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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

ELLIOT BISHAI,

Defendant(s).

Criminal Case
No. 21-282 (TSC)

Washington, D.C.

July 29, 2022

SENTENCING HEARING
BEFORE THE HONORABLE TANYA S. CHUTKAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): Grace Albinson, Esquire
United States Department of Justice
Tax Division
150 M Street Northeast
Washington, D.C. 20002

FOR THE DEFENDANT(S): Donald M. Brown, Jr., Esquire
Brown & Associates, PC
Suite 200
Park South Professional Center
10440 Park Road
Charlotte, North Carolina 28210

REPORTED BY: Tammy Nestor, RMR, CRR
Official Court Reporter
333 Constitution Avenue NW
Washington, D.C. 20001
tammy_nestor@dcd.uscourts.gov

1 The following proceedings began at 11:08 a.m.:

2 THE COURTROOM DEPUTY: This Honorable Court is the now
3 in session. The Honorable Tanya S. Chutkan presiding.

4 Your Honor, we have Criminal Action 21-282-2, United
5 States of America versus Elliot Bishai.

6 We have Ms. Grace Albinson representing the
7 government. We have Mr. Donald Brown, Jr. representing
8 Mr. Bishai, all appearing in person. And we also have Ms. Ami
9 Landon representing probation. She's here in person as well.

10 THE COURT: Good morning. I apologize to everyone for
11 the delay. I know I saw Mr. Bishai and his family in the
12 courtroom before 10:00 this morning, so I know they have been
13 waiting for a while, and I apologize.

14 Every case demands my full attention at the time I
15 hear that case, and I had another January 6 case with some
16 exigent issues that required my attention. So I apologize for
17 the delay. I like to think that if it were this defendant, you
18 all would want me to give my full attention. Sometimes that's
19 how the justice system works, not always efficiently, but I
20 hope thoroughly.

21 All right. We are here for the sentencing of Elliot
22 Bishai, who has pleaded guilty to entering and remaining in a
23 restricted building or grounds in violation of 18 U.S.C.,
24 Section 1752(a)(1). This is a class A misdemeanor to which the
25 United States Sentencing Guidelines do apply.

1 I note the presence this morning of Mr. Bishai's
2 family, who is here, and I have received and reviewed the
3 presentence report and sentencing recommendation from the
4 probation department. And I have also received and reviewed
5 the following, as well as the video exhibits submitted by the
6 government, the following documents submitted by counsel before
7 the hearing:

8 Plea agreement and statement of offense signed by
9 Mr. Bishai and his counsel, a sentencing memorandum from the
10 government, a sentencing memorandum from Mr. Bishai's counsel,
11 letters of support for Mr. Bishai, and materials submitted in
12 conjunction with Mr. Bishai's application to the United States
13 Army's Warrant Officer Flight Program.

14 Ms. Albinson, the video exhibits that the Court
15 submitted -- that you submitted to the Court, are you moving to
16 make those part of the record in this case?

17 MS. ALBINSON: Yes, Your Honor.

18 THE COURT: Is there any objection?

19 MR. BROWN: No objection.

20 THE COURT: The video exhibits will be filed -- may be
21 filed and made part of the record in this case.

22 Okay. Let me first begin with the presentence report.
23 The presentence report was disclosed to counsel on June 24,
24 2022. The final presentence report and sentencing
25 recommendation were filed in this matter on July 22, 2022. The

1 defendant has not submitted a receipt and acknowledgment form
2 of the PSR nor filed any notice of objections or inaccuracies
3 to the PSR.

4 Mr. Brown.

5 Let me just say, regarding protocols, there's a
6 microphone at counsel table. You may all, including
7 Mr. Bishai, you may sit at counsel table and speak, because you
8 have to speak into the microphone, because even if I can hear
9 you, my court reporter, who is wearing headphones, can only
10 hear you if you speak into the microphone. You may, if you
11 choose, come up to the podium, and that's totally fine. And
12 you can take your mask off while you are speaking. Totally up
13 to you.

14 Mr. Brown, is that just an omission?

15 MR. BROWN: Yes. We don't have any objection to the
16 presentence report.

17 THE COURT: Are you going to sign the receipt and
18 acknowledgment?

19 MR. BROWN: We will.

20 THE PROBATION OFFICER: Your Honor, I actually have a
21 copy.

22 THE COURT: Thank you, Ms. Landon. I thought you
23 would.

24 Let the record reflect Mr. Brown is signing the
25 receipt and acknowledgment of the presentence report.

1 Mr. Bishai has to sign it.

2 Mr. Bishai, this is a form acknowledging that you've
3 received and read the presentence report. Before you sign it,
4 hold on, did you receive and read it?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Did you go over it with your lawyer
7 carefully?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. Let the record reflect the
10 defendant has signed the receipt and acknowledgment form.

11 Now, counsel, I will start with you, Ms. Albinson.
12 Are there any disputed issues of fact, that is, are there any
13 objections to any of the factual statements set forth in the
14 presentence report?

15 MS. ALBINSON: No, Your Honor.

16 THE COURT: Mr. Brown?

17 MR. BROWN: (Inaudible.)

18 THE COURT: Remember, I can hear you, but the court
19 reporter cannot.

20 MR. BROWN: No objection, Your Honor.

21 THE COURT: All right. Mr. Bishai, you need the
22 microphone now.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Are you fully satisfied with the services
25 of your attorney, Mr. Brown, in this case?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Do you feel that you have had enough time
3 to talk to him about the probation department's presentence
4 report and the papers that were filed in connection with the
5 sentencing?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Ms. Albinson, are you expecting an
8 evidentiary hearing? Do you have any witnesses you who intend
9 to testify today?

10 MS. ALBINSON: No, Your Honor.

11 THE COURT: Okay. Hearing no objection, I will accept
12 the factual recitation set forth in the presentence report
13 regarding the circumstances of the offense, and therefore, the
14 facts as stated in the presentence report will be my findings
15 of fact for the purpose of this sentencing.

16 Now, with regard to the guidelines, the presentence
17 report lays out the probation office's calculation of the
18 advisory guideline range that applies in this case. This
19 calculation was done using the 2021 guidelines manual and is as
20 follows:

21 Beginning with the guidelines offense level, the
22 applicable guideline in this case is Section 2B2.3(a) which has
23 a base offense level of 4.

24 The presentence report indicates that a section
25 2B2.3(b) (1) (A) requires a two-level increase because the

1 trespass occurred at a restricted government facility for an
2 adjusted offense level of 6.

3 The government has also represented that Mr. Bishai
4 has demonstrated acceptance of responsibility in a manner that
5 entitles him to a two-level reduction under Section 3E1.1(a).

6 Therefore, before I consider any departures or
7 variances, Mr. Bishai's total offense level is 4.

8 Are there any objections to the calculation of the
9 offense level, Ms. Albinson?

10 MS. ALBINSON: No, Your Honor.

11 THE COURT: Mr. Brown?

12 MR. BROWN: No, Your Honor.

13 THE COURT: Turning to the applicable criminal history
14 category -- Mr. Brown, you may want to pull that microphone
15 over to you at this point.

16 The presentence investigation report has found that
17 Mr. Bishai has zero prior convictions that receive criminal
18 history points in the guidelines manual, and therefore, he has
19 a criminal history point subtotal of zero. This puts
20 Mr. Bishai in Criminal History Category I.

21 Any objection to this calculation, Ms. Albinson?

22 MS. ALBINSON: No, Your Honor.

23 THE COURT: Mr. Brown?

24 MR. BROWN: No, Your Honor.

25 THE COURT: Based on the offense level and criminal

1 history category I have just discussed, the presentence report
2 calculates the guidelines sentencing range to be zero months to
3 six months of imprisonment.

4 Any objection to that calculation, Ms. Albinson?

5 MS. ALBINSON: No.

6 MR. BROWN: No, Your Honor.

7 THE COURT: Okay. Having determined the applicable
8 guidelines range, the next step for me is to consider
9 departures and variances. The presentence report does not
10 include any departure grounds. And under the terms of the plea
11 agreement entered into by the parties, both sides have agreed
12 that there are no grounds for imposing a sentence outside of
13 the guidelines range that is based on the policy statements in
14 the guidelines manual.

15 Is that correct, Ms. Albinson?

16 MS. ALBINSON: Correct.

17 THE COURT: Mr. Brown?

18 MR. BROWN: Yes, Your Honor.

19 THE COURT: Neither party has made an argument that
20 the Court should vary from the guidelines range either. Is
21 that is correct?

22 MS. ALBINSON: Yes, Your Honor.

23 MR. BROWN: Correct, Your Honor.

24 THE COURT: Section 3553 requires me to consider a
25 variety of factors including the sentencing range that the

1 guidelines prescribe, which I have just discussed, and also the
2 applicable penal statutes.

3 So the charge of entering and remaining in a
4 restricted building or grounds in violation of 18 U.S.C.,
5 Section 1752(a)(1) carries a statutory maximum penalty of a
6 year in prison or up to five years of probation.

7 If a term of imprisonment is imposed, the statutes and
8 guidelines provide that Mr. Bishai faces a supervised release
9 term following imprisonment of not more than one year.

10 The statute of conviction sets a maximum fine of up to
11 \$100,000 while the guidelines fine range is between \$500 and
12 \$9,500.

13 And the plea agreement contemplates a restitution
14 order, and Mr. Bishai has agreed as part of his plea agreement
15 to pay restitution in the amount of \$500 because there is an
16 identified victim in this case, to-wit: the Architect of the
17 Capitol.

18 There is a special mandatory assessment of \$25 for a
19 misdemeanor count, and that's mandatory.

20 Counsel, have I stated accurately the statutory and
21 guidelines framework under which you are operating?

22 Ms. Albinson?

23 MS. ALBINSON: Yes, Your Honor.

24 THE COURT: Mr. Brown?

25 MR. BROWN: Yes, Your Honor.

1 THE COURT: So before I discuss the other sentencing
2 factors that will bear on my final decision, I will at this
3 point notify the parties of the particular sentence that the
4 probation office has recommended taking into account the
5 guidelines range, the available sentences, and all of the
6 factors in Section 3553(a).

7 The probation office has recommended 36 months
8 probation and \$500 in restitution. The recommendation of the
9 probation office is not based on any facts or circumstances
10 that have not already been revealed to the parties in the
11 presentence report.

12 So at this point I want to give the parties an
13 opportunity to address the Court.

14 Ms. Albinson.

15 MS. ALBINSON: Thank you, Your Honor.

16 Your Honor, this defendant shouted at the top of the
17 stairs of the Capitol, civil war two. That's what he hoped
18 would happen that day. He encouraged other rioters to keep
19 pushing up the northwest stairs to get closer and closer to the
20 Capitol Building. He said, come on, you got it as the rioters
21 scaled the walls. He was not a passive participant in this
22 riot.

23 He claims that he does not remember saying civil war
24 two, but there is a Signal chat on the codefendant Elias
25 Irizarry's phone entitled civil war from just days after

1 January 9 that includes this defendant, Mr. Irizarry, and the
2 defendant's father, and they discuss building a bunker and
3 buying land in Alaska.

4 The Court should question whether or not the defendant
5 remembers saying civil war two on January 6.

6 For these reasons and others which I will briefly
7 discuss, the government is asking that Mr. Bishai is sentenced
8 to 30 days' incarceration, 12 months' supervised release, 60
9 hours of community service, and ordered to pay \$500 in
10 restitution.

11 This defendant sought signs of violence and
12 destruction both inside and outside of the Capitol, and he kept
13 going.

14 Exhibit 10, the video which Your Honor has reviewed,
15 shows what appears to be blood on the floor of the Capitol
16 Building. His two codefendants carried poles inside the
17 Capitol. He entered through a broken window just 13 minutes
18 after the initial breach. He saw and smelled tear gas and saw
19 broken bicycle racks. He observed police trying to block
20 rioters from entering the building, and he kept going.

21 He admitted that the crowd was dangerous and he told
22 his girlfriend not to come with them. He entered into a
23 sensitive area of the building, which is S-145. It is
24 distinguishable from the Rotunda or a hallway in that it would
25 have been closed even if the building had been open to the

1 public. He filmed himself in that room, gleeful, happy,
2 sitting in a chair. This is a sign of dominance over the
3 building and the people in it. He also climbed on statues in
4 the Rotunda.

5 Your Honor, his military experience makes this crime
6 more egregious, not less. He was obliged to protect the
7 American people, and instead, he chose to be a member of a
8 violent mob that attacked the Capitol Building and threatened
9 everyone inside.

10 He also did not admit to the number of videos of Gypsy
11 Crusader on his phone, and I bring that up to emphasize that he
12 was not forthcoming at the time of his proffer.

13 THE COURT: Ms. Albinson, I have a question about
14 that. I have said and I will continue to say and I will say
15 today, I am not punishing anyone for their political beliefs.
16 Every defendant before me has a right to believe whatever they
17 want. That is of no moment.

18 What I want to ask you, though, with regard to that
19 material -- which I have not looked at and I don't intend to
20 look at because he is not charged with that. Again, it
21 pertains to his political beliefs which are of no moment to me
22 no matter how much they may be offensive to others. Does that
23 material in any way advocate the violent overthrow of the
24 government?

25 MS. ALBINSON: No, Your Honor, it doesn't. And I

1 bring it up, not to besmirch the defendant or not to infringe
2 on his First Amendment rights. He certainly has those rights.
3 I bring it up because there are over 400 videos on his phone,
4 and he downplayed it and said -- I think he said, I thought
5 there were only around 20. I bring it up because I don't think
6 he was forthcoming in his proffer.

7 THE COURT: I put those in a different category,
8 videos or messages pertaining to the January 6 riots. If he
9 had downplayed or not been forthcoming with regard to that
10 material, I would be very, very concerned.

11 I can see why he might be embarrassed or reluctant to
12 acknowledge the political material, which may be embarrassing
13 to him, and so I put it in a different category. But I hear
14 your argument.

15 MS. ALBINSON: Yes. And he was under an obligation to
16 tell the truth at the time of his proffer.

17 THE COURT: That's true.

18 MS. ALBINSON: Your Honor, all told, the defendant was
19 inside the building for 27 minutes knowing he was not supposed
20 to be there. The government is, therefore, asking for 30 days'
21 incarceration, 12 months' supervised release, 60 hours of
22 community service, and \$500 in restitution. Thank you.

23 THE COURT: Thank you, Ms. Albinson.

24 Mr. Brown.

25 MR. BROWN: Yes, ma'am.

1 THE COURT: I heard your argument, so maybe -- I heard
2 your argument with regard to a couple things. One is the early
3 acceptance of the plea. And I don't disagree with you that it
4 looks like your client wanted to plead guilty as soon as he
5 could, and I am going to give him credit for that.

6 MR. BROWN: He did, Your Honor.

7 THE COURT: And with regard to the statements about
8 his codefendants, I also am -- I am inclined to credit your
9 interpretation of when he volunteered to do that or when he was
10 prepared to give that information.

11 MR. BROWN: Yes, ma'am.

12 THE COURT: And you just heard me with Ms. Albinson.
13 I mean, the material -- I haven't looked at that material.
14 Look, people are entitled to their political beliefs no matter
15 how offensive they may be other to people. His political
16 beliefs do not count one bit with me. In a previous life, I
17 worked very hard to defend people's rights to protest and to
18 believe what they want to believe. I'm never going to punish
19 him for what he believes. I am punishing him for what he did.

20 MR. BROWN: Yes, ma'am.

21 Your Honor, the way we would like to proceed, with the
22 Court's permission, is I would like to briefly introduce his
23 family, have them hold their hands up. And then Mr. Bishai
24 would like to stand and offer an apology to the Court. And I
25 have some follow-up remarks, if that's okay with you.

1 THE COURT: Okay. That's fine.

2 MR. BROWN: Your Honor, Mr. Bishai is here today with
3 his father Hani Bishai.

4 Hani, hold your hand up.

5 He's written a letter in the file. I'm not sure if
6 the Court --

7 THE COURT: I have read every letter in the file.
8 Good morning.

9 MR. BROWN: His sister Faye --

10 THE COURT: Good morning.

11 MR. BROWN: -- his aunt. And Christine is Elliot's
12 fiancée. They are scheduled to get married in September. We
13 understand that may or may not happen. I'm just letting the
14 Court know a little bit about their personal situation.

15 THE COURT: Good morning.

16 MR. BROWN: Elliot, would you please stand and address
17 the Court just very, very briefly?

18 THE COURT: Hold on.

19 MR. BROWN: I'm sorry.

20 THE COURT: I told Mr. Bishai when he took his plea
21 that he would have an opportunity to speak to the Court, to
22 speak to me, if you wanted to. I also told you that, and it's
23 true now, that you don't have to say anything. And if you
24 choose not to say anything, I am not going to hold it against
25 you, I am not going to punish you. But, obviously, if you do

1 choose to speak, I will hear what you have to say. So if you
2 want to say something, this is your opportunity to do so.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: You can either stand -- you can come to
5 the podium if you like.

6 Is that okay with the marshals?

7 Come on up. Speak into the microphone, please.

8 THE DEFENDANT: Before I say anything, I just want to
9 say my heart is racing a little bit, and as you guys
10 understand, I am probably a little bit nervous.

11 THE COURT: That's fine. That's understandable.

12 THE DEFENDANT: If I slur my words or anything, I'm
13 sorry.

14 THE COURT: All I'm going to ask you is that you speak
15 in a careful, measured tone for the court reporter because she
16 has to take everything down.

17 THE DEFENDANT: Yes, ma'am. I just want to say I do
18 apologize. I wish -- if there was some way I could make this
19 entire thing not have happened and what I did not have
20 happened, I would. But there's nothing I can do about it. It
21 already happened. And I just want to sincerely apologize to
22 the nation and sincerely apologize to the Court.

23 Thank you for hearing me. That's all.

24 THE COURT: All right. Thank you, Mr. Bishai.

25 Mr. Brown.

1 MR. BROWN: Your Honor, I want to reiterate some of
2 the points that, of course, have been made in our brief.
3 Mr. Bishai does apologize to the Court, to the United States,
4 to the United States Attorney's Office. It's taken a lot of
5 time. It's taking a lot of time today. So we will try not to
6 unnecessarily consume too much of the Court's time.

7 THE COURT: That's fine.

8 MR. BROWN: We appreciate your patience.

9 Your Honor, I think -- and, first of all, thank you
10 for your comments about whatever was found on the phone. We
11 really appreciate that. I know when I was in college at the
12 University of North Carolina, they made me read --

13 THE COURT: Don't make any admissions, Mr. Brown. The
14 statute of limitations may have run --

15 MR. BROWN: Well, I should have checked to see if you
16 were a Duke graduate, Your Honor. But, anyway, I mean, we had
17 to read like Mein Kampf and -- you know, political science
18 class. You read things. You see things. We appreciate you
19 not considering whatever they found as relevant in punishing.

20 You have a hard job. And, you know, I admire the work
21 that any judge does. This is a tough, tough situation because
22 of the national importance of surrounding what turns out to be
23 a criminal misdemeanor offense, yet there are circumstances
24 that don't allow us to only look at it that way. And we
25 understand that.

1 We understand the government has asked for 30 days. I
2 would ask Your Honor that when you fashion your sentence -- and
3 Mr. Bishai is prepared to accept whatever you do. We know some
4 of the things you have done in other cases. And that's fine.
5 We know. But he's --

6 THE COURT: I take every case on its own merits,
7 Mr. Brown.

8 MR. BROWN: Yes, ma'am. He's prepared for whatever
9 you say. But I would ask, Your Honor, that you consider
10 Mr. Bishai's individual situation in three phases, before
11 January 6 who he was, take a look at the events on that day,
12 the good, the bad, and the ugly, and then what he's done since
13 then.

14 I saw, for example -- read the media report the other
15 day another judge who sentenced a January 6 defendant because
16 he was not convinced that she was truly remorseful for what she
17 had done in her apology. But I think if we look at before and
18 after, we will see consistency and we will see that
19 Mr. Bishai's actions, for which he is truly regretful, are an
20 aberration to who he is.

21 I would like to start, Your Honor, Mr. Hani Bishai has
22 written a very passionate plea to the Court on behalf of his
23 son. We all make mistakes. I make more mistakes than the
24 U.S. Attorney or Mr. Bishai, but Mr. Bishai made a mistake on
25 his son's own age.

1 At the time of this offense, Elliot Bishai had just
2 turned 20 years old. He was born January 31, 2000. So
3 January 31, 2021, he turned 20. He's criminally responsible
4 for his actions as an adult. But we would ask the Court to
5 consider that just three weeks earlier he had been a teenager.

6 While he's certainly criminally responsible for his
7 actions, I ask, as his attorney, if you consider maybe had he
8 had five or ten years on him, maybe there would have been a
9 greater level of maturity. There was extreme immaturity here
10 that led to breaking the law.

11 THE COURT: I know, Mr. Brown. I have punished some
12 60-something-year-old people, but I agree.

13 MR. BROWN: Yes, ma'am. We do ask you to consider
14 that.

15 When we talk about before and after, Your Honor, I
16 want to work -- and I appreciate you letting me dock the mask,
17 because whenever I wear a mask, my readers fog. But I am going
18 to work primarily with some things out of Exhibit E. Those are
19 some of the letters. And I think these letters will give us a
20 good picture of before and after.

21 Exhibit E attached to our brief -- we will go -- and
22 these are numbered by pages. Mr. Bishai, on page 1, in 2000,
23 July of 2020, before this happened, writing why he wants to go
24 into the Army's Warrant Officer Flight Training Program, and he
25 says, because of servant leadership, servant leadership.

1 Now, let me say I don't disagree -- I have been on
2 both sides of this fence, and I don't disagree with the
3 argument the U.S. Attorney's attempting to construct, that he
4 had a duty to the United States. And we don't disagree with
5 that. What we are saying is that this is an aberration. He
6 wanted to serve and he wanted to lead and he's always wanted to
7 do that.

8 If you would -- and if you look at page 3, you see,
9 again, he was a member of a Marine Corp ROTC back in 2019.

10 Then at page 4, we have a letter, again, this is
11 pre-January 6. So these folks are writing about Elliot, not
12 with a view of trying to craft something to persuade the Court.
13 But page 4 of that, the sergeant major there, an experienced
14 Marine, is saying that he dedicated himself to Marine ROTC,
15 fully permitted in the Air Force Civil Air Patrol Program
16 earning his solo flight rating. And he was accepted at
17 Oklahoma State, wound up not saying there, but he was accepted
18 there.

19 And he goes on, that is the sergeant major, to say
20 that Elliot personally completed over 300 hours of community
21 service -- again, this is before. This is who we are dealing
22 with -- and served as a member of Team Rubicon, which, by the
23 way, is another veterans organization that responds to natural
24 disasters. So we get a little picture of who Elliot was and
25 always has been. And the author of that, Sergeant Major Neal,

1 has a brief CV there.

2 THE COURT: I saw it. Let me interrupt you for a
3 minute, Mr. Brown. I apologize.

4 MR. BROWN: Yes, ma'am.

5 THE COURT: Mr. Frank, who wrote the letter about
6 fighting fires with --

7 MR. BROWN: Yes, ma'am.

8 THE COURT: -- is he the owner of the company?

9 MR. BROWN: He is a senior supervisor. That's a very
10 good question. He is a translator for the United States --

11 THE COURT: I saw the letter.

12 MR. BROWN: -- in the '70s. That's a powerful letter.

13 THE COURT: It's a very thoughtful letter.

14 MR. BROWN: As a matter of fact --

15 (There was an interruption by the court reporter.)

16 MR. BROWN: Oh, I know. I've gotten in trouble many
17 times, so thank you for reminding me.

18 My apologies for overtalking, Your Honor.

19 Let me go to that because I think that is significant
20 on a couple points because it shows -- well, let me find the
21 letter.

22 THE COURT: It's at page 20.

23 MR. BROWN: Thank you so much for your assistance,
24 Your Honor.

25 May 28, 2022, this letter, and this is why I say even

1 if Mr. Bishai had not stood before this Court and apologized,
2 and if I had not apologized for him, I think there's an old
3 saying that actions speak louder than words. This letter shows
4 that Mr. Bishai has voluntarily placed his life on the line in
5 service to the United States since the date of the arrest.

6 As you can see, there are several firefighting
7 training certificates from September of 2021. But this letter
8 is powerful. I would just like to read parts of it into the
9 record.

10 THE COURT: If you are going read, you got to slow
11 down.

12 MR. BROWN: I will.

13 THE COURT: Thank you.

14 MR. BROWN: Dear Elliot, in '21 and '22, you and I
15 fought wilderness fires beside one another in a number of
16 states over a period of months. As we did, I thought about you
17 often. I thought often about your direction --

18 THE COURT: Dedication.

19 MR. BROWN: Yes. -- to your dedication, the effort of
20 protecting our national forest, your persistence under
21 difficult circumstances, including the smoke, the long hikes
22 into and out of the fire while carrying 50 or more pounds, the
23 many hours of controlling lines of brushing, cutting snags, and
24 the tedium of grinding and mopping up.

25 This is Mr. Bishai joining with Mr. Frank and others

1 putting his life on the line.

2 Paragraph 3, this is moving, that gray Thanksgiving
3 day in November of '21 in the Talladega National Forest in
4 Alabama, we were all worn out from ten days of fighting. Our
5 families were far away. The local churches prepared and
6 delivered to our position 20 Thanksgiving dinners with Bible
7 verses on handwritten boxes. The clouds lifted, et cetera.

8 The next paragraph, midnight in the Cherokee National
9 Forest at Weavers Bend Road, east of Newport, Tennessee, the
10 end of March '22, after winds gusted to 60 mile an hour, the
11 fire ripped uphill on a hillside that was steep as a mule's
12 face.

13 You know, they are facing fires blowing at them.
14 Mr. Bishai, every time he's on the firing line, depending what
15 this Court does, he would head out to Oregon soon hereafter,
16 but we are happy whatever you want to do, but he's going to
17 head to Oregon.

18 But they faced these fires, the fires ripping up the
19 hills.

20 We held the line until relief arrived that dawn.
21 Eight hours later, we were back on the line.

22 And then perhaps some of the most moving parts are at
23 the end of page 1 and 2 of this letter or 20 and 21 of
24 Exhibit E.

25 You probably heard me say thank you and others that

1 years after payback for firefighting has been deposited in our
2 bank accounts. We will remember events such as the
3 hand-painted sign in the small town somewhere in some state
4 that says thank you, firefighters.

5 Father and daughter waving -- okay. I'm going get --
6 I got to get ahold of myself, Your Honor. I don't want to get
7 choked up in front of a federal court. That's highly
8 embarrassing.

9 THE COURT: It happens all the time.

10 MR. BROWN: Father and daughter waving thanks to us as
11 they stood at a gate of the fairgrounds, the grandeur of the
12 national forest and wildlife refuge, the smile of two
13 grandmothers passing out home-baked goods in the middle school
14 football field where we pitched our tents, handwritten letters
15 from school children thanking us for our efforts. We don't do
16 this for financial gain.

17 And he goes on to describe dangerous sniper trees,
18 overhead hazards, stump holes, loose rocks. And then near the
19 entrance --

20 (There was an interruption by the court reporter.)

21 MR. BROWN: Yes, ma'am. I apologize because you got
22 to get me down.

23 -- near the entrance of -- to our base camp in
24 Leicester, North Carolina is a memorial for one fallen
25 colleague.

1 So, you know, we've got a lot of material here, but I
2 want to say that when you look before and after, those
3 horrible -- he is angry with himself. He's embarrassed of his
4 actions and doesn't make any excuses for it. I will try to
5 argue for mitigation on his behalf, but he doesn't make any
6 excuses for those actions that have been described. But he has
7 done everything he can do to rectify his life.

8 Certainly one of the great -- we all learn in law
9 school one of the great purposes of the criminal justice system
10 is deterrence. That's appropriate in some of these cases
11 perhaps. But one, you know, one objective also purpose is
12 rehabilitation.

13 I don't know. You've got a better feel, Your Honor,
14 of other cases than me. I don't know how many folks have gone
15 to the extent of actively putting their life on the line for
16 their country in the best way they can.

17 Mr. Bishai has already been punished to a degree, not
18 punishment under the statute itself for this level of crime.
19 But as you know, he was accepted into the army flight school.
20 That got pulled. That's a dream that's gone. And even, Your
21 Honor, and I hope you won't do this, but even if you gave him
22 the max offense, the harm, the hurt to him for having lost that
23 is going to hurt him more than incarceration.

24 The other thing, and we have mentioned it, is his
25 student pilot's license has been taken. There's a letter in

1 here describing his first solo in a Cessna 172.

2 When you look at before the event and you look at
3 after the event, what you see is consistency. You don't see
4 Elliot suddenly volunteering to become a firefighter to try to
5 look good for the judge. He was volunteering his time with
6 Rubicon, you know, with the Civil Air Patrol leading in the
7 ROTC programs before that.

8 What happened to him, what he did, let me say, on
9 January 6 was an aberration. He came up to Washington from the
10 Charlotte area -- he lives in Fort Mill, right across the
11 border -- with a friend of his, Mr. Irizarry, and someone they
12 had never met, or at least Elliot had never met, Mr. Sherrill.
13 They came up. You know the events. They got separated. He's
14 embarrassed by what he was yelling. I mean, that's extremely
15 embarrassing. There's no excuse for it.

16 I know personally -- you know, I go to Duke Carolina
17 games. We start yelling things we don't mean, you know, in a
18 sporting event. I don't mean to downplay or degrade the
19 seriousness of January 6 compared to a football game.
20 Sometimes you just start yelling things.

21 It is not excusable at all. But it doesn't represent
22 who he is. What represents who he is is what he's done before
23 and afterwards.

24 Let me say this also. There's just one other letter
25 that I wanted to ask the Court to consider on this front, and

1 that is from -- if I may, the letter from -- I think written by
2 Sergeant First Class Neal at page 6 is significant. Why is
3 this? I will wait until you get there, Your Honor.

4 And here's why I say that's significant in some ways.
5 It was written on March 21, 2021, after January 6. So it was
6 written after the fact. But in the letter, it's very clear
7 that Elliot, even -- and I have indicated in our brief that we
8 wanted to plead as early as possible. The U.S. Attorneys were
9 tied up with mountains of evidence and couldn't get to us.

10 But he writes -- he goes to his trusted mentor
11 Sergeant First Class Morrow Neal and he confesses to what he's
12 done. He said he's sorry. He said he screwed up for it. This
13 letter was written just a few weeks after the fact.

14 And, you know, if I were defending his case as an
15 attorney and I was trying to go for a not guilty plea
16 altogether, I would tell him, don't talk to anybody. But, you
17 know, he came forward with one of his mentors just a few weeks
18 later.

19 I would also argue, as I have -- and notice he says, I
20 thought his remorse -- if you look at page 7 of the document,
21 page 2 of the letter itself, Sergeant Major, at the top of the
22 page, says, I felt his remorse -- so he came and showed remorse
23 just weeks after the event -- is sincere and is aware of the
24 pain and embarrassment he's brought to the United States Army,
25 himself, and his family.

1 So this is something he's been expressing for a long
2 time.

3 And, finally, I will just say there was an error -- it
4 wasn't intentional, I'm sure -- made in the -- you've already
5 seen it in the presentence report by the U.S. Attorney. We
6 tried to come forward with information on Sherrill --

7 THE COURT: I understand that --

8 MR. BROWN: Yes.

9 THE COURT: -- that you and the U.S. Attorney's Office
10 have a different view of that. I take your --

11 MR. BROWN: Yes, ma'am.

12 THE COURT: -- I wouldn't say it's an error. I would
13 say it's a different interpretation --

14 MR. BROWN: Okay.

15 THE COURT: -- but I do take that into consideration.

16 MR. BROWN: Yes, ma'am. Well, here's the point I
17 would like to make on that. We've got an email in there on the
18 14th. You can read the email. But my point is he's coming
19 forward with no promises because he felt so bad about what
20 happened.

21 Now, Mr. Sherrill, when he gets prosecuted, they may
22 have some film, but when you put an admission of a party on top
23 of that, then, you know, if I'm a prosecutor, I don't want just
24 a film because somebody could argue, well, is that my guy or
25 not, maybe or maybe not. But he came forward with an admission

1 with no promises at all.

2 And so I would say that, in terms of sending messages
3 to the public, I think it's important to send a message to the
4 public also, not only you should not do this, you shouldn't be
5 involved in something where the United States Capitol is
6 breached, but also turn your life around. You know, if you
7 want to put your life on the line, if you're sincere about it,
8 if you want to step forward and volunteer to help the
9 prosecution because you feel so bad about doing it, it ought to
10 be considered, and he volunteered to talk to the FBI. So he's
11 done all that he can.

12 Your Honor, you've read our report. You know, we're
13 asking for zero confinement. But if the Court does feel that
14 some sort of confinement is appropriate, then we would ask the
15 Court to consider -- I won't give a certain number of days, but
16 I know that they have asked for 30, but I will say if you
17 could -- if you could -- if you will consider maybe zero
18 probation or to lower the amount of probation, and here's the
19 reason, so he can get back out to the fire line as soon as
20 possible.

21 Mr. Bishai trusts this Court. And we appreciate this
22 Court for treating us fairly all throughout the many hearings
23 that we've had via WebEx. This is one of the very few, I
24 suppose, silver linings coming out of COVID, saving me a few
25 trips to D.C. But we appreciate your good -- you know,

1 treating us kindly. We appreciate you allowing him even to
2 plead guilty from one of the fire lines in Western Virginia.
3 So we will put this in your hands. Thank you.

4 THE COURT: Thank you, Mr. Brown.

5 I appreciate all the hard work that has gone into this
6 case. You know, one of the things that is so ironic,
7 Mr. Bishai, for those of you who were at the Capitol that day
8 talking about civil war or burn it down and, you know,
9 basically showing disrespect for the rule of law and the
10 democratic norms and rules of this country, is that I believe
11 strongly that you have gotten every single benefit of the
12 presumption of innocence in the criminal justice system and the
13 rule of law in this country.

14 There's a lot of problems with the justice system in
15 this country, but I can tell you, and I'm telling you this as
16 an immigrant, I don't know anyplace that does it better. And I
17 hope when you -- as you grow older and consider and reflect on
18 the actions that you engaged in on that day, you consider how
19 you have been treated by this criminal justice system.

20 Your lawyer has done a very good job of advocating on
21 your behalf. I think the government has treated you fairly. I
22 certainly am hoping that I am treating you fairly. So that
23 whole system you wanted to tear down on January 6 has given you
24 all the presumptions and rights that you are entitled to under
25 the same Constitution that you ignored that day. And I hope

1 that's not lost on you.

2 All right. This is the hard part, at least for me.
3 It is the hardest part of my job. After calculating the
4 sentencing guidelines and departures and hearing the statements
5 made by counsel and by Mr. Bishai and reviewing the letters
6 that I have received on his behalf, I must now consider the
7 relevant factors set out by Congress in 18 U.S.C.,
8 Section 3553(a) and ensure that I impose a sentence sufficient
9 but not greater than necessary to comply with the purposes of
10 sentencing.

11 These purposes include the need for the sentence
12 imposed to reflect the seriousness of the offense, to promote
13 respect for the law, and to provide just punishment for the
14 offense.

15 The sentence should also deter criminal conduct,
16 protect the public from future crimes by the defendant, and
17 promote rehabilitation. And in addition to the guideline on
18 policy statements and purposes of sentencing, I also have to
19 consider the nature and circumstances of the offense, the
20 history and characteristics of Mr. Bishai, the types of
21 sentences available, and the need to avoid unwarranted sentence
22 disparities among defendants with similar records who have been
23 convicted of similar conduct and the need to provide
24 restitution.

25 I have considered all of these factors at length in

1 deciding what an appropriate sentence is in this case, and I
2 will discuss some of them now.

3 On January 5, 2021, Mr. Bishai drove himself, his
4 girlfriend, and another friend, his codefendant, from South
5 Carolina to Washington, D.C.

6 On January 6, Mr. Bishai and his friends went to the
7 Ellipse to watch the former President give a speech, which is
8 certainly, as I have said, his right. And the Court has
9 that -- the fact of why he came to Washington and the fact that
10 he went to hear the speech is, again, of no moment to this
11 Court. He was exercising his constitutional rights to support
12 whatever candidate he chooses to.

13 What the Court does consider, though, is that after
14 that speech was over, Mr. Bishai begins walking to the U.S.
15 Capitol Building. And he does so even before the speech is
16 over, which is also significant. And as he is walking to the
17 Capitol, he sees downed bicycle barricades. And the bicycle
18 barricades are barricades used for crowd protection.

19 He sees broken fencing around the Capitol Building,
20 and he sees people climbing the scaffolding and the walls. I
21 have seen those pictures. I have seen them a lot of times. I
22 saw them on that day. And they never cease to horrify me.
23 It's like something from a movie.

24 He smelled the tear gas. He saw the smoke. And he
25 saw, and this is most important to me, the lines of vastly

1 outnumbered police officers trying to protect the occupants of
2 that building who were doing their duty, their sacred duty, to
3 ensure the peaceful transition of power and to certify a lawful
4 election.

5 He saw that. And having seen that, not only did he
6 tell his girlfriend not to go because it wasn't safe, he surged
7 forward. He went in there. And that's the first mistake.
8 I've seen these videos countless times. I continue to look at
9 them in every single case because, as I said, every single case
10 is different.

11 I was in Washington on January 6 watching some of this
12 on video. I have seen video footage and photographs many, many
13 times, and I am going to continue to do that. And every time
14 it strikes me again at how the people who were -- the police
15 officers and the law enforcement officers and the people inside
16 that building must have been terrified, terrified, as they saw
17 people with gas masks, as they saw people with poles and
18 makeshift weapons and gallows going up outside and heard the
19 things that they were screaming. I can't imagine.

20 And I hear your remorse. I heard your apology. And I
21 have heard many, many apologies. And what strikes me so often
22 in these cases is a lack of acknowledgment of the terror that
23 you inflicted by your participation in that riot on the people
24 who were there that day trying to do their jobs.

25 I said it before and I will say it again, Washington

1 is a town, not full of people just, you know, leaching off the
2 government. It's full of patriots. It's full of people who
3 come here because they want to serve their country like you
4 wanted to serve your country. And they are doing their job
5 under difficult circumstances. And that's what they were doing
6 that day.

7 And I haven't heard a lot of acknowledgment and
8 compassion and sympathy for the people who were terrified, who
9 were crying, who were hiding under their desks, who were
10 calling their children telling them they loved them and didn't
11 know if they would see them again.

12 I had a police officer in my courtroom this week
13 talking about slipping in blood, talking about the fact that
14 he's had to retire. He's never going to put on the uniform
15 that he loves again because of the injuries he suffered from
16 that day and talking about the injuries he continues to suffer
17 and his coworkers for that day.

18 So while I am sure you wish this had never happened,
19 I'm wondering how much of it is because of what has happened to
20 you. I am not hearing a whole lot of you wish it would have
21 never happened because of what has happened to the people who
22 were there that day and to our country, because we are going to
23 be feeling the effects of what happened on January 6 for a
24 long, long time.

25 I'm not saying that you don't feel remorse or

1 compassion for them, but I'm just saying I'm not really -- I'm
2 not sure if it's really -- if you have a real understanding of
3 how terrifying it must have been for those officers seeing you
4 come through those windows. You didn't come through the door.
5 You didn't wander in later on with the crowd. And these
6 factors are very important.

7 The government has done a very careful job, in my
8 opinion, in distinguishing among groups of defendants and what
9 they did and the request for sentences commensurate with their
10 level of involvement.

11 When you saw those people scaling the walls and you
12 saw the gas and you saw the outnumbered officers, you saw the
13 violence that was going on, you can be heard shouting, and I
14 heard you. Let's go. You got it. Come on, guys. Keep
15 pushing. Keep pushing.

16 That's just not getting caught up. That's exhorting.
17 That is encouraging. That is being -- again, there's no mob
18 without you. There's no mob without the members of the mob.
19 Every single person in that crowd yelling encouragement and
20 pushing and shoving is part of the mob. And the mob doesn't
21 succeed without every single individual member.

22 You weren't just curious trying to see what was going
23 on. You were actually encouraging. And I have to take that
24 into consideration.

25 Civil war? I really shudder to think what would have

1 happened if the Capitol had not been secured.

2 When you eventually climb into the Capitol Building
3 through a broken window through the Senate wing door, when you
4 go in, you see shards of broken glass scattered around the
5 floor, and one of your friends is carrying a pole. What could
6 he possibly have been carrying that pole for?

7 I can tell you that I have sentenced a number of
8 individuals who were carrying poles, and they were using it to
9 beat on the police including one so hard that they broke his
10 shield.

11 It is to your credit that you weren't carrying a
12 weapon. It is your credit, and I don't think you would have a
13 misdemeanor plea or would be charged with a misdemeanor, that
14 you did not strike or in any way assault a law enforcement
15 officer.

16 But you continued into the Capitol. And you went into
17 a private space. It's not a restricted space. It's not a
18 Senator's office, but still, it is a conference room. That
19 room is not accessible to the public, and you all took it over.
20 You all just wondered around like it was yours, like you could
21 desecrate it and defile it in any way you wanted without any --
22 lack of respect for the chamber in which you were entering, sat
23 there taking pictures looking happy. And I have to take that
24 into consideration as well.

25 You climbed on statues in the Rotunda. You took an

1 elevator to the third floor, continuing to the Rotunda. And
2 then you left the Capitol at about 2:53 having been inside for
3 approximately 27 minutes. This wasn't just a wandering in and
4 wandering out.

5 I'm emphasizing that because I have looked carefully
6 at the sentences I've given other people and the sentences
7 other people are getting. And in one of the earlier cases, I
8 sentenced a defendant to 14 days who did less than you. So I
9 am considering -- I have to consider the sentence I give you in
10 light of what I'm giving other people.

11 When you left, you sat on a police car that was parked
12 on the east side of the Capitol Building. Your involvement was
13 far from being a curious onlooker who wandered in just to see
14 what all the fuss was about. It was far more active than that,
15 and I take that into consideration.

16 On the other hand, your characteristics of an
17 offender, you are 21 years old. I have a 23-year-old and a
18 25-year-old. You know, it's almost -- you are almost
19 programmed to do dumb things at this age. I have taken that
20 into consideration.

21 I have thought about this case for a long time. I've
22 thought about the three of you defendants because you are the
23 youngest people I have before me. And I am looking at your
24 case differently. You have come forward. You have taken
25 responsibility. You have pleaded guilty. I don't know about

1 the other two, but I know you have indicated a desire to plead
2 guilty quite some time ago. And you're young, and young people
3 do stupid things.

4 But your lawyer wants me to consider the service to
5 your country and your desire, your longstanding desire,
6 frankly, to serve your country, being in ROTC, the Rubicon
7 program, and your desire to enter the pilot program. You have
8 had a longstanding desire to serve your country and the
9 military. And that dream is now -- well, if's not completely
10 destroyed, it's severely damaged.

11 I take -- I do see how much you want it and how it was
12 your life's dream to enter that pilot program. And I do
13 understand that whatever punishment I give you probably will
14 not be as hard as the one you have already borne in not being
15 able to go into that program, so I am taking that into account.

16 You have a high school diploma. You were in the U.S.
17 Marine Corps Junior Reserve Officer Training Corp. You were
18 enlisted in the military, but you were instructed not to
19 report. So your life has been really thrown into -- off course
20 by this. And I do take into consideration your desire to serve
21 your country.

22 But then, Mr. Brown, that's a double-edged sword,
23 because I see in front of me every day in this Court, before
24 January 6 and since, young men and women who haven't had the
25 advantages that Mr. Bishai has had, who haven't had supportive,

1 loving families, who have had chaotic and dysfunctional
2 upbringings. So you almost can predict and understand why they
3 end up here in the criminal justice system.

4 But Mr. Bishai has had many advantages. He has a
5 family here to love and support him no matter what punishment
6 that I give him. And in that, sir, you are very fortunate.

7 You are going to have a career. You have taken on a
8 firefighting -- a very dangerous and very brave career in which
9 you are doing a great service to people. And I take that into
10 consideration.

11 And I certainly take into consideration the letter
12 written by Mr. Frank, which is one of the most thoughtful
13 letters I have read in some time. He does not condone what you
14 did, but he sees, like I do so often, that people are
15 complicated. People aren't generally all bad or all good.
16 Good people can do bad things, and they do. It happens a lot.
17 And oftentimes you don't really realize that until you find
18 yourself in the criminal justice system.

19 I have lots of people who come before me with families
20 who love them, who do great things in their community and
21 probably will continue to do so in the future, but they did a
22 bad thing. And that's what you did. So I'm sure you wish you
23 could go back and undo it.

24 But the double-edged sword, Mr. Bishai, is that you
25 had a higher obligation on January 6. You took an oath to

1 defend the motherland. You wanted to serve your country. You
2 professed to being a patriot and wanting to serve the military.
3 And that's even more troubling, that somebody like yourself,
4 somebody who wanted to enter the military, somebody who wanted
5 to work on behalf of their country and dedicate their life to
6 public and military service would do what you did.

7 Let's go, civil war, keep pushing? It boggles the
8 mind. It really does. And I really am hoping that that is an
9 aberration. I don't care what material you had on your phone,
10 what political beliefs you have, racist or otherwise. That is
11 not important or relevant to me at the time of sentencing.

12 But you need to consider how you could have done what
13 you did and how you square that with your desire to serve the
14 country and how -- I don't understand how you looked those law
15 enforcement officers in the eye on January 6 and did what you
16 did, just the same as you serving their country, coming from
17 small towns and other countries and slipping in their own blood
18 and being called traitors.

19 Turning to the types of sentences that are available,
20 this is where it's difficult. The government is asking for 30
21 days. I have looked at the sentences that I have given and my
22 colleagues have given other people. I have up to a year of
23 imprisonment I could give you.

24 The sentencing guidelines suggest a term between zero
25 and six months, and I can impose a term of supervised release.

1 I have looked at -- and so that brings me to the issue
2 of disparity. I have looked at the sentences I have given to
3 other people, but those people have been older than you. Some
4 of them have had criminal records. Some of them have not.

5 And I realize that I may be one of the few judges
6 that's given a lot of terms of incarceration. That doesn't
7 mean that I believe everybody who went into that Capitol
8 Building is going to get incarceration. That is not the case.
9 I am taking each defendant one at a time.

10 And your case is a particularly difficult one and
11 probably one of the most difficult ones I am going to give
12 because of your age and your lack of criminal history and what
13 you have done with your life before and after, as your lawyer
14 said.

15 And I think in most, if not all, cases, I have given
16 what the government has asked for or more. I am not going to
17 do that in this case. I don't think a sentence of 30 days is
18 going to -- is necessary for you.

19 I think that deterrence is one of the most important
20 aspects -- seriousness of the offense and deterrence are two of
21 the most important aspects in these cases because, again, to
22 anybody who thinks this cannot happen again, they are
23 absolutely wrong. There are people who just think that it
24 didn't go far enough and it wasn't successful, and there are
25 people out there who want the next one to succeed.

1 I need to make it clear in every instance that when
2 people committed certain acts that day, when they crossed
3 certain lines and when they took certain actions, there's going
4 to be swift and certain punishment.

5 And I think, again, that your situation, your yelling,
6 your taking the videos, your climbing through the windows, your
7 going into the restricted space, your taking the pictures is
8 more than somebody who just wandered in, and it does not
9 entitle you to a probationary sentence. But I don't think it
10 warrants the sentence the government is asking. So in this
11 particular case, I am not going to give what the government is
12 asking.

13 If you could stand, please, sir.

14 Based on my consideration of all the 3553(a) factors,
15 I will now state the sentence to be imposed.

16 It is the judgment of the Court that you, Elliot
17 Bishai, are hereby committed to the custody of the Bureau of
18 Prisons for a term of 14 days on Count 7. You are further
19 sentenced to serve 12 months, that is one year, of supervised
20 release, and to pay a \$25 special assessment.

21 The Court finds that you do not have the ability to
22 pay a fine and, thus, waives imposition of a fine in this case.

23 Mr. Brown, my understanding regarding the materials
24 I've read is that Mr. Bishai will still be allowed to have his
25 job despite the 14-day sentence of incarceration.

1 MR. BROWN: Yes, Your Honor. His job will be waiting
2 for him, and we can get that worked out.

3 THE COURT: Okay. I don't know that, because of the
4 short sentence, relatively short sentence, I don't know if
5 Mr. Bishai is actually even going to serve it in a Bureau of
6 Prisons facility, but if he does, is there a recommendation for
7 a facility?

8 MR. BROWN: Well, we would like, if possible, to have
9 him serve somewhere in South Carolina so he's closer to home,
10 if possible. We would ask that from the Court.

11 THE COURT: The special assessment is immediately
12 payable to the Clerk of the Court for the U.S. District Court
13 of the District of Columbia.

14 Within 30 days of any change of address, you shall
15 notify the Clerk of the Court of the change until such time as
16 the financial obligation is paid in full.

17 Within 72 hours of release from custody, you shall
18 report in person to the probation office in the district in
19 which you are released.

20 While on supervision, you shall submit to the
21 collection of DNA. You shall not possess a firearm or other
22 dangerous weapon. You shall not use or possess any illegal
23 controlled substance. And you shall not commit another
24 federal, state, or local crime. You shall also abide by the
25 general conditions of supervision adopted by the U.S. Probation

1 Office as well as the following special conditions.

2 I am actually not going to impose a term of community
3 service on you, Mr. Bishai, because I believe that the work you
4 are doing is sufficiently dangerous and valuable. I believe
5 you are -- I don't believe a term of community service is
6 warranted in this case. Although, I certainly hope that you
7 will use this case and use your experience to help guide other
8 people, other young people, away from this kind of behavior.

9 You shall remove firearms, destructive devices, or
10 other dangerous weapons from areas over which you have access
11 or control until the supervision term expires.

12 I am not going to impose financial restrictions.

13 The probation office shall release a presentence
14 investigation report to all appropriate agencies in order to
15 execute the sentence of the Court.

16 As set forth in the plea agreement, the government
17 pledged to move to dismiss the remaining counts of the
18 indictment specific to Mr. Bishai. Does the government wish to
19 do so now?

20 MS. ALBINSON: Yes, Your Honor.

21 THE COURT: All right. The motion is granted. The
22 remaining counts of the indictment are dismissed.

23 For 18 U.S.C., Section 3742, you have a right to
24 appeal the sentence imposed by this Court subject to certain
25 rights of appeal you waived as part of your plea agreement in

1 this case.

2 If you choose to appeal, you must file an appeal
3 within 14 days after the Court enters judgment. If you are
4 unable to afford the costs of an appeal, you may request
5 permission from the Court to file an appeal without cost to
6 you.

7 Now, the decision about your terms, I have to decide
8 whether to detain you today or allow your voluntary surrender.
9 And the government has not taken a position with regard to
10 that. You have complied in large part with your terms of
11 pretrial release. I told you when you came in here, into this
12 case, that how you behaved on pretrial release would have an
13 effect and would pay off one day, and today is that day.

14 Even though you had some missed calls back in 2021,
15 you have appeared timely at every single appearance. You
16 haven't messed up. You have been in compliance. I am going to
17 allow you to voluntarily surrender at a time to be determined
18 by the probation office and the Bureau of Prisons. Do you
19 understand?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Mr. Brown, there is a lot of these, and if
22 there are dates that you want to the work with probation about
23 because of his reporting to Oregon, you can work that out.

24 MR. BROWN: We will still deal with the probation
25 officer here in D.C. until otherwise instructed, just so I

1 don't lose --

2 THE COURT: Ms. Landon?

3 THE PROBATION OFFICER: Your Honor.

4 THE COURT: Can you come up.

5 THE PROBATION OFFICER: Amy Landon for U.S. Probation
6 here in D.C.

7 We would just ask that the defendant and defense
8 counsel come down to the probation office to just do the
9 voluntary surrender paperwork. And it has all the instructions
10 in there. It's just a call-in process that he will be able to
11 do from South Carolina.

12 THE COURT: Okay.

13 THE PROBATION OFFICER: The only question that I do
14 have while I have the Court's attention, is it the Court's
15 intention to transfer the jurisdiction or just the supervision?

16 THE COURT: Mr. Brown?

17 MR. BROWN: Well, he's been sentenced. We don't have
18 a strong opinion on that except he can serve in South Carolina.
19 It would simply --

20 THE COURT: My recommendation will be for a facility
21 in South Carolina. I will transfer the supervision to the
22 district in which he resides. That's fine.

23 MR. BROWN: To be clear, the offices are downstairs in
24 the building --

25 THE COURT: Come up to the microphone.

1 MR. BROWN: Sorry.

2 THE PROBATION OFFICER: The probation office is on the
3 second floor.

4 MR. BROWN: Second deck of this building?

5 THE COURT: This building.

6 THE PROBATION OFFICER: Yes.

7 MR. BROWN: We'll see you when we're done.

8 THE COURT: Okay. Thank you.

9 I am going to allow you to voluntarily surrender.
10 That will be at a date determined by the probation office. But
11 here's -- I got to caution you now, just as I cautioned you
12 after your plea of guilty. You are required to continue to
13 follow the conditions of your pretrial release as they have
14 applied to your case.

15 Again, if you violate any of these conditions, you
16 could be subject to -- detained for failing to comply. And if
17 you fail to surrender, that's another crime. So you don't want
18 to do that. You want to surrender when you are told to
19 surrender.

20 If there is a problem with that date, your lawyer will
21 file a motion. I have received motions to extend voluntary
22 surrender dates. I will consider them if they are filed.

23 The penalty for failing to surrender for a service of
24 sentence are serious. You could be subject to a term of
25 imprisonment up to ten years consecutive to any term in this

1 case. So you want to show up.

2 Mr. Brown and Ms. Albinson, any objection to the
3 sentence not already on the record?

4 MR. BROWN: No, ma'am, Your Honor, no objections.

5 MS. ALBINSON: No, Your Honor.

6 THE COURT: All right. Mr. Bishai, you made a serious
7 error in judgment. More importantly, you are still young, and
8 I want you to reexamine the motivations that caused you to do
9 what you did. Your political beliefs are entirely your own,
10 but you may want to consider getting your information from a
11 wider variety of sources in the future.

12 A very smart man said that we are not the worst thing
13 you've ever done. You are not. You've lived a good life.
14 You've lived a productive life up until January 6. You are
15 paying the price for it both in terms of your restraints on
16 your physical liberty, a criminal record, and not getting into
17 the program you've tried so hard and wanted so hard to get
18 into.

19 But you're are going to move on. You're going to do
20 the sentence. You're going to continue with your very long
21 life, I can tell you at the age of 22, and you are going to
22 have a chance to show what you're made of and to show that you
23 can fall, as so many do, but it's how you pick yourself up and
24 how you live your life that shows the true test of character,
25 not the mistake, the life that you lead after the mistake.

1 You have your family who loves you and supports you,
2 and they are here for you. You have a lot going for you. And
3 so I wish you the very best of luck, sir.

4 THE DEFENDANT: Thank you, ma'am.

5 THE COURT: All right. We are adjourned.

6 (The hearing concluded at 12:10 p.m.)

7 - - -

8 C E R T I F I C A T E

9
10 I hereby certify that the foregoing is an
11 accurate transcription of the proceedings in the
12 above-entitled matter.

13
14 10/7/22

 s/ Tammy Nestor
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 Official Court Reporter
 333 Constitution Avenue NW
 Washington, D.C. 20001
 tammy_nestor@dcd.uscourts

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<p>MR. BROWN: [50] 3/19 4/15 4/19 5/17 5/20 7/12 7/24 8/6 8/18 8/23 9/25 13/25 14/6 14/11 14/20 15/2 15/9 15/11 15/16 15/19 17/1 17/8 17/15 18/8 19/13 21/4 21/7 21/9 21/12 21/14 21/16 21/23 22/12 22/14 22/19 24/10 24/21 28/8 28/11 28/14 28/16 43/1 43/8 45/24 46/17 46/23 47/1 47/4 47/7 48/4 MS. ALBINSON: [15] 3/17 5/15 6/10 7/10 7/22 8/5 8/16 8/22 9/23 10/15 12/25 13/15 13/18 44/20 48/5 THE COURT: [74] 2/10 3/18 3/20 4/17 4/22 5/6 5/9 5/16 5/18 5/21 5/24 6/2 6/7 6/11 7/11 7/13 7/23 7/25 8/7 8/17 8/19 8/24 9/24 10/1 12/13 13/7 13/17 13/23 14/1 14/7 14/12 15/1 15/7 15/10 15/15 15/18 15/20 16/4 16/11 16/14 16/24 17/7 17/13 18/6 19/11 21/2 21/5 21/8 21/11 21/13 21/22 22/10 22/13 22/18 24/9 28/7 28/9 28/12 28/15 30/4 43/3 43/11 44/21 45/21 46/2 46/4 46/12 46/16 46/20 46/25 47/5 47/8 48/6 49/5 THE COURTROOM DEPUTY: [1] 2/2 THE DEFENDANT: [11] 5/5 5/8 5/23 6/1 6/6 16/3 16/8 16/12 16/17 45/20 49/4 THE PROBATION OFFICER: [6] 4/20 46/3 46/5 46/13 47/2 47/6</p>	<p>18 [4] 2/23 9/4 31/7 44/23 2 20 [6] 13/5 19/2 19/3 21/22 23/6 23/23 200 [1] 1/16 2000 [2] 19/2 19/22 20001 [2] 1/21 49/16 20002 [1] 1/13 2019 [1] 20/9 2020 [1] 19/23 2021 [6] 6/19 19/3 22/7 27/5 32/3 45/14 2022 [4] 1/5 3/24 3/25 21/25 21 [3] 23/23 27/5 37/17 21-282 [1] 1/3 21-282-2 [1] 2/4 22 [3] 3/25 48/21 49/14 23-year-old [1] 37/17 24 [1] 3/23 25-year-old [1] 37/18 27 [2] 13/19 37/3 28 [1] 21/25 282 [1] 1/3 28210 [1] 1/17 29 [1] 1/5 2:53 [1] 37/2 2B2.3 [2] 6/22 6/25 3 30 [7] 11/8 13/20 18/1 29/16 40/20 41/17 43/14 300 [1] 20/20 31 [2] 19/2 19/3 333 [2] 1/21 49/15 3553 [4] 8/24 10/6 31/8 42/14 36 [1] 10/7 3742 [1] 44/23 3E1.1 [1] 7/5 4 400 [1] 13/3 5 50 [1] 22/22 6 60 [2] 11/8 13/21 60 mile [1] 23/10 60-something-year-old [1] 19/12 7 72 [1] 43/17 A a.m [1] 2/1 aberration [4] 18/20 20/5 26/9 40/9 abide [1] 43/24 ability [1] 42/21 able [2] 38/15 46/10 about [25] 6/3 12/13 14/7 15/14 16/20 17/10 19/15 20/11 21/5 22/16 22/17 28/19 29/7 29/9 30/8 34/13 34/13 34/16 37/2 37/14 37/21 37/22 37/25 45/7</p>	<p>above [1] 49/12 above-entitled [1] 49/12 absolutely [1] 41/23 accept [2] 6/11 18/3 acceptance [2] 7/4 14/3 accepted [3] 20/16 20/17 25/19 access [1] 44/10 accessible [1] 36/19 account [2] 10/4 38/15 accounts [1] 24/2 accurate [1] 49/11 accurately [1] 9/20 acknowledge [1] 13/12 acknowledging [1] 5/2 acknowledgment [6] 4/1 4/18 4/25 5/10 33/22 34/7 across [1] 26/10 Action [1] 2/4 actions [8] 18/19 19/4 19/7 22/3 25/4 25/6 30/18 42/3 active [1] 37/14 actively [1] 25/15 acts [1] 42/2 actually [4] 4/20 35/23 43/5 44/2 addition [1] 31/17 address [3] 10/13 15/16 43/14 adjourned [1] 49/5 adjusted [1] 7/2 admire [1] 17/20 admission [2] 28/22 28/25 admissions [1] 17/13 admit [1] 12/10 admitted [1] 11/21 adopted [1] 43/25 adult [1] 19/4 advantages [2] 38/25 39/4 advisory [1] 6/18 advocate [1] 12/23 advocating [1] 30/20 afford [1] 45/4 after [19] 10/25 11/18 18/18 19/15 19/20 23/10 24/1 25/2 26/3 27/5 27/6 27/13 27/23 31/3 32/13 41/13 45/3 47/12 48/25 afterwards [1] 26/23 again [14] 12/20 20/9 20/10 20/21 32/10 33/14 33/25 34/11 34/15 35/17 41/21 41/22 42/5 47/15 against [1] 15/24 age [4] 18/25 37/19 41/12 48/21 agencies [1] 44/14 ago [1] 38/2 agree [1] 19/12 agreed [2] 8/11 9/14 agreement [6] 3/8 8/11 9/13 9/14 44/16 44/25 ahold [1] 24/6 Air [3] 20/15 20/15 26/6 Alabama [1] 23/4 Alaska [1] 11/3 Albinson [15] 1/11 2/6 3/14 5/11 6/7 7/9 7/21 8/4 8/15</p>	<p>12/13 13/23 14/12 48/2 all [35] 2/8 2/18 2/21 4/6 5/21 10/5 13/18 16/14 16/23 16/24 17/9 18/23 23/4 24/9 25/8 26/21 29/1 29/11 29/22 30/5 30/24 31/2 31/25 36/19 36/20 37/14 39/15 39/15 41/15 42/14 44/14 44/21 46/9 48/6 49/5 allow [4] 17/24 45/8 45/17 47/9 allowed [1] 42/24 allowing [1] 30/1 almost [3] 37/18 37/18 39/2 already [6] 10/10 16/21 25/17 28/4 38/14 48/3 also [17] 2/8 3/4 7/3 9/1 12/3 12/10 14/8 15/22 25/11 26/24 27/19 29/4 29/6 31/15 31/18 32/16 43/24 Although [1] 44/6 altogether [1] 27/16 always [3] 2/19 20/6 20/25 am [26] 12/15 14/5 14/8 14/8 14/19 15/24 15/25 16/10 19/17 30/22 30/22 33/13 34/18 34/20 37/9 37/23 38/15 40/8 41/9 41/11 41/16 42/11 44/2 44/12 45/16 47/9 Amendment [1] 13/2 AMERICA [2] 1/2 2/5 American [1] 12/7 Ami [1] 2/8 among [2] 31/22 35/8 amount [2] 9/15 29/18 Amy [1] 46/5 angry [1] 25/3 another [7] 2/15 18/15 20/23 22/15 32/4 43/23 47/17 any [26] 3/18 4/2 4/15 5/12 5/12 5/13 6/8 7/6 7/8 7/21 8/4 8/10 10/9 12/23 17/13 17/21 25/4 25/5 36/14 36/21 36/21 43/14 43/22 47/15 47/25 48/2 anybody [2] 27/16 41/22 anyone [1] 12/15 anyplace [1] 30/16 anything [4] 15/23 15/24 16/8 16/12 anyway [1] 17/16 apologies [2] 21/18 33/21 apologize [9] 2/10 2/13 2/16 16/18 16/21 16/22 17/3 21/3 24/21 apologized [2] 22/1 22/2 apology [3] 14/24 18/17 33/20 appeal [6] 44/24 44/25 45/2 45/2 45/4 45/5 appearance [1] 45/15 APPEARANCES [1] 1/10 appeared [1] 45/15 appearing [1] 2/8 appears [1] 11/15 applicable [4] 6/22 7/13 8/7 9/2 application [1] 3/12</p>
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