UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	
Plaintiff,	.	CR No. 21-0509 (TSC)
	.	
v.	.	
	.	
ANTONY VO,	.	Washington, D.C.
	.	Wednesday, April 10, 2024
Defendant.	.	2:01 p.m.
. . . . .		

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

APPEARANCES:

For the Government:	ERIC BOYLAN, AUSA U.S. Attorney's Office 601 D Street NW Washington, DC 20530
For Defendant:	CARMEN D. HERNANDEZ, ESQ. Federal Public Defender Office 7166 Mink Hollow Road Highland, MD 20777
Court Reporter:	BRYAN A. WAYNE, RPR, CRR U.S. Courthouse, Room 4704-A 333 Constitution Avenue NW Washington, DC 20001

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Transcript produced by computer-aided transcription.

P R O C E E D I N G S

THE COURT: Criminal action 21-509, United States of America versus Antonio Vo. Counsel, please state your appearances for the record, starting with the government.

MR. BOYLAN: Good afternoon, Your Honor. Eric Boylan on behalf of the United States.

THE COURT: Good afternoon, Mr. Boylan.

MS. HERNANDEZ: Good afternoon, Your Honor. Carmen Hernandez on behalf of Mr. Vo, who is sitting at counsel table with me.

THE COURT: Good afternoon, Ms. Hernandez.

Good afternoon Mr. Vo.

MS. HERNANDEZ: There are also some of his family members in the courtroom.

THE COURT: Good afternoon.

MS. HERNANDEZ: I can wait to identify them when it's my time to talk.

THE COURT: That's fine.

I'm sure Mr. Vo appreciates your being here today.

PROBATION OFFICER: Good afternoon, Your Honor. Haley Spicer on behalf of the United States Probation Office.

THE COURT: Good afternoon.

All right. We're here for the sentencing of Mr. Vo, who, after a week-long jury trial, was found guilty of Entering and Remaining in a Restricted Building or Grounds, in violation of

18 U.S.C. § 1752(a)(1); Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2); Disorderly Conduct in a Capitol Building or Grounds, in violation of 40 U.S.C. § 5104(e)(2)(D); and Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G).

All right. Before I proceed to sentencing, there are two outstanding motions I have to address first. The first is the defendant's motion to stay sentencing pending the resolution of the elements of 18 U.S.C. § 1752 by the D.C. Circuit in *United States v. Griffin*, and defendant's motion for the Court to accept Mr. Vo's guilty plea to a violation of 40 U.S.C. § 5104(e)(2)(G), motion to vacate the verdict of guilt on the remaining counts.

With regard to the motion to stay pending resolution of *Griffin*, Mr. Vo requested that the Court stay sentencing until the D.C. Circuit has ruled on the issues in *Griffin*, which was argued on December 4, 2023, and as he states, "will resolve the intra-district split regarding the *mens rea* element of the § 1752(a) offenses."

Mr. Vo argues that, should the D.C. Circuit reverse the conviction in *Griffin*, that would also require a reversal of Mr. Vo's 1752(a) convictions, and furthermore, if we proceed today with sentencing, Mr. Vo would be seeking to remain on bail pending appeal until the *Griffin* opinion is decided.

The government opposes, arguing that the defense motion

should be denied because *Griffin*'s outcome should have no effect on the sentencing in this case and, more specifically, that even if *Griffin* were to be decided in a way that is favorable for Mr. Vo, there will be no change in the nature or circumstances of Mr. Vo's offense, his history and characteristics, or any of the other 3553(a) factors.

Is there anything you want to add? And then today I received the government's filing of emails on that point. After Mr. Vo's plea broke down, there was an exchange -- and I'm referring to ECF No. 1 --

MR. BOYLAN: Your Honor, I don't mean to interrupt, but I think the email goes to the defense's motion to vacate.

THE COURT: Oh, that's right. Not to stay. Okay. I just want to put it on record. Here we go.

It is ECF No. 151 filed today. And it is a notice of filing by the government, and it attaches an email from Mr. Vo's lawyer at the time, Maria Jacob, to my courtroom deputy Tim Bradley, and Mr. Michael Romano, who was the assistant U.S. attorney who was in the office prosecuting January 6 cases. This is from Ms. Jacob, Mr. Vo's counsel, after the breakdown of the plea:

On April 22, 2022, two years ago, Ms. Jacob states: "Good morning. After much discussion with Mr. Vo, he has had a change of heart and no longer wishes to enter a guilty plea. Would it be possible to convert the plea hearing next week into

a status conference instead? Thank you, and sorry for the change."

That was an email sent by Ms. Jacob on behalf of Mr. Vo on April 22, 2022, after the breakdown of the plea, and therefore it goes, frankly, to thoroughly undermine Ms. Hernandez's assertion that the Court should somehow be compelled to accept a guilty plea, which is another argument in and of itself.

MS. HERNANDEZ: May I respond to that?

THE COURT: Yes, you may.

MS. HERNANDEZ: Thank you, Your Honor.

I don't believe that under the D.C. Circuit case law, any of the Supreme Court case law, that what happened weeks after the plea is relevant.

THE COURT: Do you have any case you might want to --

MS. HERNANDEZ: Well, yes.

THE COURT: -- cite in support of that?

MS. HERNANDEZ: In the memo that I filed yesterday, the issue was, at the time that he tried to enter the plea, the government was asking the Court to have him affirm a fact that the D.C. Circuit refers to as an external fact that's not an element of the offense, as I understand that charge.

THE COURT: But it was a fact that was contained in the statement of offense that -- let me finish -- that Mr. Vo had signed, and therefore I am not limited in my questioning of Mr. Vo with regard to the veracity of the information contained

in the statement of offense. I'm not limited to simply the elements. I'm questioning him regarding the facts that he had signed and agreed to.

MS. HERNANDEZ: Correct. And he confirmed all the facts. He affirmed that he -- in fact, he said, "Let me triple check." He affirmed all the facts. He affirmed that he was admitting all of the elements of the offense, and then I guess Mr. Romano, the prosecutor, said to the Court, "Is he admitting to the other facts?"

But my understanding of the case law -- and of course I know the Court ruled as it did -- the case law says, at that point, you're not allowed -- it's an abuse of discretion. The case I cited in my reply authored by Judge Edwards is that the Court is -- it's an abuse of discretion for the Court to preclude a plea to go forward when the defendant refuses to admit a fact, which the D.C. Circuit refers to as an "external fact," because it is not an element of the offense. That's the D.C. Circuit's language.

THE COURT: But that's not what happened here. I didn't prevent the plea going forward. I have before me the transcript of the plea, which I've looked at again just to refresh my memory since it was so long ago.

When I started questioning Mr. Vo with regard to the facts contained in the statement of offense and he said that he believed he had permission to enter, I said, "Why don't you talk

to your lawyer. I really don't want to rush through this when I've had some red flags," because there were some other issues that had caused me some concern.

And I said Mr. Vo's "being very careful, and he's being very candid, and I appreciate that. I want him to be candid. I want him to be honest, and I want him to ask any questions or raise any concerns he has. So Mr. Vo is doing what -- nothing wrong."

"What I'm going to do is let you talk briefly in a breakout room, and then we will come back and see if we need to reschedule this," because my concern was Mr. Vo had not had sufficient opportunity to really understand what he was entering into and he was agreeing to.

His lawyer said, "Thank you. I would appreciate that." And Ms. Jacob then, after a break, said, "I think we need a little bit more time to fully answer Mr. Vo's questions and go through this in a little bit more detail." That's page 25 of the plea transcript.

I said, "I absolutely agree. This is not something I want to rush into. And Mr. Vo has some questions. They should be answered. I don't want anybody twisting anybody's arm here. And Mr. Vo has an absolute right to have all of his concerns answered, his questions answered. This is fine. No problem. Let's move this to another date."

MS. HERNANDEZ: So, Your Honor, my argument is that what happened after that time is not relevant to the Court's decision that day. My argument is that the record, based on not just one case, but multiple D.C. Circuit cases, and the one that's most on point is *United States v. Washington*, where the D.C. Circuit said it was an abuse of discretion.

The court wanted the defendant to admit -- the court rejected the plea because the defendant would not admit that his coconspirator was involved in the offense. The government said he's not being charged with a conspiracy, he's being charged with a distribution charge, and therefore, whether he admits what his codefendant did or didn't do is an external fact and it's an abuse of discretion to deny it.

THE COURT: But there again, Ms. Hernandez, you're assuming facts not in evidence. I did not reject Mr. Vo's plea. I simply said Mr. Vo can have additional time to discuss his case and his concerns with his lawyer and that they could come back, and it was only upon inquiry as to how he wished to then proceed at the next date that his lawyer unequivocally rejected the plea on behalf of her client.

MS. HERNANDEZ: So my position is that the emails are irrelevant to the decision based on my reading of the case law. The transcript at page 23, you asked Mr. -- and this is cited in page 3 of my motion, ECF 138:

The Court says, "Okay. At the time -- and you don't have

to know the exact time. That's why I said 'approximately.' At the time you entered the Capitol building on January 6, 2021, did you know that you did not have permission to enter the building?"

And I must say, the Court asked that question at the prompting of the prosecutor. You can see the prosecutor wanted you to ask that question. I agree it was in the statement of offense. And then the defendant says -- tried to answer your question fully:

"I think at first -- well, the thing is, like, I was standing at the entrance for the longest time, and I guess I wasn't given much indication, because police officers were standing in front there, and they gave me no indication that I couldn't enter in. They never said that I couldn't enter in. They gave a thumb's up to you, you know --"

And the Court interrupted at that point -- he was still talking -- and said, "Ms. Jacob, hold on a minute" -- I think Ms. Jacob said, "Your Honor --" and you said, "Ms. Jacob, hold on one minute. I just don't see how we can go any further." I read that as the Court believed -- let me back up.

If in fact it is an element of that offense that he has to -- that he was required to know that he was prohibited from entering the Capitol -- and I haven't seen any cases. It's out there. I know a lot of defendants admit to that, but I haven't seen any cases. And in fact the opinion from the circuit

yesterday evaluated -- it didn't take that issue head on. That wasn't an issue before it, but it described why Congress passed that statute, and it described that the reason that Congress passed that statute and the reason it was not unconstitutional under the First Amendment is that the Capitol is a working building where Congress does its business, so it can preclude anything going on.

If I am correct that it's not an element, it is my opinion -- and of course the court -- it is my opinion that the court and the government wanted him to admit a fact that's not an element of the offense, but he did admit every other fact. He admitted every other fact on there without equivocation, and therefore, if the reason that he was not allowed to plead is because of that fact -- which he's explaining to you the truth. And, Your Honor, let me say this: Pleas --

THE COURT: You know, Ms. Hernandez, you should be careful how you start throwing around terms like "the truth," because I sat here for this trial.

MS. HERNANDEZ: This is what he was thinking. He's explaining to the Court what his mindset was. Only he can tell the Court what his mindset was. He was trying to explain -- I was just going to say, plea agreements are very difficult. The government often wants defendants to admit facts that are not what the defendant believes are accurate. I've got three cases right now where I'm struggling with this issue.

And so what my understanding of the case law is, one, I don't believe that email is relevant to the decision, but two, what they're still asking him to do is admit a fact which he believes is not accurate and which is not an element of the offense. It's that combination. And therefore, when he says I don't want to plead, he doesn't want to plead if pleading requires him to say something that he doesn't believe is true and that's not accurate.

THE COURT: And therein lies your problem. Because what happened on the day that his plea broke down was that he -- I was questioning him and -- and, you know, we can talk about whatever we had in mind. The record is, I think, abundantly clear that I was questioning him with regard to the statement of offense. And as I said before, he signs and attests to the statement of offense. He says it's all correct.

And I always ask defendants when they're pleading: Did you read the whole thing? Is it all true? Every word? You can't come back at sentencing and say, well, I did what it says in paragraph 3 but not in paragraph 4.

So I ask defendants -- and it is my practice to ask defendants about not just the elements, but the other information and factual information that is included in the statement of offense that they have signed and agreed to. If there are facts in a statement of offense that the defendant does not agree to, the time to work that out is before there's a signed plea

agreement because that's when -- I don't have any part. I don't have any role to play in that. But once a signed statement of offense is presented to me as part of a plea agreement, I'm going to probe -- let me finish -- whether the whole thing is accurate. And that's what I was doing.

Now, if there was a problem with some of the facts contained in the statement of offense, the thing to do was, in the drafting of this, was to say, well, he can't admit to that because that's not true. He didn't. He signed it and it was presented to me. So when I'm questioning him -- and I did not -- I don't believe I said this is not an element. I said: Do you need more time? Let's continue another day so you can have your questions answered.

That was a second opportunity for Mr. Vo, through counsel, to negotiate a revised statement of offense with which he could agree, and that would have been just fine. But that's not what happened. And I disagree with you. That's why the email is absolutely relevant, because when asked is this going to be a plea, what is this going to be, Ms. Jacob said he doesn't want to plead, we're going forward.

MS. HERNANDEZ: So as the Court has just indicated, the Court is absolutely --

THE COURT: He's raising his hand. You may want to --

MS. HERNANDEZ: No. He's not going to say anything.

THE COURT: Okay.

MS. HERNANDEZ: My advice is he's not going to say anything.

THE COURT: Well, that's between y'all.

MS. HERNANDEZ: Okay. Number one, Your Honor, what the Court just indicated, what happened at the plea hearing, is a matter of record. The transcript is there. And that's my point. What happened at the -- the email that was sent two weeks later or three weeks later requires additional facts to explain why it was sent. That is -- that may be a 2255 issue. That's not here.

THE COURT: I think the email supplements the record in terms of what the parties agreed to, but we can differ on that.

MS. HERNANDEZ: So the Court just described what happened. In fact, what the transcript shows is what happened. And the Court correctly started asking him about the facts that he had signed to, and he said, Let me triple check, and then he came back and said I admit paragraphs 8 through 11.

The government steps in -- and paragraph 12 is the one that says I had no permission to enter. The government then steps in and says to the Court, is he admitting that he knew that entry was not permissible?

The Court then turns to him and asks that question, and then he tries to explain to you what he thought about it. He did, as to paragraph 12, explicitly say, I admit all the elements of the offense. It's the next line that says he wants

to -- he has permission to --

THE COURT: Ms. Hernandez, are you saying that having disavowed -- with Mr. Vo having disavowed one paragraph of the statement of offense that he had agreed to and signed, that I should have somehow said, okay, well, I'm going to ignore that section? Or in my opinion, the appropriate course of action was to say, let's just stop this, then, and you all can go and discuss the concerns -- you know.

I can't force -- I mean, I have a duty. If I have before me a signed document saying I agree and accept all the facts and I did everything in the statement of offense, and during the plea inquiry the defendant says, no, actually I don't -- I actually disagree, I didn't do paragraph 12, I believe I have a duty to stop.

MS. HERNANDEZ: Well, what I am telling the Court is, as I read *United States v. Washington* --

THE COURT: I've read it.

MS. HERNANDEZ: -- it's a similar situation. The transcript was not in the appellate, but the issue there was the Court rejected the plea because the government wanted the man to admit to something which the D.C. Circuit terms was an "external fact." What the D.C. Circuit says is, as long as you have -- as long as the defendant had admitted -- the Court's obligation is to determine that there's a factual basis for the plea. That's under Rule 11, and that's what the Court was doing.

THE COURT: But don't you agree, Ms. Hernandez, that your argument rests on an assumption that I rejected the plea?

MS. HERNANDEZ: But you did. At the point that he said -- at the point that he would not admit a fact which under D.C. Circuit terminology is "external," it's not an element of the offense, the Court said, "hold on a minute, I just don't see how we can go any further," it was at that moment when he rejected, when he would not admit that he knew he had no permission. Again, if that's an element of the offense, that's the end of the inquiry. I have not seen a case that says that's an element.

THE COURT: I think we're going to have to agree to disagree on how that's characterized because, first of all, I did not reject the plea because I wrongly believed that that was an element. I stopped the proceeding, continued the change of plea hearing to give Mr. Vo and his lawyer a chance to work out their understanding of paragraph 12 and if necessary straighten it out with the government. I continued it. I didn't say, okay, we're done here, let's schedule a trial date.

MS. HERNANDEZ: Well, again, I agree with the Court, what happened at the plea hearing is -- we have a transcript. The Court believes that you did not. I read it as you did. And I understand -- that's why I think -- it doesn't matter what happens afterward.

And I cite the Supreme Court case, the *Frye* case, where the

Supreme Court says if a defense counsel does not communicate a plea offer to his client, the fact that at some later time a different plea offer is made or a less favorable plea offer is made doesn't change the facts of that day.

I believe under the facts here -- and I understand. I understand that the government wants January 6 defendants to admit -- I know it because I represent a number of defendants. They want the defendants to admit that they knew that they were not allowed in the Capitol. But I do not believe --

THE COURT: Then they shouldn't sign statements of offense saying that they --

MS. HERNANDEZ: Well, that's an issue about his representation. And again, when you questioned him, he was very clear about what he was disagreeing with. And again, he wasn't even rejecting it. He was trying to explain to you what his state of mind was. So the point is, we have a record. The Court sees it one way; when I read the agreement, I read it a different way. You're the judge. I understand that.

THE COURT: Interestingly enough, I never got any communication from Ms. Jacob, his lawyer at the time, saying, Judge, we believe that Mr. Vo should be allowed to enter his plea; that's not an element. This argument comes after Mr. Vo's been convicted after a jury trial.

MS. HERNANDEZ: Again, that may have to be taken up at a --

THE COURT: I'm sure.

MS. HERNANDEZ: -- evidentiary hearing. But I will represent to the Court, because I represent a number of January 6 defendants, that the government always wants that in there, and I often fight it. There are times when it's clear that the defendant knew. I mean there are times when the evidence is clear that the defendant knew, there are times when they don't.

And I will say to the Court because I have non-January 6 cases and January 6 cases where the government stands there and says this is the plea offer, take it or leave it. So if the government is insisting that that element be put in there and the Court did a lot of -- I will say this:

The Court did a lot more than a lot of judges, because you went through the paragraphs and said do you admit this, do you admit this. So, yes, Your Honor went through a lot more than other judges at the plea hearing, but the only thing he did not categorically admit was this fact.

And if that fact, as I understand the case law, is not an element, then that inquiry and that termination and whatever his lawyers were telling him and whatever the government wanted him to admit should not have played a part. That's my view. It will not be the first time I am wrong, but I'm sure -- the D.C. Circuit has a lot of cases on this issue. Frankly, I was surprised that there were so many cases on this issue.

THE COURT: Okay.

MS. HERNANDEZ: Because, I mean, I do remember once -- this is how old I am. I remember when Judge Green was ordered -- was reversed by the D.C. Circuit. That's a long time ago, and that's why I went looking for the case when I heard that he had tried to plead. And it is very prejudicial to him, as I said.

Let me say this: I did not respond to the government's -- respond to the motion to stay because it's clear that the Court doesn't want to stay the case, and it is clear that the Court has a lot of discretion in that regard. So I didn't want to jam up the record more than I already have. I will say the government claims that it makes no difference how you sentence. I don't see how factually that can be the case if you're sentencing on two petty offenses versus --

THE COURT: We'll get to that at your allocution.

MS. HERNANDEZ: I disagree with the government's position that they say it wouldn't matter because that issue arose in the context of staying the sentencing, which the Court has made clear you don't want to --

THE COURT: I'm not staying the sentencing.

MS. HERNANDEZ: That's why I didn't reply to that.

THE COURT: All right.

MS. HERNANDEZ: Anyway, that's I think the record -- I believe the record is the transcript of the guilty plea, and whatever happened outside, none of us know exactly what the

conversations were between Ms. Jacob and the defendant, Ms. Jacob and the prosecutors, and I don't believe that -- if the Court were going to look at that, then we'd have to bring in Ms. Jacob. We'd have to bring --

THE COURT: That's for another issue.

MS. HERNANDEZ: Exactly. That's my position. That's why I'm saying that it's not relevant. It may become relevant in a different context, but I don't think it's relevant at this point.

THE COURT: Thank you, Ms. Hernandez.

MS. HERNANDEZ: Thank you, Your Honor.

THE COURT: Yes, Mr. Boylan.

MR. BOYLAN: Your Honor, first of all, I think the proper way to read the transcript of the Rule 11 hearing is exactly what Your Honor has already stated. The plea was not rejected on that day, it was just continued, and for that reason the email becomes dispositive. The defendant voluntarily withdrew his plea and he chose not to move forward.

THE COURT: And he chose not to renegotiate or engage in any -- I don't know. But all I know, at no point -- I said you all need to talk about this, and nobody said, okay, well, we're going to try to get a statement of offense without the offending paragraph.

MR. BOYLAN: I think that's correct, Your Honor. I do want to add a couple other things. To the extent that the

transcript is read or construed to be a rejection of the plea, I think that the Court was still proper and correct in doing that, and it's true for two reasons. Number one Your Honor already touched on. The Court has an obligation to ensure that a plea -- a guilty plea is knowing and voluntary.

There were certainly questions about whether Mr. Vo was going to enter that plea knowingly, and the Court was correct to question him about that, as happens at every Rule 11 conference, and there were concerns there. So rejecting it on that basis was correct. I think it was also correct for the Court to have rejected that because there was no factual basis to establish that count. The Court has to find a factual basis for every count that a defendant pleads guilty.

The defendant disputed that he entered the Capitol -- that he didn't know he wasn't allowed to enter the Capitol. There just isn't a world where a defendant could act willfully and knowingly in parading inside the Capitol where he didn't know that he wasn't allowed to be inside. That's a -- one is a factual predicate for the other. So without that information, there couldn't have been a factual basis for the plea, and for that reason independently, the Court was right to reject it.

I think that's all that I have, Your Honor, unless you have any questions for me.

THE COURT: All right. Thank you, Mr. Boylan.

MS. HERNANDEZ: So, Your Honor, I don't think any

of us in here --

THE COURT: Ms. Hernandez?

MS. HERNANDEZ: If the burden's on me, then I should be able to --

THE COURT: All right. But, you know, let's try and stick with some decorum here.

MS. HERNANDEZ: So the Court is interpreting the facts to say that there was no additional plea negotiation. We don't know, and the Court would not have become privy to that, because as the Court already noted, you're not a part of those negotiations. So as the record stands, the only way we could know that is if we brought Ms. Jacob here and had her testify, which is not appropriate, I don't think.

Second of all, I don't believe that the government's statement that a defendant cannot act knowingly and willfully -- and again I point to the jury instructions. The Court never told the jury he never had to know he was not allowed in the Capitol. "Knowingly and willfully" modifies the terms "parading inside the Capitol."

If you read the *Nassif* opinion that was issued yesterday, the D.C. Circuit appears to say that the congress's intent in passing the statute is not to have any parades or demonstrations inside the Capitol. It says nothing about whether people who come in with permission or not permission -- and in fact that's the case.

We've had a number of events at the Capitol where people, during the Kavanaugh hearings, people sat during -- protesting immigration law. People come and sit in the lobby in the Rotunda, and they're carted away. They come in through metal detectors and everything else, and they are told to leave.

So they entered the Capitol knowingly -- I mean they were admitted into the Capitol after going through security, and they're still arrested or, you know, directed out and they do and I believe 5104, which is why it's a petty offense, 5104 the knowingly and willfully only modifies the terms parading -- those three terms, and it modifies "in the Capitol."

It doesn't say anything about knowing that you weren't admitted into the Capitol. And again, my view is that even if I go through security, even if I got a letter of invitation from a member of Congress, I cannot parade in the Capitol because that violates 5104.

THE COURT: All right. Thank you.

At Mr. Vo's March 2022 plea hearing, he was extended a plea agreement as to Count 4, Parading, Demonstrating, or Picketing in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(G). That statute states the following: "An individual or group of individuals may not willfully and knowingly parade, demonstrate, or picket in any of the Capitol buildings."

As indicated in the hearing transcript, when I reiterated the count that Mr. Vo intended to plead guilty to, he first

asked: "And what is defined by 'parading'?" This was the first indication to the Court that Mr. Vo, although he had claimed otherwise prior, did not fully understand what he was about to plead to. I then allowed Mr. Vo a sidebar with his counsel, Ms. Jacob.

When we returned, Mr. Vo indicated that he wanted to proceed with the plea. However, it was clear to the Court that there were remaining concerns when I tried to establish the "willful and knowing" element of the charge.

I asked Mr. Vo, in looking at the relevant paragraphs in 8 to 12 of the statement of offense, whether he knowingly and voluntarily admitted to all the elements of the offense to which he's pleading guilty to. Mr. Vo answered: "Yes, I do." 8 through 12.

But this broad response was in conflict when the Court attempted to receive more direct responses from Mr. Vo with its questions. As soon as the Court began to directly question Mr. Vo as to some of the information and factual admissions in the statement of offense, Mr. Vo balked.

For instance, the Court first asked: "On January 5th or 6th of 2021, did you travel with a family member from Bloomington, Indiana, to Washington, D.C., for the purpose of protesting Congress's certification of the Electoral College results on January 6, 2021?"

Instead of answering in the affirmative, Mr. Vo rephrased

the question and answered: "I was there to be a part of the Trump rally and to -- my purpose of being there was to voice my concern for the election irregularities." After the question at issue here was asked with regard to whether he knew he did not have permission, Mr. Vo responded that the police gave him no indication that he couldn't enter in.

I then told the parties that there were some red flags here. And again, those red flags arose because of Mr. Vo's disagreement with the -- some of the elements, but also the information contained in the statement of offense, to which he had signed and stated, under oath, that he agreed. And yet when questioning him more closely, it was clear that he didn't agree.

And so I believed it was incumbent upon me to stop the proceeding, allow Mr. Vo to discuss this further with his lawyer, and I guess if necessary, the lawyer could enter into negotiations with the government, but that my role had to be halted because of the red flags that I saw as arising in that hearing.

I did not reject Mr. Vo's plea; rather, after witnessing confusion on his part, I allowed him more time to discuss with Ms. Jacob before making a decision. As I said in that hearing to Mr. Vo: "I really don't want you to stifle any questions or concerns you have. This is important, and it's your life."

And then subsequently the plea hearing was continued, and subsequently Ms. Jacob indicated that they did not want to go

forward with the plea hearing. They wanted to reject the plea offer and convert the plea hearing to a status date, as the email indicates. For all those reasons, the defendant's motion to accept Mr. Vo's guilty plea and vacate the remaining counts is denied.

With regard to the motion to stay, as I indicated before, I'm going to deny that motion. Mr. Vo's trial -- I heard you partially on that issue, Ms. Hernandez.

Mr. Boylan, did you want to respond to that?

MR. BOYLAN: Yes, Your Honor. The issue of *Griffin* doesn't affect the sentence that will be set down here today because, under 3553(a), those factors won't change.

THE COURT: Well, I have to decide that, don't I.

MR. BOYLAN: That's true, Your Honor.

THE COURT: All right.

MR. BOYLAN: But the sentence that the government requests here is 11 months. It doesn't exceed the 12-month statutory maximum for the two counts that wouldn't be affected by the *Griffin* decision. So in any event, the Court can issue a ruling, and the government would request that the Court issue a ruling that the sentence would be the same regardless of the decision in *Griffin*. For that reason, there's no reason to stay the sentencing.

THE COURT: All right. Ms. Hernandez.

Ms. Hernandez, before you begin, I'll just tell you that

I believe that I would have to make that finding.

MS. HERNANDEZ: Correct. And, in fact, the whole sentencing memo is about the guidelines, which would not apply -- you know, the --

THE COURT: Right. But the statutory maximum would.

MS. HERNANDEZ: Correct. But again, the government didn't cite any particular case for that proposition. But as a matter of fact and law, it makes no sense, in my opinion, that the Court would sentence exactly the same if you had a defendant with four criminal counts versus two counts.

THE COURT: Well, if I'm sentencing -- I mean, in the three other four-count misdemeanor trials that I've had, my sentence has always been to run concurrently.

MS. HERNANDEZ: Correct. But again, even the government's -- as I cited from the government's -- in another context, the government has requested -- has sought straight probation in the petty offense cases, in like seven cases. I don't believe they've ever asked for probation or recommended probation in the one-year misdemeanors. So I don't think that, as a matter of fact, that's accurate.

THE COURT: I think that goes to the disparity argument.

MS. HERNANDEZ: Well, again, I disagree with the government's analysis. They didn't cite a case, so I couldn't come back with a case. And I think as a matter of fact, we all understand that when judges decide -- every factor, the 3553

factors changes if you're sentencing somebody on four factors rather than two, I believe. And I believe the Court -- but again, it's Your Honor's finding.

THE COURT: I think I'd have to decide whether my sentence would be any different without the 1752 counts.

All right. So I'm going to deny that motion because the sentence I intend to impose today, regardless of Mr. Vo's convictions under 1752, in consideration of the evidence that I heard at trial -- remember, this is not a case of a plea. This is the case of the evidence I heard at trial.

My sentence would be the same had Mr. Vo been convicted solely as to counts 3 and 4, even if he weren't convicted of counts 1 and 2, based on the evidence I heard at trial as well as all the factors I have to consider under § 3553(a).

All right. Now, in preparation for the sentencing, I have received and reviewed the presentence report and the sentencing recommendation from the probation department, as well as the following documents: the government's sentencing memorandum; the defendant's sentencing memorandum and corresponding character letters, which are ECF Nos. 146 to 148; and the latest pretrial compliance report, which was filed on April 5, ECF No. 145; as well as the government's filing this morning, which I believe is ECF No. 151.

So let me begin first with the presentence report. The final presentence report and sentencing recommendation were

filed on April 3, 2024.

Mr. Boylan, does the government have any objection to any of the factual determinations as set forth in the presentence report?

MR. BOYLAN: No, Your Honor.

THE COURT: Are you expecting any evidence or any witnesses for this hearing?

MR. BOYLAN: No, Your Honor.

THE COURT: All right. Mr. Vo, are you fully satisfied with the services of Ms. Hernandez?

THE DEFENDANT: Yes, I am.

THE COURT: Do you feel you've had enough time to talk with her about the probation department's presentence report as well as any of the papers that have been filed in connection with this hearing? Have you had enough time?

THE DEFENDANT: I wish we had more time, Your Honor.

THE COURT: Do you need more time? I mean, we're going to go forward with sentencing today, but I can break if you need to talk with her. This case has been pending since 2021.

THE DEFENDANT: Yes. Your Honor, like, we've just been working, working, working the past few days just to like, you know, put together everything that we want to say, and it's been -- I don't know -- like even up to right before court we've been trying to scramble and address --

THE COURT: What are you saying, Mr. Vo? Do you want to talk to your lawyer some more today?

THE DEFENDANT: Yes, I do.

THE COURT: How much time do you need, Ms. Hernandez?

MS. HERNANDEZ: Well, Your Honor, he was preparing a statement of facts he wanted -- I'm sorry -- he was preparing a letter for the Court, and we were editing as we --

THE COURT: See, this case has been pending, as I said, since 2021. We have had -- I can't even begin to count the motions for continuances we've had for statuses, for plea, for a trial date, change of counsel, the motion to stay the sentencing, to a point where I think it's not unfair for the Court to perhaps suspect that there is some effort here to delay the final disposition of this case. And I hesitate to raise it, but that's what it looks like to me. And I'm not delaying the sentencing another day.

MS. HERNANDEZ: So, Your Honor, I guess it's not fair to Mr. Vo. The truth is, I came in -- all of you were here. The Court heard the evidence. The government heard the evidence. I didn't.

THE COURT: That's not going to change. You weren't the lawyer for the trial.

MS. HERNANDEZ: The government has been -- I have asked for multiple items. They have provided me with the trial exhibits. It's difficult in any case to come in after a trial

because there was evidence that came in, there were exhibits that came in, there was testimony -- there were all sorts of things that I was not privy to.

In essence, I've had to prepare for sentencing -- the preparation that is required for a sentencing when there's been a trial and counsel was not trial counsel is almost as extensive as what is required to go to trial because, as I say, exhibits were introduced. The government refers to them in the memo. The PSR refers to them. So I then have to go -- I talk to the defendant, and he says to me X, Y, and Z, so I then have to pull transcripts. I then have to pull --

THE COURT: Let me stop you. The thing is, the facts have already been determined. A jury heard evidence over several days and found Mr. Vo guilty on all four counts after hearing the evidence.

I've looked at your filings. You take dispute with a number of matters to which the jury already ruled. We're not relitigating the facts of this case. Mr. Vo can disagree about what happened in this case; but I sat here and heard the evidence, and a jury sat there and heard the evidence. They made their findings, they rendered a verdict, and I was able to determine the evidence as well.

So we're not going to relitigate -- Mr. Vo's dispute or disagreement with what the jury found or how the government argued evidence is really not relevant for purposes of

sentencing.

MS. HERNANDEZ: That's just -- I don't believe that's accurate. The jury was not asked to find did he say this, did he say that. The jury was asked to find was he guilty of this, was he guilty of that. That's a completely different inquiry than the government quotes certain items that he said -- and one in particular, if they're quoting from a different text, I don't know that; but in one in particular the government quotes that he said something, and they left out -- they left out the word -- as I read -- I had to go looking for the exhibit, and the exhibit said "apparently" my mom and I did something or other, and then "LOL." As quoted in the presentence report, the "apparently" is left out and the "LOL" is left out. Obviously --

THE COURT: But I saw the exhibit. I mean, the presentence report's recitation of the statement of the facts is taken from documents the probation office got. This is a case that went to trial, and therefore, that's neither here nor there.

MS. HERNANDEZ: No, Your Honor. The presentence report requests that a defendant if he wants to challenge a fact, and the fact of what he said was not something that the jury decided. And as I say, the government quotes it -- unless they're --

THE COURT: Slow down. Please.

MS. HERNANDEZ: Maybe they're looking at different

exhibits.

THE COURT: I have before me your lengthy sentencing memorandum. I have your objections to the presentence report. So I think I know what your objections are. If you need some more time to talk with your client about what he wants to say or something, I'll give you till 3:30.

MS. HERNANDEZ: I would like to talk to him about what he wants to say to the Court.

THE COURT: I'm actually going to give you to 3:15, because it's a quarter to 3:00 now, and we've been here since two o'clock.

MS. HERNANDEZ: Paragraph 26 of the presentence report says, in two different exchanges on Instagram, Defendant Vo said that he and his mother stormed the Capitol. I then went and asked the government for the exhibits. He sent them to me. The exhibit that I believe refers to that includes what I just told the Court that says "apparently."

Now, when somebody says apparently something happens, it generally means that's not what I did; that's what people are saying. So I believe that's a statement of fact that needs to be corrected because of the way the plea agreement -- you know, the way the law on presentence reports, if I don't object, then the Court can use anything --

THE COURT: And what I'm saying to you is I'm using the evidence that I heard at trial. But frankly, Ms. Hernandez --

and I'm going to give you till 3:15 -- you might be better served and your client might be better served talking about some of the things he's said since his trial.

Mr. Boylan.

MR. BOYLAN: Your Honor, I think there's been a statement that the government's misrepresenting the evidence, and I don't take that lightly. And it's completely unfounded. The defendant had two separate text messages. The one that Ms. Hernandez refers to is trial Exhibit 461A, where the defendant said, "Wow, apparently we stopped the vote count for a bit." And the one that's referred to in the PSR is 501A: "My mom and I helped stop the vote count for a bit," just to clear that up.

THE COURT: That's my recollection.

And again -- you know, Ms. Hernandez, far be it from me to tell you how to do your job, but there are a lot far more troubling things about this case that I'm troubled by than whether you disagree with the specific wording of an exhibit at trial.

MS. HERNANDEZ: Again, the prosecutor (inaudible) --

THE COURT: Okay. Stop it. No. We're not going back and forth here.

MS. HERNANDEZ: I was talking about paragraph 26, which is a different statement than what he's describing. And again -- and this is the problem with coming in at the end of

the case, Your Honor. The presentence report makes an assertion, but it doesn't refer to the particular exhibit. And I admit I wasn't at trial, so I have to go looking to see if there's an exhibit that matches.

If the statement had said exhibit blank says Y and Z, I can either say, yes, that's what it says, or no. But because of the case law, if I do not object to these factual -- as the Court well knows, if I do not object, then the Court can accept everything in this PSR --

THE COURT: That may be, but again, Ms. Hernandez, there are battles you have to fight. Again, this is not a case where we're proceeding to sentencing after a plea. There was a trial. There was a full evidentiary hearing. I heard the evidence. I am frankly not -- I don't need the factual recitation set forth in the presentence report.

I heard the evidence in this case, and there are more problems that Mr. Vo needs to deal with and address at this hearing than discrepancies between the presentence report and what you believe the evidence was at trial. There will be the problems that he has including some of the statements he has made since his conviction in this matter.

So I'm giving you till 3:15. You decide what you want to talk about at sentencing; but we're doing the sentencing today, and we're not going past 4:30.

MS. HERNANDEZ: I understand that. If the Court

has some questions that it wants to have Mr. Vo answer --

THE COURT: No. I mean, Mr. Vo has seen the government's sentencing memoranda. Mr. Vo is well aware of the statements he's made and the conduct he's engaged in since his conviction in this case. I don't need to give you preset questions now.

MS. HERNANDEZ: Mr. Vo is not self-representing, Your Honor. It puts me in a very bad position to say Mr. Vo knows.

THE COURT: Well, I believe the government has addressed Mr. -- I'm not talking about anything I haven't been presented with by the government, so you know what's in the government's sentencing memorandum.

(Recess from 2:51 p.m. to 3:19 p.m.)

MS. HERNANDEZ: Your Honor, thank you for giving us time. I would like more time to spend with him. This is the first time I'm meeting him in person, and as I've explained, I think I was appointed January 30th of this year, I can't tell the Court what time I started getting the transcripts, and the government also provided me with trial exhibits at my request, but there's a lot of materials. This is the first time we're meeting. We've had a number of conversations. It's not delay. As the Court knows, we're all very busy in this courthouse these days.

THE COURT: I think it is delay, Ms. Hernandez, and

I'll tell you why: I suspected that this might be the issue when I got back to resume the hearing, and I asked my law clerk to pull out a list of all the continuances and delays that I've been asked to agree to since this case has come in. And again, I'm not even -- this isn't even exhaustive:

I continued an October 2021 status conference to December 2021. That was continued several times.

In March of 2022, we vacated a status conference date and scheduled a plea hearing for March 18.

On March 18, after that plea hearing broke down, we continued the plea hearing to April 27.

On April 22, I converted that plea hearing, at the request of defense counsel, to a status date.

On May 31, I set a pretrial order for trial set to commence on November 9, 2022.

On August 16, 2022, I continued the trial date to February 2023.

In November of 2022, I granted in part and denied in part a motion to continue and modify conditions of release.

I permitted Mr. Vo to travel outside of the country for a cruise in February of 2023.

Eventually, trial was rescheduled to June of 2023.

In April of 2023, I granted another motion to continue the trial to September 2023.

There was an oral motion to continue trial on September 18

that I denied.

And then we had trial. And then I scheduled -- after the trial was concluded, I scheduled sentencing for December 18, 2023.

In November of 2023, I received a motion from the defense to continue the sentencing for Mr. Vo to conduct his PSR interview and for medical treatment. I granted that motion, and sentencing was rescheduled to February 20, 2024.

On January 3, 2024, Mr. Vo filed a motion requesting modification of his pretrial conditions of release to allow him to travel. I denied that motion.

After Mr. Vo's trial counsel filed a motion to withdraw, we then had to reschedule the sentencing till today.

So Mr. Vo was convicted last year, and we are now in April. And I understand that you may not have had a chance to meet personally. That's between you and your client.

And I will say, Ms. Hernandez, your focus on the materials at trial is one focus. And you're a defense attorney, I'm not going to tell you how to do your job, but again, this is not a sentencing after a plea in which case you need to talk about -- this is a sentencing after a trial.

I saw the evidence. I'm able to judge the evidence. A jury returned a verdict on the evidence. And so as I have said, my concern lies with factors such as acceptance of responsibility, remorse, statements that your client has made

since his conviction, statements he's made after this matter after he was -- after January 6. Those are all issues.

The fact that he committed this offense while he was admonished to be on good behavior in a prior offense, those are all the things that really factor into my determination of the 3553(a) factors. I'm not going to sit here and hear you argue about how I should, you know, interpret the evidence that the jury and I heard at trial.

MS. HERNANDEZ: What the Court is saying makes it even more important that I review the evidence that the Court is considering and that the government is arguing --

THE COURT: Well, you have had time to do it, and I'm not going to give Mr. Vo additional time because, frankly, delay seems to be the order of the day here.

MS. HERNANDEZ: So, Your Honor, what I would say is the following: The motions to continue were filed by counsel, federal defenders in this case whom I assume that the Court respects. So --

THE COURT: I do.

MS. HERNANDEZ: -- if they filed -- as I do. I'm a former federal defender. If they filed a motion, it was for good grounds. Also, the attorney who originally represented Mr. Vo was not the trial attorney. I don't know what happened there. In other words, Maria Jacobs --

THE COURT: Ms. Hernandez, if you're going to file a

motion for ineffective assistance of counsel, that's after the sentencing hearing.

MS. HERNANDEZ: If the Court would allow me, that's not what I'm saying. What I'm saying is some of those delays may be because of change of counsel, and we don't know why they changed counsel. As I noted, everyone in this courthouse is extremely busy. Everyone. From the clerks, to the Court, to every lawyer. I'm working -- I have a pretrial conference --

THE COURT: Ms. Hernandez --

MS. HERNANDEZ: I'm just saying, if the bottom line is if it were a plea my work would be less problematic because everything that would have been presented to the Court would be presented, I am driving blind.

THE COURT: Then you should have filed a motion to continue like all those other motions that were filed that I granted. You don't come in here and -- we've been talking for an hour and 20 minutes, and now you want to continue the sentencing?

I'm telling you, Ms. Hernandez, that I don't doubt your word as an officer of court and as a respected attorney in this courthouse, but I sense, based on everything that has transpired before you were counsel and since, that Mr. Vo is doing every single thing he can to avoid being sentenced for his behavior and conduct for which a jury has found him guilty.

MS. HERNANDEZ: That is not my opinion. That is not

my opinion. Some of the issues with respect to -- I asked the government to give me exhibits after I read the presentence report. Maybe I should have done it beforehand.

THE COURT: You should have filed for a motion to continue if you weren't ready.

MS. HERNANDEZ: Well, the Court --

THE COURT: No. You are just asking for a continuance an hour and 20 minutes into the hearing, and I'm not going to give it. If there are things Mr. Vo wants to address, he can address them when he -- he can address them to the Court.

MS. HERNANDEZ: If I could put some things on the record, Your Honor. So I think the Court made it very clear when I first came into the case. You spoke fairly similarly to what you're speaking now, which is that you believed there were a lot of delays in this case. You made that very clear. You weren't prepared to consider any more continuances. I heard you.

And so I tried to -- as I do in every case, I try to do all the work that I can in the hours that there are. And I think I've done most of the work. The reason I'm asking for a lot more time is because Mr. Vo is preparing a statement that he wants to provide --

THE COURT: Mr. Vo has had seven months to prepare a statement.

MS. HERNANDEZ: Correct. And --

THE COURT: And he wasn't so pressed for time that he

didn't ask for modifications of conditions of release to be allowed to travel, again.

MS. HERNANDEZ: So the issues became more clear once the presentence report gets filed. The final presentence report was filed seven days ago, as the rules require, but that's when everything really gets focused in terms of what the Court is listing. So, yes, I guess he could have written the statement in September, but he didn't.

With respect to his medical issues, I have a letter from a doctor who had scheduled the --

THE COURT: Medical issues now?

MS. HERNANDEZ: No, no. You mentioned that there were -- that one of the continuances was based on --

THE COURT: I granted that continuance.

MS. HERNANDEZ: Correct. So I'm just telling you --

THE COURT: I don't need to go over it again. I granted the continuance.

MS. HERNANDEZ: What I'm saying, that was not a phony excuse. I have the letter. I've seen the letter from the doctor about the cyst, and I saw a photograph of him with the cyst. That's all I'm saying.

With respect to his request for new lawyers, that arose out of the problems with the global discovery. As the Court -- as I believe happened, when trial started in this case, the defense counsel informed the Court that they had not had an opportunity

to review the global discovery.

THE COURT: Ms. Hernandez, please don't spend another moment of time -- we're going forward. I suggest you use whatever time you have left today to deal with -- we're going forward to sentencing.

MS. HERNANDEZ: The Court has made a number of comments attributing delay, intentional delay, to Mr. Vo, and I believe I have a responsibility to address the accusations that the Court has made. The reason the relationship between Mr. Vo and his trial counsel, Eugene Ohm, who I know and like very much, and the other AFPD, was over the global discovery.

My understanding is he came; he wanted to review it. At trial the Court chastised the defense counsel when they said they had not reviewed it. The record reflects that the Court was very upset with them.

Mr. Vo is sitting there hearing the Court chastise his lawyers about not doing something, which as a layperson he believes is something that they were supposed to do, and then that he came -- he wanted to review global discovery he was never allowed to review.

So all those issues came to a head, and I believe what Mr. Ohm told the Court was that they had to withdraw because there was some concern that Mr. Vo was suggesting that they had failed to do what they were required to do. Again, part of that understanding that Mr. Vo has is what he observed while

the trial was ongoing, which is that the Court said how can you come in here and say you haven't had a chance to review the discovery, and you chastised them for it.

THE COURT: Ms. Hernandez?

MS. HERNANDEZ: Yes.

THE COURT: I admire your diligence, I really do. And your zeal. It's in the finest tradition of public defenders, of which I was one. But you are right now failing to see the forest for the trees. We have spent an hour and a half talking about things that don't really bear on this sentencing.

I've indicated where I have concerns. I've indicated what my focus would be. We are now 90 minutes in, and we have not really begun the sentencing. I don't doubt you have matters that will go to a 23-110 or an ineffective assistance of counsel motion. I don't have doubts there are issues -- I have granted numerous motions to continue.

I'm simply putting on the record that this case is old. There have been numerous motions to continue, and we came in here -- you filed a bunch of motions. None of them asked for a continuance. And I'm not so set in my position that I wouldn't have considered whatever factors you raise, as I've said every other time when I've granted a motion to continue, even when I've done so reluctantly. But you cannot come in --

MS. HERNANDEZ: That's my fault.

THE COURT: -- an hour into the hearing saying you

need more time. We're going forward. So I suggest you let me continue with the hearing.

MS. HERNANDEZ: Correct. So Your Honor asked whether he wanted more time, and he said he did. I have been working with him. He's been preparing a statement that he wanted to talk to the Court -- that he wanted to present to the Court and that he wanted to submit to the Court, and that's what we're doing there.

THE COURT: I allowed Mr. Vo time to consult with you regarding the sentencing. I didn't specify what that was for, but I will tell you this: Mr. Vo can address the Court, as he has a right to do, at the conclusion of your allocution and the government's allocution, and I will hear him then.

But we are not -- I am not continuing this to give him additional time when he has had since September of 2023 to prepare whatever statement he wants to prepare. He can speak to the Court, as he has a right to do, at the conclusion of the allocution.

MS. HERNANDEZ: Correct. And he has a right to consult with his counsel and get advice from his counsel.

THE COURT: And he has had that.

MS. HERNANDEZ: Well, I am telling the Court that I haven't had enough time to review the statement that I'm trying to help him with.

THE COURT: So when were you planning on raising this

issue of not having had enough time to review the statement? When was that going to come up?

MS. HERNANDEZ: As soon as you asked him if he -- we've been working on it --

THE COURT: So you didn't know. You didn't know your client didn't have enough time till I asked him midway through the hearing. Is that what you're saying?

MS. HERNANDEZ: No. I guess it's my fault, Your Honor. If the Court sets a date, I tend to try to comply with it, and I tend -- I tend -- I ask for a lot of continuances, but again I know what the Court -- what the Court expressed today about your dissatisfaction with the number of continuances.

THE COURT: My frustration.

MS. HERNANDEZ: Correct.

THE COURT: Yes.

MS. HERNANDEZ: I perceived that same -- at the initial appearance, I perceived that the Court had those same concerns, and so I have tried not to ask for a continuance. As I said when we started here, I didn't reply to the government's opposition to the continuance because it appeared to me pretty clear that the Court was not going to grant it, so why waste time.

I'm not asking you to continue the sentencing here. All I'm saying is I would like, I don't know, another half hour. I understand it's a problem for everybody. I'm just telling the Court --

THE COURT: I understand.

MS. HERNANDEZ: I'm just explaining to the Court where we are.

THE COURT: And one of the things I always have to weigh in making these determinations is a prejudice to the parties, and I can tell you that I find your statement regarding Mr. Vo's desire to present a statement to the Court, any prejudice that will accrue to Mr. Vo for having less time to talk with me about it will be ameliorated and lessened by the fact that Mr. Vo is free to speak to this court, as he has a right to do, at the end of the allocution. And that's all I'm doing. We are going forward. You have made your record.

All right. With regard to the presentence report, per pages 29 to 30 of the presentence report and the defendant's sentencing memorandum, there are a handful of outstanding defense objections.

I assume, Mr. Boylan, that you don't have any objection to the factual recitation set forth in the presentence report?

MR. BOYLAN: That's right, Your Honor.

THE COURT: Okay. Now --

MS. HERNANDEZ: The factual recitation set out --

THE COURT: Ms. Hernandez --

MS. HERNANDEZ: -- in the --

THE COURT: Ms. -- no, no. You know what?

MS. HERNANDEZ: May I respond?

THE COURT: You may respond, but you need to observe the rules of the courtroom. I'm pretty loose -- I mean, you know, I'm not going to *not* let people speak, Ms. Hernandez, but this is not just shout out when you feel ready.

MS. HERNANDEZ: Well, the presentence report, as stated by the probation officer, the factual recitation, the factual section is taken from the government.

THE COURT: I understand.

MS. HERNANDEZ: Explicitly. The probation officer said that.

THE COURT: When I need to hear from you, Ms. Hernandez, I'll ask you.

Per pages 29 to 30 of the presentence report and the defendant's sentencing memorandum, there are a handful of outstanding defense objections. Paragraphs 12 through 28 deal with the offense conduct. Defense counsel objects to various information contained in these paragraphs as noted in document No. 135, which was filed on CM/ECF on March 25, 2024.

In summary, the defendant objects to the allegations that are not relevant to his conduct and intent on January 6, 2021, and the use of statements that were not presented at trial including out-of-court statements made by unknown persons.

The defendant further objects to the use of statements made by him which he states were expressions of political opinion that are protected by the First Amendment. In a supplemental

filing, which is ECF No. 136, the defense provided an alternate version of the offense conduct which has been incorporated into the presentence report at paragraph 32(a).

As noted in the report, the probation office obtained the information in the Offense Conduct section from the memorandum provided by the government to the probation office dated October 24, 2023, and the Criminal Complaint, which is ECF No. 1, filed on July 20, 2021.

The Court, having heard the evidence at trial, believes it is best positioned to determine factual matters concerning the representations made at trial. Questions of fact are to be resolved by a trier of fact; in this case, a jury. This court held a week-long jury trial in September of 2023 regarding Mr. Vo's conduct on January 6.

After short deliberation, the jury returned a verdict of guilty as to all four counts, meaning that the jury found Mr. Vo liable based on the government's evidence presented at trial. Therefore, I'm going to overrule the defense objections and accept the government's recitation of facts which were proven and accepted by the jury at trial.

With regard to paragraphs 32 and 48 through 50, defense counsel objects to the statements that the defendant did not demonstrate acceptance of responsibility, arguing that the defendant sought to enter a guilty plea on March 18, 2022, to Count 4.

The probation office's response is that the docket reflects that on March 18 the defendant's plea hearing was continued, and on April 22, the defendant's plea agreement hearing was converted to a status conference. Ultimately, the defendant elected not to plead guilty and to go to trial, which was his right, and I do not believe in punishing defendants for exercising their constitutional right to jury trial.

So the defendant is not going to be given any greater punishment for proceeding to trial because he has every right to put the government to the test, but the defendant will not get acceptance of responsibility for -- and it has nothing to do with his going to trial. The Court finds the defendant has not accepted responsibility based on the statements he made after the events of January 6 and the statements he has made since his conviction in this case.

The Court reminds the parties that during this trial, the Court was informed by Mr. Vo's pretrial compliance officer in Indiana that Mr. Vo was violating his conditions of release by -- Mr. Vo was ordered to stay away from the District of Columbia except for court appearances. He was here for his trial. He was still under his pretrial release conditions, and after trial, every day, he was going down to the jail to take part in the protests and rallies for the so-called January 6 "hostages" that were taking place down at the jail.

I want to make it very clear that the Court is not finding

that Mr. Vo doesn't have responsibility because of his political views. Mr. Vo was in violation of the conditions of his pretrial release, and Mr. Vo is fortunate that the Court did not step him back the minute I found out he was violating his conditions of release.

Moreover, Mr. Vo's statements since his conviction in this case convinced this court that he has not accepted responsibility, nor has he shown any remorse for his part and his role in the riots on January 6.

Pursuant to sentencing guideline §3E1.1 note 2, the acceptance of responsibility adjustment is not intended to apply to a defendant who puts the government to its burden of proof at trial. The sentencing judge is in a unique position to evaluate a defendant's acceptance of responsibility. Therefore, no revisions were made.

This is the response of the probation office to the presentence report pending the Court's resolution, and my resolution is that Mr. Vo has not demonstrated, based on the record before it, any acceptance of responsibility in this matter.

Mr. Vo's assertion that he sought to plead guilty and went to trial only to "assert and preserve issues that do not relate to factual guilt" the Court finds nothing to be more than a creative argument. Not only do the sentencing guidelines dictate that I don't have to find that that adjustment applies to Mr. Vo

as his case proceeded to trial, but also I said, more importantly, from his actions during and following his guilty verdict that he does not hold any remorse or responsibility for his actions.

With regards to paragraph 52 to 54, defense counsel objects to the calculation of Mr. Vo's criminal history points, asserting that none of Mr. Vo's prior convictions should count under sentencing guideline §4A1.2(c)(2), as they are misdemeanor and/or petty offenses involving marijuana.

Defense counsel further objected to the information contained in the offense description related to possession of firearms since there were no charges filed in relation to the firearms offenses. Probation office responded to that matter, and the Court will adopt the probation office's recommendation that sentencing guideline §4A1.2 is applicable, as Mr. Vo's three prior sentences meet the guidelines provisions and are not excluded under the guidelines application note 3.

The Court notes also that Mr. Vo's participation in the riots, and therefore his participation in the criminal conduct on January 6, was done at a time when he was under admonition in a prior case to be on good behavior. And while that may not rise to the level of committing a crime on supervised release, the Court certainly notes that Mr. Vo had a heightened responsibility not to be engaging in any law-breaking since he was under an admonition of good behavior and nonetheless flew here and participated in the riots in the Capitol, and therefore

I do not believe that it would be appropriate to disregard §4A1.2's application.

Furthermore, as to the defense counsel's objection to the information with regard to firearms, while it's true that Mr. Vo was not charged with any firearm offenses, I can, if I choose to, take into consideration any information concerning the background, character, and conduct of the defendant.

I'll be perfectly clear, Ms. Hernandez, that I generally don't factor in uncharged conduct, and I'm not factoring the firearm information in my sentencing decision at all. He wasn't charged with it, as you know the reason he wasn't charged with it, and it bears no role in my determination.

With regard to paragraph 99, defense counsel objects to the calculated sentencing range. The defense argues that pursuant to defense counsel's sentencing guidelines calculation, the appropriate guideline range should be zero to six months. For the same reasons that I've said before which I'm including the prior convictions, I disagree with that guideline range.

MS. HERNANDEZ: The decision by the D.C. Circuit yesterday eliminates one of the arguments as to the base offense level.

THE COURT: One of the government's arguments?

MS. HERNANDEZ: No, my argument asking for application of 2B, so that no longer applies.

THE COURT: And I was -- that's correct. The defense

disagrees with the government's assertion that guideline §2A2.4 applies to defendant's conduct, which are the bases of misdemeanor offenses for which he stands convicted. Defense also disagrees with the government's assertion that defendant willfully violated the conditions of his pretrial release.

Probation office has updated paragraph 99 of the report to reflect the amended sentencing guidelines in response to the government's objections with respect to the use of guideline 2A2.4 as the prevailing guideline.

As the government indicated in their filing yesterday, pointing to *United States v. Nassif*, and as Ms. Hernandez has indicated, the D.C. Circuit affirmed the district court and held in *Nassif* that it correctly applied guideline §2A2.4 to defendant's conviction under 1752(a)(2). Therefore, the Court will overrule that objection and proceed with §2A2.4.

Paragraph 30 of the presentence report states that defendant, in his response to the draft presentence report, emphasized that he did not actually cause any of the alleged damages to the Capitol and therefore asserts he's not liable for restitution.

Interestingly enough, when Mr. Vo sought to enter into the plea which he's now arguing I should somehow force acceptance of, he agreed, as part of that plea offer, to pay restitution for damage caused to the Capitol. So it's an interesting position he's taken now and one with which I am going to disagree.

Mr. Vo does not have to be personally responsible for the destruction to be liable for restitution. Yes, Ms. Hernandez.

MS. HERNANDEZ: So the plea agreement in the January 6 cases, part of the plea offer requires defendants to agree to $500 restitution.

THE COURT: And Mr. Vo had agreed to that.

MS. HERNANDEZ: Correct. But the plea agreement is not in force.

THE COURT: Are you saying I can't order $500 in restitution or that I shouldn't?

MS. HERNANDEZ: I'm saying both. There's case law on when restitution can be, and I cited the case --

THE COURT: So are you saying all the plea agreements that provide for $500 in restitution for misdemeanor cases are somehow illegal?

MS. HERNANDEZ: No. I'm saying that a party can agree to something that is not required by law or authorized by law. And those plea agreements, there's been disputes about that, but there's no question that the parties agreed. And I believe some of the judges have indicated that to the extent that's part of the bargain in the plea agreement, it's permissible to impose it. But what I am objecting to under what I believe to be relevant binding case law is that the Court -- that in order to impose a restitution award, it has to be damages caused -- directly caused by the defendant.

THE COURT: Okay. Mr. Boylan, regardless of whether I accept that argument --

You certainly don't disagree that I could impose a fine on Mr. Vo. Is that correct? I know what Probation has said with regard to his ability to pay a fine because he has court-appointed counsel, but are you suggesting that the Court could not impose a fine in this case?

MS. HERNANDEZ: No. The Court has different findings to make for a fine.

THE COURT: Mr. Boylan, do you want to say anything further on this?

MR. BOYLAN: Your Honor, I'll be frank. I'm not terribly familiar with the case law behind Ms. Hernandez's assertion. I know, as Your Honor has said, that restitution has been ordered in a litany of January 6 cases. I think the Court would be on firm ground to order it in this case.

THE COURT: All right. Thank you. I'll deal with that at the time I impose sentence.

Mr. Vo also objects in his sentencing memorandum to the use of the JISN data found in paragraph 134 of the presentence report. The JSIN data's not pure speculation, as defendant asserts, but rather an accumulation of data for similarly situated defendants.

Moreover, Mr. Vo conveniently overlooks that, under this language on the JSIN website, the United States Sentencing

Commission states the following: The "sentencing data provided does not reflect the Commission's recommendation regarding the appropriate sentence to be imposed or represent the Commission's official position on any issue or case."

"If the court does consider the sentencing information provided by JSIN as part of its consideration of the factors in 18 U.S.C. § 3553(a) when imposing sentence, it should do so only after considering the properly calculated guideline range and any applicable departures provided for in the *Guidelines Manual*," that this is one factor of many that the Court *may* take into consideration in sentencing an individual defendant, and it does not outweigh any other § 3553(a) factors.

MS. HERNANDEZ: Your Honor, the argument is not that the data is always inappropriate. It's just that because in this particular case the guideline applies to a range of offenses, from one-year misdemeanors, as here, to misdemeanors that carry -- I'm sorry -- to felonies that depending on the --

THE COURT: I'll make it easier on you, Ms. Hernandez. I'm not considering it.

MS. HERNANDEZ: I'm just saying it's not like --

THE COURT: Okay. Now, with regard to determination of the sentencings options, as the PSR indicates, the guidelines only apply to counts 1 and 2, which are Class A misdemeanors. Counts 3 and 4 are Class B misdemeanors for which the sentencing guidelines do not apply. I've already stated that my sentence

is going to run concurrent, and I've stated for the record that my sentence would be no different had Mr. Vo been convicted only of counts 3 and 4, which are nonguideline offenses.

The guideline as to Count 1 and 2 -- the guideline for Count 1 is §2B2.3, and the guideline for count 2 is §2A2.4. Pursuant to §3D1.2(b), those counts are grouped as they involve the same victim or one or more acts or transactions.

As the PSR states, for counts grouped under §2D1.2(a) to (c), the offense level applicable to a group is the offense which produces the highest offense level. Here, §2A2.4 produces the highest offense level, which applies to Count 2 and has a base offense level of 10.

The presentence report also finds that there are no specific offense characteristics, victim-related adjustment, adjustment for role in the offense, adjustment for obstruction of justice, acceptance of responsibility, and Mr. Vo does not meet the criteria as a zero-point offender under §4C1.1(a)(1). Therefore, Mr. Vo's total offense level is 10. The statutory maximum terms of imprisonment for counts 1 and 2 are one year imprisonment as to each offense.

And I may also impose a term of supervised release of not more than a year. Multiple terms of supervised release shall run concurrently. The guidelines range for supervised release as to counts 1 and 2 is a year. The maximum fine is $100,000, and a special assessment of $25 per count is mandatory.

For counts 3 and 4, each offense carries a maximum term of imprisonment of six months and a fine of no more than $5,000. Because these offenses meet the definition of a petty offense, a term of supervised release is not applicable. The guidelines do not apply to counts 3 and 4, as I said before, as they are petty misdemeanors. A special assessment fee of $10 per count is mandatory.

The guidelines provide that the fine range is between $4,000 and $40,000. Mr. Vo is eligible for up to five years of probation because the offenses are misdemeanors, and this is applicable to all four counts. Multiple terms of probation, should the Court impose a term of probation, shall run concurrently.

Under the guidelines, if I impose probation as to counts 1 and 2, the term shall be at least one year but not more than five if the offense level is six years or greater. Since the applicable guideline range is in Zone B of the sentencing table, the Court may impose probation with a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention.

Given Mr. Vo's prior criminal history, the guidelines imprisonment range is 8 to 14 months. But as noted, pursuant to §5G1.2(b), the statutory maximum term as to counts 1 and 2 is 12 months.

Since the applicable guideline range is in Zone B of

the sentencing table, the minimum term may be satisfied by a sentence of imprisonment or a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention, provided that at least one month is satisfied by imprisonment, or a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment.

Now, have I stated correctly the statutory and guidelines framework under which we're operating notwithstanding the objections, Ms. Hernandez?

MS. HERNANDEZ: Right. But there are objections. I object to the Court's -- particular findings of the Court. I don't know if you want me to --

THE COURT: The objections have been made on the record and are noted.

MS. HERNANDEZ: Yeah, but some of the -- in the event that I need to state them for the record, there are objections that I need to make, but I'll wait till the end or however the Court wants me to --

THE COURT: Go ahead and do it now.

MS. HERNANDEZ: Okay. So the probation officer, in rejecting application -- the criminal history §4A1.2(c), mentioned the firearms, but that applied only to -- there were three separate ones to which 4A1.2(c) by its terms applies, and

the statement the probation officer made referred only to one of the three. So to the extent no decision was made by that, I object.

Separate and apart from 4A1.2(c) is the downward departure recommendation by the commission, or note by the commission, regarding simple possession of marijuana, that the Court has to address that, I would submit. And again, the statement that one of the offenses involved guns has nothing to do with the statutory -- with the guideline language and only applies to one.

THE COURT: I think I've addressed all of those issues prior.

MS. HERNANDEZ: Okay. I just -- with respect to the Court's findings that Mr. Vo -- I know the Court made a finding during trial that Mr. Vo violated the conditions of pretrial release. I believe that his -- that it was not a -- I would object. I would submit to the Court that it was not a willful violation, because the terms of the pretrial conditions indicated that he had to stay away from D.C. except for court.

Well, he was in D.C. for court. What he did -- the conditions of pretrial release did not indicate what he could or could not do while he was in D.C., and the Court itself indicated that, you know, obviously, he could go to dinner and that type of thing. I submit to the Court it was a prayer meeting. So he has First Amendment --

THE COURT: Okay, wait.

MS. HERNANDEZ: -- protections.

THE COURT: Are you seriously arguing it was appropriate and Mr. Vo was in compliance of his conditions of release to be in the District of Columbia for the purposes of trial, and when trial was not in session, for him to go down to the D.C. jail not for a prayer session, to sing and support -- sing with and support the individuals who were being held in pretrial detention for violent crimes, that was -- that was in keeping with his conditions of release? I just want to make sure I'm getting this right.

MS. HERNANDEZ: Yes.

THE COURT: Okay.

MS. HERNANDEZ: I'm saying that the conditions of pretrial release do not make clear that was prohibited, and in order to find a willful violation, the conditions have to be clear. And number two, his attendance there was a peaceful gathering, and his attendance there is protected by the First Amendment.

I would submit to the Court that had he been at -- had he gone to the Kennedy Center or to a museum or to watch the cherry blossoms, no one would have argued that he violated his conditions because he was in D.C. -- it's conditions -- if a client had asked me, while I'm in D.C., do I have to run back to my hotel room and can't walk out? I would say no. You can go jogging, you can go see the monuments. So I think it's not a

willful violation. And further, there are First Amendment interests in his ability to attend.

THE COURT: Okay. Well, we'll just have to agree to disagree on that one.

The parties are aware of the probation office's recommendation in this case. Probation office has recommended two years of probation as to counts 1 and 2, $500 in restitution, and a $70 special assessment.

So at this point I'll give the parties the opportunity to address the Court. Mr. Boylan.

MR. BOYLAN: Thank you, Your Honor.

Your Honor, the government's recommended a sentence of 11 months of incarceration and 12 months of supervised release for the defendant. The government believes that that's an appropriate sentence for this case, it's not more than necessary, because of the defendant's characteristics.

He's shown — before January 6, on January 6, and since his conviction for the crimes he committed that day — that the defendant believes he is above the law. He believes he doesn't have to play by the rules. He doesn't have to follow the rules. He doesn't have to follow the law.

I'll start with the events of January 6 and that day. The defendant knew that he shouldn't enter the Capitol, and he went in anyway. Those are facts that were proved at trial to a jury that sat in those chairs. Nevertheless, the defendant continues

to dispute those facts. He went inside. He knew he shouldn't go inside. He saw people using a fence as a ladder. He saw tear gas. He climbed inside scaffolding. He filmed a man climbing the outside of the building. He heard an alarm and looked at the sign, and he went through the doors.

Your Honor, I'd like to read some of the text messages and social media messages that were admitted at trial that illuminate not just the defendant's conduct, but his mindset that day. I'm sure Your Honor's familiar with these, you heard them at trial, but I think that it bears repeating for those reasons.

He bragged that he "stormed the fuck out of the Capitol with my mom LOL."

"My mom and I stormed it LOL."

"My mom and I got to storm the Capitol."

Referring to the police officers: "Yeah, they stood down and retreated after we clearly outnumbered them."

He sent the same photo of himself and his mother inside the Capitol at least five different times.

He said, "Wow, apparently we stopped the vote count for a bit. My mom and I helped stop the vote count." He said, "So easy to storm the Capitol with arms. They had it easy today."

Your Honor, these messages, they aren't hyperbole. They aren't sarcasm. They're a window into the defendant's mind. He told us what he believed, told us what his intent was. He knew what he wanted to happen, and he knew what did happen.

He described them factually. They stopped the vote count, and he was proud of it. He bragged about it.

All that was on the day of January 6, but the defendant's belief that he was above the law started long before that. We have a criminal history for the defendant that reaches back almost seven years. Three convictions. And as the Court has pointed out, he was under an admonition from a court of law to be on good behavior on the day of January 6.

And I would note, Your Honor, if we had had this sentencing six months or a year ago, there's a provision in the sentencing guidelines which has changed, the defendant would have been possibly, probably, available for a two-point increase because he was on probation. I'm not arguing for that, but it shouldn't escape the Court's knowledge.

The defendant's mindset that he's above the law hasn't changed since January 6. As the Court's pointed out, he deified his pretrial release conditions, went to freedom corner. Even since his conviction in this case, he hasn't stopped disputing his guilt.

THE COURT: I'm sorry. Is that what it's called now, "freedom corner"?

MR. BOYLAN: That's what I've heard it referred to as, Your Honor, yes. He's been on multiple podcasts where he's disputed his guilt, he's disputed the facts that the jury found in this case. He's made several tweets. He referred to a zero

jury of peers. He's referred to this court as a kangaroo court. If you go on his Twitter page right now, or at least as of about two hours ago when I checked it last, Your Honor, he refers to himself as a "J6 wrongful convict."

That same mindset has pervaded his filings in this court. Your Honor can look at the PSR in which he says that he saw no posted signs; at no time before entering the building was he told he was not allowed to enter the Capitol. He believed he was engaged in First Amendment protected activity. All of those are facts that the jury found were not true.

Your Honor, one of the things that's most moving to me is the defendant's lack of remorse. He's never accepted -- he's never shown any remorse for the events that happened that day, threatened to do it again. He said it was so easy to storm the Capitol with arms, he wanted to come back.

He isn't sorry for what happened to other people. The defendant has never thought about the events of January 6 from anyone's perspective but his own. He never thought of the police officers who were inside that building and fought so hard. He said, "They had it easy today." Never thought of the civil servants who were in that building afraid for their lives. He hasn't thought of the millions of Americans who could have been and were affected by the effect on the vote count proceeding on January 6. It's only his own perspective that matters.

Your Honor, I want to talk briefly about the comparator

cases that I think are appropriate for this case. Both of the ones that are cited in the government's sentencing memo are cases before Your Honor — the *Hager* case and the *Alford* case — and I think those cases give an appropriate spectrum from which to judge this case. The charges were identical in both of those cases. The facts were strikingly similar.

Hager entered the exact same door as the defendant. Alford received a sentence of 12 months. Admittedly, he was found to obstruct justice and testified untruthfully, so he got plus 2, so probably more culpable than the defendant here. Hager received seven months, but he had no criminal history. So, from the government's perspective, he falls on the other side of the spectrum. The government has recommended a sentence of 11 months, which falls squarely between those two.

Your Honor, I'll close with this: It's true that the defendant didn't participate in destruction. He didn't assault anyone. But he's not charged with that, and he's had the benefit of not having done those things.

What the defendant did do is contribute to a mob. He was one raindrop in a flood. Like other defendants, he participated in an attack on an American institution, an attack on the democratic process and the peaceful transfer of power. For those reasons, unless the Court has questions, the government recommends a sentence of 11 months.

THE COURT: Thank you, Mr. Boylan.

MR. BOYLAN: Thank you, Your Honor.

THE COURT: Ms. Hernandez?

MS. HERNANDEZ: Your Honor, first of all, the jury did not make the findings that the government claims it did. The jury found the defendant guilty. On what basis the jury found the defendant guilty, we don't know because they were not asked. I will refer the Court to the cross-examination of Case Agent Henry who, under oath, indicated -- and he's the case agent, so he was familiar with all the evidence, his job to review all the evidence.

Under oath, he repeatedly answered that he had reviewed all of the photographs, all the videos in Mr. Vo's phone and generally speaking, and he did not observe any violence around Mr. Vo, in the vicinity of Mr. Vo, which leads to the conclusion that Mr. Vo did not see any violence. He indicated this --

THE COURT: Ms. Hernandez, are you arguing his culpability? Because the jury's verdict is the jury's verdict. This is not the place to argue that the jury's verdict was based on insufficient evidence.

MS. HERNANDEZ: That's not what I'm arguing, Your Honor.

THE COURT: He was found to have committed the offenses. Now, if you want to talk about -- address some of the factors the government raised, but --

MS. HERNANDEZ: That's exactly what I'm doing, Your Honor.

THE COURT: Okay.

MS. HERNANDEZ: Exactly. The government stood up here and said he did this, he did this, he did this, and the jury found it. No. The jury didn't find that he saw violence. The jury didn't find that he -- all the different things that the government claims that happened that day and that Mr. Vo saw, the jury did not make findings because no jury has ever been requested to make those kind of specific findings.

THE COURT: Let me see if I can move this along.

MS. HERNANDEZ: I'm addressing what the prosecutor stood up here and told Your Honor.

THE COURT: Let me stop you. And again, you can do your allocution however you want, but I'm your audience at this point. And I heard the evidence, and I saw what the videotapes and the photographs depicted. So I could tell -- you can stand up here and tell me that he didn't see violence or he wasn't aware there was rioting. I would submit to you that's not the best use of your time, but if that's what you want to argue, go ahead.

MS. HERNANDEZ: Well, I will submit to the Court the testimony on cross-examination of Case Agent Henry.

THE COURT: Which I heard.

MS. HERNANDEZ: At pages 1060 through -- I'd like to make that part of the record. 1060 through --

THE COURT: You do know it is already part of the

record, right?

MS. HERNANDEZ: Excuse me?

THE COURT: It is already part of the record.

MS. HERNANDEZ: I want to make it part of the sentencing hearing.

THE COURT: Go right ahead.

MS. HERNANDEZ: Because he was specifically asked whether, in reviewing the evidence, whether he -- I'm trying to -- I don't want to misstate -- whether he -- his testimony was did Mr. Vo -- did any violence take place around Mr. Vo. His answer was no. And his answer was based on the extensive review of discovery. That was his answer.

So to the extent -- again, to the extent -- let me back up. Mr. Vo stands convicted of misdemeanors, Your Honor. Misdemeanors. The government stands up here and may be -- I guess my experience representing federal defendants is that I have represented a number of violent career offenders and other defendants. I know that the Court is very compassionate about the persons that appear before Your Honor. You generally do not impose, you know, severe sentences.

Unfortunately for Mr. Vo, I would submit the Court in the January 6 cases is an outlier. I will -- I mean I've looked at -- for example, in the 5104 cases, there were about 70 of them where the government recommended probation. Only three times did the sitting judge reject that recommendation and actually

impose jail time, and in each of those three occasions it was Your Honor. I'm --

THE COURT: I know.

MS. HERNANDEZ: And I mean the truth is that there are judges in this courthouse, some of whom impose harsh sentences and some -- you know, there are judges that are harsher and less harsh generally across the board. I'm just telling the Court that in January 6 cases, Your Honor is an outlier based on the evidence. And as -- I'm not -- that's the Court's prerogative, right? The Court has discretion to impose sentencing. I am just -- I'm just pointing out that fact which is concerning for someone who appears before Your Honor in these -- which is concerning for me as I stand here and try to represent Mr. Vo.

THE COURT: I understand.

MS. HERNANDEZ: Number two, again, the government's argument that Mr. Vo has some extensive criminal history is baffling to me based on my 40 years of federal criminal experience, because he's in criminal history II to begin with. Each of the offenses are misdemeanor offenses, which our president just issued a proclamation pardoning every defendant who's convicted of a federal marijuana possession or D.C. marijuana possession.

And yet we're looking at -- and yet that's the record here, and we're being told that it is evidence of his disregard for the rule of law and all sorts of things, misdemeanors, Your

Honor, for which he received fines because in America today most of our jurisdictions, including the District of Columbia, look at marijuana possession as a civil fine, right? It's just like speeding or something like that. And yet somehow that record is being represented to be some evidence of his lack of respect for the law.

So I would ask the Court to take that into account. I requested that the Court -- which the Court rejected, and so did the probation officer -- to apply two provisions, one which specifically addresses downward departures with respect to misdemeanors -- I'm sorry -- with respect to marijuana convictions, and the second is an application of the criminal history under 4A1.2(c), which says these offenses do not get criminal history points unless the defendant got a sentence of a year or -- it has specified provisions.

In each of Mr. -- and it tells the Court to use a commonsense approach and consider the offense of conviction, which these -- which we were telling the court not to give criminal history points, and that has not been done in this case, in my opinion.

I don't believe that -- I believe Mr. Vo, for the past lengthy period of time -- I guess we're going now almost on three years of pretrial release. I know that the Court made a finding that he violated the conditions of release, but I do not believe -- and I'm making this argument -- I would make

this argument in any case. I don't believe that that finding is correct, because ordinarily we require a condition to be real clear before the Court would find a violation. And again, as I say, I'd be hard pressed to believe that if instead of being there he would have gone to the Kennedy Center, for example, that the Court would have said, yeah, you're violating.

And the other thing -- and I understand. It's kind of distressing to me the way -- because I was looking on Twitter the other day, or X. Apparently some citizen sent a picture of Mr. Vo at the prayer meeting, or the freedom corner or whatever it's called, not committing any crime, not -- there was no violence or anything like that, and sent it to the probation officer. I kind of find it creepy that we've become a nation where people go out of their way not knowing and then send information to the probation office. It reminds me, you know, of some Communist countries. I'm an immigrant in this country. You know, I --

THE COURT: Well, as am I. Doesn't bother me at all.

MS. HERNANDEZ: Well, it bothers -- I'm being very--

THE COURT: I'm sure.

MS. HERNANDEZ: -- candid. I'm telling the Court I find it creepy what we've become in terms of -- the political --

THE COURT: Ms. Hernandez, I gotta tell you, your client's charged with being part of a violent -- even though he's not charged -- he's charged with being part of a mob to

stop the peaceful transfer of power, and you're telling me why you're concerned with what we've become?

MS. HERNANDEZ: Yes.

THE COURT: That's pretty ironic.

MS. HERNANDEZ: Well, first of all, and I think it's pretty clear from the facts that he came to D.C. for a rally, Officer Henry said there was not a single comment about the Capitol before January 6. He came here for a political rally protected by the First Amendment.

He walked to the Capitol after listening -- a lot of the -- let me say this: A lot of the persons who entered the Capitol didn't go to the rally. They went directly to the Capitol and started the mayhem. That is not Mr. Vo's situation.

A lot of the defendants who've been charged in January 6 came prepared for battle. By that I mean they brought protective gear, gas masks, pepper spray, makeshift weapons. That's not Mr. Vo. Mr. Vo came here with his 67-year-old mother. He stood at the -- he stood at the speeches, and then he walked peacefully to the Capitol as -- whatever President Trump is responsible for or not responsible for, he explicitly suggested to the crowd that they walk peacefully -- he used that term -- to the Capitol and make their voices heard.

There is case law -- every person who demonstrates at the Capitol for any reason — for reasons that we agree with, for reasons that we disagree with — goes there with the express

purpose of trying to have the legislature not do what they propose. That's what they do.

During the Kavanaugh hearings, hundreds of women attended the rally and were quoted in the paper. One of the women was the leader of the Women's March, which I attended, and she was quoted as the reason she came to the capital for the confirmation hearing was to stop it. And she boasted that she was the first person arrested that day, and she said that they had -- her organization and a number of other organizations had collected funds to pay for the bail of the people.

And over 200 women were -- and men, but mostly women -- intentionally interrupted the hearings. And by that I mean they went into the committee hearing one by one. All they got was fines. They weren't even charged with a single misdemeanor. All they got were fines.

I believe the Court has to take that into account in determining the -- in avoiding unwarranted disparity. There is a case that I cited -- I don't know if the Court has ever seen the videos of the demonstrations in 2017 when President Trump took office. They burnt down --

THE COURT: I've seen the video, Ms. Hernandez.

MS. HERNANDEZ: Okay. They're ugly. The one gentleman that I cited, because there's a DOJ press release, was convicted of two felonies including assault on a police officer. He came to the protest wearing gas masks, with bats, and

everything else. He got four months in prison. Those were felonies, and they came prepared for battle.

Mr. Vo did not come prepared for battle. I'm not here to defend those who did. I'm not here to defend those who broke windows. I'm not here to defend those who hit police officers or threw things at them. I am here to defend one young man. There is nothing in any of those pictures where you see him angry, nastily screaming at the police, calling them names, not one picture of that.

I will compare that to Mr. Nassif, the case that the D.C. Circuit just decided. He took the stand, according to the circuit opinion. He was charged with this. He went to trial on the same four misdemeanors. He took the stand, and the judge found him to have perjured himself. According to the opinion by the D.C. Circuit, he was yelling at the -- confrontational statements, he encouraged people to enter the Capitol. He got four months in prison. And he perjured himself. And he went to trial on the same four misdemeanors.

Mr. Vo did not do any of those things. He didn't take the stand and perjure himself. He didn't bring any weapons with him. He didn't do any of those things. None of those things. There's the case which I cited, which Judge Cooper decided, where five protesters entered the chamber of the Supreme Court during an oral argument, and one by one stood up and interrupted the Court. One stood up, interrupted the Court, was arrested

and sent out. Five of them.

Their express purpose was to interfere with the proceeding. They challenged the constitutionality of the statute as applied to them. The circuit said it's constitutional. Judge Cooper gave them 12 months' probation. Again, those people went in there with the express purpose of interrupting a Supreme Court hearing.

Now, I understand that the Court -- this court and I believe almost every judge in this district -- looks at what happened on January 6 as *sui generis*. But frankly, as an American citizen, as a defense lawyer, I don't think -- I think the judiciary, court hearings, confirmation hearings for judges deserve the same level of respect.

And Mr. Vo did not enter the Capitol with the express purpose -- there's nothing in his conduct before or in his text messaging or anything before he entered the Capitol, in contrast to a lot of other January 6 defendants, there's nothing in the record that he came with the express purpose of interfering. By the time he enters the Capitol, the proceedings had already been suspended at least, I believe, more than a half hour.

He entered through a door, in contrast to Nassif, the case that -- where the door -- there were alarms, no question. But the door was -- it was not one of the doors that had broken glass or that had in his presence any confrontation with police,

and there are police officers standing by the side as he's entering the Capitol.

Now, I understand the government's arguments, and I understand the jury's findings, but the bottom line is that when someone is doing something and a police officer -- and I understand the testimony because I've been in a number of these trials.

A number of the officers -- not the officers necessarily, but the brass, the U.S. Capitol Police, said that they were outnumbered and at certain points they just -- the only thing they could do is back up and let things happen. But the defendant, Mr. Vo, as he's entering the Capitol, doesn't have all this information.

THE COURT: This isn't closing argument, okay?

MS. HERNANDEZ: No, I'm just --

THE COURT: Ms. Hernandez, you have been talking now for 25 minutes, and you're relitigating the facts of the case.

MS. HERNANDEZ: I'm not relitigating the facts of the case, Your Honor. I am suggesting to you that you have to -- in making a decision as to the 3553(a) factors, the nature and circumstances of the offense, I believe you have to look at what he did.

THE COURT: I am. And unlike you, I was actually here and saw the evidence.

MS. HERNANDEZ: I am only -- the only thing I can do

is read the transcript. And Officer Henry was, to me, very clear on what he believed had happened. And the government is not telling you that -- Mr. Vo did not injure anybody --

THE COURT: You know, defense lawyers keep coming in and telling me this in misdemeanor cases, and I'm not sure why, because if he had injured anyone, or fought anyone, or broke anything, or destroyed anything, he'd have been charged with --

MS. HERNANDEZ: Correct.

THE COURT: So he's already received the benefit of his lack of violent behavior by only being charged with misdemeanors. So it really doesn't advance the ball for you to stand here and tell me he didn't fight. I know that because he would be charged with felonies.

MS. HERNANDEZ: Well, for one, it reflects Congress's considered judgment that his conduct is a misdemeanor.

THE COURT: It is a misdemeanor. On that we are in complete agreement.

MS. HERNANDEZ: A misdemeanor. Had he done any of those other things -- I'll point the Court to -- you sentenced my client and another young man early on. They pled to the 5104, the parading charge, two young men. They went in there. The codefendant went in there, stole some papers from some office, and the Court gave him just -- no, I'm sorry. I think the Court gave him 30 months. I'm sorry, 30 days. 30 days. And they stole papers. They stole papers.

THE COURT: I remember that case.

MS. HERNANDEZ: At least that one guy stole paper, not my client.

THE COURT: He was 19 years old. Your client's 31, with a criminal history.

MS. HERNANDEZ: With misdemeanor simple possession of marijuana. I just -- I'm --

THE COURT: Three.

MS. HERNANDEZ: Of marijuana. The president of the United States has pardoned --

THE COURT: Ms. Hernandez, I have disregarded previous convictions of possession when they were long ago, long before the offense, but the thing that really stands out to me and why I refuse to disregard them in this case is he was under admonition for good behavior at the time he did that.

MS. HERNANDEZ: That was the last one. The first one is from 2017.

THE COURT: Well, you know what? He doesn't get three chances. And so, you know, you could talk about that. I have in the past discarded those kinds of convictions. I'm not doing it here. So I know the case you're talking about. I remember the case of those three young men.

MS. HERNANDEZ: I think it was two young men.

THE COURT: Two young men. And I took into consideration all the 3553 factors, and you could certainly take

exception to my sentences in all these cases, and that's fine. I have a certain amount of discretion that I exercise, but I do consider each case individually.

MS. HERNANDEZ: Correct. I'm not taking exception. I'm saying the Court is required to avoid unwarranted sentence disparity, and the only way to make that assessment is to submit to the Court comparable cases. In the case of Mr. Finley, who was the president of the West Virginia --

THE COURT: Proud Boys.

MS. HERNANDEZ: -- Proud Boys. A very nice young man. He was in his 30s. He marched with the Proud Boys for two hours. He never went to the speeches.

THE COURT: He also didn't go inside.

MS. HERNANDEZ: Yes, he did go inside. Yes, he did go inside.

THE COURT: The Capitol?

MS. HERNANDEZ: Yes.

THE COURT: Oh, yes. He did go inside. He was charged with a felony, but he didn't break anything. But I remember --

MS. HERNANDEZ: He ended up pleading guilty to a misdemeanor.

THE COURT: Yeah, I remember Mr. Finley's case very well.

MS. HERNANDEZ: He was observed -- because he was with

the Proud Boys he observed, you know, breaking of windows and destruction of property and violent conduct. He went into the Capitol for a short time, and after the fact he destroyed his phone, told others to destroy their phones, and the Court gave him, I believe, 75 days. You know, again, he wasn't charged with obstruction, but he got an obstruction enhancement because he destroyed the contents of his phone and encouraged others to do the same.

And all I'm suggesting is none of those -- Mr. Vo did not destroy his phone afterwards. Mr. Vo didn't do any of these things. That's all I am saying to the Court. It's the type of thing that the Court is required to look at and that I know the Court looks at.

You look at those pictures of Mr. Vo. Again, I have seen, as I'm sure the Court has, a number of these cases where the defendants are out of control, screaming, assaulting verbally police and sometimes physically assaulting police. That's not Mr. Vo. You can see the picture of him inside the Capitol. He's smiling with his mother. You can -- as soon as he was told to leave, he left.

Maybe he has his head in the sand, maybe he's stupid, but he mistook what was happening. And again, I don't believe the jury was ever asked to make a finding -- I've looked at the jury instructions multiple times -- as to some of these facts. I'm not saying there wasn't evidence for them to convict on these

charges, but they weren't asked to make a finding that he knew he wasn't allowed in or that he saw violence. That is not what they were asked to do. That's none of the elements of any of these charges. I know he's being painted as whoever he is.

Let me talk about his postings on -- public postings. I don't condone it. He has a First Amendment right to make those statements. The comment about a kangaroo court is --

THE COURT: I've been called worse.

MS. HERNANDEZ: Well, let me again -- I don't see that there's grounds for calling the Court worse, or even a kangaroo court. I'm not -- you know. And I readily recognize that I'm pushy and I don't shut up. So it's not like I'm an easy person not to slap around, as it were, and I know that the Court allows me a lot of ability to argue for my clients. So that's not my opinion, but I will tell the Court the background.

Again, he doesn't appear before the Court every day, so he doesn't have the evidence to make that judgment. He, for whatever reason, was very focused on the goal of discovery. He actually came to D.C. to be with his public defenders to review the global discovery. They told him he couldn't see it, or they didn't have it available, I'm not sure exactly. Whatever it was, he wasn't allowed to see it.

He comes into court, and the Court was upset with the federal defenders who told the Court that they had not reviewed the -- and I think they maybe asked for a continuance. That's

why the Court said, "What do you mean?" And the basis for the continuance -- whatever happened, the Court reamed them out for not reviewing it, while Mr. Vo is sitting there not knowing what's going on. And he sees that the Court thinks that they're doing -- whatever they did was wrong, and not only was wrong, but wrong enough that it concerned the Court. That's what he sees. He sees that there's discovery that was produced that somehow his lawyers didn't look at.

He then also sees, during the trial, that the Court made evidentiary rulings, as we all know every court makes every day. But from his point of view, his understanding is the Court is -- the Court is excluding evidence that his lawyers think is relevant. That's what happens every day in the courtroom to me, you know.

And, unfortunately, after the trial he spoke to some lawyer, as there are a lot of lawyers out there who are willing to opine — not the federal defenders, not me — who told him there was this violation, that violation, the other violation, the other violation, and blah, blah, blah. And so he says -- makes that stupid, in my opinion, statement. But that's part of the nature of social media. People say stuff on there that they wouldn't say in person.

The thing about not a jury of his peers, the truth is that 92 percent of D.C. voters voted for President Biden, even in the Republican primaries. This year and in 2016, D.C. Republicans

did not vote for Trump. And having sat through three weeks or four weeks of jury selection in the Proud Boys case, I personally was shocked at the antagonism of the jury pool to what happened on January 6. And I have tried MS-13 cases and other cases where people get killed. I've tried FARC cases. So the point is, much has been written about how D.C. juries are not like these defendants.

They're impertinent statements, particularly the one about the Court, but that's the background of it I'm telling the Court. It comes from this notion that he understood that his lawyers had failed to do something that they should have done, and that the Court excluded evidence that his lawyers believed was going to come in. It's indefensible in some ways because, as I've mentioned, he had two very fine court-appointed lawyers.

THE COURT: He did.

MS. HERNANDEZ: Who had a lot of resources. I read the transcripts. Yes, the Court at times excluded evidence, but at times it did not. You know, it's not like one would read that transcript and say, oh, boy, this was really one-sided. It wasn't.

THE COURT: Okay.

MS. HERNANDEZ: But anyway. I want to finish with the following, Your Honor. Again, I listed a number of cases where I think a sentence of 11 months is greater than necessary. That's the test, right? It's sufficient but not greater than

necessary. And here's where I want to finish.

If you read the letters that were sent to the Court by a diverse number of people -- and I will say, one of the letters where I didn't identify the person, he identifies himself, he thinks he's Witness No. 2 from the complaint, and so he didn't want to have his name in the public record. But I'm happy to give the Court and probation and the prosecutor the gentleman's name.

If you read those letters, to a person, to a person, they describe a very sweet, compassionate young man. These are people, some of whom have known him from high school and elementary school and college. Not a single one of them says anything about violence. Not a single -- every single one of them talks about his compassion, about his nonviolent nature, about he tries to diffuse situations, about how concerned and good he is with his friends.

His parents divorced when he was about six years old. His father remarried and moved out-of-state. And yet, when he was 15 and his father got cancer, he took a leave of absence to care for his father. That's the young man -- whatever happened on January 6 is only one part of this young man, and I implore the Court, implore the Court, to read those letters and see the full picture of this young man.

He has some -- he has his ideas about the Constitution and about what happened and everything else. You know, that's the

beauty of the United States of America. And I just ask the Court to consider, when you're being told about him or what happened on that day, bottom line: he didn't destroy property, didn't yell at cops, didn't have any confrontations, he didn't come armed to have a confrontation. And I implore the Court to consider the letters from people who know him best, who have known him for years, who describe a kind, gentle man. And nothing in his criminal history indicates any crime of violence of any nature.

THE COURT: Okay. Thank you, Ms. Hernandez.

MS. HERNANDEZ: So I'm asking for a sentence of probation with home detention is what I'm asking for, Your Honor, and you can impose -- you can put whatever conditions you want over him with home detention.

I am concerned. I mentioned it in the -- he's slight. He's short, not very tall. Slight. And there are issues with people like him in prison. They're susceptible to abuse in prison, there's no question about it. So I ask the Court to consider misdemeanor, to compare other sentences, to compare the nonviolent nature of his conduct that day and his history.

THE COURT: Thank you.

MS. HERNANDEZ: Thank you, Your Honor.

THE COURT: Mr. Vo, you have an absolute right to be heard at this point. Was there anything you wished to say?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Come on up. If you've written a letter and you want to read it, you can do that. I'm just going to ask that you slow down as you read it. But come on up to the podium, please.

MS. HERNANDEZ: He wants to speak to you, but he also wanted to email it to you.

THE COURT: Well, you can submit it after the fact. I'm going to impose sentence today, and if there's anything you would like to say to me before I impose sentence, you're free to do that.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Come on up.

THE DEFENDANT: Thank you. Hello, Your Honor. Thank you for everything.

THE COURT: Good afternoon.

THE DEFENDANT: Sorry. I just got -- I just got reminded that today's the anniversary of my dad's passing, so.

THE COURT: Could you move the microphone a little higher? I'm sorry that's the case.

THE DEFENDANT: I just wanted to say that I'm sorry for everything. I know I shouldn't have been there that day. I fully recognize that. It's something I would never -- a situation I would never put myself in again. I'm sorry I misjudged, like, the law-enforcement officer presence. I should have known better. I just -- I don't know. Some things that

hurt me when people, like, say false things.

I wasn't there to overthrow any democratic process or anything. At the Trump -- I'm sorry if I mention him, but at the speech I was told that, you know, it was a matter up to Congress, we're to respect law enforcement, and that we're supposed to be there peacefully, patriotically, and I fully intended to do that.

Like I know I had a previous legal matter hanging over my head. I took the time to look at the police officers as to what was permitted and not permitted, and I even took a picture just to show what I thought was them allowing us. And I just don't -- I fully accept like everything that, you know, I was a part of.

I'm sorry that January 6 happened, and there are a lot of things that happened in court that I want to share in my letter, but like -- and just -- I don't know. Like I hope that you can read my letter later because I wrote it for you, Your Honor, and like -- I mean, after like all of this, I've tried to follow like all the rules and everything.

I remember what -- the going to freedom corner, I actually had talked to my counsel then, and I told them that I was going to attend, and he told me not to appear on camera.

THE COURT: I don't think you want to put --

THE DEFENDANT: I'm sorry. I'm sorry. I don't know what to say.

THE COURT: That's okay. I suggest you don't talk about the conversations you had with your lawyer, because those are privileged and I don't want you to inadvertently waive the privilege of things you told your lawyer. Those are protected.

THE DEFENDANT: Okay. But given the chance or whatever you decide today, either way, like I would never put myself into such a situation. I've tried to be law-abiding, and like I continue to try to be law-abiding to the best of my knowledge. I'll even like -- I guess I know I should be erring on the side of caution more than I should have on January 6, especially considering my previous legal matter, and I'm really sorry, Your Honor, for everything.

THE COURT: All right. Thank you, Mr. Vo.

THE DEFENDANT: Thank you.

THE COURT: All right.

Now it's my turn. And as I've said often --

MS. HERNANDEZ: I'm sorry, Your Honor. I apologize. I know his sisters and his mother came all this way. I was just wondering if any of them --

THE COURT: Well, frankly, Ms. Hernandez, I have heard and read -- I've read every single letter. I frankly --

MS. HERNANDEZ: It would be cumulative.

THE COURT: Mr. Vo's mother accompanied him into the Capitol and remained with him in the Capitol, and I'm not really inclined to hear from her.

MS. HERNANDEZ: I would not be asking his mother. She hardly speaks English, but his sisters are here. But you are correct. I think they would be cumulative of what --

THE COURT: Mr. Vo's mother is fortunate that she was not charged along with Mr. Vo, and that's all I'm going to say on that.

MS. HERNANDEZ: She's been charged.

THE COURT: Well, then, she definitely doesn't want to come up here and --

MS. HERNANDEZ: No. Again, no. I know.

THE COURT: All right. Thank you.

I have to consider all the factors set out by Congress in Section 3553(a) and ensure I impose, and as Ms. Hernandez said, a sentence that is sufficient but not greater than necessary to comply with the purposes of sentencing.

And that's a very difficult balance. I struggle with it in every single case, and I struggle with it in these cases. It may be that I'm an outlier as Ms. Hernandez suggests. I don't necessarily think I am. But if you look at my sentences, they have ranged either 7 to 10 days, to 63 months. So I do consider in each case the factors that I must in Section 3553(a), and I've considered all those factors here.

With regard to the nature of the offense, Ms. Hernandez mentioned all the letters that have been written on Mr. Vo's account. I read every one of them, and what struck me was not

so much that the letter writers describe a kind and helpful person because, believe it or not, I get a lot of letters like that for people, not just January 6 defendants but other people charged with other crimes, and that people are complicated and people are complex, and good people can do bad things. I've always thought that, and it's been shown to me over and over in the years that I've been on the bench.

And so Mr. Vo is like many other defendants who have come in front of me in these cases, which is, in many aspects of his life he has been a good son or a good brother or good friend. What struck me about the letters that I received was none of them seem to really take into consideration the actions that he engaged in on January 6.

Either the letters blew it off and said it was no big deal, he's protesting First Amendment activity — which immediately undercut the weight I gave the letter — or didn't address it at all, which is not helpful because, as I said, I'm not punishing him for what he believes. What I keep saying is I'm not punishing him for his political beliefs. He's entitled to them.

I'm not punishing him because he called me a kangaroo court. There's a reason why I have the job that I have and the protections I have, and -- you know, that comes with being a judge. I have a thick skin. And I, like you, Ms. Hernandez, share an appreciation for living in a country where one is free to say those things. So, I mean, he has his opinion.

That's not what I'm punishing him for. That's not what I'm sentencing him for.

But what has struck me about Mr. Vo's case — and he's been in front of me for a long time — is until just now, his absolute and complete lack of remorse. Not just after, not just in the aftermath of January 6, but even during his trial and after his conviction in this case, he has doubled down on his behavior. And I don't believe that he really understands that not only what he did was unlawful, but understands the effect it had on others.

What I hear from Mr. Vo -- and, unfortunately, what I hear from a number of defendants before me and especially in the January 6 context -- is a regret for the incident that happened or what has happened to them. What I don't hear is any understanding or awareness of the fear, the terror, that was inflicted upon the occupants of that building because of his participation in that mob.

He may not have been breaking things; he may not have been yelling. Agreed. The evidence doesn't show that he went in there and yelled at people or broke anything or tore anything down or anything of that. But by his presence there unlawfully inside that building, with his mother, he contributed to the rioting.

And the people who were inside that building doing their jobs, the Capitol Police officers who were outnumbered, as you

heard, and trying their best despite being outnumbered by thousands of protesters, there's no awareness or understanding or appreciation for what those actions did to those people, or the rest of the country watching with horror as people are scaling walls -- and I know he didn't scale a wall -- and going in and desecrating the Capitol and stopping the orderly transition of power, the electoral count.

And again, it may have stopped by the time he went in there, but he was aware that it was -- he texted or tweeted or whatever, posted some comment, not just "apparently" -- and I would disagree with you, and argue that him using "apparently" means he was proud of it -- but that he knew that his participation and those riots had stopped the electoral count and the transfer of power. So I don't see any remorse.

He apparently has a different view of the Constitution and a different view of the seriousness of his actions. He's entitled to that view, but what he's being sentenced here today are for his actions. And I saw and heard the evidence at trial. I saw the pictures.

Mr. Vo and his mother did not just, oh, look, we're just walking up to the Capitol; and, look, there's an open door, let's take a look-see and see what is inside; and then, oh, we're not supposed to be here, let's leave. It wasn't anything like that.

Mr. Vo climbed up on scaffolding. He saw tear gas. He saw

smoke. He saw police officers. He heard alarms. He knew he wasn't supposed to be there. And for him to argue that he didn't is disingenuous. And he went in knowing that the reason he was being let in or the reason he was allowed to walk in is because there were so many more protesters than police officers.

I sat here and I watched the testimony of the officers who were there that day. There's one in particular who testified -- was that the officer who had been upstairs in the -- yes. I forget his name, but he had been basically almost killed earlier on. And he came back downstairs, and I think he was the one that was saying "respect the building"?

MR. BOYLAN: Officer Millard.

THE COURT: He got pilloried online for that. He was somehow accused of letting protesters in the building, when what he said was, there were so many more of them, all I asked is that they not trash the place. There was no tacit approval of the fact they were coming in. This was an officer who was doing his darnedest, who almost got killed for trying to protect that building and the occupants thereof.

And as he was testifying, compellingly, I looked at Mr. Vo. And Mr. Vo was smiling. The jury was visibly moved by the testimony that they heard. You couldn't help but be moved. One by one, this court and the jury heard from officers who displayed incredible courage and resolution and determination to protect that building and its occupants in the face of

incredible physical danger to themselves, and some of them who suffered for it. And in the face of that testimony from one officer after another, I watched Mr. Vo, and he appeared to be completely untouched and unbothered by what he was hearing.

There is no way, based on the evidence that I saw and heard, that Mr. Vo could have possibly thought he was allowed to be in that building. At every turn, he was met by visible signs of law enforcement presence, by alarms and smoke and unruly crowds, and he kept going in. And once he was inside that Rotunda, he took pictures with his mom, very proudly. And I believe those pictures of himself with his mother inside the Rotunda are -- they're still on his -- whatever profile picture, right?

MR. BOYLAN: I think they've been taken down now, Your Honor.

THE COURT: But they were at some point.

MR. BOYLAN: Yeah.

THE COURT: And then Mr. Vo comes to trial. In the District of Columbia, he's been ordered to stay away except for court appearances. So he comes for trial, and after court and -- and I think your comparison with the Kennedy Center and the monuments is really a little, again, disingenuous. Because he goes down to "freedom corner" or whatever you want to call it, the jail, outside the jail -- and I'm familiar with that part of town -- to show common cause with people who are protesting the

incarceration of dangerous, violent defendants.

The people who are being held in the D.C. jail or at Central Treatment Facility pending trial are people who have been found to be dangerous. And there's I think a recent count of them, maybe 15 of them. It's a small group, but they're being held there because they are dangerous people. And he was not authorized to be there.

He was allowed to be in the city for his trial, and that is where he chose to go after court: down to show his support for people who claim that those individuals who are being held, either pretrial or serving sentence in that jail, are somehow hostages or heroes or people deserving of his support. And that is -- I find that extraordinary. So I take that into account when I'm considering his characteristics as an offender.

Again, with regard to the nature of the offense, he acknowledged in one message that he and his mother helped stop the vote count for a bit.

Mr. Vo has a criminal history. You're right, it's three misdemeanor offenses for marijuana. Normally, if those had been years earlier, I would give them very little consideration, maybe none at all, and I have in the past. But the fact is Mr. Vo was under admonition in his most recent case, having two previous convictions, to be on good behavior.

And yet he came here and -- for the rally? That's totally fine. But having attended the rally, he marched to the Capitol.

And again, free expression. It's when he decides to go inside that building. Unlike the thousands of people who stayed outside the building and take pictures and send messages, he violates the law.

And then I do consider that his previous convictions because he should have known better. He had every reason not to get in trouble with the law. He had every reason not to violate the law because he was under admonition for good behavior. So I do take that into account. And he should know better because he is a college graduate. He is educated. He has had advantages in life.

I've stated regarding the need for general deterrence over and over that there have to be consequences for the people who committed these offenses beyond just probation, and I consider every defendant individually. And the government mentioned Mr. Alford and Mr. Hager whose trials I presided over. You mentioned Mr. Finley and the individual you represented whose name escapes me right now.

Mr. Finley's case was a case -- probably one of the three cases in which I have rarely seen a defendant express that much remorse and do as much to make up for their actions in that particular case. And it was a very difficult case, but it was -- the sea change in Mr. Finley from the time he was arrested to the time he was sentenced was remarkable.

Mr. Alford, who had no criminal history, he took the

stand and frankly, in the Court's opinion, testified falsely. Mr. Hager did not, and had no criminal record, and I took that into account as well.

All those defendants received different sentences because of either whether they took the stand or whether they had criminal history and whether they expressed remorse. And I believe that Mr. Alford did not. I believe Mr. Hager did. Mr. Finley certainly did. And I took all of those factors into consideration.

I do not believe that Mr. Vo believes the law applies to him. I think he has, in his actions and his words, including words he said and posted after this offense, indicated he has no respect for this court or for the rule of law, and I think there have to be consequences for that.

Ms. Hernandez, your client keeps raising his hand. I'm not sure; you may want to consult with him. I have given him an opportunity to speak.

MS. HERNANDEZ: He wanted to have the Court have access to his letter.

THE COURT: I will -- I did not get the letter before today, and therefore I was not able to consider it. I have heard from you, Mr. Vo, and I have said I will read your letter, but I can tell you that there was a deadline for submitting materials, and I would have -- you know, I was receiving materials up to this morning and last night, but I cannot take

a letter, a long letter, that is submitted in the middle of a sentencing hearing. Moreover, I'm not sure that any letter would at this point, based on the record I have before me, change my sentence.

And I will say that my sentence in this case is a sentence I would give because of the evidence that I saw and heard at trial, as well as Mr. Vo's characteristics, previous criminal history, statements pre- and posttrial. And I've considered all the Section 3553(a) factors in determining his sentence.

So if you could stand with your client.

(Counsel and defendant comply.)

It is the judgment of the Court that you, Antony Vo, are hereby committed to the custody of the Bureau of Prisons for a term of nine months. You are ordered to serve 12 months of supervised release following your sentence of incarceration.

You are further sentenced to pay a fine of $1,000 and a $70 special assessment. The fine is based on the fact that you currently are, I believe, according to presentence report, live off passive investment income. You have been able to travel during the pendency of the case including on a trip. You have two Porsches, an Audi, and a Honda as part of your assets, and therefore it is my belief that you have an ability to pay a fine and should pay a fine in this case.

The special assessment and fine are immediately payable to the Clerk of the Court for the U.S. District Court of the

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

Ms. Hernandez, do you have any requests for a recommendation? I have -- to you, Mr. Vo, I have allowed every single January 6 defendant before me who I have sentenced to incarceration who was not already incarcerated to voluntarily surrender, and I have done so in every case, because in every one of those cases the defendant has been in compliance with their pretrial conditions of release.

I find that you did violate your conditions of release when you were here for trial, but since that time, you appear to be in compliance, and notwithstanding the statements that you've posted, I'm going to allow you to remain on release pending voluntary surrender. I will caution you, though, that if you commit a crime while you are awaiting voluntary surrender, you could be subject to enhanced penalties because that crime was committed while you were awaiting incarceration.

If you fail to comply with your conditions of release while you are awaiting voluntary surrender, your conditions of release could be revoked and you could be incarcerated immediately. You are required to turn yourself in on the day that you are ordered to do so, and a failure to do so could result in another criminal offense, the penalty for which would be consecutive to any sentence in this case.

Ms. Hernandez, do you have a sentencing recommendation?

MS. HERNANDEZ: I don't, as I stand here, Your Honor. Can I send something to chambers first?

THE COURT: Yes. Could you consult with the prosecution first? But I generally give that recommendation.

MS. HERNANDEZ: Sure. I would anticipate that we would be asking for bail pending appeal, particularly with the -- I understand the Court indicated that you would have given the same sentence.

THE COURT: I would.

MS. HERNANDEZ: So I will file that motion.

THE COURT: Yes.

MS. HERNANDEZ: Unless the Court wants to grant it without filing a motion.

THE COURT: No, I don't. Please file it.

MS. HERNANDEZ: Okay.

THE COURT: All right.

MS. HERNANDEZ: Thank you.

THE COURT: Thank you.

Mr. Vo, you know, you're younger than you look. You're 31 years old. You have a supportive family, and you obviously have resources and friends. And I got many letters from your friends from your tennis club in Florida. You had character witnesses at trial. You're still young enough that you can come back from this, that you can continue a life as a productive

citizen.

I believe, as Ms. Hernandez does, that a person is not the worst thing they've ever done, and therefore you have an opportunity to move beyond this and continue with a law-abiding life. I encourage you to do that, and I wish you luck in that endeavor.

But I really want to encourage you, perhaps, to broaden your base of information. I know you have very firm beliefs, perhaps grounded in your experience as an immigrant from a country that suffered the ravages of communism. I understand that. I heard the testimony at trial.

But all the privileges and rights that you've been afforded here, you've had three different lawyers, you've had extensions, continuances, you've been allowed to remain on pretrial release, all those things are part of the Constitution that you believe is not being followed or some view of the Constitution you have. I encourage you to read a little more widely, to listen to opinions that differ from you, perhaps get a broader range of views. Good luck to you, sir.

MS. HERNANDEZ: Thank you, Your Honor.

MR. BOYLAN: Your Honor, could I ask for the a clarification of the Court's sentence?

THE COURT: Yes.

MR. BOYLAN: I understand that the Court imposed the sentence, and earlier you stated that regardless of the result

of *Griffin* --

THE COURT: Six-month maximum, right?

MR. BOYLAN: Six-month maximum for both, but I think what Your Honor said was you would run them concurrently.

THE COURT: Actually, you're right. They would be consecutive to each other. Counts 3 and 4 would be six months on count 3 and three months on Count 4, to run consecutive.

MR. BOYLAN: Thank you, Your Honor.

THE COURT: And I don't have any conditions of supervised release, just standard conditions.

PROBATION OFFICER: Your Honor?

THE COURT: Oh, thank you. Ms. Spicer.

PROBATION OFFICER: Just one request from the probation office: Would Your Honor be inclined to impose the firearm restrictions since these are misdemeanor convictions?

THE COURT: Oh, yes. Ms. Hernandez, I am going to impose a firearm restriction.

PROBATION OFFICER: The firearm-restriction language is on page 3, or it's the first page of the sentencing form of the recommendation.

THE COURT: Yes.

MS. HERNANDEZ: Your Honor, I don't believe it's misdemeanors the Court can restrict possession of firearms?

THE COURT: As a condition of supervised release? I think I can impose that.

MS. HERNANDEZ: They're misdemeanors. I'll research it. If there's an issue, I'll file something.

THE COURT: Okay. You do that.

Mr. Vo, as a condition of your supervised release, you shall remove all firearms, destructive devices, or other dangerous weapons from areas over which you have access or control until the term of supervision expires. Do you understand?

THE DEFENDANT: That was part of my pretrial release conditions.

THE COURT: Right. And they're to continue during your supervised release.

PROBATION OFFICER: And the language regarding the Court's ability to impose the firearm restriction is on page 26 of the presentence investigation report in footnote No. 3.

MS. HERNANDEZ: We'll take notice of that, Your Honor.

THE COURT: All right. Just a minute.

Yes. Thank you.

PROBATION OFFICER: Thank you, Your Honor.

THE DEPUTY CLERK: And the government, the original information, you move to dismiss?

MR. BOYLAN: Yes, Your Honor. We would move to dismiss the original information.

THE COURT: The motion's granted.

All right. Thank you all.

(Proceedings adjourned at 5:08 p.m.)

(Case recalled at 5:17 p.m.)

THE COURT: Back on the record, thanks to my ace courtroom deputy, that I had not given a sentence as to counts 1 and 2. My intention is, as I said, my sentence would not change if Mr. Vo had not been convicted of counts 1 and 2.

So the sentences on counts 1 and 2, nine months, to be served concurrently with each other and concurrent with counts 3, and 4, which is six months on Count 3, three months on Count 4, to be served consecutive. So 3 and 4 are being served consecutively, 1 and 2 are concurrent, and 1 and 2 are concurrent with 3 and 4, for a total sentence of nine months.

MS. HERNANDEZ: I'm sorry. Would you mind repeating that?

THE COURT: Not at all. On counts 1 and 2, the sentence would be mine months on each count concurrent with each other. On counts 3 and 4, it would be six months on Count 3, three months on Count 4, those two counts consecutive, for a total sentence of nine months. Counts 1 and 2 would be concurrent with counts 3 and 4.

MS. HERNANDEZ: But the total sentence is nine months.

THE COURT: Nine months, yes.

MS. HERNANDEZ: Six and three --

THE COURT: Yes, six and three --

MS. HERNANDEZ: But concurrent --

THE COURT: With 1 and 2. 1 and 2 are concurrent with

each other. Any objection to that formulation of the --

MR. BOYLAN: (Inaudible.)

THE COURT: Yes. Bring the microphone up. Okay.

MR. BOYLAN: Your Honor, the issue we run into is with supervised release. Supervised release is only available for a non-petty offense misdemeanor.

THE COURT: For counts 1 and 2.

MR. BOYLAN: It would only be available for counts 1 and 2. Couldn't impose supervised release for counts 3 and 4.

THE COURT: But I am going to impose the supervised release for counts 1 and 2. If *Fischer* is decided and they have to be vacated, so will the term of supervised release.

MR. BOYLAN: Understood, Your Honor.

MS. HERNANDEZ: You could impose supervised release on -- you just can't on the petty offenses if you don't impose prison also.

THE COURT: And I am. I realize I have to vacate supervised release if *Fischer* is decided differently, and we'll deal with that if it becomes an issue. Anything further?

MR. BOYLAN: No, Your Honor.

THE COURT: Ms. Hernandez?

MS. HERNANDEZ: No, Your Honor.

THE COURT: All right. Thank you.

PROBATION OFFICER: Your Honor? Sorry. Probation has one more question.

THE COURT: Yes.

PROBATION OFFICER: In regards to the mandatory conditions of supervised release, are you inclined to impose the three mandatory drug tests, or are you inclined to suspend those?

THE COURT: Do you have a position, Mr. Boylan?

MR. BOYLAN: I'm sorry. Could you repeat that?

THE COURT: Mandatory drug testing?

PROBATION OFFICER: The three mandatory drug tests.

MR. BOYLAN: I'll leave it to the Court.

THE COURT: I'll require three tests, and if they are negative, then no further testing necessary.

PROBATION OFFICER: Thank you, Your Honor.

THE COURT: All right. Thank you, everyone. Hopefully, this is the last time.

MS. HERNANDEZ: I'm sorry. The only thing, obviously, and I think all the objections I raise are preserved?

THE COURT: They are all preserved for the record.

MS. HERNANDEZ: Thank you, Your Honor.

(Proceedings adjourned at 5:20 p.m.)

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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Bryan A. Wayne
Bryan A. Wayne