. We all have to hear you here.

20 MS. G. SICKNICK: Okay.

21 751 days, that's how much time has passed since
22 January 6, 2021. And each and every day, I and my family
23 are reminded of what you did to my son Brian. There is
24 hardly an hour's respite. With every news report,
25 newspaper, on the internet -- we are pummeled by the

1 horrific images of that day. But we also see the face of my
2 son and those of courageous men and women who stood their
3 ground to protect our democracy from a vicious mob. And I
4 see you, Mr. Khater. You are a center stage in our
5 recurring nightmare.

6 Just when raw nerves have begun to heal, we are
7 carried back to the scene of your crime. You, among all the
8 other crazies, you are the reason Brian is dead, Mr. Khater.
9 You alone, today, sir. But on January 6th you were on the
10 front lines of a violent mob. And for what?

11 While you were assaulting police officers whose
12 duty is to keep the peace and secure our Capitol, you can't
13 possibly have thought you were doing the right thing. A
14 Congressman from Georgia, I think, described January 6th as
15 being like any other day; just another Wednesday with
16 tourists admiring the Rotunda.

17 Did you feel like a tourist, Mr. Khater, watching
18 my son fighting for his life?

19 Thank God the footage of Brian facing off with
20 your fellow, "patriots" is kept secure as evidence by the
21 FBI. At least we have been spared that torture.

22 The rioters who breached the Capitol that day,
23 whether or not they have been charged with crimes, all of
24 you are culpable in Brian's death. All of you bear
25 responsibility for the injuries sustained by Brian's fellow

1 officers: The broken bones, head trauma, and the continuing
2 mental anguish they suffer and will endure for the rest of
3 their lives. Imagine the emotional pain that would cause
4 someone to take his own life. Four officers committed
5 suicide. You and your movement caused their deaths.

6 "Foot soldiers" you call yourselves. You, with
7 your flags used as spikes. My son was a soldier. Soldiers
8 don't erect gallows and call for the Vice President to be
9 hanged. Soldiers don't attack the seat of their own
10 government by brandishing pipes and clubs and bats. They
11 don't plant pipe bombs. They don't drag a police officer
12 into their midst, beat him senseless, and tase him
13 repeatedly while he begs for his life. And they don't beat
14 and blind policemen with chemicals like you did to Brian.
15 You attacked my son like he was an animal. You are the
16 animal, Mr. Khater.

17 In defense of their actions, some of the mob have
18 relied upon the fact that the former President invited them
19 to Washington, that he whipped them into a frenzy and sent
20 them marching to do his bidding to stop the peaceful
21 transfer of power, to overturn our election. That man will
22 get his due, his day in court; that's my hope.

23 But you should have known better. In this great
24 country we go to the voting booth to make a difference. We
25 don't start an armed rebellion, no matter if the President

1 encouraged you to fight like hell to take your country back.
2 To this day he rants about your patriotism and how unfair
3 you have been treated. To this day he lies about the
4 election. How does it feel to be headed to jail because of
5 a bald-face lie?

6 You are no martyr. You are a felon.

7 We are called as citizens to honor the
8 Constitution, to support our police in maintaining law and
9 order. You can speak your mind under the First Amendment
10 because of law-abiding Americans and dedicated law
11 enforcement officers. Your right of free expression didn't
12 entitle you to attack my son that day. What you did happens
13 in places like Russia, China, Venezuela, Cuba. Not the
14 United States.

15 I don't know what kind of upbringing you had, what
16 might have happened in your childhood that contributed to
17 your deluded sense of right and wrong. If I were your mom,
18 I would be embarrassed to have a son like you. I couldn't
19 bear to look at you ever again, which is how I feel right
20 now. Let this be the last time, Mr. Khater.

21 Lawlessness, misplaced loyalty to a deranged
22 autocratic ideal, and hate killed my son. And I hope you
23 are haunted by your crimes behind bars. Whatever jail time
24 you receive is not enough in my eyes. I leave it to Judge
25 Hogan to set your just reward for having imparted the

1 darkest days in my life and among the worst in American
2 history.

3 My son Brian was good boy who grew up to be a good
4 man, quiet, humble, unassuming, and honest; faithfully
5 committed to his family, friends and comrades, and to the
6 defense of his country.

7 Growing up he didn't join many things, like
8 T-ball, Cub Scouts. Whatever the activity, he never lasted
9 long -- until he joined the Air National Guard as a young
10 man, and swore an oath; that was very important to him. He
11 kept his word, both as an airman and as a Capital Police
12 officer.

13 That he may be remembered for his patriotism, his
14 heroism offer solace to our family. But nothing less than
15 justice here today, and for all the others who set in motion
16 the events of January 6th, will honor Brian's sacrifice.

17 Thank you, Your Honor, for the opportunity to
18 speak in front of the Court.

19 THE COURT: Thank you, Ms. Sicknick. I appreciate
20 your concern coming in here with that and explaining what
21 it's meant to you about the loss of your son.

22 MR. LIGHT: Your Honor, we call Sandra Garza to
23 the stand.

24 MS. GARZA: Hello, Your Honor.

25 THE COURT: Thank you.

1 MS. GARZA: Thank you for allowing me to speak.

2 THE COURT: You need to introduce yourself for the
3 record, please.

4 MS. GARZA: Okay. My name is Sandra Garza, and I
5 am the long-time girlfriend of Brian Sicknick.

6 THE COURT: All right. Thank you.

7 MS. GARZA: Thank you for allowing me to speak
8 before you today and give my victim impact statement. This
9 is something I have been waiting two years for. And it
10 means a lot to me that I am finally allowed to have my voice
11 heard regarding the two defendants, Tanios and Khater.

12 Since the insurrection and since Brian Sicknick's
13 death on January 7th, 2021, I have seen zero remorse from
14 either defendant. I have not heard any statements of sorrow
15 for participating in the insurrection, for assaulting my
16 long-time partner of over 11 years, or any statements from
17 any of their family members; I find this reprehensible.

18 I understand that their attorneys probably advised
19 them not to make any statements regarding Brian; but from a
20 place of humanity this is not acceptable, and disturbing.

21 Expressing sorrow for the passing of someone to
22 their loved ones is not an expression of guilt but an
23 expression of being human. I know if I assaulted someone or
24 participated in the planning of someone who was assaulted
25 who later died, I would be filled with remorse, pain, and

1 anguish.

2 Clearly, these two defendants do not feel any
3 empathy. Any sorrow they may feel is for themselves and the
4 consequences they now face. This is further demonstrated by
5 their actions on the days leading up to January 6th and the
6 day of.

7 Both defendants went to great lengths to plan
8 their attack on law enforcement, with defendant Khater
9 having full knowledge that defendant Tanios was going to a
10 gun store to purchase items for the insurrection. Tanios
11 originally tried to buy firearms. But when he was told that
12 was not legal by the gun store manager still would not back
13 down, and tried to buy pepper ball guns. When that
14 failed -- because he was told those weren't legal either --
15 exasperated, he settled on buying four cans of two types of
16 bear spray. He knew full well bear spray is not meant for
17 human beings. Bear spray is meant to take down over
18 650-pound grizzlies, yet he bought them intending to use
19 them on innocent law enforcement officers.

20 Though there is no proof defendants Tanios and
21 Khater used bear spray on Brian and the other officers,
22 considering Tanios bought bear spray and Khater yelled,
23 "Give me that bear shit," once they were in the crowd in
24 Washington, D.C., a reasonable person can infer that that
25 was the chemical substance used on Brian.

1 Once Brian was sprayed in the face, he was
2 incapacitated. Khater and Tanios thought nothing of the
3 fact that approximately over 30,000 angry people were
4 wanting law enforcement officers' heads and that, while he
5 was incapacitated, he could have easily been overpowered and
6 rioters could have taken his gun. This angers me, that --
7 even after he was sprayed in the face, they continued to
8 stay in the crowd having no remorse for what just occurred.

9 Further, after the dust settled and defendants
10 Tanios and Khater left the grounds, for months they knew
11 Brian had died. They knew they participated in the
12 insurrection, and they did not turn themselves in to the
13 FBI. This shows a callousness and maliciousness that
14 disgusts me.

15 Brian was a wonderful, warmhearted, and caring
16 person. He suffered, and his life was taken from me. I
17 love Brian, and I miss him dearly. I cried myself to sleep
18 most nights after his death. Just two nights ago I was
19 crying because I saw a movie on television we both loved and
20 watched frequently.

21 After his death, which was so public, not one
22 single person had anything negative to say about him.
23 That's why it hurts me so much that defendants Tanios and
24 Khater assaulted him. Had they gotten to know him, they
25 would have liked him; and that's why it's very sad and

1 painful for me to accept what they did.

2 When he first died, I was disregarded by some in
3 power because we weren't married, and I had been forced to
4 minimize my own suffering. But we were together longer than
5 some marriages last.

6 When you are talking about a death, a death is
7 extremely stressful on an individual and on a family. The
8 stress from January 6th has given way to a point of no
9 return for many in law enforcement and their families. The
10 stress has had a significant impact on our health and
11 well-being. There are times when I've felt beaten down.
12 Every day I have to muster the strength to be a powerful
13 voice for Brian. It is hard for me, and it takes a toll on
14 my health and well-being; but I am will to go the extra
15 lengths to ensure justice for Brian. All individuals that
16 participated in the insurrection need to be held accountable
17 for their actions.

18 Prior to having fully processed all of this, I did
19 have some empathy for Khater and Tanios. I saw them as
20 people who were brainwashed by our former President; two
21 young men who were fed lies and thought they were doing the
22 right thing by America.

23 As a clinical social worker, I know we are all
24 shaped by genetics and early childhood experiences, adult
25 life experiences, any trauma we have encountered, and that

1 some brains are more vulnerable to persuasion by charismatic
2 characters in our world. However, as I reflected on
3 everything, I realized I didn't see a shred of remorse or
4 sorrow, or any attempts for them to make a statement through
5 their attorneys or family members. It was then I realized
6 they're not sorry for their actions.

7 For this reason, Judge Hogan, I am asking for the
8 maximum sentence you can impose. I realize it will not
9 bring back Brian, nor give him peace in his last moments on
10 Earth, but it will give some sense of justice in my
11 universe. Thank you.

12 THE COURT: Thank you, ma'am. I appreciate it.

13 MR. LIGHT: We'll call Ken Sicknick to the
14 lectern.

15 THE COURT: All right.

16 MR. K. SICKNICK: Good afternoon, Your Honor.

17 THE COURT: Good afternoon.

18 MR. K. SICKNICK: My name is Ken Sicknick. I am
19 Brian's brother.

20 THE COURT: Thank you.

21 MR. K. SICKNICK: I am the brother of Brian
22 Sicknick. His job was an officer with the United States
23 Capitol Police, but that was not his only identity. He is a
24 brother, a son, and a coworker that was embraced by his
25 peers. He was loved because of the person that he was. He

1 was also a hero.

2 Today is a terrible day, even if this is the day
3 that justice is to be served. There are probably some
4 details I do not know regarding the attack on Brian and his
5 subsequent death when it came to what was pleaded by the
6 defendants. However, asking about those things, digging
7 deeper just brings up too much pain.

8 I cannot read books about that day. Reading
9 articles and seeing newscasts just brings me down. There is
10 a constant reminder every single day. I hesitate to ask his
11 coworkers that were there that day because I know how hard
12 it was for them and how much they loved Brian. I do not ask
13 because I do not want them to be in any more pain than they
14 already are. I know the pain.

15 In time, I will delve deeper into that day from
16 the people that were there -- people, human beings, family,
17 sons and daughters, husbands, wives, people that were
18 brutally attacked -- a few, like my brother, who died from
19 the actions of inconsiderate animals that only saw my
20 brother and his fellow officers as targets and obstacles.

21 It's been over two years since Brian was attacked
22 and killed; two years of reading and hearing one conspiracy
23 theory after another; seeing the testimony of the defense
24 attorney explaining away the attacks from these defendants
25 as self-defense. It sounds almost humorous, defending

1 oneself from being attacked by the USCP officers because the
2 defendants were on the attack. It's been two years of
3 hearing people of the same ilk as the defendants trying to
4 justify what they did as righteous.

5 Two years of hearing that Brian didn't die because
6 of the attacks on January 6, 2021, so his death does not
7 matter. Two years of election deniers forgetting or
8 conveniently ignoring the statement from the medical
9 examiner's office that all that transpired on that day
10 played a role in his condition.

11 It has been two years since the night my family
12 and I saw Brian for the last time; laying motionless, skin
13 gray. I got to hold his hand. I got to kiss his forehead.
14 I did not get to speak to him, at least I could not hear him
15 reply to me. Two years since I heard my father repeatedly
16 say, "I am the one that is supposed to die first."

17 The last two messages I ever received from Brian
18 were him replying to me via text after I said "good luck" to
19 him. They were -- and forgive my language -- "Tell me about
20 it, we're fucked, talk later." And the last message, "Fuck,
21 I smell like BO, weed, OC spray, and CS gas." That was the
22 last message I ever heard from him.

23 I found out that he had passed away not from a
24 doctor, not from my family; I found out through a statement
25 from a reporter on my phone as I was driving my older

1 brother and my father to Washington. He simply said, "My
2 condolences." I suspect somebody leaked that information
3 before anybody knew.

4 I am angry. The two defendants came to
5 Washington, D.C. that day looking for a fight. I am not
6 going to use their names as it will humanize them. The two
7 defendants are not worthy of having names or being addressed
8 as such. They are an appendix. They exist only to inflame.
9 The moment they are taken out, everyone will feel a lot
10 better.

11 They brought with them chemical sprays, plural.
12 They were not there to be peaceful. What they did was not
13 an accident. It was not a lapse of judgment. Make no
14 mistakes, what they did that day is who they are.

15 The only thing that surpasses my anger is my
16 sadness; sadness that the only time I can communicate with
17 Brian is to speak into the nothingness and hope that he is
18 listening. I am sad that I am now hyperaware regarding my
19 surroundings, hoping to see signs that he is still here. A
20 price on a receipt with his badge number, a cardinal showing
21 up at random, a blue and black butterfly that flies across
22 my path -- I stop when I see these things; I hope they're
23 signs from Brian. I listen. I remember. I hope that he is
24 okay because I know that my family and I are not.

25 Brian was never one for the spotlight. He

1 preferred to go about his business not bringing attention to
2 himself. My family and I quietly smile at each other when
3 we attend an event honoring and remembering Brian and the
4 weather turns bad; we know that that is Brian telling us
5 that we don't have to go forward with the event. We know
6 it's Brian telling us that it's okay; he is okay. Please
7 don't make a big deal about me. Take care of the others
8 that need it. That's what he would have done.

9 Brian served in the Air National Guard. He joined
10 because -- among other reasons, so he could obtain veteran
11 status and go serve as a police officer. He ultimately got
12 to serve his country as an airman and as an officer. That
13 is all he wanted. His goal was never to be a hero because
14 he was, among other good things, humble.

15 Brian and I bonded largely through our sense of
16 humor. There was hardly a day that went by that we did not
17 send a funny meme or give to each other; no explanation
18 needed. We both understood the humor no matter how off the
19 wall it was. Two years later, I will still see something
20 that I think that we both would have thought was funny and
21 reach for my phone, and I have to stop; angry and sad I
22 can't share that moment with him. There is no replacing the
23 small moments like those.

24 Friends that I have had for longer than one of the
25 defendant's has been alive wouldn't understand. Some of

1 those same friends cannot talk to me because they do not
2 understand what to say, or they do not know what to say.
3 Some of them just feel sorry for me and my family, never
4 comfortable bringing up anything that happened that day in
5 conversation. These are my closest friends. Friends that
6 would do anything for me, as I would do for them. I can no
7 longer have the usual conversations with my friends. They
8 all walk on eggshells hoping not to have to breach this
9 uncomfortable topic. It has changed the relationship with
10 people I have known for over 40 years.

11 Brian is my little brother. He's seven years
12 younger than me, and nine years younger than my older
13 brother Craig. He would hang out with us as a little kid,
14 but rarely was he a nuisance that would get in our way.

15 He was looked after by his older brothers as well
16 as his older brothers' friends. He would quietly observe
17 what was going on, what we were doing, picking up a thing or
18 two along the way. Craig would work on cars; Brian would
19 pick up a trick or two. I would do whatever I would be
20 doing, he would be happy just being there. We would, in our
21 own brotherly way, look after him.

22 When he became older, he would lean on us for
23 advice from time to time; eventually, we would do the same
24 with him. I always admired his determination. We never
25 really worried about him when he was on his own; we knew he

1 was going to be okay.

2 One of the things most sought after when a family
3 member loses a loved one is closure. However, for my family
4 and myself, I believe that there will never be closure.

5 Quoting author Stephen Grosz: Closure is delusive -- it is
6 the false hope that we can deaden our living grief.

7 I will forever want to know why. Why did these
8 individuals do this? Why did they think that assaulting
9 someone would make their lives better? How can you better
10 your own life by attacking and eventually the death of an
11 innocent person? Why did they not look around and see what
12 was going on was very wrong and walk away?

13 I suspect it was indifference to someone else's
14 life. Indifference is the same thing that stopped them from
15 turning themselves in, instead of going about their lives
16 like nothing had happened; not worrying about what they did
17 until they got caught.

18 I cannot imagine living a life knowing that you
19 attacked someone, getting caught, and then pleading not
20 guilty until you get tired of sitting in custody. They were
21 on video, and they had the balls to plead not guilty
22 initially. Once again, no remorse. The only remorse is
23 that they got caught.

24 Sometimes the only way to get closure is by
25 accepting that you will never get it. I believe forgiveness

1 for these two will never come from me; it would not bring me
2 any closer to closure.

3 In some way, in some form, I hope that the
4 individuals that attacked Brian are constantly reminded of
5 what they have done, and that they are perpetually tortured
6 by it as I am.

7 I am in a constant state of anxiety now, not
8 something that ever affected me. I could always just jump
9 into a new situation because I knew that whatever the
10 situation was, I can make the best out of it.

11 The best way to explain how I've gone through life
12 since the attack on Brian and his subsequent passing is by
13 quoting a TV show that focuses on the grief of losing a
14 loved one. Comedian and actor Ricky Gervais, in the show
15 "Afterlife," explains perfectly how I am now going through
16 life. "I feel sad all the time. I am not the person I
17 was."

18 Brian dying is like a loss -- I lost a large part
19 of me. All of the good things, all of the happiness, the
20 joy in anything -- I feel like I am nothing. People think I
21 am okay; they think I am moving on with my life. I am my
22 sarcastic self, and that -- that, my sadness, my moodiness
23 is the lapse. But it is not. This is me all the time now;
24 everything else is a front. I am not well. But I do
25 remember what it was like to be normal, so I do my best

1 impersonation of that; but this is what I really am now.

2 I want to be normal again. I have tried since
3 Brian's death to be positive, to put that face on, but it's
4 just for show; that is, to keep the people I love in a place
5 so they don't worry about me.

6 I continued on with my job as a manager of a
7 retail store after Brian's death, but ultimately could not
8 handle the normal stresses of retail. I used most of my
9 savings and took six months off from work -- never to return
10 to that job that, for the most part, I enjoyed.

11 I excelled at customer service. Now I just want
12 to avoid people in general. I ultimately found a job that
13 is largely stress free, and the only people I have to
14 interact with are my coworkers; and that is on rare
15 occasions. It's just a job, a placeholder, just enough to
16 pay my bills.

17 I work 60 to 70 hours a week. My coping mechanism
18 has become working so that I don't have to think about
19 anything else. This leaves little time for myself or my
20 family -- or for downtime or for hanging out with my
21 friends, for going out on the town with my wife, who,
22 because I work so many hours, I see less than one-third of a
23 day per week.

24 I am embarrassed to tell you that I cry at random
25 moments; no warning. Luckily, I am usually by myself when

1 this happens. There are triggers everywhere; phrases that
2 are uttered; a meme that comes across my social media; a
3 scene in a movie or TV show that I have to leave the room
4 for or turn off. My wife constantly worries that something
5 on the TV will trigger me. She will pause and ask me if I'm
6 okay before we continue watching something together.

7 Politics used to be something to joke and complain
8 about; now it's a constant reminder of what happened to
9 Brian that day.

10 I would like to share a quote that was provided by
11 a member of a support group I now belong to, a group of
12 other siblings who also lost their loved ones in the line of
13 duty. We call ourselves: The best family that you can
14 never want to be a part of. The quote reflects how I
15 believe is how myself and others who love Brian feel.

16 The reality is that you will grieve forever. You
17 will not get over the loss of a loved one. You will learn
18 to live with it. You will heal, and you will rebuild
19 yourself around the loss that you have suffered. You will
20 be whole again, but you will never be the same, nor should
21 you be the same, nor would you want to.

22 These two defendants grew up, literally, ten
23 minutes away from where and Brian grew up. They have taken
24 away my brother's future as well as mine. Not only was
25 Brian hurt, so were his family, his coworkers, his friends,

1 his partner. My healing will consist of getting used to the
2 pain, not overcoming it; learning to exist while still being
3 damaged. I suspect that goes for everyone else Brian came
4 across in life.

5 Abraham Lincoln warned us that: Mob rule begets
6 mob rule. Lawlessness and violence are contagious. The
7 defendants were part of a mob that indiscriminately attacked
8 law enforcement and threatened to kill the people they
9 perceived as standing in their way. If the mob is not
10 punished, what is to prevent this from happening again?

11 Recently a politician suggested that if they were
12 the ones to lead the mob, the mob would have won.

13 I miss my brother dearly. I agonize every day
14 that my remaining brother and my parents are doing okay,
15 that his partner Sandra is okay, that his coworkers are
16 okay.

17 The United States Capitol Police are so busy
18 taking care of my family, I wonder who is taking care of
19 them. I suspect they're going about their lives much like I
20 am, remembering what normal is and acting the part. None of
21 this is okay. We're just moving forward knowing that we
22 will never get Brian back.

23 Judge, I ask that you consider all of these things
24 when passing sentence. One of the defendants, if given the
25 sentence that was suggested, will still be free and be

1 younger than Brian was when he died; meaning that he would
2 be given another chance at life, something that cannot be
3 said for Brian. The other defendant is asking for time
4 served. Whatever the extenuating circumstances were to put
5 him in that situation, please be reminded that he
6 participated. He bought the chemical irritants that Brian
7 was attacked with; he was part of the mob that overwhelmed
8 the police at a ratio of 58 to 1. The defendants were not
9 there by mistake; they didn't leave when it was obvious what
10 was happening.

11 To my family and I, whatever sentence is
12 administered, it cannot be enough.

13 Thank you, Judge.

14 THE COURT: Thank you, sir. I appreciate that.

15 MR. LIGHT: I call Craig Sicknick to the lectern.

16 MR. C. SICKNICK: I would like to thank Judge
17 Hogan for the opportunity to speak.

18 THE COURT: All right. And your name for the
19 record again.

20 MR. C. SICKNICK: Oh. My name is Craig Sicknick.
21 I'm Brian Sicknick's oldest brother.

22 THE COURT: All right. Thank you.

23 MR. C. SICKNICK: On January 6, 2021, you decided
24 to follow former President Trump down a dark path with many
25 other miscreants. I really would like to know how someone

1 can be so easily duped into doing the dirty work of another,
2 with no facts, no potential rewards, and a high likelihood
3 of facing serious repercussions for one's actions.

4 Was it fun? Did you really think you would be
5 rewarded for your idiotic efforts?

6 Over two years have passed since the actions of
7 you and your fellow rioters led to the death of my brother.
8 Did you think you would wind up here in this courtroom after
9 being involved in the first insurrection in U.S. history?
10 Did you think you would bask in the glory of Trump's
11 stupidity?

12 I wish I were not in the same room as you, as your
13 presence makes me sick. Your actions and those of your
14 fellow rioters that day led to the death of my kid brother,
15 who was by any measure more of a man than you will ever hope
16 to be.

17 Not a day goes by where I am not reminded of your
18 actions. I start every day by coming down the stairs of my
19 home and seeing a painting of Brian in his United States
20 Capitol Police uniform with a slight smile on his face,
21 reminding me of what my family and our nation has lost. He
22 was 42, far too young to die, especially due to the actions
23 of a madman and his sycophant followers.

24 After looking at the painting for a moment, I turn
25 on the morning news before work. More often than not, I am

1 reminded again of your actions with some bit of news on
2 Trump, the January 6 committee, or another piece on the
3 events of January 6th, in which you willingly participated
4 with misplaced rage and a cultish desire to follow your
5 narcissistic chief, willingly attacking Brian and his fellow
6 officers who were simply doing their job protecting the
7 Capitol Building, and those within it, on a day that has
8 been one of peaceful transition since the country was
9 founded.

10 Brian was a United States Capitol Police officer
11 for over 12 years, and not once did he have to deal with
12 someone such as yourself and your mindless fury that day.
13 Before he became a United States Capitol Police officer, he
14 served honorably in the Air National Guard overseas where he
15 faced all kinds of his dangers as part of his duties. He
16 managed to survive that experience physically unscathed and
17 went on to a career in law enforcement at the United States
18 Capitol where he continued to protect our country.

19 After 12 years as a United States Capitol Police
20 officer, his fate was sealed. Not by any foreign enemy, but
21 by the actions of you and your loathsome coconspirators that
22 day.

23 Your selfish actions have caused more pain than
24 you could ever imagine. My family is a wreck, and none of
25 us have been even remotely unscathed as a result of your

1 actions that day.

2 Brian's coworkers are still reeling from his
3 death. I myself have been both physically and emotionally
4 damaged to the point where I left a great job I loved, as I
5 can no longer handle being in the high-adrenaline
6 environment that went along with the job.

7 Thanks to you, I now suffer from ulcers as any
8 reminder of Brian's death still hits me like a hammer. I
9 have lapses of memory which I have never had before, which
10 make it more difficult to function both at work and at home.
11 I also suffer every day seeing what you have done to my
12 family, knowing you took away a son and a brother, a friend
13 and a coworker, and a gentle soul who chose the path of
14 protecting others instead of choosing another easier path.

15 He was the youngest of three siblings, ten years
16 my junior and should have easily outlived me, as he lived a
17 better lifestyle, was in great physical shape, and took
18 great care of himself.

19 I have seen my parents appear to age a decade at
20 least in the past two years. I see my brother Ken suffering
21 in his own way. And the face I see in the mirror is not the
22 same one I saw before everything occurred. Where I used to
23 see a face with a small grin, full head of hair, and clear,
24 bright eyes staring back at me. I now see a balding,
25 graying face, with new wrinkles and, more mornings than not,

1 a haunted look due to poor sleep and uneasy dreams.

2 Your participation in the January 6th insurrection
3 took away more than you can ever understand. Whatever
4 sentence the judge gives you today will not be long enough
5 or severe enough for my satisfaction, as our laws are far
6 more lenient than the actions you took that day toward Brian
7 and the other officers of the United States Capitol Police
8 and the D.C. Metropolitan Police that you attacked.

9 I hope you have a long time behind bars to think
10 about your actions and how they affected others. Your
11 deviant behavior on that day has altered the lives of me, my
12 family, our extended family, and the nation.

13 I would like to thank the Court for allowing me to
14 voice my thoughts.

15 THE COURT: Thank you, Mr. Sicknick. I appreciate
16 your remarks. Thank you.

17 MS. N. SICKNICK: I call Nicole Sicknick to the
18 lectern.

19 THE COURT: All right.

20 MS. N. SICKNICK: My name is Nicole Palmieri
21 Sicknick. I wanted to thank you for letting me read my
22 statement today.

23 THE COURT: Yes. Thank you. Go ahead.

24 MS. N. SICKNICK: Nearly 23 years ago, while
25 putting myself through college, having lived for years in

1 rented rooms, I went on a date with the most thoughtful,
2 gentle man I knew; his name was Craig. We had been friends
3 for a year, and I was terrified. I was terrified because I
4 loved him dearly, but also valued his friendship and didn't
5 want to risk losing it. I was terrified because he talked
6 about his family, and without knowing them I knew they were
7 good people.

8 Where I come from, good people kept their distance
9 from penniless nomads who lived in rented rooms and worked
10 two jobs to afford both groceries and tuition. But I went
11 on that date anyway, being scared, because I knew Craig was
12 a good person who knew where I came from and wanted to take
13 me out anyway.

14 A few weeks later, I met his family. And I am not
15 sure they knew how to take me, not many people did back
16 then. I was suspicious, scrappy, and sarcastic, and didn't
17 know how to act in a family, so I winged it. They gave me a
18 chance. They gave me a chance when many others didn't.
19 They listened even when I was difficult to understand. They
20 didn't always know if they were saying the right things,
21 neither did I. But they opened their hearts and gave me a
22 place. They welcomed me as family and, though, I had never
23 felt settled in my life, eventually, here, I was.

24 In time, I found myself as much a member of the
25 family as any of them, Craig, Gladys, Chuck, Ken, or Brian.

1 After years of existing ruthless and surrounded by callous
2 indifference, I was for once surrounded by people who loved,
3 valued, and protected one another. It was a tough
4 adjustment, but I made it; and it made a difference in my
5 life.

6 Then late morning, on January 7th, 2021, after I
7 had watched hours of mayhem on the news, my phone rang. It
8 was Craig, and his voice was choked. His brother, my
9 brother-in-law Brian, had collapsed in his office. It made
10 no sense because Brian had texted the night before, shaken
11 but in good spirits, having said nothing about being injured
12 or feeling ill. My stomach turned. Brian had always been
13 healthy. Why would he collapse? But Craig didn't know
14 either.

15 I waited hours for another call. And when it
16 came -- it came. Brian had had two strokes. He was
17 unresponsive, and his prognosis was grim. I asked my
18 husband in disbelief if this meant Brian would die, and he
19 frantically answered yes. After I heard myself scream,
20 "Why?" -- the voices on the TV slurred into the background,
21 and a fist clenched my throat. I sobbed on the floor for
22 not sure how long.

23 How could Brian die? He sounded fine yesterday.
24 He was only 42. He was an amazing person. We all loved
25 him. He was only doing the right thing. My mind raced on,

1 but no answers came.

2 What followed was a blur. Reporters pounding the
3 doors; silencing my phone to stop all of the ringing.
4 Photographs of Brian flashing repeatedly on the TV until I
5 turned all that off too; crying in the bathroom until I
6 threw up, physically ill from electrolyte loss. Then
7 hearing my family crying, all of them, listening to them
8 scream at one another in confusion and rage.

9 Blue and red lights -- miles and miles of them --
10 for hours; sirens; the sounds of everyone's voices turned
11 unbearable because all I could hear in those voices was fear
12 and loss; then the sound of no one knowing what to say for a
13 long time.

14 The silence was as maddening as the noise. Asking
15 why? But never getting an answer. Just angry voices and
16 sad faces all around me from people I had never seen angry
17 and sad in 20 years.

18 Where I came from, anger and sadness were all
19 over, wherever you turned, but not in this family. What had
20 happened?

21 There was once joy, comfort, laughter. There was
22 once a sense of shelter. So many memories and moments were
23 once cherished. I was lucky to find a family who helped my
24 heart to become better. And now the defendants snuffed all
25 that out with a spray can of chemicals -- just because you

1 could. You took it away from us with your malice and
2 hatred -- just because you could.

3 Now, because of all of that, the comfort, the joy,
4 the laughter, the safety, and the memories became drowned in
5 rage, sadness, terror, and tears. How could this happen?
6 Because of hate. The same hate that rallied thousands to
7 take up arms against a nation that allowed their rights and
8 freedoms, and attack that same nation, and those who
9 defended those very rights and freedoms -- all because of
10 some malignant, self-important egomaniac told them to do so?

11 Many times this has happened in history the world
12 over. Any American with basic knowledge of history knows or
13 should know where this leads. And yet American citizens
14 like you took it upon yourselves to brutally attack, maim,
15 and kill fellow Americans because you fancied one man; one
16 woefully misguided man wished you to do it.

17 When did it become okay to commit violent crime or
18 any violent crime just because someone wished it? Never.

19 The SS officers on trial at Nuremburg learned this
20 the hard way; and if there is any justice in the world, so
21 will you.

22 What did my brother-in-law Brian, someone you had
23 never even met, ever do to justify your vicious abuse of
24 him? He was here doing his job, protecting the people he
25 had sworn to protect. And for doing this, you felt he

1 deserved to be attacked and sprayed with poison? You didn't
2 even belong in the Capitol. You were there for the sole
3 purpose of destruction, and Brian died protecting the
4 innocent from people like you.

5 You destroyed Brian Sicknick, my brother-in-law
6 and friend, because it suited your whims. You destroyed the
7 hearts of every member of Brian's family just because it
8 suited your whims. An innocent man, a loving brother, and a
9 good friend, and the lives of the people who loved him have
10 been destroyed by you just because it suited your whims. I
11 hope that makes you proud of yourself.

12 THE COURT: Thank you, Ms. Sicknick.

13 MR. LIGHT: And, Your Honor, our final victim
14 impact statement will be Officer Caroline Edwards.

15 THE COURT: All right.

16 OFFICER EDWARDS: Good afternoon, Your Honor.

17 My name is Caroline Edwards. I am an officer with
18 the United States Capitol Police.

19 THE COURT: Thank you.

20 OFFICER EDWARDS: And thank you for the
21 opportunity to address the Court and allowing me to speak.

22 On January 7th, 2021, a sergeant called me to tell
23 me that Officer Sicknick would not make it. My day had
24 already been confusing enough. Injured with a traumatic
25 brain injury, I slept fitfully, not sure of what was real

1 life and what was a dream. I had hoped this call was a
2 nightmare. All I could remember saying to him over the
3 phone was, "No." That's all I could say, "No," followed by:
4 I'm sorry. I am so sorry.

5 I had just seen Sicknick on the west front a day
6 ago. When I saw him get attacked, I remember his face,
7 ghostly pale, and in pain. I remember thinking that I had
8 never seen anyone go pale when they got sprayed with
9 chemical spray, and I knew he must need help. I didn't get
10 a chance to help, though, because seconds later I was
11 sprayed.

12 What kicked off was a month's of survivor's guilt
13 and asking God why it wasn't me. It didn't matter what
14 anyone else said to me. I felt like the absolute worst kind
15 of officer; someone who didn't help their friend, couldn't
16 help their friend. Every time I looked in the mirror, I was
17 reminded of this.

18 My eyes were red and scabbed for over a month
19 afterwards. It was like the 6th was mocking me, reminding
20 me at every turn how I couldn't help my fellow officer that
21 day.

22 As you are aware, that's why sentencing for
23 someone who attacks a first responder is so high. When you
24 attack a police officer, you limit their ability to do their
25 job and help others in need. So many people died needlessly

1 that day due to first responders and resources being held up
2 by attacks from people like Mr. Tanios and Mr. Khater.

3 I quite possibly was the first person to notice
4 something wrong with Officer Sicknick. Could anything I did
5 that day help him? Possibly not, but I will never know.
6 That's what was taken away from me, Your Honor, my ability
7 to be there for a fellow officer, to be there for a friend.
8 Sometimes, when I close my eyes, I can still see his face,
9 white as a sheet.

10 I thought I would be happy when this day came,
11 when justice would be served, and I would get a chance to
12 tell the Court how I and my fellow officers felt when
13 thousands attacked us. I thought it would feel like
14 closure. Instead, I would give anything for none of us to
15 be where we are right now; and I would give anything to take
16 the pain away from the Sicknick family and my fellow
17 officers.

18 That day, these choices, those moments will affect
19 all of us for the rest of our lives. How we choose to move
20 forward from this moment is what will define us. It does
21 not matter to me how Brian died. Instead, what matters is
22 that Brian gave some of the very last breaths he had to
23 defending the Capitol Building, our symbol of democracy. He
24 shouldn't have had to, but he did. This is what I want
25 people to remember when they think of Sicknick, and this is

1 what I choose to remember.

2 Brian David Sicknick: End of watch, January 7, 2021.

3 Thank you for the Court's time, Your Honor.

4 THE COURT: Thank you, Officer.

5 MR. LIGHT: Your Honor, that concludes the victim
6 statement portion. The government is ready to proceed to
7 its allocution if the Court's ready.

8 THE COURT: All right. First, let me establish
9 that we have taken testimony from the people who are
10 victims, that is, suffered as a result of the activities
11 before us today from Mr. Khater and Mr. Tanios. And I will
12 talk more about that at the time of actual sentencing, as to
13 how we can approach their concerns.

14 I take it that I have no objections in the
15 presentence report by counsel from the government, or
16 corrections to be made.

17 MR. LIGHT: That is correct, Your Honor.

18 THE COURT: And since I am doing that, let me just
19 ask each defense counsel -- so we don't have to repeat this
20 again -- that each defense counsel, having reviewed the
21 report, there are no objections or corrections to enter; is
22 that correct?

23 MR. SEIGEL: That's correct on behalf of
24 Mr. Khater, Your Honor. Thank you.

25 THE COURT: All right. Thank you.

1 Ms. Gross.

2 MS. GROSS: No objections on behalf of Mr. Tanios.
3 Thank you.

4 THE COURT: Thank you. All right. So the
5 presentence report stands as found.

6 The presentence report, as I've said, is based
7 upon the probation officer's review of the pleas in this
8 case. And the presentence report found that, under the
9 Sentencing Reform Act of 1984 that set forth guidelines for
10 almost 40 years now that the Court uses as an advisory basis
11 to consider an appropriate sentence -- principally to make
12 sure the sentences are not only fair and adequate and
13 respond to the needs of the public as well as of the
14 defendants' situation and the nature of the offense that we
15 consider, but to help provide a somewhat uniform sentencing
16 so that there is no unfair disparity between sentencing
17 between individuals convicted of the same offense and the
18 same background.

19 In this case as to Mr. Julian Khater, we have the
20 total offense level of 80 -- 28. The Criminal History
21 category is minimal, it's 1; it's not affecting anything.
22 The guideline provisions, for the pleas to Count 2 and 3
23 that he pled to in this case charge him with two counts of
24 assaulting, resisting, impeding certain officers using a
25 dangerous weapon in violation of 18 U.S.C. 11(a)(1) and (b),

1 are 78 to 97 months. So that's, approximately, a little
2 over six-plus years up to eight and a half to nine years.
3 So we'll consider that range as a part of the consideration
4 the Court gives in the case. It's not bound by that range,
5 although to vary there has to be some rational basis for
6 varying from the range, either going higher or lower.

7 All right. Mr. Light.

8 MR. LIGHT: Thank you, Your Honor.

9 Today the government asks for this Court to impose
10 a sentence on Julian Khater of 90 months of incarceration
11 based on the defendant's egregious conduct on January 6th.
12 I just want to --

13 THE COURT: That's about 8.6 years that I
14 interpret it to be coming out to be, approximately?

15 MR. LIGHT: The range of 78 to 97, I believe, tops
16 out at eight years and one month for 97 months.

17 THE COURT: All right.

18 MR. LIGHT: Now, first, the government would like
19 to address, as discussed, defendant Khater.

20 My colleague, Mr. Scarpelli, will then address
21 defendant Tanios.

22 THE COURT: All right.

23 MR. LIGHT: So beginning with Mr. Khater and what
24 happened on January 6th, this defendant committed a cowardly
25 and premeditated assault on at least three uniformed law

1 enforcement officers.

2 This was not just an assault on law enforcement;
3 it was an assault launched in timed coordination with other
4 rioters who were trying to break through the makeshift
5 police line that was barricading the United States Capitol.

6 The government submits that -- when this Court
7 evaluates the factors specified in Title 18, Section 3553,
8 as it should -- it will find that the collective balance of
9 the weight of these four factors; it weighs heavily in favor
10 of our requested sentence today.

11 And Your Honor has correctly stated the charges,
12 the guideline recommendations; I won't repeat them for the
13 Court. I would like to just address the four sentencing
14 factors and why they support the requested sentence
15 beginning with the first factor, the nature and the
16 circumstances of the offense.

17 Now, this Court is familiar somewhat with the
18 details of what happened, with the facts -- and I don't
19 intend to launch an entire factual summary of what happened
20 that day, as this was presented largely to the Court during
21 a detention hearing back in April and May of 2021. We
22 submitted Exhibits 1 through 17 to the Court during that
23 hearing. We have incorporated these exhibits as exhibits in
24 our sentencing memoranda, they are still before the Court;
25 and I will refer to some of them today by the same exhibit

1 number for purposes of this hearing.

2 THE COURT: All right.

3 MR. LIGHT: We have also added Exhibit 18 within
4 our sentencing memorandum relating to defendant Khater.

5 We will be showing some of these exhibits. I am
6 going to start our PowerPoint presentation. The exhibits
7 are also referenced in our sentencing memoranda.

8 So, first, I do want to review the lead-up to the
9 assault itself, and what led the defendant to commit this
10 awful act of violence. What we know is that on January 5th,
11 2021, Julian Khater and George Tanios traveled to
12 Washington, D.C., together. They brought with them two
13 canisters of bear spray, two canisters of pepper spray.
14 Both of these sprays contain the same active ingredient
15 capsaicin; and they were purchased by George Tanios that
16 evening specifically for their trip to Washington that
17 night.

18 Now, on January 6th, Tanios -- carrying the bear
19 and the pepper spray in his backpack -- and defendant Khater
20 went to the rally in front of the White House. They
21 listened to the speeches, they marched across the mall.
22 They walked right by this courthouse, and they got to the
23 U.S. Capitol Building at approximately two o'clock p.m.

24 Now, from this point on, Julian Khater's assault
25 on law enforcement and the formation of his malicious intent

1 to attack these officers and purposely launch this assault
2 and purposely break the law -- it develops in three stages.
3 Each of these three stages, we submit, reveals an escalating
4 level of criminality.

5 First, he observes the riot that is already fully
6 underway. Now, the timing of the larger riot is very
7 important here. And these are details that we did not have
8 a good grasp on when we last spoke in April of 2021; we
9 understand much more about it now.

10 What we see is that in Slide 1, which is before
11 the Court -- and this is Figure 1 referenced in our
12 sentencing memorandum -- it shows the layout of the Capitol
13 on the day of the riot. And with my mouse, which is not
14 showing up on the screen -- bear with me.

15 If I may just approach the screen because the
16 pointer is not showing up.

17 THE COURT: Certainly.

18 MR. LIGHT: This area, Your Honor, by the Lower
19 West Terrace, just to the right of the circle C, that's
20 where much of the camera footage that you are about to see,
21 and that you have seen, took place.

22 Now, the circles that you see there, A, B, and C,
23 are where the initial breaches happen. And if we move to
24 Slide 2, we see this very area that I have highlighted to
25 you -- the front of the west side of the Capitol, the Lower

1 West Terrace and the West Plaza -- at 1:39 p.m., in the
2 afternoon, is already overrun with rioters, with violence,
3 and with a makeshift police line that is barely hanging on
4 through bike barriers -- or bike racks that were set up as a
5 makeshift barrier.

6 Now, as we know from the surveillance video, the
7 first time that we see Khater and Tanios enter the Capitol
8 grounds is at, approximately, 2:09 p.m. So all of this is
9 already ongoing.

10 The first clip I would like to play for the Court
11 is Government's Exhibit 3. The time stamp is 2:11 p.m. I
12 am going to hit "Play." There is no sound on this footage;
13 this is from United States Capitol Police surveillance
14 footage. What we have done -- to try and assist the
15 Court -- is put arrows on top of the defendants' heads. The
16 red arrow is pointing to defendant Khater; the yellow arrow
17 is pointing to defendant Tanios.

18 Now, you can watch this video over and over and
19 over again and see something different because there is so
20 much to see. I would direct the Court's attention to the
21 center right of the screen where you'll see officers behind
22 the barrier repeatedly rushing over to the line because
23 violence was going on; because batteries were being
24 launched; spears were being thrown; chemicals were being
25 deployed by the rioters; flash bombs were going off, some of

1 those from law enforcement; makeshift devices being hurled
2 by the rioters; smoke going up in the air. It was a melee.

3 And this defendant sat there and watched it. He
4 took it all in. And you can see him trying to get closer,
5 walking up to that area. Shortly you are going to see a
6 fracas to his right, and that's now in the center of the
7 screen, that he approaches and sees heads on, up close with
8 his own eyes.

9 Julian Khater did not arrive at a protest in front
10 of the Capitol. He arrived at a riot. He arrived at a war,
11 a full-fledged assault on overmatched police officers
12 struggling to protect the Capitol. He saw all of this and
13 he wanted to get closer.

14 Now, he stays. He doesn't leave. He separates
15 from his codefendant, Mr. Tanios, at some point, and then he
16 comes back together with him farther away from the police
17 line. So at this first stage, his culpability level is a
18 little bit lower. Right? All he has done is he has seen
19 violence, he hasn't participated in it yet. But at the
20 second stage, which we saw caught on video as well, is when
21 his involvement turns to anger and loss of control.

22 I am about to play for the Court Government's
23 Exhibit 5 which captures the moment that the Court saw
24 previously, when defendant Khater reaches into defendant
25 Tanios's backpack to retrieve what is clearly a bottle of

1 bear spray, not pepper spray. This is Government Exhibit 5.
2 It's from open source media, it does have volume. I will
3 play it for the Court.

4 (Whereupon, an exhibit was published.)

5 MR. LIGHT: I hope Your Honor heard that at the
6 end, when Mr. Khater emphatically declared, "They just
7 effing sprayed me." You can hear that he's angry, that he
8 is upset, that he is ready to do battle. He has reached for
9 a weapon. You can hear it in his voice.

10 Now, he claims he was sprayed as if he was some
11 innocent victim. I don't know what he expected when he
12 walked up to the front line of a riot. But he used this
13 perceived slight and portrayed himself as the victim to fire
14 himself up even further, amongst hundreds of people who were
15 uncontrollably fired up and ready to do battle. But that is
16 not the worst of it because, after that moment, what we see
17 is that Mr. Khater actually does calm down.

18 We see in the next government exhibit, Government
19 Exhibit 4, a moment of cooling off, if you will; meaning, he
20 doesn't appear to be roused, he doesn't appear to be jumping
21 up and down. He is standing there talking to his
22 codefendant, to Mr. Tanios, and to others.

23 And this final stage is the most disturbing,
24 because this happens at 2:13, and he sits for seven minutes.
25 We're now on Government's Exhibit 4, at 2:20 p.m. And for

1 the previous seven minutes, Mr. Khater is standing there
2 talking to people calmly. We know he has a canister of
3 pepper spray in his hand. We know he has a canister of bear
4 spray on him. To be clear -- it's clear from the video,
5 it's clear from what we see -- he did not actually use that
6 canister of bear spray during the assault; he used a smaller
7 canister of pepper spray.

8 At this stage, where he is calm and deliberative,
9 is where we see intentional and methodical conduct. Now, I
10 am going to hit "Play" here again, and talk over this video.
11 You are going to see the red arrow start to work it's way
12 up. This is 2:20, and the assault happens at 2:23.
13 Mr. Khater has said goodbye to the people he was talking to,
14 and is now positioning himself.

15 There is only one reason he is trying to get
16 closer to this violence, and that's to join it. He is going
17 to walk up and lay in wait. He is going to work his way to
18 the front of the line, stay positioned facing forward,
19 facing the line of officers. He is armed with two canisters
20 of pepper spray. He has got one in his hand, and he is
21 waiting for the right moment to spring into action.

22 And here is what is so disturbing, Your Honor.
23 This is not just an impulsive reaction to him supposedly
24 being sprayed. You don't see in the video that he's
25 reacting the way some others you're about to see react when

1 they get sprayed with pepper spray. He is not leaning over,
2 rubbing his eyes; he's not dousing his face with water. He
3 claims he was sprayed.

4 You can see in the videos, certainly, people are
5 walking away from where police are spraying protesters;
6 there is no question they were. And police are getting
7 away -- I'm sorry -- other people in this mob are walking
8 away from that. He gets closer.

9 Now, as you see, he continues to get closer, and
10 he waits. He waits for what he knows is about to happen,
11 and that is a full-on assault on the police line.

12 Other rioters have attached straps to the bike
13 racks and, at the right moment, after a lengthy wait -- when
14 he had time to walk away and time to think about what he was
15 doing, he jumped into action right when the officers were at
16 their most defenseless. We're going to let this video play
17 just for another 30 seconds here until we get to the
18 assault.

19 (Whereupon, an exhibit was published.)

20 MR. LIGHT: In about 10 seconds, at the bottom
21 right of the screen, you will see a disturbance, a
22 commotion; that's the pull on the bike rack that sent
23 defendant Khater into action.

24 If you watch the red arrow, you can see defendant
25 Khater with his hand extended. He just sprayed Officer

1 Edwards. And watch him, because he continues to spray; his
2 hand is up, he is leaning back in. And an officer in a
3 white shirt, Lieutenant Bagshaw, sees him, approaches him,
4 and has to spray him to get him to stop.

5 Now, we're going to revisit that and more about
6 the injuries that were inflicted at that moment. I want to
7 go to a different angle for what we saw here. This is
8 Lieutenant Bagshaw's body-worn camera, the same officer you
9 just saw chase Mr. Khater down.

10 This is a very short clip. I am just going to
11 play it for the Court.

12 What it does is it shows our three victims:
13 Officer Brian Sicknick on the left in the blue, Officer
14 Caroline Edwards in the center, and Officer Chapman on the
15 right from the Metropolitan Police Department. One thing
16 they all have in common is they're not wearing riot gear;
17 they're not wearing face shields. The most that they are
18 protected with are bicycle helmets -- for Officer Sicknick
19 and Officer Chapman. Officer Chapman is wearing a ski mask
20 which is of no help to him. And Officer Edwards has
21 absolutely no protective gear on her head or covering her
22 eyes.

23 Now, Mr. Khater is standing right in front of
24 these three officers, standing and waiting in that video we
25 just showed you.

1 We're going to go to our next exhibit; this is
2 Government's Exhibit 6. And this shows another angle where
3 you can see the defendant's assaultive conduct.

4 (Whereupon, an exhibit was published.)

5 MR. LIGHT: We have slowed this down so you can
6 see what's happening.

7 The green arrow is Officer Edwards; the yellow
8 arrow is Officer Chapman; the blue arrow is Officer
9 Sicknick. And in red, there is defendant Khater; hand
10 extended, spraying all three officers one by one. And,
11 importantly, he doesn't stop. There he is, continuing to
12 spray.

13 And one final clip we would like to show Your
14 Honor is Government's Exhibit 7. And there -- I'm sorry, I
15 stopped it too soon. But there is defendant Khater
16 continuing even longer to spray other officers.

17 It's worth noting, we have identified, Your Honor,
18 three victims. That's at least three victims. Those are
19 the victims that we were able to identify. It's very likely
20 that that pepper spray landed on more than just three
21 people.

22 Now, Government's Exhibit 7, one final view of
23 what happened there.

24 (Whereupon, an exhibit was published.)

25 MR. LIGHT: I paused it here, Government

1 Exhibit 7, just a few seconds in because this shows what I
2 was referring to earlier. This shows seconds before the
3 assault where defendant Khater was laying in wait directly
4 in front of these three officers.

5 (Whereupon, an exhibit was published.)

6 MR. LIGHT: Now, Your Honor, that was Officer
7 Chapman's body-worn camera. That was one of the victims who
8 got sprayed, and that's why it got so unsteady there.

9 But you could see Officer Edwards moving around;
10 you could see Officer Sicknick. Both of them -- all three
11 of them reacting to the pepper spray. And I am going to get
12 to their injuries and the effects it had on the police
13 officers in a moment.

14 With regard to defendant Khater's conduct, the
15 nature of this offense shows much more than an impulse; it
16 shows more than heat of the moment. It is an intentional
17 effort to join the other rioters -- to team up with them, to
18 work in concert with them -- to help the riot succeed in its
19 goals.

20 Now, the idea that the defense has submitted to
21 the Court that it was never Khater's intent to facilitate a
22 breach of the Capitol -- that's page 11 of their sentencing
23 memorandum -- is, with all due respect, completely
24 disingenuous because that is precisely what he did. He knew
25 what he was doing when he timed his actions like that. This

1 is not a situation where he got sprayed by an officer and
2 then immediately reacted in the heat of the moment. And we
3 take issue with the defense's characterization of this as
4 some sort of impulsive reaction.

5 Why did he wait if he was so impulsively angry?
6 Why did it take him so long to act?

7 There are nine minutes between when he retrieves
8 that bear spray from Tanios's backpack and the actual
9 assault. There are multiple minutes longer when he's just
10 standing there. Your Honor, that is premeditation; that is
11 deliberation.

12 Your Honor should not either find any mitigation
13 or justification in the presence of what the defense
14 characterizes as "a climate of mass hysteria." I believe
15 the defense described it, on page 11, as "a visceral powder
16 keg that was waiting to ignite," and that Mr. Khater was
17 somehow a victim of that explosion. That is completely
18 wrong. Mr. Khater was the powder.

19 His conduct is not absolved or mitigated or
20 otherwise deserving of leniency just because people were
21 egging him on. It is up to our everyday citizens to follow
22 the law when voices of chaos are at their loudest. It's up
23 to everyday citizens to refrain from violence, to refrain
24 from assaulting our brave men and women in uniform.

25 Julian Khater, he failed that basic test of a

1 civilized democratic society that day. The test that says:
2 When you don't get your way, you resolve things peacefully.
3 He didn't get his way, he chose violence, and he chose to
4 assault our democracy.

5 I want to talk now about the injuries inflicted on
6 these officers because this was a personal assault on human
7 beings, Your Honor.

8 Each one of these officers was incapacitated.
9 They suffered the sting of a direct hit to the eyes. They
10 lost their vision, they lost their ability to defend the
11 line, they had to retreat off that line, and they required
12 other officers to assist them even in seeing just to get to
13 a safe place. Three officers all struck with pepper spray,
14 at least three, all forced to go to the sidelines.

15 And then, Your Honor, most tellingly, five minutes
16 later the order to retreat was given. The line fell five
17 minutes after Julian Khater's pepper spray. The line fell,
18 and we know what happened next. Now, the Capitol was
19 breached on multiple fronts, not just right there. But the
20 cumulative efforts of rioters like Mr. Khater are what
21 contributed to -- what allowed the breach of our Capitol
22 Building.

23 I want to play Government Exhibit 10 for the
24 Court. And I will note -- right here -- this is a good
25 still shot of this body-worn camera. What you see in the

1 very left there -- and it's just cut off here -- is Officer
2 Sicknick standing to the side, leaning over, suffering the
3 effects of pepper spray. And if you can see in the center,
4 that is Officer Edwards -- the camera will get closer to
5 her -- with a hand on her eyes. She cannot see, she has a
6 hand in front of her. She is alone, blinded, and doesn't
7 know where to go. We're going to play this video.

8 (Whereupon, an exhibit was published.)

9 MR. LIGHT: Note there were two officers that had
10 to assist her and guide her through the scaffolding. Now,
11 that was Officer Edwards.

12 The next video we would like to play for the Court
13 are Government's Exhibits 11 and 12. Court's indulgence
14 while I retrieve these from a different source.

15 Now, Exhibit 11 we're about to play for the Court
16 is surveillance footage from the upper terrace, the stairs
17 leading up from where these officers were just assaulted.
18 We would like to play about three minutes of video for the
19 Court. We think it's instructive because this is video of
20 Officer Sicknick after he retreated from the line.

21 THE COURT: Yeah. I remember he was up in the
22 patio area.

23 MR. LIGHT: That's correct, Your Honor. Right.

24 With the Court's permission, these videos are not
25 terribly long, about three minutes. I am going to let them

1 play. I will note for the Court -- we would like you to
2 focus not just on Officer Sicknick and how long it's taking
3 him to recover, but the other officers who are also coming
4 up to retreat and recover and douse their face with water,
5 and are unable to defend the line.

6 (Whereupon, an exhibit was published.)

7 MR. LIGHT: That was Government's Exhibit 11.

8 We'll play Government's Exhibit 12, a continuation
9 of the same clip.

10 (Whereupon, an exhibit was published.)

11 MR. LIGHT: I will note, Your Honor, this is 2:29
12 p.m. on the surveillance video. That is Officer Sicknick
13 six minutes after this assault, still leaning over with his
14 hands on his knees, pouring water in his eyes trying to
15 recover.

16 This defendant left these officers defenseless,
17 helpless, unable to see, and in need of assistance. He took
18 more than three officers away from the line which further
19 took away from the defense of the Capitol, and this is how
20 the Capitol was breached.

21 With regard to the injuries, I will point out that
22 Officer Edwards was here and bravely chose not to talk about
23 her own injury but to talk about the injury of her friend,
24 her colleague. She was suffering the same way that he
25 suffered at that moment. This was -- I saw the scabs myself

1 on her eyes, Your Honor, that lasted for weeks. She was
2 also the victim of other violence at other areas of the
3 Capitol. But that attack -- this defendant's attack on
4 Officer Edwards, Officer Sicknick, Officer Chapman was
5 instrumental in allowing January 6 to happen.

6 Now, with regard to the intent of the defendant in
7 terms of interfering with the Electoral College, we don't
8 have any evidence that he was planning on this prior to
9 January 6th. We have been very forthcoming with the fact
10 that there are no postings or communications that show any
11 preexisting intent. He was not one of the individuals who
12 were talking up interfering with the election prior on
13 social media or in any other forum that we know of.

14 The defense has emphasized this lack of planning
15 and prior agitation as some sort of a mitigator but, quite
16 frankly, Your Honor, I am not sure what's worse: Someone
17 who talks about it for 30 days prior to January 6th and
18 stands on the sidelines, or someone who doesn't say a word
19 and doesn't talk the talk but walks the walk and assaults
20 three officers like this.

21 At the end of the day, the nature and
22 circumstances of this offense are that Julian Khater formed
23 a very deliberate and calculated intent to attack law
24 enforcement and, for these reasons, the nature and
25 circumstances of the offense call for a lengthy term of

1 incarceration as punishment.

2 Our second factor under the sentencing
3 guidelines -- I'm sorry -- under the sentencing analysis are
4 that -- with regard to the history and characteristics of
5 this defendant, we submit that there is no reason to dispute
6 Mr. Khater's background and characteristics of which I know
7 the defense will be speaking about shortly. His lack of a
8 criminal history, his lack of a prior record is reflected in
9 the guidelines analysis. The fact that he immediately
10 accepted responsibility for his actions -- all of that is
11 reflected in the plea offer agreed to by the government
12 where an additional assault was not charged.

13 Our third factor is the need for the sentence to
14 reflect the seriousness of the offense. And I can reiterate
15 my allocution on the first factor, that this was an
16 unprecedented attack on law enforcement officers who were
17 guarding the democratic process itself. The defendant's
18 willingness to join this mob of rioters makes it even more
19 serious than had he acted alone.

20 A lengthy period of incarceration will promote the
21 very respect for the law that Julian Khater abandoned on
22 January 6th. It will also afford adequate deterrence. And
23 that's our final factor, both to Mr. Khater himself and to
24 others tempted to act similarly. Julian Khater acted with
25 malice and hatred in his heart that day. His susceptibility

1 to extreme violence, his willingness to join that mob, his
2 willingness to attack these unprotected officers -- it's
3 shocking, it's outrageous, and it requires a sentence that
4 will ensure that law and order continue to govern our
5 society.

6 Now, in terms of unwarranted sentencing
7 disparities, I would like to address that for a moment.
8 And, Your Honor, we did file a supplemental sentencing --

9 THE COURT: I received that and reviewed it, the
10 cases that defense relied upon as to the potential disparity
11 in sentencings of other January 6th rioters that were
12 sentenced for somewhat similar conduct. I read through
13 those and any differences that you pointed out.

14 MR. LIGHT: Thank you.

15 I won't go into them in detail. I will just
16 summarily state that this defendant's actions are easily
17 distinguishable from those cases, if only on the following
18 grounds: They are different charges; there are no dangerous
19 weapons involved in these other cases; there are no injuries
20 to officers in these other cases, and/or the number of
21 victims is much smaller.

22 One of those four factors -- in most of them more
23 than just one factor are present in those other cases. They
24 are not the same; they are inapposite to this case.

25 THE COURT: A majority of them are within the

1 guidelines of those offenses that they plead guilty to?

2 MR. LIGHT: Yes.

3 Those were guidelines -- you took the words out of
4 my mouth, Your Honor. These were guideline-compliant
5 sentences that were given.

6 We are not asking for any upward variance here; we
7 are not even asking for the very top of the guidelines.
8 This is a reasonable sentence for all of the reasons I have
9 already stated.

10 And with that, Your Honor, unless the Court has
11 questions specifically about defendant Khater, I would like
12 to yield the microphone to my colleague, Mr. Scarpelli.

13 THE COURT: No. I am going to consider and talk
14 to Mr. Khater. You can come back and talk about the
15 restitution, potentially, for the -- anything they may have
16 paid for damages to the officers. I have restitution that
17 they can get, that will be at a later stage, and any fine
18 possibilities that are available based upon Mr. Khater's
19 financial situation and his GoFundMe page. All right.

20 MR. LIGHT: Thank you, Your Honor.

21 THE COURT: Thank you, Mr. Light.

22 All right. Mr. Seigel, if you are ready.

23 MR. SEIGEL: I am, Your Honor.

24 THE COURT: Thank you.

25 MR. SEIGEL: Thank you, Your Honor.

1 At the outset, as the Court noted, the guidelines
2 in this case are 78 to 97 months.

3 The Court stated that there would need to be some
4 other mitigating circumstances to warrant a variance, and we
5 submit that there are, indeed, such circumstances in this
6 case that justify leniency and compassion. We outline them
7 in great detail in our sentencing submission, which I know
8 the Court has read thoroughly, so I only intend to address
9 certain salient facts within our submission. But at the
10 outset, I do want to outline what those considerations are,
11 and then I will go into them in greater detail.

12 First -- and I would note the government has not
13 touched this issue at all; and that is the onerous
14 conditions of pretrial detention at the CTF to which
15 Mr. Khater has been subjected for nearly the last two years.

16 The circumstances surrounding the offense
17 itself -- which, of course, the government has addressed; we
18 will as well -- including its spontaneous nature, we
19 obviously disagree strongly with the government's
20 assessment; and Mr. Khater's anxiety which contributed to
21 it, meaning it was not part of some orchestrated plan to
22 attack democracy. And despite the government's
23 representations today, there are acknowledgements in their
24 submission which confirm that. And the reality is that that
25 truly is what lies at the heart of the most disturbing cases

1 on January 6th.

2 In addition, there is Mr. Khater's post-defense
3 rehabilitation, his genuine remorse, the aberrational nature
4 of his conduct in this case and, as the government
5 prophesied, we would be addressing his upstanding background
6 and character. For all of these reasons I intend to delve
7 into, we are, indeed, asking for time served with supervised
8 release, specifically with a condition that addresses his
9 mental health, his underlying anxiety. And it's our
10 position that such a sentence would be sufficient but not
11 greater than necessary to achieve the objectives of
12 sentencing under Section 3553.

13 And, importantly, one such objective which the
14 government touched on is the need to avoid unwarranted
15 sentencing disparities. We'll address that, including the
16 cases which the government brought to the Court's attention
17 at 12:01 a.m. this morning. We reviewed them, and we
18 respectfully disagree with their assessment. I will delve
19 into that.

20 But, first, turning to Mr. Khater's background --
21 and it's important under 3553. Mr. Khater is now 32 years
22 old. Indeed, his Criminal History Category is 1, and that's
23 for a reason; he has led an exemplary life. He was born in
24 New Jersey, where he was raised alongside his older brother
25 and two younger brothers in a very close-knit family. In

1 fact, in 1994, when Julian was only five years old, his
2 father moved the entire family back to his own childhood
3 home in Lebanon, to raise his children amidst their extended
4 family, comprising no less than 32 cousins.

5 THE COURT: Let me just say one thing.

6 For the sake of the people who are here and are
7 listening to this, to understand the proceedings, Mr. Seigel
8 is going to go into under -- he mentioned 18 U.S.C. 3553(a),
9 as did the prosecution. That's the general sentencing
10 statute that guides the Court in sentencing and part of that
11 statute that the Court has to consider after it considers
12 the guidelines.

13 And (a), the first paragraph, is nature and
14 circumstances of the offense which has been discussed, and
15 will be more; (b), as Mr. Seigel is into now, the history
16 and characteristics of the defendant. You would have to
17 know something about the defendant to determine his
18 appropriate sentence, what his background is, whether he is
19 a prior serious offender or not, et cetera; (c) is the need
20 for the sentence imposed to reflect the seriousness of the
21 offense, promote respect for the law -- that the government
22 raised; (d) is the need for the sentence to afford adequate
23 deterrence, specific and general deterrence as well and,
24 then, (e), obviously, to consider the guidelines.

25 But, finally, that we consider unwarranted

1 sentencing disparities under 3553(a)(6), which is very
2 important because the courts got concerned, in years past --
3 one of the reasons for the guidelines is that people with
4 the same crimes were being sentenced very differently,
5 perhaps because of racial or other inequalities.

6 So we have to consider all of those factors. I
7 think Mr. Seigel is appropriate to go into the history and
8 characteristics of Mr. Khater at this time so that we can
9 consider that, and that would also include not only his
10 physical characteristics but mental characteristics, family
11 characteristics, et cetera.

12 MR. SEIGEL: Your Honor, thank you very much for
13 that. I appreciate you stating that. Because it's true,
14 Congress in its wisdom -- and I am saying this for the
15 edification of those who are in the audience -- enacted
16 18 U.S.C. 3553 Section (a)(1), which specifically requires
17 the Court to consider the history and characteristics of the
18 defendant. That's because the guidelines are not all
19 powerful; it's just one factor for the Court to consider
20 when viewing a human being to assess what sentence is
21 appropriate for him individually. And that's why his
22 background is very important in this case.

23 He is a good human being. This conduct in this
24 case does not define him, and I will address that in greater
25 detail.

1 I heard -- my heart goes out to them -- I heard
2 someone speak to this Court and say what kind of family
3 could he have? How could he do what he did? What led him
4 here today? We intend to address that, Your Honor. It's
5 our hope that it brings some clarity to those in the viewing
6 audience today and sheds some light on what occurred because
7 there really are extenuating circumstances here.

8 And with that said, Your Honor, Julian Khater was
9 brought back to Lebanon to be raised in a very close-knit
10 environment by his father. It was a rural and mountainous
11 area, in Bcharre [sic], Lebanon, which lacked traditional
12 staples: A steady source of electricity, a regular
13 telephone system, continuous supply of hot water. But what
14 it did offer him was a sense of belonging and a very strong
15 sense of family and community values; I highlight that
16 because it's a central theme throughout his life.

17 His mother, Eleanor Fox, in a letter submitted to
18 this Court, as well as his cousin, Josephine Khater,
19 provided accounts of that, establishing that family has
20 always been so important to him. Being raised in that rural
21 area amidst a close-knit community, Your Honor, shaped
22 Julian's values and his perspective on life, and provided
23 him with a very strong sense of belonging and support.

24 Unfortunately, he had a very traumatic
25 circumstance happen in his childhood which caused that world

1 that he knew to be ripped away from him in July of 2006, and
2 that was at the start of the Israel-Hezbollah war. At only
3 age 17, he and his family were impelled to flee Lebanon
4 overnight, as bombing hailed down around his surroundings.
5 We detail the circumstances surrounding this in our
6 submission, so I will just touch on it briefly.

7 It was frightening, terrifying; he had no time to
8 prepare. He and his family had to leave their home with
9 their possessions behind. And to sort of bring some horror
10 to this reality, while he and his family were escaping
11 Bcharre to Beirut, a bomb struck the road in the path of
12 their vehicle nearly killing them. And it cast a cloud of
13 smoke and debris into the air, creating a temporary impasse.
14 Julian's father provides a letter to the Court detailing the
15 circumstances. But Julian, at 17, screamed out in terror
16 aside his siblings; his mother pleading for their father to
17 go back but, at that point, there was no turning back. They
18 had to escape. Ultimately, the family reached the U.S.
19 embassy in Beirut, and they were transported safely out of
20 the region.

21 But I reference this not to pander to the Court
22 for sympathy because that traumatic event actually shaped
23 Julian's psychological state; I submit that it's something
24 that remains with him until this day. Leaving his home, his
25 community, his way of life under such harrowing

1 circumstances had a lasting impact on him.

2 And it's actually touched on in the presentence
3 report, which Your Honor has spoken of. Specifically,
4 paragraph 81 says that he suffers from anxiety for which he
5 is prescribed medication. And we submitted records to this
6 Court, which are under seal because of HIPAA issues from the
7 CTF where he is incarcerated, documenting that he in fact
8 has an anxiety disorder which has caused him, while in
9 pretrial detention, to experience -- I am quoting:
10 Overwhelming feelings of apprehension, and tightness in his
11 chest; a recent panic attack; ongoing feelings of anxiety
12 for which medication was not helping. And in conjunction
13 with his anxiety, he suffers from depression. He feels,
14 quote, very depressed and down.

15 Now, Julian's escape from Lebanon and his history
16 of anxiety are confirmed by his father, Elie Khater, in his
17 letter; it's very lengthy. I am just going to highlight two
18 brief portions in which he notes that: Julian himself was a
19 victim of war trauma during the horrible events of July 2006
20 in Lebanon. And, in fact, from 2012 to 2014, Julian was
21 hospitalized due to these anxiety attacks on numerous
22 occasions. His anxiety was crippling in some cases, to the
23 extent that he would scream to his mom: Please sit next to
24 me; I feel like I can't breathe. I feel like I am going to
25 die. On some of these occasions we would have to call the

1 ambulance to take him to the hospital.

2 Your Honor, despite having successfully escaped
3 Lebanon under siege in 2006, upon returning to the
4 United States -- as he is an American citizen, he was born
5 here; he lived here for his first five years. Upon
6 returning, he continued to face challenges separate and
7 apart from his anxiety.

8 After leaving behind places, people that had been
9 familiar to him for over 12 years, he abruptly found himself
10 having to adapt to a very new and different environment at
11 17 years old as a senior in high school -- just dropped into
12 that culture; and he experienced significant shock. Having
13 just relocated to this country without the benefits of
14 friends, he felt alienated and isolated. And where, still,
15 he had great difficulty forging new relationships because he
16 is inherently a shy and introverted person.

17 Your Honor, that is a central theme that runs
18 through all of the letters submitted on his behalf. You
19 sort of get a sense of who he is from the tellings of these
20 people; that he is sheepish, quiet, introverted, shy.
21 That's his person, not what we watched -- that's who he is,
22 not what we watched on that screen. That he is reserved.
23 The letters go on and on describing this, how sweet and
24 gentle he is.

25 Your Honor, despite his adversities, he embraced

1 the altruistic values and sense of community instilled in
2 him as a child. During his senior year in high school, in
3 fact, he engaged in charitable acts. That's who he is, not
4 the seconds that we saw on the screen; but, as his father
5 describes, the person in high school who volunteered to
6 serve the poor and the needy, who spent most weekends at the
7 soup kitchen in New Brunswick, New Jersey.

8 In his teens, he joined the Maronite youth
9 organization at the Catholic church where he helped organize
10 events, raise money, and provide for those in need. In
11 fact, while donating his time to church activities, he
12 further espoused his faith -- it's very important to him,
13 Your Honor -- while he inspired younger children through his
14 humility and genuine concern to follow their own religious
15 beliefs.

16 In fact, his aunt, Layla Khater, describes that in
17 a letter in which she says: He was also involved in the
18 church of Saint Sharbel. A lot of younger generations
19 looked up to him as he was so humble, caring, and tender.
20 So all knew Julian as a big loving heart and helping hand.

21 Your Honor, Julian's faith is very important to
22 him, and that's a sentiment that's echoed by his mother. In
23 fact, she writes that: We always joked that Julian would
24 become a priest. And she adds that: His faith hasn't
25 wavered throughout this ordeal; meaning, since his arrest

1 and detention over the last two years. And true to her
2 words, even while presently detained, Julian continues to
3 counsel his younger nephews to maintain their own religious
4 beliefs.

5 Your Honor, his values were not only a product of
6 the time he grew up in that tight-knit community in Lebanon,
7 but lessons imparted to him by his father, who I have gotten
8 to know very well over the last couple of years, a very
9 honorable man. And he writes: I have always instilled in
10 my children to help the poor and the needy among us. We
11 house many people who have emigrated from Lebanon over the
12 years fleeing war and a destabilized environment until they
13 were able to take care of themselves and lead successful and
14 productive lives in the United States.

15 Your Honor, in an effort to lead his own
16 successful and productive life, to his credit, Julian
17 secured his associate's degree in business administration
18 from a community college in 2009 after returning to this
19 country, as difficult as those circumstances were. He then
20 went on to earn his Bachelor of Science degree in that same
21 discipline, in 2011. And his mother describes how arduous
22 that process was for him as he commuted nearly two hours a
23 day going back and forth; still never missed a day of
24 school, and graduated with honors.

25 And that strong work ethic, Your Honor, endured as

1 he transitioned from school to the work force because, since
2 arriving here -- returning here more than 16 years ago -- he
3 has remained continuously and gainfully employed. Your
4 Honor has our submission. We spell out all of the work he
5 has done over the years. But I want to just go back to
6 January of 2018 when he managed and co-owned a health food
7 restaurant in North Carolina until January of 2019, when he
8 started up and managed another -- another similar business
9 in Pennsylvania where he had 30 employees. This man had 30
10 employees; that's the responsible person that he is. Again,
11 not what we saw on that screen over the course of seconds.

12 Unfortunately, that business had to shutter its
13 doors due to the pandemic, prompting him -- because he
14 didn't want to remain unemployed -- to work as a Lyft driver
15 from September 2020 until his arrest in March of 2021. So
16 he has always worked.

17 Though his business closed due to the pandemic,
18 the respect and the admiration that he developed, that he
19 garnered while working there and tending to the needs of his
20 family remains. And his cousin Joanna, in a letter, states
21 that: Julian continues to be a role model to our whole
22 family, always working hard, always kind and devoted to the
23 people and things he loves. He is an honorable man with
24 good morals, and a pure heart.

25 So with that, Your Honor, I want to turn to the

1 instant offense.

2 THE COURT: I will note that, for the record, I
3 have reviewed -- I think it's 16 or 17 exhibits, maybe all
4 of the letters from family members, cousins and aunts,
5 father and mother, which are very instructive to the Court
6 about Mr. Khater's background and history, and what kind of
7 person he is.

8 MR. SEIGEL: Thank you, Your Honor.

9 And in terms of the kind of person he is, what
10 those letters demonstrate is that he is gentle; he's kind,
11 he's altruistic. And I think we can all recognize that
12 someone doesn't just develop those attributes after he is
13 arrested; it's a hallmark of a life well lived, that's who
14 he is.

15 So then the question remains: Why is he here
16 today? It's hard to reconcile how he possibly could have
17 engaged in this conduct. That's something that, honestly,
18 we, as defense counsel, grappled with because we got to know
19 him as well, directly and through his loved ones. And it's
20 an understandable question that I am sure everyone in the
21 audience behind me is wondering as well, or at least many.

22 And I think what is significant to note is that a
23 more than cursory review of the surrounding circumstances --
24 and I want to emphasize this so much, Your Honor, for
25 everyone in this courtroom -- does not excuse it by any

1 stretch, by any stretch. He's not looking here -- he is not
2 looking to be excused for what he did. He understands he
3 needs to be punished, but it does shed light on his actions.

4 In particular, his involvement, unlike so many
5 others caught up in the events of January 6th, wasn't
6 motivated by a desire to undermine democracy; that's not
7 what happened here. Despite all of the rhetoric, the
8 hyperbole, that's not what this was.

9 The truth is, Julian Khater loves this country.
10 He loves members of law enforcement to uphold and defend the
11 laws here. His mother even describes, in her letter, how he
12 wanted to join the sheriff's department.

13 So the question remains: Why did he discharge a
14 small canister of pepper spray at officers during the riot?
15 What happened?

16 And I think, importantly, to answer that question
17 we have to initially recognize why he was even there in the
18 first place. So his only intention was to attend a
19 political rally, not storm the Capitol Building or seek to
20 undermine the election results.

21 And the government in its submission states, on
22 page 10, the following to corroborate that, that its
23 investigation: Uncovered no evidence that Mr. Khater
24 planned to advance to the Capitol prior to January 6th or
25 that prior to January 6th he intended to enter the Capitol

1 Building or interfere with the lawful counting of the
2 Electoral College votes; that's not why he came to D.C. And
3 the evidence presented to this Court at the bail hearing,
4 back in April or May of last year, corroborates that.

5 Mr. Tanios called as a witness his friend Sean
6 Ruth who testified under oath that he discussed with
7 Mr. Tanios attending the rally with him and Julian. And
8 quote: There was no plan of going to the Capitol Building
9 afterwards, or anything like that.

10 Likewise, although Mr. Tanios on his own
11 purchased -- you will hear from his counsel -- purchased
12 spray. The manager of the store from which he purchased
13 those items explained that he did so for self-protection.

14 Accordingly, there was never a coordinated plan by
15 Julian and Mr. Tanios to bring weapons to D.C. in order to
16 attack the Capitol Building. And consistent with that fact,
17 the government, on page 11 of its submission, states
18 something very different than the position they took at that
19 bail hearing, if Your Honor recalls. But what they say now
20 is: These canisters were purchased by Tanios the night
21 before, ostensibly, as Khater later told the FBI, for their
22 own protection during a political event.

23 So against that backdrop, I also think it's
24 important, particularly in light of many of the other
25 defendants who have been charged in this -- this riot, this

1 insurrection, to note that Julian Khater, aside from his
2 membership in a church organization, isn't a member of any
3 other organization. He is not a member of any other group,
4 associations or clubs.

5 I'm going to put it out there. He is not part of
6 some right-wing extremist group; he's not part of some
7 militia; he's not part of the Proud Boys, or any of these
8 other fanatical groups that shouldn't have been there that
9 day engaging in the deliberate activity that they were
10 participating in. That's not what he was doing.

11 He truly traveled to Washington, D.C., on
12 January 6th, with the mindset of being a passive spectator
13 and having no expectation of the tragic events that would
14 unfold at the Capitol that day; had no idea that a riot
15 would erupt. In fact, when the former President said:
16 We're going to walk down to the Capitol, Julian Khater
17 thought that perhaps another speech was forthcoming, so he
18 followed the crowd heading towards the Capitol Building.

19 Upon arriving there, as the government correctly
20 acknowledges, it wasn't a political rally. He encountered
21 something very different than that which he anticipated.
22 Protestors incited others with false rhetoric about a
23 reputed stolen election. And it sounded like the government
24 might have been minimizing this -- I'm not sure how they can
25 given what we saw -- but there was a climate of mass

1 hysteria there; it was fueled by dissemination of
2 misinformation about the election, and it did give rise to
3 this visceral powder keg. That's what happened; you see the
4 emotions there. In fact, I will talk about what the
5 government says with regard to that, although they
6 apparently try to step back from it now.

7 But Julian stood in a crowd of people as plumes of
8 chemical irritant permeated the air. In the video, we saw
9 the plumes of smoke in the background. And in an agitated
10 state, after having been sprayed, he said it -- there was no
11 reason for him to tell his friend over there something that
12 wasn't true -- he, agitated, took a small canister of pepper
13 spray.

14 Now, it's true he had access to a more potent
15 item. We have heard so much about this bear spray in this
16 case. Bear spray, bear spray, bear spray. That's what all
17 the press picked up on. That's a salacious fact that tends
18 to perhaps distinguish him from other people who just used
19 chemical spray, but it's not true. It's not true.

20 And the reason we know it's not true is because
21 the government thoroughly investigated this, and they
22 located the canister that was used. And, by the way, the
23 bear spray -- never once sprayed, not deployed once. It was
24 pepper spray. And I am not saying that, Your Honor, in any
25 way to suggest that he should be forgiven for his conduct,

1 but I think we need to be grounded in reality about what
2 happened here.

3 And, importantly, despite having been sprayed and
4 agitated -- to his credit, he still had enough wherewithal
5 not to take that more potent item. Instead, he took the
6 small canister of pepper spray, which he received from
7 Mr. Tanios that was brought for defensive purposes, after he
8 had been sprayed. And that pepper spray, by design, Your
9 Honor, is a nonlethal self-defense tool. It's meant to
10 avoid permanent harm. Still, to his regret, he used it
11 offensively in a moment of clouded judgment.

12 And whether it was the heat of that moment -- and
13 I will talk about that in a second -- or the addition of
14 some trauma which still lingered from having fled Lebanon
15 while under bombardment, bombs coming down around him -- the
16 government described the situation as a "war zone." No one
17 is suggesting he's a warrior by any means but, clearly, it's
18 a chaotic, emotionally heightened atmosphere. I don't know
19 how anyone can look at that otherwise -- with straight face
20 and say otherwise, and something in him was triggered. He
21 deployed that canister of pepper spray.

22 And the government acknowledges that he lost
23 control of his emotion. I don't know how they can say
24 otherwise when, in writing, on page 14 of their submission,
25 they acknowledge that: Mr. Khater, after having been

1 personally sprayed by police chemical spray, lost control of
2 his emotion.

3 Now, the government says, well, wait a second,
4 that was nine minutes earlier. He had time to calm down.
5 Right? Look at him. He's calculated. You can see how his
6 culpability levels are rising.

7 First, he's standing there; that's really low
8 culpability. Then he asked for the spray. That's really,
9 really, really, bad, but not so bad. It's one isolated act,
10 Your Honor.

11 What happened was, he was in a crowd; he got
12 sprayed. There is mass hysteria going on. They don't
13 highlight this part. But when you're looking at the video
14 in the back, Lieutenant Bagshaw is there with that super
15 soaker of chemical irritant indiscriminately spraying the
16 crowd of people who are there.

17 Now, he shouldn't be there. No question about
18 that. But understand that, at the moment that he deploys
19 what he deploys, there are people just standing there
20 getting doused in the face with chemical spray. Again, they
21 shouldn't have been there; but look at it from his
22 perspective. Right? Heightened anxiety, been sprayed
23 earlier. He's got this for defensive purposes.

24 I am not saying, as the government acknowledges,
25 that he is some innocent victim because, if he were, clearly

1 I don't think we would be here today.

2 But we're trying to explain what happened in that
3 moment that is so distinct and aberrational from who he is.
4 Why did he do this in that moment? And the reality is the
5 government gives us the answer on page 24 of its submission.
6 Quote: Julian Khater became emotional and riled up. I
7 couldn't have said it any better. He became emotional and
8 riled up.

9 So I want to pause here and address the injuries
10 that were sustained as a result of his actions. As the
11 government acknowledges in its submission, while officers
12 were incapacitated -- it's true; it was temporary. And I
13 say that not to minimize, but so that we're grounded in
14 reality, particularly given some of the emotionality
15 surrounding this event.

16 And, in particular, I would note that the
17 government's submission, on page 18, specifically states
18 that, quote: Officer Sicknick had recovered from the
19 assault. He recovered. So despite whatever liberties some
20 may wish to take with the facts, facts are stubborn things,
21 Your Honor; they really are.

22 Here, the chief medical examiner, after thoroughly
23 investigating the matter, issued a comprehensive autopsy
24 report officially declared that Officer Sicknick -- tragic
25 as it was, no one can say otherwise -- but he passed away

1 not from being sprayed but from natural causes; and that's
2 important. "Natural causes," which is defined as disease.

3 In fact, the medical examiner's office said,
4 quote: The natural classification is used when disease
5 alone causes death. Just disease.

6 Importantly, the medical examiner's office
7 added -- public statement -- quote: If death is hastened by
8 an injury, the manner of death is not considered natural.
9 Which means that despite some of the hyperbole and rhetoric
10 about his conduct, the objective -- corroborated,
11 scientific, and medical fact is that Mr. Khater did not
12 directly or indirectly cause Officer Sicknick's passing.

13 THE COURT: He certainly -- he certainly did not
14 plead to any type of offense relating to the death of the
15 officer directly.

16 MR. SEIGEL: That's right, Your Honor.

17 THE COURT: The use of -- assault with a dangerous
18 weapon on the officer.

19 MR. SEIGEL: Thank you.

20 THE COURT: There are civil cases pending that is
21 not relevant to the Court today, and we'll see what they
22 decide.

23 I don't know if there is such a category as an
24 eggshell plaintiff that you may be familiar with; but I do
25 know the press conference of the coroner has talked about

1 all of the conditions that day contributed. Some remark he
2 made. It was not part of the offending autopsy report, and
3 I agree. I agree I have looked at that. And having put
4 down "natural causes" that distinguishes it from anything
5 else causing it. He could have put down indeterminate or
6 undetermined; he didn't do that.

7 MR. SEIGEL: That's right.

8 THE COURT: I can't sentence Mr. Khater for
9 causing Officer Sicknick's death; that is not before me or a
10 consideration of the law at this time.

11 MR. SEIGEL: Thank you, Your Honor.

12 And it's true, he wasn't charged. I think, given
13 the nature of this case and the government's position in the
14 beginning, if there were any evidence to the contrary they
15 would have charged him. They didn't, because it's just not
16 true.

17 In any event, although Julian deployed the spray
18 over the course of the seconds that we saw, as the
19 government recognizes -- it's true, it was long enough to
20 temporarily incapacitate multiple officers. I would add
21 that those officers -- to their credit, I commend them for
22 the job they did, it was incredible -- returned -- two of
23 them, certainly, to duty; that I know for a fact. The
24 third --

25 THE COURT: I don't know if Officer Sicknick

1 returned that day.

2 MR. SEIGEL: He did. He returned to duty.

3 THE COURT: He later asked to be excused, and went
4 home --

5 MR. SEIGEL: Right. He did.

6 THE COURT: I know that because of illness -- I
7 thought at some point. I'll see about that.

8 I do know, I thought -- I was amazed that Officer
9 Edwards -- her modesty today, and not talking about her
10 injuries directly because it had been -- hurt her eyes,
11 et cetera, and she was incapacitated for a while. But she
12 was more concerned about her emotional distress about not
13 helping the officer as a friend. All right.

14 MR. SEIGEL: Thank you, Your Honor.

15 THE COURT: Finish up. And then, after you
16 finish, we'll take a short break. The reporter has been
17 here two hours without a break.

18 MR. SEIGEL: Thank you, Your Honor.

19 So, as I was saying, the officers were temporarily
20 incapacitated. Importantly, although the government says
21 that maybe five minutes later there was a breach, and tries
22 to attribute it to Mr. Khater. The reality is that the
23 barricades these officers were defending were reformed
24 within about a half minute, without any rioters traversing
25 the area during that momentary window. And we know that

1 from Officer Brown's body-cam footage, which shows the
2 spraying occurring at 2:23 and 8 seconds, and the barricade
3 reforming at 2:23:45 seconds.

4 So that's a fortunate fact, Your Honor. I say
5 that because it was never -- despite the government's claim
6 to the contrary -- never Julian's intent to facilitate a
7 breach of the Capitol Building. And as proof of that fact,
8 he didn't go into the building; he left the area. So his
9 conduct -- and I think you have to look at it for what it
10 is; it was isolated and not part of some coordinated effort.
11 He still feels tremendous remorse and regret for it because
12 he knows he did wrong.

13 One of the statements we heard today was he hasn't
14 expressed contrition or remorse. But on the very day of his
15 arrest, Your Honor, his actions actually speak so much
16 louder than those types of words. And he has expressed
17 remorse, and he will do so again today. But I will just
18 note that, on day one, he signed a Miranda waiver form
19 agreeing to speak with law enforcement. He executed a
20 consent form authorizing federal agents to search his
21 vehicle -- not looking to hide, minimize; go ahead, have at
22 it. They did, and they found the spray.

23 He spoke to federal agents for more than two
24 hours. He identified himself and Mr. Tanios in photographs
25 during the riot. He admitted that he deployed the pepper

1 spray; he didn't deny it. He never falsely denied his
2 involvement in the events of January 6th. And even during
3 the bail hearing, Your Honor, through his counsel he
4 acknowledged that he used pepper spray during a moment of
5 being emotionally overwhelmed. The defense said this is not
6 a premeditated, planned-out event; it's reactionary,
7 emotional. Reactionary. There was no denial from day one.

8 Since his arrest, Your Honor, he has been in
9 custody for, as I said, nearly 23 months, 680 days, at the
10 CTF under extraordinarily harsh conditions.

11 We brought it to the Court's attention, I think it
12 was last year -- no, November 2021 -- when we sought the
13 Court's assistance to get him the discovery that CTF was
14 withholding from him without explanation. We were given
15 false information from the facility, which they attributed
16 to some miscommunication. In any event, he needlessly
17 languished in that pretrial detention for additional months
18 because they wouldn't give him access to his material. And
19 that's just part of the systematic ill treatment to which
20 he's been subjected to there.

21 The laundry list of abuses within the prison
22 system have been widely reported; they're spelled out in our
23 submission so I don't need to go into all of them. Simply
24 to say that --

25 THE COURT: One that concerned me represented but

1 was never brought to my attention was that he was denied any
2 access to religious services; that was never raised with the
3 Court, I don't believe, because that should have been
4 granted.

5 MR. SEIGEL: So it's relevant for sentencing now,
6 Your Honor, and that is that the conditions at the CTF were,
7 indeed, egregious. Judge Lamberth actually rebuked the jail
8 conditions in the D.C. system as deplorable and beyond
9 belief; and I would agree with that.

10 So, first of all, Julian Khater -- and I
11 understand it's not the Hyatt, it's not meant to be that.
12 But he's in a cell 7 feet by 11 feet that had mold in it,
13 diminutive space he was forced to share with someone else,
14 no space for movement. Half the cell has a metallic bunk,
15 the other half has a toilet and sink, and a window that's
16 only a foot wide with a mesh that covers viewing to the
17 outside world.

18 And this part is egregious, I mean, beyond that.
19 During the first year of his detention, he was largely
20 subject to solitary confinement in that setting, locked
21 within a cell for 25 consecutive -- 25 and a half
22 consecutive hours every other day. Solitary confinement. I
23 mean, I understand some defendants need to be detained and
24 that there is a regulatory purpose for that; I get that
25 part. But solitary confinement.

1 THE COURT: I think that's part of the COVID
2 outbreak which happened throughout the jail. People have
3 been given some credit for that.

4 MR. SEIGEL: Your Honor, this went on for a good
5 solid year. During that time he couldn't look up at the
6 open sky or breathe fresh air. A harsh reality. And while
7 the restrictions have lessened, even over the past year, he
8 still has only been afforded access to breathe fresh air and
9 outdoor space about two dozen times.

10 What is not ameliorated are his everyday living
11 conditions. To give some context here, he is on a one-inch
12 mattress, without a pillow, suffering sleep deprivation, as
13 the guards are banging on his cell loudly at 2:30 in the
14 morning to give him breakfast. I'd submit he doesn't have
15 to eat breakfast at 2:30 in the morning; there is a reason
16 for that. The particular unit that he was in, segregated
17 from the other detainees because of the nature of this case,
18 I think was treated disparately by the guards there. And
19 there were certain colorful euphemisms used to describe that
20 particular unit which had been referenced in the past. But
21 I'll just say that he was treated excessively harshly given
22 the circumstances of this case.

23 For the better part of a year, for instance, CTF
24 wouldn't permit him the dignity of even grooming. They did
25 today. In terms of the food that he was given, I would

1 suggest that it was subhuman. At times he was given two
2 square slices of processed cheese and broccoli tips that
3 were doused in chemicals that gave off the smell and taste
4 of ammonia. I will just point out -- I don't know if anyone
5 here, the government or the Court, remembers what he looked
6 like when he first came here two years ago but, at this
7 time, he's lost almost 25 pounds in the facility.

8 And as the Court noted in our submission, he was
9 deprived of religious services and made to suffer all of
10 these indignities there while cut off from his loved ones;
11 denied the opportunity to receive visits from his family
12 members for nearly the past two years; not once able to
13 embrace a loved one for comfort and support -- not once
14 until, lo and behold, the first time about a week and a half
15 ago, right before sentencing. I don't think that was a
16 coincidence by the prison.

17 But, in any event, the separation from his family
18 and inability to practice his religion have inflicted a
19 particularly severe punishment on him, considering the
20 paramount importance of both in his life. And yet, even
21 under these painful circumstances, he has been a paradigm of
22 rehabilitation in the facility. He has had ample
23 opportunity to reflect on his conduct. He feels remorse,
24 which a letter submitted on his behalf established; they're
25 replete with references to his contrition.

1 But beyond that, there is objective evidence of it
2 because he sought to atone for his conduct while in custody
3 by being of service to others. Even in the jail system
4 that's been so harsh to him, he has volunteered to
5 distribute the food trays, to clean the general areas, to
6 collect the laundry, to perform any other task that will
7 provide a service to his peers.

8 And as proof of that fact, in our submission, we
9 provided a D.C. Department of Corrections work performance
10 sheet which describes his services to the facility. And
11 what they say is that the quality -- quote: The quality and
12 quantity of his work, his initiative, his dependability, his
13 response to supervision, and his overall job performance
14 are -- to use their word -- "excellent." They say he does
15 superior work, more work than is expected or required of
16 him. Performs superior work and exceeds expected
17 productivity. It goes on and on. They say he works with a
18 positive attitude. I will skim through this because there
19 are a lot of very positive statements about him. That his
20 work is very reliable, consistent, and thorough, and that he
21 makes a real effort to please his supervisor.

22 Because the fact of the matter is, notwithstanding
23 his own adversities, he is a compassionate human being. And
24 his emotionally charged conduct on January 6th was an
25 aberration in an otherwise exemplary life. So he feels

1 genuine remorse, and he's been severely punished.

2 With that, I'll turn to the guidelines because the
3 government spent a lot of time in their submission
4 suggesting that the guidelines themselves avoid an
5 unwarranted sentencing disparity. And in this instance,
6 Your Honor, they don't. Indeed, they can't provide
7 sentencing ranges that account for each of the various
8 factors and purposes the Court must consider when imposing a
9 sentence under 3553(a).

10 In fact, one of the original sentencing
11 commissioners, Ilene Nagel, acknowledged this problem with
12 the guidelines which she dubbed "overreaching uniformity,"
13 saying that the emphasis in creating the guidelines was more
14 on making sentences alike and less on ensuring the likeness
15 of those grouped together for similar treatment.

16 In fact, Your Honor, the United States Supreme
17 Court in *Koon v. U.S.* has said the following: It has been
18 uniform and constant in the federal judicial tradition for
19 the sentencing judge to consider every convicted person as
20 an individual and every case is a unique study in the human
21 failings that sometimes mitigate the crime and the
22 punishment to ensue.

23 The guidelines in this case do none of that. They
24 don't take into consideration any of the 5H1 factors that
25 are in the guidelines for the courts to consider, any of the

1 factors in 3553, the history and characteristics of the
2 defendant; that's not incorporated in the guidelines. Your
3 Honor, the guidelines here carry no greater weight than any
4 of the other sentencing factors under 3553.

5 So with regard to the other factors, Your Honor,
6 as I pointed out, Julian has already been severely punished
7 for his misconduct over the last two years at the CTF. His
8 pretrial detention has been unquestionably punitive, not
9 just serving a regulatory purpose; it's inflicted
10 unacceptable suffering and pain on him.

11 We cited a case, *United States versus Francis*,
12 which actually deals with very similar circumstances.
13 Granting -- we are not seeking a downward departure, but it
14 granted one in that case where the defendant was subjected
15 to conditions -- a federal defendant -- subjected to
16 conditions at a state correctional facility that were
17 qualitatively worse than those in a federal correctional
18 facility, and that was only for 13 and a half months;
19 including overcapacity, we have that here; poor food and
20 sanitation, check that off too; the denial of access to
21 materials, same here; the occasional denial of contact
22 visits with his family, here it wasn't just occasional. And
23 the court there addressed that with a downward departure.

24 But here, now, particularly in light of *Booker*,
25 the Supreme Court's decision, the Court can and we submit

1 should do so in the form of a variance with respect to the
2 factors in 3553.

3 And, Your Honor, furthermore, with regard to those
4 factors, I would just add -- satisfying the Court's need to
5 look at the history and characteristics of the defendant;
6 this man's character throughout his life, despite the
7 seconds we see, has been upstanding. And that's spelled out
8 in all of the letters submitted on his behalf which show why
9 he is an appropriate candidate for the Court's leniency and
10 compassion. But they also corroborate something else that
11 Julian's oldest brother, Michael Khater, makes plain in his
12 letter -- and I am quoting: The isolated incident at the
13 center of Julian's case does not and should not in any way
14 be a gauge to determine or judge his character.

15 Julian's offense conduct truly is a shocking
16 aberration, Your Honor, and, in fact, it satisfies the legal
17 definition of aberrant conduct in this circuit. In
18 *United States versus Dice* [sic] which we cite, the Court
19 defines such behavior as that which, quote: Generally
20 contemplates a spontaneous and seemingly thoughtless act
21 rather than one which was the result of substantial
22 planning. And, again, the Court can show leniency based on
23 that mitigating factor with a variance.

24 I would also turn to 3553(a)(2)(D) as it relates
25 to Julian's anxiety, another consideration for the Court.

1 Although Julian takes prescribed medication to address his
2 anxiety, which we submit certainly is a contributing factor
3 to what we watched on that screen, he never received ongoing
4 therapy for it. And pursuant to this section I stated: The
5 Court, in determining what particular sentence to impose,
6 should consider the need for the sentence to provide a
7 defendant with medical care in the most effective manner.
8 And that solution, Your Honor, is not found here with
9 further incarceration because prison has actually triggered
10 his anxiety. I have already referenced the medical records
11 which show that his medication there has not been helping.

12 When his father just saw him a week and a half
13 ago, on January 13th, that evening he had another anxiety
14 attack. He is suffering in this prison, Your Honor,
15 psychologically, emotionally. The most effective treatment
16 for him would be care at home, surrounded and supported by
17 his family, particularly given how much he means to them and
18 they mean to him.

19 So I am getting to the last factor now. I think
20 this one is particularly critical; it's the need to avoid
21 unwarranted sentencing disparities which is, of course,
22 significant in every case but especially in this one, Your
23 Honor, because so many people were charged with similar
24 activity. And one of the functions of the judicial system
25 is to preserve integrity in the eyes of the public; preserve

1 its integrity so that people have faith, trust in the
2 fairness of the court system. And that's why, Your Honor,
3 we painfully provided a list of comparable defendants --
4 showed what they did, and what their sentences were. And a
5 review of their sentences involving January 6th supports the
6 propriety of the one now sought.

7 We listed three defendants who deployed chemical
8 spray at officers. Those defendants, along with all the
9 others that we identified, received sentences considerably
10 below Julian's guidelines. And unlike Julian's conduct,
11 which was isolated -- it was fleeting, momentary -- these
12 defendants all engaged in more extensive and premeditated
13 conduct designed to strike at the heart of our democracy.

14 Before I address these other defendants, Your
15 Honor, one point bears emphasis. The government, when
16 arguing that its requested sentence would not create an
17 unwarranted disparity in their submission, at first didn't
18 even attempt to specifically compare other defendants. It
19 only did so when responding to our submission, which we
20 filed on Monday, in the document it filed this morning at
21 12:01 a.m.

22 Putting aside the fact it's sort of an
23 eleventh-hour submission, the effort that they've undertaken
24 just highlights the unreasonableness of their stance. I am
25 glad they did it actually.

1 At the outset, although we cited the --

2 THE COURT: Explain that to me, because --

3 MR. SEIGEL: Sure.

4 THE COURT: -- I went through those cases today.

5 After we got them from the government, I went back through
6 yours; and they're not exactly comparable cases. Yours did
7 not usually involve -- at least the ones you've given me so
8 far, except for a couple at the end -- but your brief did
9 not involve a dangerous weapon -- assault with a dangerous
10 weapon. And all, except for maybe one, were within the
11 guideline range of the sentence that was covered by that
12 offense.

13 MR. SEIGEL: Right.

14 THE COURT: So there was --

15 MR. SEIGEL: Your Honor --

16 THE COURT: -- a couple of departures -- one was
17 very minor, and one was ten years, but it was a departure
18 from somewhat more -- for other matters. So tell me how
19 this one is -- disparity is the problem in this one.

20 MR. SEIGEL: Sure. So I was actually going to
21 address each one specifically but at the outset -- in
22 response to your question, the first three defendants we
23 identified used chemical spray. The government actually
24 says -- it's crazy -- withdrawn. It's an unreasonable
25 position. They actually say that -- with respect to Mattice

1 and -- excuse me, Your Honor -- yes, Mattice and Mault.
2 They, in their submission this morning, said there is no
3 proof of a presence of chemical spray with regard to Cody
4 Mattice and James Mault. I was astonished reading that
5 because they're minimizing what they said previously in
6 taking an inconsistent position.

7 So, I don't know, perhaps they didn't read what
8 they submitted to other judges. But with regard to Mattice,
9 in his case, Docket No. 60 -- in their sentencing
10 submission, the government stated, quote: He rejoined the
11 fight, traveled to the Lower West Terrace, climbing over
12 other rioters to reach the mouth of the Lower West Terrace
13 tunnel, and using a chemical spray.

14 Today they said, oh, there is no proof he used
15 chemical spray to try to bang him out with a 90-month
16 sentence, suggesting somehow that that doesn't create an
17 unwarranted sentencing disparity. But in front of another
18 judge, that defendant used chemical spray; he only got 44
19 months.

20 THE COURT: But he pled -- they didn't have him
21 plead to the assault with a dangerous weapon.

22 MR. SEIGEL: Right, Your Honor, and that's
23 exactly --

24 THE COURT: So the plea is different.

25 MR. SEIGEL: Right. And that's exactly the point,

1 Your Honor.

2 THE COURT: And that's the plea, though, not the
3 sentence difference.

4 MR. SEIGEL: Your Honor, I am glad you touched on
5 that, because that's exactly the point. Because while the
6 government allowed, for instance -- Willden, for instance --
7 let's take him. Another guy -- excuse me -- another
8 defendant who sprayed received 24 months. While the
9 government allowed him to plea to subsection (a) of 111
10 rather than subsection (b) --

11 THE COURT: Right.

12 MR. SEIGEL: -- that's only because the government
13 allowed for that charging decision. And I understand fact
14 bargaining may play a role in the distinction between the
15 charges and the attendant guidelines of various
16 defendants --

17 THE COURT: Right.

18 MR. SEIGEL: -- But the ultimate sentence to be
19 imposed on Julian Khater should not turn a blind eye to the
20 actual relevant facts of each case when seeking to avoid an
21 unwarranted sentencing disparity. You have to look at --

22 THE COURT: I don't know the damages to those
23 officers, what the infliction of actual injuries were,
24 but -- other aspects of those cases. I --

25 MR. SEIGEL: Well, I can address that.

1 THE COURT: -- I am not convinced that those make
2 a difference in this case, frankly.

3 MR. SEIGEL: Your Honor, I can address that.
4 Because even assuming hypothetically that these individuals
5 caused personal injury -- I looked at it this morning --
6 that's a three-point enhancement on the guidelines. Three
7 points which, at most, would account for perhaps a 12-month
8 difference in the guidelines -- not five years or six years;
9 or in the case of Willden, a two-year -- another, what? --
10 seven years? Look --

11 THE COURT: Were those cases involving assaulting
12 two or more officers?

13 MR. SEIGEL: There is a case, for instance, where
14 the defendant sprays, you know, six officers at one time.

15 THE COURT: Okay.

16 MR. SEIGEL: Look, Your Honor, let me just address
17 this right now, it's the elephant in the room. I was going
18 to go through all the cases, I don't know that I need to do
19 that.

20 But, look, Your Honor, why is the government
21 taking the position they're taking in this case? Honestly,
22 it's our position that they're being intellectually
23 dishonest when they come here and they try to make out
24 Mr. Khater to be this horrific monster who planned and
25 coordinated. I think if everyone here is being honest with

1 themselves, they know the answer. Right?

2 After arresting Julian Khater, but before
3 completing its investigation and receiving the autopsy
4 report from the chief medical examiner -- the government
5 publicly took a very different position than the one it
6 takes today, making hardline claims that simply were proven
7 to be false and now they have egg on their face.

8 I want to be clear: I am not casting aspersions
9 on my colleagues, Assistant U.S. Attorneys Gil Light and
10 Anthony Scarpelli, because they have been nothing but
11 professional during these proceedings. They've been
12 terrific.

13 But we know, from their own statements at prior
14 court appearances, that their actions in this case, their
15 charging decisions, how they proceed, are driven by
16 higher-ups in their office who, with all due respect, are
17 looking to save face. And that's not this Court's function,
18 Your Honor.

19 It's the Court's role to impose a reasonable
20 sentence, taking into consideration the objectives and
21 factors set forth in 3553.

22 So with that said, Your Honor, Ricky Willden goes
23 into this riot, saying, you know: I love my Proud Boys. He
24 succeeded in breaching the doors to the Capitol Building
25 singing, you know, The Star-Spangled Banner with his fellow

1 rioters. He sprays officers for 10 seconds, throws the
2 canister at them. And then the government, in that case,
3 identified at least six officers who were there subject to
4 his attack.

5 This is what they wrote in another sentencing
6 submission: This defendant, Willden, helped facilitate the
7 eventual breach of the Capitol Building and aided rioters,
8 injuring officers and destroying property, inciting others
9 to embolden -- inciting and emboldening others. And then
10 showed no remorse after; posting on Facebook: I think they
11 got the message from everyone of all ages.

12 Now, Ricky Willden -- I didn't know that man's
13 name until researching these cases -- I think if he were in
14 the public spotlight, he too wouldn't be here with a 111(a)
15 charge; it would be a 111(b).

16 Mattice and Mault, I already mentioned them. In
17 addition to what they did, attacking officers with spray,
18 chemical spray, despite the government saying there is no
19 proof now, they did before. In the midst of all of this and
20 pulling down the bike rack, Mattice is texting his family
21 and bragging about breaking the police line. He then
22 discharges chemicals -- this is the government's quote -- at
23 police officers for about 10 seconds.

24 And unlike Mr. Khater, then -- I guess he is proud
25 of himself, this guy -- he sends his mother a selfie-style

1 photograph, and later bragged about his participation; and
2 then, after, lied to FBI agents about it. Not Khater,
3 Mr. Khater.

4 Julian Mault [sic] led the mob that penetrated the
5 police line in the West Plaza before he went ahead and
6 sprayed. And then, afterwards, he is actually antagonizing
7 officers: I am going to -- quote -- kick the shit out of
8 you.

9 Seeking to justify the mob's conduct, he then
10 tells officers: I obey the F'ing law every goddamn F'ing
11 day, every F'ing day. Where the F's that got me? Everyone
12 else breaks the law. And then he lied to FBI agents. This
13 is the government's words: He minimized and denied his
14 unlawful conduct, parroted baseless conspiracy theories, and
15 still posed a substantial risk of committing future
16 political violence.

17 He got 44 months, less than half the time the
18 government seeks for Julian Khater.

19 I will go on.

20 Devlyn Thompson, 46 months; he used a metal baton
21 against others. Right. So this is the government's
22 response this morning to that one.

23 This is great. They said, well, it was only a
24 metal baton, it wasn't spray. He only injured some people,
25 not others. So that's the distinction.

1 And the funny thing is, Your Honor, that this is
2 the best the government can do with our 12. They identified
3 five to distinguish which aren't distinguishable because
4 three of them used chemical spray, and the other two still
5 engaged in violent conduct.

6 What the government doesn't do is touch the other
7 seven defendants that we've identified who got considerably
8 less sentences than Mr. Khater in our submission -- would
9 clearly establish, if he were sentenced to anything greater
10 than we were asking -- there would be a sentence disparity.

11 Alan Byerly -- I'll skip right to number 12, I
12 know you've read all of these -- so three separate assaults,
13 34 months' incarceration. What did he do? So he used a
14 large sign as a battering ram against -- against a line of
15 police officers, and the barricades -- he took that down.
16 And then this guy goes ahead, participates in a vicious
17 assault against an Associated Press reporter who he is
18 dragging down the streets; then he uses a stun gun against
19 Capitol -- Metropolitan Police. By the way, he got a 111(a)
20 charge, not a (b). It's okay. A stun gun, I guess, there
21 is not a dangerous weapon, although we'll engage in fact
22 bargaining, ignore it; we'll give him a guidelines plea to
23 get rid of that guy.

24 But that's not the reality of what this Court
25 needs to look at in terms of relative conduct. He used a

1 stun gun. And then, after the officers removed the stun gun
2 from that person, he continued to charge towards the
3 officers, physically striking and pushing against them, and
4 grabbed an officer's baton. And then lied to federal agents
5 when they caught him, and said: This is a political F'ing
6 persecution.

7 The other defendants that the government just said
8 today in their submission -- because I didn't get a chance
9 to respond to this -- that they claim are analogous -- okay.
10 So three new cases they cited. I'm sorry I didn't have a
11 chance to respond to this in writing, Your Honor, I didn't
12 see it until I woke up.

13 But with regard to two new defendants, Albuquerque
14 Head and Kyle Young -- with regard to Head, the government
15 says: No dangerous weapon was used on an officer. They
16 must have overlooked what they wrote in that case because,
17 as Head was pushed out of the tunnel leading to the Capitol
18 Building, quote: He did not retreat. Rather, he wrapped
19 his arm around an officer's neck and admitted a sickening
20 yell to his fellow rioters, "I've got one." And then he
21 forcibly dragged that officer into the riotous mob,
22 isolating him, as the crowd violently assaulted the officer.
23 He then continued -- because he is not letting go of this
24 guy -- to restrain the officer while another rioter -- one
25 that Head called over, "Come on over." "Come on, let's get

1 this guy" -- applied a Taser to the base of the officer's
2 skull. I guess they don't think that's a dangerous weapon
3 there.

4 And then Head only let go when the officer reacted
5 with enough force to free himself. And after the officer
6 screamed in agony, Head -- I quote the government in the
7 other case: Reached toward the officer, repeatedly grabbing
8 on to the officer and trying to regain control of him. And
9 then after -- this is good; the government left this out. I
10 guess they must have overlooked this in their submission
11 this morning. They left out that Head, quote: Twice struck
12 towards the police line with the riot shield. And he did
13 this not for seconds, but for a good number of minutes. And
14 then, after, posted on social media he's proud to have been
15 there.

16 Like so many other defendants who then boasted,
17 after lying to the FBI, or before they lied to the FBI: I
18 want to come back with rifles. I want to take down these
19 officers. I want to -- do all of these things.

20 Young, the other defendant they identified in
21 their submission, participated in the same assault as
22 Albuquerque Head, attacking and restraining the same officer
23 so that he can be tased. Young purposely gave the Taser to
24 another rioter, showed him how to use it so he could attack
25 the helpless officer. And then what the government

1 neglected to tell the Court this morning in their submission
2 is that this guy, Young, turned his sights on another
3 incapacitated officer, attacking him. That's on page 3 of
4 the government's submission in that case, Docket No. 140.

5 And, moreover, showing no remorse, Young bragged
6 to a reporter: I don't let cops push me around -- which is
7 consistent with him urging other rioters during the melee
8 to: Pull the cops out. Grab their hands and pull them out,
9 and we've got them.

10 And then, along the same lines, the third new
11 defendant that they brought to the Court's attention to
12 somehow suggest that this violent, ongoing, aggressive,
13 continuous conduct with no remorse, as akin to what
14 Mr. Khater did, is Thomas Webster.

15 What Thomas Webster did, according to the
16 government, was come to D.C., quote: Armed and ready for
17 battle with a bulletproof vest, and -- oh, this is great; I
18 was surprised to see this this morning. They didn't tell
19 Your Honor. This individual, Webster, came to D.C. to the
20 riot armed with a gun. That's what they think is analogous
21 to Mr. Khater. But hold on. I'll continue.

22 With a bulletproof vest and a gun, antagonizing
23 officers, saying, quote: You F'ing piece of shit. You
24 F'ing commie -- excuse me, Your Honor -- motherf'ers, man,
25 you want to attack Americans? Well, F that. And that was

1 before Thomas Webster attacked officers with a pole he used
2 as a weapon.

3 And what the government also didn't tell you in
4 their submission this morning is that Webster then also
5 charged at another officer and personally tackled him to the
6 ground, dragged him by his helmet, pinned him to the ground,
7 tried to rip off his mask -- which choked him and caused him
8 to struggle to breathe -- the government wrote that. That
9 was -- and after that, Webster continued to advance towards
10 the Capitol Building. That's at page 21 through 23 of the
11 government's submission in *U.S. v Webster*, Docket Entry 104.

12 And unlike Julian Khater, Thomas Webster didn't
13 have remorse or accept responsibility because he went to
14 trial, and he was convicted. But somehow the government
15 stands up here and says that individual is analogous to
16 Mr. Khater. It's just not honest. And I know why -- and,
17 again, I am not faulting these individuals; I have nothing
18 but respect for them.

19 Lastly, the government doesn't deny that these
20 defendants, unlike Julian Khater -- the ones I just
21 identified and the ones in our submission, 12 of them --
22 planned for violence, coordinated their attack, engaged in
23 continuing violence and aggression intending to make a
24 political statement; and they showed no remorse.

25 But contrary to them, Julian Khater didn't plan

1 his assault. He didn't belong to some militia or extremist
2 organization. He didn't enter the Capitol Building. I left
3 those people out, by the way, because I'm flying through the
4 submission.

5 But people that went into the Capitol Building --
6 one of them said: There's the Speaker's office. Let's go.
7 These people are getting 30 months, 40 months. Okay.

8 Also, after -- those people are then bragging on
9 social media, lying to the FBI, minimizing their conduct.
10 None of the things that Julian Khater did. He didn't brag
11 on social media or elsewhere about his conduct. He didn't
12 urge others to engage in violence, like some of the people I
13 just mentioned. He didn't engage in political rhetoric
14 justifying his actions. He didn't verbally antagonize or
15 insult officers, and he didn't boast about committing future
16 acts of violence.

17 I'm coming to the end here, Your Honor.

18 But the government corroborates these facts in its
19 submission, writing on page 17, quote: The government's
20 investigation has not uncovered evidence that Khater
21 committed any more assaults or acts of violence that day.
22 The government's investigation has not uncovered evidence
23 that he entered the U.S. Capitol Building. And, in fact,
24 they confirmed that he, quote: Left the area.

25 The government's investigation has not uncovered

1 evidence that Khater posted on social media or made any
2 public comments regarding his involvement in the assault on
3 the Capitol. Because he did not.

4 Likewise, on page 10 of its submission, the
5 government says: The government's investigation uncovered
6 no evidence that either Khater or Tanios planned to advance
7 to the Capitol prior to January 6th or prior to January 6th
8 they intended to enter the Capitol Building or interfere
9 with the lawful counting of the Electoral College votes.

10 Julian Khater didn't lie to law enforcement about
11 his actions like so many others. Again, what we saw here
12 was aberrant behavior over a limited period of time in a
13 very stressful situation that was fueled by his anxiety, and
14 then he left the area.

15 Immediately after his arrest he cooperated with
16 law enforcement, honestly admitting that he deployed the
17 sprayed; signed the consent form so he can get it;
18 identifying himself, identifying his codefendant; talking to
19 them for hours, expressing genuine remorse. Your Honor,
20 these circumstances distinguish him from all of the other
21 defendants which mitigate his conduct.

22 And because of that, further imprisonment at this
23 stage, in light of all of these considerations I identified,
24 would subject him to an unwarranted sentencing disparity.
25 But the government seeks to justify its request for a

1 greater sentence than all of the defendants I identified by
2 years -- not because Julian planned to coordinate it like
3 them or because he sought to interfere with democracy like
4 them, but because he impromptu -- listen to this one -- page
5 24 of their submission, "He jumped into the fray," as if
6 somehow it's worse to just jump into something in an
7 emotionally charged instant than the people who planned and
8 coordinated everything. Talk about backwards, Your Honor.

9 It tells you everything you need to know because
10 it's just not a reasonable position and it's not grounded in
11 reality. But, still, they seek to attribute -- I just heard
12 it here today, we all did, the government say that:

13 Mr. Khater should bear a greater responsibility for the
14 breach. Here is why. Quote, "The cumulative effort of all
15 the rioters allowed for the breach." Okay. Well, then that
16 should be factored into the sentences for all of the other
17 defendants that I have identified. That doesn't justify the
18 disparity that the government seeks here. If it's -- all of
19 the defendants are to be cumulatively held responsible,
20 that's already factored in, Your Honor.

21 Your Honor, as I pointed out, I understand the
22 reason they're seeking 90 months in this case; I know why.
23 It's not based on the 3553 factors. It's based on, I think,
24 other agenda, based on a hardline position they took at the
25 beginning of this that they just won't walk back from

1 because of the scrutiny that it's received.

2 But as I pointed out, it's not this Court's
3 function, with all due respect to the government, to help
4 them save face. It's to impose in accordance with
5 Congress...

6 I just had a thought. You know, we're here
7 talking about the integrity of Congress, right? The
8 legislature. And yet, honestly, with all due respect to the
9 government, I think the sentence they're asking does a
10 disservice to it. Because it's Congress that enacted
11 Title 18 U.S.C. 3553(a), which requires the Court to
12 consider these factors, and the government is just
13 disregarding it to advance their own agenda; and it's not
14 right, Your Honor.

15 3553, all of the factors I cited, supports the
16 imposition of time served based on who he is as an
17 individual.

18 THE COURT: You're asking me to depart 56 months
19 down from the lowest range, right?

20 MR. SEIGEL: I'm sorry, Your Honor?

21 THE COURT: You're asking me to depart almost five
22 years below the range that's suggested?

23 MR. SEIGEL: Your Honor, what I am asking the
24 Court -- maybe this is just --

25 THE COURT: You want me to vary that much?

1 MR. SEIGEL: Your Honor, what I am asking the
2 Court to do -- the variance -- yes, Your Honor.

3 I am asking the Court to say that the guidelines
4 in this case don't capture who Julian Khater is, the
5 circumstances surrounding this event and, importantly, the
6 need to avoid unwarranted sentencing disparities.

7 Your Honor, to the extent the government now wants
8 to say: We should impose a higher sentence on him by 90
9 months because it's appropriate here, it's within the
10 guidelines. Well, then that's on them for creating -- if
11 they believe that a sentence outside the guidelines is
12 inappropriate, Your Honor -- if they think that a reduction
13 is inappropriate, then that's on them for creating this
14 unwarranted sentencing disparity.

15 THE COURT: The guidelines -- the guidelines were
16 in the plea agreement.

17 MR. SEIGEL: They were, Your Honor.

18 THE COURT: No one is objecting to that or to the
19 presentence report; those are the guidelines.

20 MR. SEIGEL: There's no dispute about that
21 whatsoever.

22 THE COURT: The government is not asking for more
23 than the guidelines.

24 MR. SEIGEL: I'm sorry?

25 THE COURT: The government is not asking for more

1 than the guideline sentence.

2 MR. SEIGEL: That would be even beyond --

3 THE COURT: They're asking for the upper range of
4 the guideline sentence, not the maximum.

5 MR. SEIGEL: You know what is interesting --

6 THE COURT: You want me to consider whether --
7 your premise that it's a vast disparity between the 950
8 other riot cases we have here and this case --

9 MR. SEIGEL: Right.

10 THE COURT: -- where only about 354 of them have
11 been sentenced. At least to that group that has been
12 sentenced it's somehow a great disparity in this case?

13 MR. SEIGEL: Right.

14 And you know what I'd add -- so it's interesting.
15 Even the probation department -- just to show how
16 unreasonable the government's being here -- and, again, I
17 want to put this on the record because I have nothing but
18 fondness for these two individuals; I mean, it's not coming
19 from them, I know that.

20 But even the probation department in this case
21 asked for a sentence at the low end of the guideline range.
22 And just from experience, we know probation -- unless they
23 consider it to be a downward departure, which the plea
24 agreement in this case precludes -- isn't going to ask for
25 something below the low end; it's the floor for them. So

1 even they recognize there's a need for treating him
2 differently and recognizing that leniency and compassion are
3 warranted.

4 The government is going -- it's funny. In their
5 submission -- I guess their math is off -- they say, oh,
6 we're looking for an approximate mid-range point of 90
7 months. Even that's not truthful. The mid-range point in
8 that range is 86 months, not 90.

9 So, Your Honor, the fact is the government right
10 now is saying sentence within the guideline range to avoid
11 the -- that's the appropriate punishment. But, again, it
12 would create an unwarranted sentencing disparity which in
13 this particular case, Your Honor, I think is as critical as
14 it could ever be. And, again, it's Congress -- Congress
15 that requires that consideration.

16 So, Your Honor, all of these factors support the
17 imposition of time served and supervised release -- I am
18 wrapping up -- with the condition of mental health
19 treatment.

20 And in terms of those factors under 3553, which
21 the Court noted -- respect for the law, just punishment for
22 the offense -- that can reasonably be achieved with such a
23 sentence. Through his plea of guilty, his acceptance of
24 responsibility, his conduct on day one when he was arrested,
25 he demonstrated his respect for the law. And his

1 imprisonment at the CTF is more than -- I mean, much more
2 than just punishment, it's cruel.

3 Second, he is not the type of person of whom to
4 make an example for the sake of, quote: Adequately
5 determining criminal conduct by others. You don't need
6 him -- to hoist him up as an example, a paradigm for general
7 deterrence. You know, based on everything we know about
8 him, he has shown himself to be a kind and compassionate
9 man.

10 Likewise, Your Honor, specific deterrence, I mean,
11 that's just -- with all due respect, it's silly.
12 Imprisonment isn't needed to protect the public from further
13 crimes by him. This was aberrational, and there's no real
14 danger -- there's none from him.

15 What is needed is court-mandated mental health
16 treatment to address his anxiety. And for that matter, Your
17 Honor, he has clearly been chastened by this ordeal. He
18 doesn't pose any risk of recidivism. You will hear from him
19 momentarily.

20 But given what he has endured over the last two
21 years in prison, separated from everything that is dear to
22 him, he is more desirous than ever to lead a healthy,
23 law-abiding, and gainful life; and we have already seen
24 that. Because even in the facility he has already turned
25 that corner and doing things in the service of other people.

1 Lastly, Your Honor, imprisonment, rather than
2 fostering his rehabilitation, it's going on -- it's
3 undoubtedly going to hamper it. In fact, he still suffers
4 from anxiety attacks as recent as a week and a half ago. He
5 needs help.

6 Anyway, Your Honor, imprisonment at this stage, I
7 think, only serves one purpose for imprisonment, and that is
8 to advance the unnecessary aim of retribution for its own
9 ritualistic sake. In contrast, permitting him to return
10 home, tend to his mental health surrounded by his family,
11 would further -- best further his ongoing rehabilitation.
12 And it would also -- particularly in light of everything he
13 has suffered to date -- be sufficient to satisfy the
14 purposes of 3553.

15 So based on all of these reasons, Your Honor,
16 we're asking the Court to impose that nonguideline sentence.
17 Thank you very much.

18 And if you have any questions --

19 THE COURT: All right. Thank you for that,
20 Mr. Seigel. I am going to take a break.

21 I do want the government to respond briefly as to
22 the challenge on the unequal sentencing.

23 Also, I am going to address the potential of a
24 fine in this case. We need to discuss that when I get back
25 as well.

1 MR. SEIGEL: Sure.

2 THE COURT: All right. We'll take about a
3 ten-minute recess, then return please.

4 MR. SEIGEL: Thank you, Your Honor.

5 (Whereupon, a recess was taken.)

6 THE COURT: All right. We're returning to
7 sentencing. At this time, I will have the government
8 briefly respond to the counsel's allocution for Mr. Khater.

9 MR. LIGHT: Yes, Your Honor. Thank you.

10 I will try to be brief. I know lawyers like to
11 get into tit for tat -- I'm not going to do that, and
12 respond to everything that Mr. Seigel said.

13 But there are a few corrections I would like to
14 note, starting with Mr. Seigel's assertion that Mr. Khater
15 was actually in the act of being sprayed when he sprayed
16 these three officers; that is simply factually inaccurate.
17 He has not shown us video of Mr. Khater being sprayed
18 because it does not exist at that moment. And we allocuted
19 for -- in detail as to the premeditated nature of that
20 assault; this is not impulsive behavior. I'm not going to
21 repeat myself.

22 But on that factual point, there is nothing in
23 those videos that shows Mr. Khater being sprayed at the
24 moment before he begins spraying these officers. He sprayed
25 twice.

1 MR. SEIGEL: Your Honor, if I may. We agree. We
2 didn't say that.

3 MR. LIGHT: The first time --

4 THE COURT: No. Let him finish. Don't interrupt.

5 MR. SEIGEL: Sorry, Your Honor.

6 MR. LIGHT: The first time he is sprayed at
7 minutes -- or he comes into contact with spray at,
8 approximately, 2:09 to 2:13, and that's when he comes back
9 and is recorded saying: They just sprayed me. And the
10 second time he is sprayed is when Lieutenant Bagshaw douses
11 him because he's been spraying officers, as many people as
12 he could, for at least 30 seconds or longer. So I just
13 wanted to correct that factual point.

14 I know the Court has asked us to address the
15 disparities and respond on that argument, which I will.

16 First, I would like to note that our filing was
17 not an attempt at sandbagging or some sort of late night
18 gotcha move by the government here. The Court did set a
19 three-day response for filings at the last status -- when it
20 first set the memoranda schedule for our briefing. We filed
21 it at 9:31 p.m., not at 12:01 a.m. I know that because I
22 was playing Wordle at 12:01 a.m. and not filing paperwork.
23 This was not some sort of an attempt to get a last word in
24 here; this was the Court's briefing schedule, okay.

25 Now, with regard to the disparities that

1 Mr. Seigel is alleging. First, as the Court is well aware,
2 there is a plea bargaining process that is unique to every
3 single case, and that is not reflected necessarily in any of
4 the supporting literature or documentation. There may have
5 been proof problems; there may have been concessions made,
6 bargaining -- that may account for some of these
7 disparities that --

8 THE COURT: Some of it would be due, I assume, to
9 the charging decisions of the government --

10 MR. LIGHT: Yes. And the charging decisions --

11 THE COURT: -- on each case, whether they're going
12 to bring the charge, even though there may be conduct that
13 they could charge, they don't charge.

14 MR. LIGHT: And our charging decisions are based
15 on the proof that's available to us, and that is different
16 in every case.

17 In this case, we have three identified victims,
18 three of them who suffered; and there is an injury
19 enhancement reflected in the guidelines for serious bodily
20 injury that applies. These were unprotected officers.

21 In many of the cases that Mr. Seigel is talking
22 about, those officers were in full riot gear. They did not
23 suffer; they did not experience the serious bodily injury.
24 It was a bad assault, to be sure, in many of those cases,
25 but the degree of injury is determinative in many of these

1 examples.

2 And I hesitate to make broad, sweeping claims on
3 any of this because we have reached a guidelines sentence
4 based on the conduct, based on the charges. I remind the
5 Court that we easily could have maintained that Mr. Khater
6 had to plead guilty to three assault victims because we
7 identified three, at a minimum. And he was given a benefit
8 of pleading to two which also lowered his guidelines range.

9 This is not some higher-up DOJ conspiracy.
10 Myself -- Mr. Light -- and Mr. Scarpelli put our names on
11 this brief. This is not a penalty we're asking for because
12 of the nature of the case, because of the media attention.
13 We have charged this case from the beginning based on the
14 facts, based on what we have seen, based on what we can
15 prove in a court of law.

16 Our sentencing allocution reflects those
17 principles. It is the right sentence; it is based on the
18 conduct. And there is no disparity with these other cases
19 where they just do not have the same degree of injury or
20 this type of assault on unprotected officers who suffered
21 the way that they did.

22 The last thing I will say in terms of the
23 disparities, Mr. Seigel makes much about the defendants in
24 those cases and their words. The things that they said
25 leading up that might have evidenced their intent, whether

1 it was pro-Trump slogans or "Take This Over" or "Stop the
2 Steal" -- whatever it was, we're all familiar with all of
3 the rhetoric that accompanied many of these cases. We
4 acknowledge that is not present here; that is not a defense.

5 Again, the actions of Mr. Khater speak louder than
6 any of those words, and we have argued that at length. We
7 have asked for this sentence. And I am happy to answer any
8 other questions Your Honor has about specific cases.

9 THE COURT: All right. Thank you.

10 MR. LIGHT: Thank you.

11 THE COURT: Mr. Light, come up for a minute, and
12 then Mr. Khater will come up. Mr. Light, you can come up
13 for a minute.

14 I'm sorry, Mr. Seigel. You can come up for a
15 minute.

16 MR. SEIGEL: That was the confusion. Thank you.

17 THE COURT: Mr. Siegel, you can come up for a
18 minute.

19 I was looking at your pleadings here, sorry.

20 MR. SEIGEL: Thank you.

21 THE COURT: Go ahead. And then we'll have
22 Mr. Khater, too, please.

23 MR. SEIGEL: And at the outset, I want to
24 apologize for interrupting. I thought I might be able to
25 save a little time.

1 For clarity, the defense never said that
2 Mr. Khater was sprayed at the moment he was sprayed; we
3 acknowledge that it was minutes earlier.

4 What I had said was that before he sprayed,
5 Lieutenant Bagshaw -- and we saw this on the video -- was
6 spraying the crowd in which he was present, not that he
7 himself was sprayed at that moment, in just talking about
8 the chaos in that situation.

9 THE COURT: I remember the video showing the spray
10 over the crowd; although, I don't think Mr. Khater was hit
11 by the spray in those videos.

12 MR. SEIGEL: Not at that moment, correct.

13 THE COURT: All right.

14 MR. SEIGEL: In terms of their -- the government's
15 response now, the plea bargain process is unique to every
16 case, and takes into con- --

17 THE COURT: I have heard enough about disparity.
18 We're going to move ahead with the sentencing, please.

19 MR. SEIGEL: Okay, Your Honor.

20 I think I have said everything.

21 The guidelines are controlling here, it's one
22 consideration.

23 And in terms of other defendants, we see all of
24 the videos and photographs pertaining to them as well, and
25 the government still gave them what they gave them in terms

1 of plea disposition.

2 So, Your Honor, ultimately, it's the facts that
3 should drive the Court's consideration here. So I haven't
4 heard anything that the government said in response to the
5 Court's request for them to clarify the sentencing disparity
6 issue. It's still our position, based on all of the cases
7 that we've cited, that sentencing Mr. Khater to anything
8 greater than we're requesting would, in fact, create such a
9 disparity.

10 So that's our request, Your Honor, the sentence of
11 time served with supervised release. Importantly -- and
12 this is critical, we're asking for this -- court-mandated
13 mental health treatment for his anxiety.

14 Thank you.

15 THE COURT: All right. I want to ask you about
16 potential fines in this case. Probation didn't cover that
17 in their report. There is some report Mr. Khater has a fund
18 of some type of stock, or something, \$20,000.

19 MR. SEIGEL: Yes.

20 THE COURT: There was also evidence at the bond
21 hearing of substantial family wealth available.

22 MR. SEIGEL: So I have spoken -- I will deal with
23 the family wealth issue first. I have spoken to his father
24 who, at some point, had some assets. They have been
25 expended in connection with this ordeal, including --

1 without getting into too much detail, a civil lawsuit that
2 was just filed. He needs to tend to that as well.

3 With regard to Mr. Khater's assets, he doesn't
4 have anything of substance. That being said, I spoke to
5 him. And there was a GoFundMe -- that's the reason why the
6 family had this GoFundMe page, trying to raise money for his
7 legal defense. I think the amount that they came up with
8 was 18,000 --

9 250?

10 \$18,325, Your Honor.

11 THE COURT: All right.

12 MR. SEIGEL: That, in fact, did go towards the
13 legal defense.

14 I spoke to Mr. Khater about this. You will hear
15 from him. He is tremendously remorseful, and he said
16 whatever the Court wants. Even though the moneys went
17 towards his legal defense, if the Court sees fit to impose
18 that as part of the fine, he will assume that. He will
19 defer to the Court, Your Honor.

20 THE COURT: Well, what I am referring to -- maybe
21 he spent it in the meantime, although he has been in prison
22 for almost two years -- is the probation report indicates
23 that he had two funds. I thought there was some type of
24 investment or stock funds; it was on page 16 of the report.

25 (Whereupon, counsel confer.)

1 THE COURT: It's paragraphs -- under: Financial
2 Condition, Ability to Pay, paragraph 93 and 94B.

3 (Whereupon, counsel confers with defendant.)

4 MR. SEIGEL: Your Honor, so since Mr. Khater has
5 been in custody for two years, he doesn't know what is still
6 in that account. But at the point he was arrested those
7 funds were, in fact, in there, approximately.

8 Again, we defer to the Court.

9 THE COURT: I'm sorry. Were approximately there,
10 but they aren't there now?

11 MR. SEIGEL: He doesn't know. He hasn't seen
12 these accounts for two years. He has been in custody.

13 THE COURT: So he had nobody look at that account?
14 He doesn't know what's in there or not?

15 MR. SEIGEL: No.

16 THE COURT: A Webull [sic] account is what?

17 (Whereupon, counsel confers with defendant.)

18 MR. SEIGEL: Your Honor, it's an investment
19 account, obviously with balances that fluctuate. He has not
20 accessed that account in two years. He doesn't know what's
21 there.

22 THE COURT: All right. And the 18,325 in the
23 GiveSendGo account, created by his -- obvious -- father,
24 apparently that's been spent for legal fees, et cetera?

25 MR. SEIGEL: That's correct, Your Honor.

1 THE COURT: Okay. Thank you.

2 All right. Mr. Khater, do you want to come up --
3 you have a right to address the Court before I finally make
4 a decision and enter a sentence at this time on you. I am
5 anxious to hear what you have to say about this situation,
6 frankly.

7 MR. SEIGEL: Your Honor, Mr. Khater prepared a
8 written statement. I just wanted to let the Court know that
9 these are entirely his words. He shared them with me, but
10 he did this entirely on his own. And he wrote it because,
11 obviously, today is emotional, he didn't want to come --

12 THE COURT: All right. I appreciate that.

13 Thank you, sir.

14 THE DEFENDANT: Thank you, Your Honor.

15 My name is Julian Khater. It's been 684 days
16 since the day of my arrest on March 14th, 2021, and 751 days
17 since the day of January 6th; the better half of that time
18 being spent in total solitary confinement.

19 To say the least, this has been a long, agonizing
20 but humbling experience that has taken a huge toll on me. I
21 look back at the picture that was taken of me at intake
22 almost two years ago, when I first got transferred to
23 Washington, D.C., and hardly recognize that person.

24 During my time in solitary confinement, I have had
25 ample opportunities to do some soul-searching, read good

1 books, further educate myself, self-reflect, meditate, and
2 pray.

3 With the limited resources I had, I have taken
4 every single chance I possibly could to better myself as a
5 person. I have read every single book I could get my hands
6 on. I have listened to audio books, motivational speeches,
7 Ted Talks, and many, many sermons. I have also been taking
8 medication for my often crippling anxiety.

9 Your Honor, what happened on January 6th, there is
10 no words for it. It's extremely unfortunate, and I wish I
11 could take it all back. The families affected don't deserve
12 that, and our great officers certainly don't deserve that.
13 I realize the damage that was done that day.

14 I understand that to many people January 6th is
15 not just a date in history, but a date that lives on in
16 people's minds and memories -- still affects them to this
17 day, a date that some will never forget.

18 Your Honor, I can assure you, as my counsel has
19 and have many honest character letters, that what transpired
20 that day is not in my nature; it's not who I am. And it
21 most certainly was a one-time thing that will never happen
22 again. I have learned and grown so much from this
23 experience, and I am a better person because of it.

24 Every human being has those certain defining
25 moments in their life; January 6th and, consequently,

1 March 14th are those dates and experiences for me, and I
2 will carry them with me as long as God gives me. I have
3 prayed and prayed, and will keep praying for every single
4 person affected.

5 I really appreciate you for hearing out me today,
6 Your Honor, and I thank you for your time.

7 THE COURT: Mr. Khater, let me just ask you a
8 couple of things. I am concerned because, obviously, this
9 is a case that originally started out as a case where you
10 could be charged with murder.

11 Unfortunately, there was a lot of speculation in
12 the press, inaccurate; that Officer Sicknick had been hit
13 with a fire extinguisher and badly injured, and that could
14 have caused his death. Then there was statements about the
15 chemical spray causing his death. And for several weeks, if
16 not more, people believed that -- not unfairly; that's what
17 the press was saying, and that's what people were reporting.
18 And not until April did the coroner's report come out
19 indicating he died of natural causes, which were two strokes
20 the next morning.

21 Although, I think people, I am sure, can conclude
22 in their own mind that the spray may have caused it. But
23 medically they haven't shown that yet, so you are not
24 charged with that offense. But that is obviously the
25 elephant in the room that has caused a lot of concerns in

1 this case.

2 I have to, as I said earlier, sentence you on the
3 basis of what you pled to and what you did that day, not on
4 what subsequently may come out in other litigation that's
5 not before me -- or not. I am concerned about what you did
6 do, however, regardless if you are responsible directly for
7 the death of Officer Sicknick.

8 I am not going to give a lecture on the riot; we
9 have seen the films. We have all had, in this court at
10 least, lots of cases. And I must say, each time you see the
11 films of the riot you are shocked over again; I mean, it's
12 something you don't forget.

13 And your counsel made an argument -- a lot of
14 argument about it -- it was an emotional time. Everybody is
15 upset, high anxiety, and it's aberrational. But I think --
16 and it may be an aberration in your case or not. But it
17 occurs to the Court that's true about 95 percent of the
18 people at the riot.

19 There were a few that planned it. There were a
20 few that executed it, and they did that with military
21 precision and intent -- and that's different. And some have
22 been convicted already of sedition and insurrection against
23 the United States.

24 But I think the bulk were there because they were
25 unhappy with the election and believed the preaching by

1 their former President and followed his directions to go
2 down and stop the steal.

3 What concerns me a little bit is your thoughtful
4 statement right now did not really include any apology to
5 the officers who you sprayed, any -- directly. I mean, what
6 you apologized -- you are sorry that it happened. I didn't
7 hear anything personally about who you sprayed, and what you
8 did to them personally in detail.

9 MR. SEIGEL: I think he did, Your Honor.

10 THE COURT: Let me finish my talk, please. Gosh.

11 I didn't hear any sorrow about what happened to
12 everybody else at the Capitol that got hurt, the 140
13 officers who were hurt by people attacking them.

14 I didn't hear any expressions of sorrow and
15 concern about the employees in the Capitol who hid for their
16 lives; many resigned after it, could never come back to
17 work. Many of the police officers quit and could not come
18 back to work.

19 You saw the effect on Officer Edwards. It's two
20 years later, and she's still destroyed when she tries to
21 talk about it.

22 It's something that is -- I think somewhere along
23 the line we have lost the sense of acceptance of
24 responsibility. I have a lot of these pleas. Everyone come
25 in and says: It's hurt my life, I've lost my job. This is

1 terrible. I am so badly treated these days.

2 These officers have lost their lives. There are
3 officers who committed suicide after this. There are
4 officers who had to quit and can't go back to work; their
5 families are affected, and we don't hear about that.

6 I mean, what everybody is sorry for is about what
7 they feel in their own situation now; and I find that is a
8 very self-centered approach to what true acceptance of
9 responsibility is in these cases.

10 I'll accept you're sorry for what happened. I'll
11 accept that you regret that you did such a thing; and I do
12 think it is unusual in your life. I don't know what got
13 into you.

14 I can't find it's some overanxiety thing that you
15 did this because it didn't happen -- it was over a period of
16 several minutes. Somehow you got determined to push your
17 way through the crowd. You didn't just turn around and run
18 up there and attack them; you got the spray.

19 You talked to Mr. Tanios before you came down here
20 when you checked if he really wanted to come down here,
21 apparently; and you went with him. You talked to him on the
22 phone about buying the spray, and you had it carried by him
23 onto the premises or the area of the Capitol. And at one
24 point, because there was rioting going on all around, you
25 decided you wanted the spray, and you wanted to spray the

1 officers. That was a decision you made.

2 It wasn't something -- you grabbed a can and threw
3 it at somebody. It's -- it's a decision you made to get it,
4 to wait a while, to work your way up through the crowd, to
5 get to the front of the crowd -- to get right next to the
6 officers. And, particularly, the officers -- they didn't
7 have all of the videos today; but it's very clear that these
8 officers did not have a lot of protective gear.

9 Officer Edwards had nothing. You just walked up,
10 within three or four feet of her, and sprayed her directly
11 in her face; I mean, held it right there into her face to
12 hurt her. I see no excuse for that. I see no rationale
13 that you were upset and anxious and so you attacked them.
14 It happened. And I am not -- I can't find any other way to
15 get around that.

16 Your counsel has argued it's unfair for you to be
17 charged with this compared to the other people who may have
18 done other things or worse. I think those are charging
19 decisions by the government that don't relate to this case
20 directly.

21 I do give you credit for your two years, almost,
22 of service in the D.C. jail system. That's a bad system,
23 it's had problems; I disagree with it. But I think that
24 that is unfortunate, and I am going to consider that in my
25 decision on how much to sentence you to.

1 But I am concerned about what happened to these
2 officers. I don't find any excuse for anyone attacking an
3 officer -- particularly in this situation, doing their
4 duty -- facing overwhelming odds of thousands of people
5 attacking and screaming at them, throwing things at them,
6 taking away the bike racks in front of you. I don't find
7 any excuse for that that I can say that because you were
8 emotionally upset that that is some kind of a situation I
9 should depart downward from the guidelines by several years.
10 I see no basis for that.

11 Your counsel is up, and he wants to say something.
12 I will let him have one more statement. That's it.

13 MR. SEIGEL: Thank you, Your Honor.

14 And the statement is not from me. It's unusual --
15 not typical -- but Mr. Khater actually wanted to respond to
16 the Court because he takes it to heart --

17 THE COURT: He can respond. I have no problem. I
18 didn't say he couldn't.

19 THE DEFENDANT: Can I just say something real
20 quick --

21 THE COURT: Sure.

22 THE DEFENDANT: -- in response to what you have
23 said?

24 I have been working on this for a very long time.
25 I've had many rough drafts.

1 The first thing that I said to my attorney is I
2 want to apologize to the officers. You yourself said it's
3 an elephant in the room.

4 As I was writing this, I got served with my civil
5 service thing and, in light of that, I didn't want to touch
6 on it because there is a civil thing going on. I wanted to
7 apologize to everybody. But at the advice of my counsel,
8 one, I never reached out to them at the advice of my
9 counsel.

10 MR. SEIGEL: There is an attorney-client issue --
11 (Simultaneous speaking.)

12 THE COURT: Stop if you are afraid of a civil
13 liability --

14 THE DEFENDANT: I did want to apologize --

15 THE COURT: I think you should be concerned about
16 civil liability.

17 THE DEFENDANT: I did have that in here, Your
18 Honor, to apologize to all of the officers.

19 THE COURT: All right.

20 THE DEFENDANT: I said they don't deserve that
21 incident.

22 THE COURT: But I think the bottom line is -- you
23 have heard the statements of the relatives of Officer
24 Sicknick, and they're very telling and very sad. And I'm
25 sorry they carry with them such a burden of loss and have

1 not been able to cope with it better and have not been able
2 to... It won't go away for them, but at least to be able to
3 better handle it because it's something that's going to
4 haunt them -- taken by their grief and sorrow and family
5 disruption by all of this.

6 But as I said earlier, in the beginning of this, I
7 can't take into account a sentence that should include that
8 you're responsible -- directly responsible for the death of
9 Officer Sicknick. I think there are conditions that you had
10 to consider when you did this, perhaps that what you were
11 doing would result in injuries to individuals and how that
12 could affect them. But right now the coroner's report does
13 not give me any basis to use that against you directly in
14 the sentencing.

15 But what I am concerned about -- and I disagree
16 with Mr. Seigel on the disparity of sentencing. I think his
17 case, as he pointed out, are matters of the U.S. Attorney's
18 Office charging decisions; that the Court has no control
19 over that, and that's up to the U.S. Attorney. They can
20 charge people for various ways for various reasons.

21 Many people think the charges are unfair because
22 of the way that the decision is made, but that's not
23 affecting the sentence in a case. There are many reasons
24 why the government brings charges and doesn't bring other
25 charges. Most of the cases you have referred to are all

1 ones that are sentencing within the guidelines. They may
2 have done other things they should have had higher -- more
3 charges, but that wasn't what was before the Court.

4 So, in this case, I have before me the guideline
5 range that we have discussed at length in this case. So
6 people are clear what the guideline range is -- again, I
7 will repeat it for the record. After having reviewed the
8 presentence report, I have also, as I said, read all of the
9 materials submitted to me by the parties, thoroughly, and
10 gone back through them all, and I am satisfied it's the
11 appropriate sentence in this case.

12 The range was 78 to 97 months. 78 months is 6
13 years and 6 months; 97 months is more than that by another
14 12 plus -- 17 months longer. It's a rather tight range,
15 actually.

16 And I am not going to depart down from the range.
17 I find no basis to apply a variance in this case. I find,
18 instead, I had three officers who were doing their duty, who
19 were not threatening anyone -- actually, all those three,
20 they didn't have the spray that the other officer had. They
21 were standing behind the little bike racks and barricade,
22 and are suddenly sprayed by Mr. Khater.

23 For whatever reason he decided to do it, after
24 having worked his way through the crowd right to the
25 front -- sprayed them directly in the face. They did not

1 have all of the protective gear the other officers had on.
2 Officer Sicknick immediately reacted; you can see that.
3 Officer Edwards said he just turned pale white. And she
4 wanted to help him and couldn't because she was blinded, as
5 we saw in the video. She couldn't see where to move or
6 where to go.

7 Then we saw the subsequent video of Officer
8 Sicknick where he's stumbling around for many minutes, up in
9 the patio trying to recover himself. There was no question
10 he was affected by that spray. It wasn't a minute
11 annoyance; he was out of action. Other officers had to help
12 him. Other officers had to break away from their duties to
13 help Officer Edwards as well.

14 The government also did not charge a third
15 offense; I can consider that under 5K of the guidelines, the
16 uncharged conduct. This was charged conduct but not pled
17 to. But I think it's sufficient for the Court to consider
18 this direct attack on these officers.

19 And I can't find any basis for accepting an
20 assault -- and I think it is a dangerous weapon -- on a
21 police officer standing there really not threatening anyone.
22 It wasn't as you were responding because they were going to
23 hit you with a club or something. It makes no sense to me,
24 for your background. And I don't accept the fact that you
25 had some anxiety attack and attacked people.

1 The anxiety attack you talked about -- your father
2 talked about is not doing that. Your anxiety attacks are
3 being paralyzed. You can't breathe; you can't move; you
4 can't do other things. It's not that you lash out at other
5 people; I don't find that related at all.

6 I am distressed that you, as a reasonable human
7 being, would come down for whatever reasons, after attending
8 the rally -- which is your right to do so, there is nothing
9 wrong with that -- legally wrong with that -- go down, and
10 this riot starts. And there were some comments about
11 everyone's response to the riot, and actually that's
12 correct. A riot doesn't happen without a mob. A mob is
13 what a riot is, and the people in the mob join in with each
14 other. And that's -- there is a generic responsibility for
15 that -- those actions.

16 You decided for your own reasons to partake in
17 that and to spray these officers. I am not going to
18 sentence you any longer because the government argued that
19 you helped -- then the barricades break down, and that
20 caused the whole entry into the Capitol. There were
21 thousands of people trying to do that; I am not holding you
22 responsible for that.

23 But I do think the sentence is appropriate that
24 I'm going to give you for your conduct at the Capitol. It
25 was very clear there was a riot going on. You didn't walk

1 away from it; you knew it was going on. You could see that
2 very clearly even in the brief exhibits we have here. There
3 are a lot of other exhibits that show more than that.

4 And why -- you decided to leave your area, back
5 where Mr. Tanios was hiding, hanging out, and worked your
6 way slowly up over several minutes to be within a few feet
7 of the officers and sprayed them directly in the face. They
8 were temporarily blinded; disabled from performing their
9 duties for a period of time; needed some medical-type of
10 attention; assistance from fellow officers. It just does
11 not compute with me this type of activity and people
12 thinking they can do this because they disagree with the
13 results of the election.

14 Now, you have served hard time.

15 You have served 1 year, 10 months and 14 days. I
16 can say the nature of the offense -- I think that I am not
17 going to give you the maximum that's provided in the
18 guidelines. The guidelines are advisory, I have reviewed
19 them; I think in this case they're appropriate.

20 I have reviewed for any possible variances, and I
21 don't see they apply to reduce the sentence.

22 I went through the Title 18 3553 factors. We have
23 discussed that with your counsel and the government, I am
24 not going to go back through those again; but I have
25 considered each of those factors.

1 And concerning particularly that your counsel --
2 unfair type of sentences based upon the other offenses in
3 this case, in this riot. But I am not going to give you the
4 maximum because I think you have served unfair time. I
5 think the jail is a disgrace, and your treatment there
6 reflects, I think, an unfairness and disrespect the jail
7 personnel have for these defendants. So that concerns me.

8 I do think because of the nature of your actions,
9 which I find inexcusable, an assault on these officers --
10 the testimony of Officer Edwards -- you can see how
11 distraught and destroyed she is two years later, it's a
12 long-term effect. And I accept that you have reflected on
13 this and that's something you would never do again; but I am
14 going to give you a sentence in accordance with what I think
15 is an appropriate sentence under the guidelines.

16 So under the Sentencing Reform Act and in
17 consideration of the Title 18 3553(a) factors and the
18 advisory sentencing guidelines, it is the judgment of the
19 Court that: Julian Khater is committed to the custody of
20 the Bureau of Prisons for a current term of 80 months,
21 that's 6 years and 8 months, on Counts 2 and Count 3 to run
22 concurrently with each other. You will get credit for time
23 served to date.

24 There is a concurrent term of 24 months, two-years
25 of supervised release, when you have served your time.

1 Additionally, a special assessment of \$100 for
2 each count, for a total of \$200, in accordance with
3 18 U.S.C. 3013.

4 Now, as to a fine in this case, I don't know where
5 your \$20,000 is. You have no dependants. And apparently
6 you had \$20,000 when you came here, I guess from your hard
7 work that you have -- I cannot see why there should not be a
8 fine in the case as to what has happened in these matters.

9 It really seems to me to be a problem that we
10 don't have the defendants paying some of the expenses that
11 have gone into by the government in these matters now to
12 prosecute these hundreds and hundreds -- now we're at 950;
13 we're probably going to get another thousand cases. I think
14 there should be fines for people who are economically
15 available to pay it and have the economics, so it's not an
16 unfair -- placing them into poverty if they have to pay a
17 fine. I am going to impose a fine in this case -- in your
18 case as well of \$10,000 to be paid to the Clerk of this
19 court.

20 Now, you are going to be put on supervision. Once
21 you get out of jail, on supervision, the conditions are all
22 of the mandatory ones and discretionary ones recommended by
23 the probation office here.

24 The mandatory ones always are: You can't commit
25 any other crimes; you can't possess unlawfully a controlled

1 substance; refrain from unlawful use of a controlled
2 substance; submit to a drug test within 15 days of placement
3 on supervision; two periodic drug tests thereafter, to be
4 determined by the Court; cooperate in the collection of DNA,
5 as directed by the probation officer; make restitution under
6 18 U.S.C. 3663 and 3663(a) or any other statute authorizing
7 restitution, which I will mention in a minute.

8 I don't think you have any real drug habit, but
9 you have to, under the law, submit to substance abuse
10 testing to determine if you have a prohibited substance --
11 been using them once you get out of jail.

12 Again, if there is any alcohol abuse, you will
13 participate in any inpatient/outpatient program as may be
14 necessary.

15 Financial information to pay the fine and the
16 restitution -- I am going to order you to provide the
17 probation office access to requested financial information
18 and authorize the release of any as necessary; that may be
19 shared by the U.S. Attorney's Office to collect the fine and
20 restitution. You must not incur new credit charges, open
21 additional lines of credit, without talking to a probation
22 officer.

23 Once you are released from jail -- and you will
24 get credit for time served, plus credit for each year you
25 have served will reduce your time. In 45 days, you will

1 have to appear back before the Court for a reentry progress
2 hearing. The probation office in the District you are
3 supervised will submit a progress report to the Court within
4 30 days of the commencement of supervision. Once the Court
5 gets the report, it may determine if your appearance is
6 required.

7 You are required to make restitution in this case,
8 pursuant to the plea agreement between you and your counsel
9 and the government, to the Architect of the Capitol of
10 \$2,000. As of now, it looks like over \$2 million of damage
11 has been done to the Capitol.

12 The Court determines you do not have the ability
13 to pay interest, so I will waive any interest or penalties
14 that may accrue on the balance. Restitution payments are
15 payable to the Clerk of this Court. They will be disbursed
16 to the Architect of the Capitol as the victim, the Office of
17 the Chief Financial Officer, Ford House Office Building in
18 Washington, D.C.

19 The restitution should be paid at a rate to be
20 determined between you and the probation officer because of
21 your incarceration. Normally, it's \$100 a month, but I will
22 let them work on that with you as you will be imprisoned for
23 a while.

24 The financial obligations for the conviction,
25 which is for these two felony convictions, is \$200; and they

1 are due immediately to the Clerk of this court.

2 The probation office can transfer and release the
3 presentence report to the appropriate probation offices to
4 carry out the treatment of the Court -- the orders of the
5 Court for any treatment that may be necessary.

6 So let me ask, Ms. Baker, if you need anything
7 else in light of that?

8 Now, I know you had a GoFundMe page, but I am not
9 going to assess what's left of that because of the necessity
10 for paying legal fees in your defense, as it may be
11 necessary in the future for your legal fees.

12 All right. Ms. Baker, anything else you need?

13 THE DEFENDANT: Thank you, Your Honor.

14 MR. SEIGEL: Your Honor, before I step away, there
15 is just one housekeeping matter.

16 THE COURT: All right.

17 MR. SEIGEL: Because Mr. Khater's family lives in
18 New Jersey, we'd request that the Court make a
19 recommendation to the BOP that he be designated to Fort Dix.

20 THE COURT: Fort Dix. I felt that was true and
21 accurate, and I will do that.

22 MR. SEIGEL: Thank you, Your Honor.

23 THE COURT: Yes. Certainly.

24 THE PROBATION OFFICER: Your Honor, nothing else.
25 You've covered everything.

1 THE COURT: All right. That will be the sentence
2 of the Court.

3 He can stay where he is. I will inform Mr. Khater
4 through his counsel he can appeal the conviction and my
5 sentence to the U.S. Court of Appeals of D.C. if you believe
6 your guilty plea was unlawful and voluntary, or there's some
7 defect that was not weighed by your guilty plea.

8 Additionally, you have a right both -- under
9 18 U.S.C. 3742A to appeal your sentence under certain
10 circumstances: I gave you a sentence in violation of the
11 law or incorrect application of the sentencing guidelines,
12 or I gave you a more severe sentence than allowed for under
13 the maximum sentencing guideline range; I did not do that.

14 If you think your sentence was unfair because you
15 received ineffective assistance of counsel at sentencing,
16 you may appeal that.

17 Under 28 U.S.C. 2255, you have a right to
18 challenge the conviction entered or the sentence imposed as
19 set forth in that statute and, that is, if you had
20 ineffective assistance of counsel or you found new and
21 unavailable evidence later that showed you are not
22 responsible for the crime or for facts that should affect
23 your sentence. You have 14 days after I file the entry of
24 judgment in this case to appeal. If you can't afford the
25 cost of the appeal, that can be waived.

1 All right. Does the government have any issues
2 with the sentencing at this time that they want to raise?

3 MR. LIGHT: No, Your Honor.

4 THE COURT: All right. Thank you.

5 THE COURTROOM DEPUTY: Your Honor, may I ask a
6 quick question?

7 THE COURT: Sure.

8 THE COURTROOM DEPUTY: Will be you waiving
9 interest for the fine?

10 THE COURT: Yes. Yes. If I didn't say that -- I
11 did for the restitution; same for the fine. Thank you.

12 All right. Thank you.

13 Mr. Khater, you can stay if you wish to hear the
14 sentence of Mr. Tanios or you can leave.

15 MR. SEIGEL: Stay.

16 THE COURTROOM DEPUTY: Will the government be
17 making a motion at this time?

18 MR. LIGHT: We are, Your Honor.

19 THE COURT: Yes.

20 MR. LIGHT: Thank you. As per the plea agreement,
21 the government --

22 THE COURT: Go ahead.

23 MR. LIGHT: As per the plea agreement, the
24 government would move to dismiss the remaining counts in the
25 indictment --

1 THE COURT: All right. All remaining counts in
2 the indictment against Mr. Khater will be dismissed.

3 (Whereupon, the Court and staff confer.)

4 THE COURT: All right. I am just reminded also
5 that the government had requested, in its filings I had
6 discussed with defense counsel, a restitution briefing
7 schedule for any damages suffered by the victims or the
8 responsible parties who paid their health care expenses,
9 et cetera, which can be done. Actually, what I am going to
10 do in that case -- and I will pull up my notes on that. It
11 can be referred to a magistrate judge to do that, if the
12 parties decide they wish to do that; it has to be done
13 within 90 days.

14 The chapter in question I am referring to is
15 18 U.S.C. 3664. Under that, the procedures and issuance of
16 enforcement of orders of restitution -- it would be under
17 (d) (5). If the victim's losses are not ascertainable by the
18 date that is 10 days prior to sentencing, the attorney for
19 the government shall inform the court, which they did. The
20 Court shall set a date for final determination of the
21 victim's loss, not to exceed 90 days of the sentencing.

22 The Court may refer any issue in connection with
23 this proposed order of restitution to a magistrate judge or
24 special master for findings of fact and recommendations,
25 subject to a *de novo* determination of the issue by the

1 court.

2 The government raised in their brief that MPD or
3 maybe the Capitol Police would have some expenses related to
4 the injuries to the officers; and they would have to file
5 that, if so, within the next 90 days or be waived.

6 So I will put an order out shortly just giving
7 time for the government to raise that and a time for the
8 response by counsel for the defendant, and have a date set
9 in 90 days. It will be done by another judge because I will
10 not be available to do it in 90 days, but that still has to
11 be done. And I'll enter an order to that effect.

12 All right. That will complete the sentencing of
13 Mr. Khater.

14 Those who are interested can leave, or they can
15 stay -- I will take up the sentencing of Mr. Tanios at this
16 time. That will be -- Ms. Gross will be representing
17 Mr. Tanios.

18 All right. The government is going to come up
19 first.

20 MR. SCARPELLI: Good afternoon, Your Honor.
21 Anthony Scarpelli on behalf of the United States.

22 THE COURT: All right.

23 MR. SCARPELLI: The government is well aware that
24 the Court understands and appreciates the facts as they
25 apply to each defendant in this case by way of the hearings

1 we have had, the pleadings we have filed, as well as
2 Mr. Light's presentation. We'd ask that you incorporate
3 those facts as they apply to Mr. Tanios in the presentation
4 to Mr. Tanios.

5 The Court is well aware that we have asked for a
6 guideline sentence. The guideline in this case is zero to
7 six months; and Mr. Tanios has effectively served five
8 months and approximately 12 days. So what we're asking for
9 is a time-served sentence, which is actually the higher end
10 of the guidelines.

11 We believe that sentence is appropriate under
12 the -- in looking at the 18 U.S.C. 3553 factors. The first
13 factor that the Court should look at is the nature and
14 circumstances of the offense. In doing so, the Court should
15 go back to January 5th, 2021, the day before this incident.

16 And on January 5th, 2021, the defendant went into
17 a performance shop in West Virginia, a gun shop, and he
18 asked the store employee several questions. One, he asked:
19 Can I bring a gun to Washington, D.C.? He then asked: Can
20 I bring this pepper ball projectile weapon to Washington,
21 D.C.? He then asked: Can I bring pepper spray to
22 Washington, D.C.? He did, in fact, tell the clerk that he
23 planned to go to the Trump rally, presumably, a peaceful
24 event. He also said he was going to be accompanied by a
25 friend, and that was Mr. Khater.

1 And on that day he purchased four canisters of a
2 substance: two canisters of bear spray and two canisters of
3 pepper spray. Almost 16 ounces of a bear spray. I don't
4 mean to make a joke of it, but the only bears that I know of
5 in Washington, D.C. are in the National Zoo. Why on earth
6 are you bringing weapons to a peaceful event? They are
7 weapons.

8 And the next day the defendant and
9 Mr. Khater traveled -- excuse me -- that night they traveled
10 to Washington, D.C. They got a hotel room with those four
11 containers. And the next morning they set out for the
12 January 6th rally carrying those items. The defendant had
13 them in his backpack.

14 When the rally was over, and they walked to the
15 Capitol, to the restricted grounds -- to an unlawful area on
16 federal property -- the defendant again had these canisters.
17 And if there was any thought that the defendant didn't know
18 what was in his backpack, it's certainly obvious when you
19 look at the conversational couch video, the social media;
20 because defendant Khater says to defendant Tanios: Give me
21 the bear shit. And defendant Tanios doesn't say: I don't
22 know what you're talking about. He says: Not now, it's
23 early.

24 And the reason why I bring up these facts, Your
25 Honor -- it's very important, in that this was not an

1 isolated or spontaneous event; they were bringing weapons to
2 a fight.

3 At the time, the defendant went to the Capitol, he
4 knew what was in his backpack. He knew it was an illegal
5 area, and he also knew that the goal was disrupt and cause
6 problems there.

7 And when you saw the image that my colleague
8 presented, I believe it was Slide No. 2, the question that
9 jumps out is: When you see that chaos and thousands and
10 thousands of people on January 6th, why didn't you just go
11 home?

12 In sum, Your Honor, the defendant's actions were a
13 mechanism by which defendant Khater was able to then get
14 these substances and provide them to him where he later
15 committed the assault. And we make no allegation that the
16 defendant Tanios was involved in the assault. What I am
17 saying is: He brought him the mechanism to do it.

18 After the event, defendant Tanios posed. He
19 memorialized what he was doing in the illegal area. Not
20 only did he memorialize it; but, Your Honor, if you look
21 closely, he is flipping two middle fingers. I think that
22 speaks for itself.

23 Therefore, the nature and circumstances of this
24 offense clearly warrant the sentence that the government is
25 asking for, in that a guideline sentence -- we also, in

1 making our recommendation, take into account the nature
2 and -- the history and character of the defendant.

3 As the Court is aware, he is a 41-year-old man
4 with a family and was at times a businessman. The defendant
5 has apologized for his unlawful behavior, and he has
6 accepted responsibility.

7 Additionally, since his release from custody from
8 this Court's detention order by way of the Court of Appeals,
9 he has shown, by complying with his conditions of release,
10 that he can live a law-abiding life. He will, in fact, be
11 on supervised released likely for 12 months, where he will
12 still be monitored by court -- by the court system.

13 Additionally, the Court must look at the need for
14 the sentence to reflect the seriousness of the offense and
15 to promote respect for the law; and we believe that this
16 sentence does, in fact, do it. It's the high end of the
17 sentencing guidelines. And what this message sends to this
18 defendant and to the public, that committing these type of
19 acts will not be looked at lightly and the Court will take
20 them seriously.

21 Your Honor, our country was built on the concept
22 of freedom, on the concept of promoting respect for the law,
23 and on the concept of respecting one another. On
24 January 6th, 2021, Mr. Tanios was a player in an attempt to
25 undermine what the United States built and what the

1 United States stands for. And for that, we ask this Court
2 to sentence him in accordance with our recommendation in our
3 sentencing memo.

4 Lastly, I would tell the Court, as you look at
5 those videos, it's inescapable the incredible work that law
6 enforcement did on January 6th. You look at those videos,
7 and you see law enforcement is so outmatched, yet they do
8 their best to do their job.

9 Additionally, since January 6th, law enforcement
10 has continued to do incredible work in determining and
11 finding facts and evidence to bring individuals who
12 committed these acts on January 6th to justice.

13 And, lastly, law enforcement including the Capitol
14 Police, the Metropolitan Police Department, the FBI, and all
15 other law enforcement agencies continue to work and do
16 incredible work. Mr. Light and I are proud to be working
17 with them.

18 Your Honor, that's all the government has with
19 respect to defendant Tanios's sentencing. We're happy to
20 answer any questions you may have with respect to his
21 sentencing.

22 THE COURT: No. I mean, that was the plea that
23 you agreed to, so that's where we are to start with.

24 That's all right. Thank you.

25 All right. I do have a couple of questions for

1 Ms. Gross, and we can get into this.

2 Thank you, Mr. Scarpelli.

3 Just for the record, again, I reviewed everything
4 that was submitted. I saw the videos on YouTube, which is
5 called a mitigation video by Ms. Gross, very professionally
6 done, concerning Mr. Tanios and his friends and his longtime
7 fiancée, the family -- what his situation is, and what he is
8 all about.

9 In that regard, I wanted to start off a question
10 with you, and I can give you these documents if you wish.
11 He had a GoFundMe site.

12 MS. GROSS: Yes.

13 THE COURT: I didn't get a chance to look at that;
14 it was taken down recently. We had some --

15 MS. GROSS: I was aware of it a while ago.

16 THE COURT: On the site, it shows him with his old
17 sandwich shop which he's lost as a result of this.

18 MS. GROSS: Yes.

19 THE COURT: On the site, they have a figure of --
20 about \$60,000 was collected, and we'll see where that goes.

21 But he has some quotes in that that were done I think in
22 November last year; so not that long ago, as follows:

23 He refers to himself and others charged in
24 connection with the January 6 riots as: A political
25 prisoner.

1 I look forward to my day in court and clearing my
2 name of these charges fabricated against me, Tanios wrote in
3 a November 13th post.

4 Life is all about rebound. God's a winner. I am
5 a winner. You are all winners, that's why they hate us so
6 much.

7 And then, a couple more paragraphs down, he thanks
8 everyone who prayed for him and his family. Then he says:
9 Your support is felt, really helped us through this.

10 Words cannot express what it's like to know you
11 God-fearing American patriots -- are paying and donating
12 hard-earned money to help you out in a time of struggle,
13 real tears. And then: It's bittersweet knowing that many
14 people are still languishing in prison, and many others are
15 being hunted down still, Tanios wrote in September. I pray
16 the truth comes out, and for their protection.

17 And, finally, he closed the message with: Let's
18 go Brandon.

19 I am bringing this up because his acceptance of
20 responsibility issues, and how I am to review that.

21 In another post he said on the page -- on this one
22 I don't see a date -- December 2021, Khater's fundraising
23 claim says: The FBI and media are exploiting small
24 fragments of videos of Julian and his codefendant George
25 Tanios without offering the full context. This is being

1 done intentionally to provide a convenient story line that
2 matches their interpretation or misinterpretation.

3 Actually, in fairness, that is probably referring
4 to another GoFund page that Julian Khater had.

5 MS. GROSS: I am not sure about that one --

6 THE COURT: I'm just concerned about the
7 statements reflecting and accepting responsibility, how I
8 think he's not really regretful about what happened.

9 MS. GROSS: Sure. I think that's a fair question.

10 I can't speak to his statements on there. I do
11 know -- or believe I know that the dates on the statements
12 were after -- or prior -- were made prior to him accepting
13 responsibility and taking a plea of guilty in front of this
14 Court.

15 So I believe there has been a change in Mr. Tanios
16 since the comments that were allegedly written by him on
17 that site, and where we stand today in front of this Court.
18 There has been a change of acceptance of responsibility and
19 in, really, remorse for his actions for that day.

20 Mr. Tanios does take responsibility for the
21 offenses that we're here in front of the Court for today. I
22 can't say that any more than what he wrote or if he wrote
23 that on those sites. It's my understanding that that would
24 have been prior to accepting responsibility literally in
25 front of the Court. So that's why I think the Court

1 shouldn't take those comments in consideration of taking
2 away acceptance of responsibility or believing in his
3 acceptance of responsibility at this time.

4 THE COURT: In both these cases, I have been
5 impressed for the defendants not having a lot of web
6 activity and media activity and various social media fronts
7 as everyone else has in these cases. I mean, it's the only
8 defendants so far I have seen that haven't posted a lot.
9 This is the first indication I have seen in this case of
10 posting their political beliefs affecting their conduct.

11 The other ones are very proud that they attacked
12 the Capitol and brag about it. This is the first time I
13 have seen this in the Tanios case where he is -- after the
14 fact, has come in sort of saying it's a political
15 prosecution, it's all phony; we didn't do anything wrong,
16 basically.

17 MS. GROSS: I understand this Court's concern.
18 Did I address it sufficiently for the Court to move on at
19 this time?

20 THE COURT: Yes.

21 MS. GROSS: And as far as the GoFundMe amount, I
22 know Mr. Scarpelli and I briefly discussed that as far as
23 restitution goes. And, you know, I -- I think that
24 Mr. Tanios -- and I don't know what is left in that account
25 at this time. But Mr. Tanios would have no objection to the

1 Court, as a part of his acceptance of responsibility, taking
2 some of those funds as part of restitution.

3 THE COURT: All right. Yeah. He had raised
4 \$60,000; I don't know what's left. I haven't gotten a study
5 done of that. They may know.

6 MS. GROSS: I believe it's in the presentence
7 report, the amount that is available --

8 THE PROBATION OFFICER: Paragraph 80.

9 MS. GROSS: There is 80?

10 THE PROBATION OFFICER: Paragraph 80.

11 MS. GROSS: Oh, paragraph 80. Sorry.

12 I was like, I don't think so.

13 But that amount that is left over -- I want to
14 make the Court know that Mr. Tanios is available to give
15 that money to the Court for restitution.

16 THE COURT: He is in a little bit of a different
17 category. He has a family; he is not really working a
18 full-time job. He's trying to support his family. His wife
19 has a job with his three little children, and doing some
20 eBay work. We'll see what money is available.

21 MS. GROSS: Thank you.

22 Judge, I know the Court has reviewed our
23 sentencing mitigation video, as well as our sentencing
24 memorandum. I am not going to go and review all of those
25 details for the Court at this time. I know the Court has

1 reviewed it.

2 But I do want to talk briefly about why we're
3 requesting time served for Mr. Tanios. The 5 months and 12
4 days that Mr. Tanios served -- we're asking for that to be
5 his sentence, with one year of supervised release, just as
6 everyone else has recommended to this Court.

7 And I know that the Court is concerned about
8 acceptance of responsibility, and I know all these other
9 people are too; I think that's a very fair concern.

10 I want everyone to know that, unfortunately, due
11 to the nature of other cases being out there, I have advised
12 Mr. Tanios not to speak to anyone or say anything to the
13 Court or anyone else at this time. That doesn't mean he is
14 not apologetic, I just can't advise that at this time; so I
15 fall on that sword, and that's why he cannot do so.

16 But he said on the video that he does accept
17 responsibility for the crimes he committed and the offenses
18 he pled guilty to. He regrets ever going to Washington,
19 D.C. that day; he also told us on that video. He
20 understands he can't change his past, but he is learning he
21 can try to overcome it now with making a positive
22 difference. He has changed dramatically since the first day
23 I met him, and he is trying to change his future for his
24 small family and support them as best he can.

25 He has demonstrated that he is at a low risk of

1 recidivism, that being because he has been compliant on
2 bond. He has been on home incarceration for quite some
3 time. Following all those rules are difficult for most
4 defendants; he has done that perfectly the entire time.

5 He has tried to gain steady employment. His
6 employment, although sporadic, is helpful to his family. He
7 is trying his best. He is retaining close personal
8 relationships; he has a stable family. He lives with his
9 family and tries to support them as much as he can.

10 He is a Criminal History Category I, that's also a
11 reason to be at low-risk of re-offending. And what's more,
12 is that a sentence of time served is what is recommended by
13 the guidelines and is actually the high end of the
14 guidelines in this case; and I believe it's consistent with
15 similarly situated individuals, like his case. It's also
16 probably the reason why the government is in agreement in
17 recommending this time-served sentence. And it's also
18 consistent with what our officers of the court of the United
19 States Probation Office, they agree that this sentence is
20 appropriate as well.

21 Really, a time-served sentence in this case is
22 sufficient but not greater than necessary to achieve the
23 goals of sentencing. Mr. Tanios is deterred; that's for
24 sure.

25 Given the backdrop of the agreement for the

1 appropriate sentence between the United States Probation
2 Office, the government, and what we recommend, you know, I
3 think anything -- it's an appropriate sentence just for that
4 reason alone, and anything more really would give the notion
5 of a disparity in this case. It's unusual to have everybody
6 in agreement for an appropriate sentence, at least in my
7 experience; it's super unusual. And I believe that is just
8 one other reason that tips the scale to say that this is
9 appropriate.

10 If the Court has any other questions for me, I am
11 happy to address them.

12 THE COURT: No. I would like to hear from
13 Mr. Tanios, if possible. I understand he is restricted in
14 what he can say, as Mr. Khater had the same condition
15 because of the civil litigation.

16 MS. GROSS: I have advised him not to speak, but
17 if the Court would really like that...

18 THE COURT: Well, he has a right to speak. If he
19 can come up here and tell me he is waiving his right, then
20 he doesn't have to speak.

21 MS. GROSS: Okay.

22 THE COURT: It's his opportunity to speak. If he
23 chooses he can't do it, that's fine.

24 THE DEFENDANT: Sorry, Your Honor. I am waiving
25 my right to speak.

1 THE COURT: All right. Thank you.

2 You have a right to address the Court at the time
3 of your sentencing, but you can waive that right. I will
4 accept that because of your counsel's advice, unfortunately.
5 Stay here, though, so I can give you the sentence in this
6 matter.

7 I am concerned a little bit in this in that, as I
8 pointed out -- and your counsel doesn't want you to speak
9 about it -- that your prior comments on your GoFundMe page
10 indicate still radical beliefs that compelled you to come
11 down to the lecture, and then go to the riot; and once you
12 saw a riot was going on, not to leave. And you had brought
13 your weapons with you, you said for self-protection; but you
14 still had them with you to use aggressively as well as
15 defensively.

16 I am going to trust now that you still are not
17 bound by those beliefs that would cause you to go back when
18 Mr. Trump tries to run again for office and go back to his
19 rallies and start getting in trouble. Because I am going
20 to -- the other thing in sentencing, I'm going to put you on
21 probation. If you violate that, I will have you yanked back
22 in here.

23 But I have to accept the pleas; the government
24 accepted it. They accepted this plea that you entered and
25 remained in a restricted building or grounds, and then had

1 some disorderly or disruptive conduct in the grounds by
2 carrying the weapons around with you. But both are
3 misdemeanors, both carry up to a six month in jail sentence;
4 you have served almost six months in jail. You have
5 basically served, except for a few days, the time that I
6 would sentence you to.

7 I am concerned about a couple of things; I have
8 mentioned what they were, about your personal conduct being
9 affected by your political beliefs. And we can't have that
10 happen.

11 What really concerns me, I guess, in all of these
12 cases -- I've had lots of these, as well as the other judges
13 have had -- and I'm concluding my service, I won't have many
14 more of these.

15 But over the past couple of years what really we
16 have had in this January 6 riot is not just the attack on
17 democracy, not -- it's so serious it's hard to really put it
18 in words. What I have seen is a venom of hate-filled
19 individuals, and I am not sure where that has come from in
20 this country; but they literally hate people they disagree
21 with. It's not a disagreement; they hate them, and they
22 want to hurt them. Something has come out in this country
23 that's very, very serious, and it results in violence that
24 is continuing everywhere today in this country, for whatever
25 reason. It's resulted in mob rule attempts, it's resulted

1 in anarchy in this riot that we had.

2 And the riot essentially reflects the lynch mobs
3 of 100 to 150 years ago. People who are decent people who
4 get enthralled in lynching, and get involved with lynching
5 people. The next day they wouldn't admit it, they would
6 hide from it; but during the time they were very happy. We
7 have gotten to that kind of normal activity here, and I
8 think we have to realign our values in this country.

9 It's a serious disregard of our moral status and a
10 reflection of holding life as precious, I think. Because of
11 our own personal feelings about something, they think it's
12 all right to hurt someone or kill them, or attack the police
13 who are standing there doing their duties. It's a shame
14 where we are now.

15 But as to Mr. Tanios, you have an opportunity with
16 your little children -- you are very lucky to have those
17 little children, very fortunate -- to try to rebuild your
18 life. You had your sandwich shop. It was a fairly
19 successful shop at the University of West Virginia. You had
20 some monikers for them online that were very interesting,
21 I'll say that, and leave it there.

22 You had a sandwich shop that was running
23 successfully and had done well. You have lost that as a
24 part of this; that's one of the other punishments, really,
25 because of the disgrace you are in by being part of this

1 riot. And I think that's appropriate, frankly.

2 But your sentence is already served that I could
3 give you. I could add -- I forget -- a few days, but that
4 makes no sense. What I really want to see is that you are
5 out of your status of your anger and mentality of being
6 picked upon and unfairly politically prosecuted because you
7 were in a riot. That's not politically prosecuting anybody
8 because you took place in a riot and damaged goods and hurt
9 people. You didn't directly, but you helped cause it. That
10 is not an unfair situation that you find yourself in.

11 I am going to give you a little bit of a different
12 sentence than probation, the government, and your counsel
13 had requested, as to some details as part of your sentence.

14 I have reviewed all of the factors -- the Title 18
15 factors -- 3553(a) factors that we have discussed, and the
16 (a)(2) factors. I think it's fitting that this type of
17 sentence is in your case based upon the plea that is before
18 me. I cannot give you a longer sentence; frankly, that
19 would be inappropriate in this case.

20 So I am going to do that, but I am going to change
21 a little bit of how the sentence is going to read in this
22 case. You have a zero to six month guideline range. You
23 have served almost six months, so I am going to give you
24 credit for time served and sentence you to time served.

25 I am going to add a couple of factors to this

1 sentence for you. One is, under the Sentencing Reform Act,
2 as I said, the Title 18 3553(a) factors and the advisory
3 guidelines: George Tanios, you are committed to the custody
4 of the Bureau of Prisons for time served; and that will be
5 concurrent sentences as to Count 1 and 2, that's 160 days
6 you've served, basically.

7 There is concurrent served -- time to be sentenced
8 to a concurrent term of 12 months of supervised release,
9 that's one year, as to Counts 1 and 2; a special assessment
10 of \$25 per misdemeanor, for a total of \$50.

11 I am going to transfer jurisdiction of this case
12 to the United States District Court for the Northern
13 District of West Virginia because that's where you live and
14 can be followed on supervision; that's where you are going
15 to report.

16 While on supervision, you will abide by all of
17 these mandatory conditions, in addition to the discretionary
18 conditions recommended by the probation office.

19 Now, the mandatory is all the same: You cannot
20 commit any other crimes; not unlawfully possess a controlled
21 substance; refrain from unlawful use of a controlled
22 substance; report to a drug test within 15 days of placement
23 on supervision, and two periodic drug tests thereafter as
24 determined by the Court.

25 You will have to make restitution under 18 U.S.C.

1 3363 and 3363A; follow any special conditions in order to
2 make the restitution and, also, a fine that I am going to
3 impose.

4 You must provide the probation officer access to
5 any requested financial information, authorize the release
6 of any financial information that can be shared with the
7 U.S. Attorney's Office. You will incur -- you will not
8 incur new credit charges or open new lines of credit without
9 talking to the probation office and getting their approval.

10 I will require community service. You are not
11 employed full-time. You are taking care of three little
12 children, two little teeny ones; I understand that. But
13 there is time, when your wife is not at work, you can do
14 some community service. I am going to give you 100 hours of
15 community service. The government had requested longer than
16 that; I don't think that's probably appropriate in your
17 situation.

18 That community service will be as approved by the
19 probation officer in the district you are being covered.
20 You will have to provide written verification of completed
21 hours to the probation officer. Many of those are working
22 in hospitals or at food banks, et cetera, that you have had
23 some experience with.

24 Firearm restrictions. You have to be restricted
25 on probation on the use of firearms and possession of

1 firearms in areas you have access over. All right.

2 You don't -- I think on a fine -- I am going to
3 fine you whatever is left -- I have an order I can enter to
4 that regard here -- whatever is left in your GoFundMe page
5 that you had. And I refer to that -- it's a little ironic,
6 that page. It's supposed to be a Christian crowdfunding
7 site. Looking at those pages and the remarks of those
8 people, it's not very Christian.

9 But in any event, any moneys left in that GoFundMe
10 page at this time will be fined; you will be fined that
11 amount.

12 Now, I will talk to probation about that -- the
13 order, basically, would be that your conviction under this
14 subsection under the law is subject to the statutory maximum
15 fine as set forth in the guidelines.

16 I have to consider your income, your earning
17 capacity, and financial resources; so I have done that. I
18 don't think you can really pay any large fine. In assessing
19 a defendant's income and earnings, I can consider where you
20 have other moneys that are available.

21 And, again, there are some judges that have
22 written their concerns about these defendants having large
23 GoFundMe pages capitalizing on their crime, making money out
24 of their crime. Some defendants have raised hundreds of
25 thousands of dollars, and that's a serious concern we're

1 going to have to address.

2 But a fine in this case is appropriate. You have
3 raised funds in an online campaign of approximately
4 \$70,000 -- \$60,000, I believe. That was to be used for your
5 legal fees, although you got a public defender. I assume
6 it's for your expenses and living because lost your job and
7 you were in jail for almost six months. And under the
8 restrictions, you are confined at home for another year.
9 And that's part of the reason I think your sentence is
10 appropriate, because you are actually locked up for another
11 year beyond the six months.

12 Additionally, you have expenses coming down here,
13 I assume, now. But whatever funds are left, I am going to
14 request you be fined the remaining amount in your GoFundMe
15 account established by your family or your wife earlier.
16 And you should not be able to capitalize and make money from
17 having raised those funds for your legal defense, et cetera.

18 I am going to enter an order to that effect based
19 upon the income you derived from this GoFundMe fundraising
20 account. I will enter an order to that effect as the fine
21 in this case; there will be no interest or anything on that
22 fine.

23 You will have restitution ordered to pay for the
24 damages that occurred during the riot at the Capitol.

25 Your restitution pursuant to the plea agreement is

1 \$500 to the Architect of the Capitol. There will be no
2 interest or penalties paid on that, on the balance. You
3 will pay it to the Clerk of this Court here in D.C. for the
4 benefit of the Architect of the Capitol. And you will have
5 to pay it as in -- I will allow you to work out a payment
6 schedule with the probation office, but it should be paid
7 within one year. It's \$500. So in your limited funds, you
8 can at least pay \$50 a month, whatever the probation office
9 works out on a payment schedule on this one.

10 MS. GROSS: Judge, we instructed him to pay before
11 today. So --

12 THE COURT: Say it again.

13 MS. GROSS: I believe he has already paid. We
14 instructed him to pay before coming today out of that fund.

15 THE COURT: All right. If you did that, that's
16 fine. It's better to get it out of your way.

17 All right. The probation office -- they need to
18 forward the presentence report to the appropriate agency,
19 like the West Virginia probation agency and it includes, as
20 I said, the probation officer in the approved district where
21 you live.

22 Again, you have a right to appeal, if you wish, if
23 you think your guilty plea is unlawful or involuntary, or
24 there is some defect in these proceedings.

25 Again, you have the right to appeal your sentence

1 if you think I gave you an illegal sentence or have given an
2 over the guideline sentence; I did not do that.

3 And you have a right under 28 U.S.C. 2255 to
4 collaterally challenge your conviction or sentence imposed
5 upon the discovery of new and unavailable information that
6 would affect your plea and sentence, or your counsel
7 performed ineffective assistance of counsel. You have 14
8 days to note the appeal after I enter the judgment.

9 Ms. Baker, anything else you need for the
10 sentence?

11 THE PROBATION OFFICER: No, Your Honor.

12 I just want to advise Mr. Tanios to meet with me
13 immediately afterwards to be signed up to probation, which
14 is supervised release.

15 THE COURT: All right. We'll make sure he stays
16 here and talks with you when he finishes here. All right.

17 MS. GROSS: No problem.

18 THE COURT: All right. Are there any -- he
19 doesn't have to have anything dismissed because he pled to
20 the information we had.

21 MR. SCARPELLI: We would move to dismiss the
22 indictment.

23 THE COURT: The original indictment against him.

24 All right. We will dismiss the original
25 indictment against Mr. Tanios at this time.

1 All right. Counsel, thank you for your work in
2 this case, both counsel -- both sides, in both cases -- I
3 appreciate you coming in and doing it.

4 I wanted to talk to Mr. Scarpelli and Mr. Light
5 for a minute, but I don't want to do so with other counsel
6 not there. After you finish with your clients, in about 15
7 or 20 minutes, I would like lead counsel to come back so I
8 can -- I have something to say to Mr. Scarpelli, if that's
9 all right. Thank you.

10 We will stand in recess.

11 (Whereupon, the proceeding concludes, 5:26 p.m.)

12 * * * * *

13 **CERTIFICATE**

14
15 I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby
16 certify that the foregoing constitutes a true and accurate
17 transcript of my stenographic notes, and is a full, true,
18 and complete transcript of the proceedings to the best of my
19 ability.

20 This certificate shall be considered null and void
21 if the transcript is disassembled and/or photocopied in any
22 manner by any party without authorization of the signatory
23 below.

24 Dated this 7th day of February, 2023.

25 /s/ Elizabeth Saint-Loth, RPR, FCRR
Official Court Reporter

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