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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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THE UNITED STATES OF AMERICA,

Plaintiff, Criminal Action No.  
1:21-cr-623-CRC-2  
Thursday, June 8, 2023  
10:08 a.m.

vs.

KIRSTYN NIEMELA,  
Defendant.

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TRANSCRIPT OF SENTENCING HEARING  
HELD BEFORE THE HONORABLE CHRISTOPHER R. COOPER  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

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P R O C E E D I N G S

THE COURTROOM DEPUTY: We're on the record for Criminal Case 21-6223, this is Defendant 2, *United States of America vs. Kirstyn Niemela*.

Counsel please identify yourselves for the record starting with the government.

MR. GORDON: Good morning, Your Honor; Mike Gordon for the United States.

THE COURT: Good morning, Mr. Gordon.

MS. ARCO: Good morning, Your Honor; Jessica Arco for the United States.

THE COURT: Ms. Arco.

MR. PIERCE: Good morning, Your Honor. Nice to see you again. John Pierce on behalf of defendant Kirstyn Niemela, along with my co-counsel, Mr. Roger Roots.

I also wanted to say thank you to the Court for accommodating my illness the other week and also Ms. Niemela's work schedule with respect to the videoconference. So thank you very much for that.

THE COURT: Okay. Good morning, gentlemen.

Ms. Niemela, can you see and hear me?

THE DEFENDANT: I can, Your Honor.

THE COURT: All right. So let me pick up where Mr. Pierce just left off.

We received a waiver from you to -- a waiver of

1 your right to appear in person this morning. We are  
2 permitted under Rule 43 of the Federal Rules of Criminal  
3 Procedure to do misdemeanor sentences remotely but only with  
4 the written consent of the defendant.

5 I read your waiver, and you hand wrote after  
6 waving your right to appear in person, "All rights reserved  
7 and none waived."

8 Now, that could be interpreted as an ambiguity in  
9 your waiver. I take it you're not waiving any other rights  
10 besides your right to appear in person; is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: So do you unambiguously agree to waive  
13 your right to appear in person and to appear by Zoom this  
14 morning?

15 THE DEFENDANT: I do, Your Honor.

16 THE COURT: Okay. Mr. Gordon, any concerns with  
17 that?

18 MR. GORDON: No, Your Honor.

19 THE COURT: All right. The Court has read the  
20 submissions. There have been a number of late-breaking  
21 submissions by Mr. Pierce. I have tried my best to review  
22 everything that has been filed over the last day or so.  
23 I've read the presentence investigation report, the memos  
24 and supplements thereto filed by each side, and the  
25 supporting exhibits.

1 I've also received letters on the defendant's  
2 behalf from her mother, her sister, numerous of her friends,  
3 several clients for whom she has worked, two of her nieces,  
4 her brother, and a number of neighbors and other  
5 acquaintances, including Mr. Hess, who, I take it, traveled  
6 with her to D.C. on the 6th.

7 Any other written materials for the Court's  
8 consideration?

9 MR. GORDON: Your Honor, we did send an email --  
10 the government sent an email to your clerk this morning  
11 alerting Your Honor to two documents provided by the  
12 defendant to government counsel yesterday afternoon. One of  
13 them is styled with the case caption and has a notation at  
14 the top that says "Filed 6/7/23" in a manner that looks like  
15 it is intended to mimic the markings that the clerk would  
16 put on a document after it has been filed. This is the so-  
17 called notice of grievances against Assistant United States  
18 Attorneys drafted, apparently, by Ms. Niemela. By all  
19 indication it has not actually been filed, even though it  
20 says it has, or submitted to the clerk's office. It's my  
21 understanding that defense counsel is not adopting it or  
22 filing it on her behalf.

23 I do think it raises some issues that we need to  
24 address before we get into the meat of the sentencing  
25 hearing, so I would like to confirm that Your Honor has

1 received those materials from the government.

2 THE COURT: Yes, I've received the materials.  
3 They have not been filed on the docket, but they are fair  
4 game for the Court's consideration for purposes of the  
5 sentencing. So do you want to be heard on those issues?

6 MR. GORDON: Well, I do, Your Honor.

7 THE COURT: Or do you want to wait until the  
8 3553(a) factors?

9 MR. GORDON: Well, I think they're actually  
10 relevant as a preliminary issue and then separately within  
11 the 3553(a) factors. So I'm going to hold off on the  
12 3553(a) application, but just addressing some things I think  
13 we need to put on the record.

14 So in Ms. Niemela's sort of post-trial interview  
15 with a YouTube person, personality, she expressed grievances  
16 against the Court, against the jury pool, and against her  
17 trial counsel, which she had -- and which she has  
18 reiterated. So to the extent -- I do not believe she has  
19 expressed any grievances against sentencing counsel, so I  
20 just want to make that perfectly clear for the record, that  
21 I do not believe sentencing counsel -- that any of this  
22 applies to sentencing counsel.

23 With respect to the notices that were filed, it's  
24 my understanding that the D.C. bar does not require notice  
25 from a complainant to lawyers that are being complained

1 against; that, in fact, the D.C. bar counsel or the D.C.  
2 bar, the way it handles complaints is that it determines  
3 whether or not there is a sufficient basis to launch an  
4 investigation. And if there is, at that point the D.C. bar  
5 would notify the attorneys under investigation that they are  
6 under investigation as a result of a complaint, and at that  
7 point the complaint's made public. There is apparently no  
8 requirement that the complainant notify or file any kind of  
9 notice.

10 As defense counsel shared via email -- as I shared  
11 with the Court via email but now I'm putting on the record,  
12 defense counsel has indicated that they did not draft these  
13 documents, they did not consult with Ms. Niemela about them  
14 before she emailed them to government counsel, and they have  
15 not consulted with her about them afterwards. So to the  
16 extent that any of these issues become relevant later, I  
17 think it's important to put them on the record.

18 Finally, I do think it's important to identify  
19 what her three complaints are against government counsel.

20 The first is that we wrote in our sentencing  
21 memorandum that Co-Defendant Stephanie Chiguer, actually in  
22 the prior case that remains before Judge Mehta, was  
23 scheduled for sentencing tomorrow. Ms. Niemela asserts that  
24 that is a false statement.

25 It is not, though the government does agree that

1 it does not appear on the public docket. And if the Court  
2 would like to go to a breakout room, we're happy to explain  
3 why we can say definitively that sentencing is scheduled for  
4 tomorrow, but it is not on the public docket. I'm sure --

5 THE COURT: That's not necessary.

6 MR. GORDON: I assume the Court can infer it.

7 Secondly, she asserts that government counsel  
8 violated rules of professional conduct when we provided  
9 information to the grand jury and trial jury without, quote,  
10 competent fact witnesses to testify regarding authenticated  
11 evidence.

12 And finally, she cites a Rule of Criminal  
13 Procedure and Professional Conduct to say that we should not  
14 have filed opposition without good cause to her motion to  
15 postpone sentencing.

16 So those are her complaints, Your Honor. I'm not  
17 asking the Court to take any action with respect to them.  
18 It's not a matter before this Court. Nor am I asking the  
19 Court to weigh in. But I think it's important to have made  
20 the record of all of those events.

21 THE COURT: Okay. Mr. Pierce, I'm not going to  
22 resolve the underlying complaint, and obviously it's -- I've  
23 got enough to deal with, and this is not within my  
24 jurisdiction. But anything to add to what Mr. Gordon just  
25 put on the record?

1 MR. PIERCE: Yes, Your Honor. I don't think it's  
2 really -- you know, these things are really too relevant  
3 here for this morning. I just want to clarify one -- I just  
4 want to make one factual correction to what Mr. Gordon says;  
5 and he's not aware of this yet so it's not on him.

6 But subsequent to my email to Mr. Gordon this  
7 morning that he references, we have had some attorney-client  
8 privileged discussions with Ms. Niemela about this, but at  
9 the time that I emailed Mr. Gordon this morning, you know,  
10 it was accurate that I had not had any, you know, such  
11 discussions. I just wanted to make sure that was accurate.

12 So I'm not sure if Mr. Roots has anything to add  
13 on this, but I agree, Your Honor. I don't think this is  
14 really, you know, terribly relevant for this morning's  
15 purposes.

16 THE COURT: Okay. Who is handling the sentencing,  
17 you or Mr. Roots?

18 MR. PIERCE: Mr. Roots is, Your Honor.

19 MR. ROOTS: Yes, I'll be making arguments about  
20 the substance of the sentence.

21 I'll just say I agree with Mr. Pierce. I don't  
22 know the relevance. I guess the government is asserting  
23 lack of acceptance of responsibility. We're not actually  
24 seeking the two points for acceptance of responsibility, and  
25 we do have -- we argue we've got some good arguments on

1 appeal that Ms. Niemela was not -- was not properly  
2 convicted with regard to several of the counts, that there  
3 just was insufficient evidence.

4 So to the extent that the prosecution is saying  
5 that she's bitter or frustrated, you know, we don't even  
6 contest that, and I think it's almost not a relevant -- I  
7 would be bitter and frustrated. I mean, so I don't think  
8 that's really a relevant issue for this sentencing hearing.

9 THE COURT: Okay. Mr. Roots, you know, I'm happy  
10 to allow you to handle the sentencing hearing, but let me  
11 make a couple of observations. Okay?

12 First of all, this is the second case in which  
13 you've appeared on behalf of a defendant in my courtroom. I  
14 understand that you are involved in at least one other case  
15 in the courthouse. You know, our local rule permits counsel  
16 from other jurisdictions to appear *pro hac*, but we ask the  
17 question: How many *pro hacs* have you filed and have been  
18 granted? Because for lawyers who practice regularly in this  
19 court -- and there's no hard-and-fast cut-off as to what  
20 "regularly" means; it's up to the judge -- we expect them to  
21 join our bar. So at some point, and I'll put you on notice,  
22 you know, either I in another case or another one of my  
23 colleagues is going to require you to join this bar and to  
24 go through that process. Okay? So just put that in your  
25 hat. Okay?

1           Second, we were all here in person last week,  
2           Mr. Pierce, and we postponed that -- including the defendant  
3           and all of her family -- and we were not able to go forward  
4           with that because you had a health condition. Now we have  
5           Mr. Roots.

6           Why couldn't Mr. Roots have stood in -- if he's  
7           going to handle this this week, why couldn't he have handled  
8           this last week and avoided this entire disruption and folks  
9           traveling from New Hampshire to come down here?

10           MR. PIERCE: Well, I mean -- well, the -- I mean,  
11           the direct answer is, Your Honor, he was -- you know, he  
12           came in, really honestly, at the very, very, very last  
13           minute. And, number one, he was not -- we had not submitted  
14           any PHV at that time because we did not anticipate that this  
15           would come up, and so I was anticipating doing it, and then,  
16           you know --

17           THE COURT: Well, if you were prepared to do it  
18           last week, why aren't you doing it now?

19           MR. PIERCE: Well, Your Honor, I mean -- I mean,  
20           as I've probably, you know, said to numerous courts -- you  
21           know, sometimes we probably don't get much sympathy -- we  
22           have -- we have so, so, so much going on that we often have  
23           to sort of, you know, put resources where things, you know,  
24           come up right away, and --

25           THE COURT: Well, I assume, when you had to go to

1 the emergency room last week, that was unexpected, and that  
2 you had fully prepared for this sentencing last week.

3 MR. PIERCE: Well, I mean, everything, of course,  
4 is relative. I mean, I prepared as much as I could, and I  
5 was prepared to go forward.

6 I mean, now -- you know, I mean, for today we've  
7 had Mr. Roots really preparing. I mean, that -- I'm not  
8 trying to prevaricate, Your Honor. I apologize for  
9 anything. But that's -- you know, I mean, we're honestly --

10 THE COURT: I think both of you get my point. All  
11 right?

12 MR. PIERCE: Yes, Your Honor.

13 THE COURT: All right. Let's start -- with that  
14 out of the way, let's start with the factual findings in the  
15 presentence investigation report. There were no objections  
16 to the factual findings -- let's put the criminal history  
17 and prior convictions to the side -- regarding the  
18 circumstances of the offense. The factual section from the  
19 PSR is drawn mostly from trial evidence.

20 You know, are there -- Mr. Pierce, or I suppose  
21 Mr. Roots, are there objections to the factual narrative  
22 regarding the circumstances of this offense?

23 MR. ROOTS: If I could address that? I'll just  
24 say I do believe we do object to a lot of -- a lot of it  
25 seems to be taken from the complaint and the indictment in

1 the case. We are going through the transcript of the trial,  
2 and we don't actually see a lot of evidence that was  
3 submitted on the transcript indicating individualized  
4 involvement in crime.

5           Granted, for Ms. Niemela, you know, there was an  
6 alarm going off, and so the entry and remaining in an  
7 unauthorized area count, you know, there may be factual  
8 support for that, at least if the jury determined that the  
9 alarm going off was evidence of that.

10           Then there's these other counts, the disorderly  
11 conduct counts and the picketing and parading, and our  
12 review of the transcript thus far does not indicate she  
13 picketed or paraded. She did not yell. She did not shout.  
14 So we actually -- I think we do contest at least the tone  
15 and the tenor of those allegations, and we think the jury  
16 may have found guilt on those three counts that was  
17 unwarranted.

18           THE COURT: All right. I sat through the trial.  
19 I heard the evidence. I read the facts presented in the  
20 presentence report and find that they are generally  
21 consistent with the trial evidence, and I have not -- I  
22 didn't get any post-trial motions challenging the  
23 sufficiency of the evidence, at least not yet, and so I  
24 would not have granted any such motion based on my  
25 recollection of the trial evidence.

1           So the Court will accept the factual narrative in  
2           the PSR for purposes of this sentencing.

3           Ms. Niemela, has Mr. Roots or Mr. Pierce reviewed  
4           the presentence investigation report with you?

5           MR. ROOTS: Yes, I think we've all been --

6           THE COURT: I was asking her, sir.

7           Have they reviewed it with you? Have you read it?

8           THE DEFENDANT: I read it after the due date. I'm  
9           not really sure. I feel like I got more than one report so  
10          I'm a little confused on some of them.

11          THE COURT: Okay. But you have read the final  
12          presentence report?

13          THE DEFENDANT: Yes. The one from Sherry Baker?

14          THE COURT: Yes.

15          THE DEFENDANT: Yes.

16          THE COURT: And have you been satisfied with your  
17          sentencing counsel thus far in the case?

18          THE DEFENDANT: I'm struggling with adequate  
19          defense all the way around since the start of this, to be  
20          honest with you.

21          THE COURT: They've furnished you the presentence  
22          investigation report and have been able to answer your  
23          questions about it?

24          THE DEFENDANT: Yes, sir.

25          THE COURT: Okay. Again, the Court will accept

1 the factual findings in the PSR regarding the circumstances  
2 of the offense; and therefore those facts, as stated, will  
3 be adopted by the Court for purposes of sentencing.

4 All right. Let's move to the calculation of the  
5 guidelines range.

6 There were four counts of conviction. Two of them  
7 are subject to the guidelines as Class A misdemeanors, so  
8 Count 3, the entering and remaining in the restricted  
9 building count in violation of 1752(a)(1), and Count 4,  
10 disorderly and disruptive conduct in a restricted building  
11 and grounds in violation of 1752(a)(2). The remaining two  
12 counts are not subject to the guidelines as Class B  
13 misdemeanors.

14 Under Guideline Section 3D1.2(b), probation  
15 grouped the two 1752(a) offenses because they involved the  
16 same victim, namely Congress, and because two or more of the  
17 underlying acts were connected by a common objective or  
18 plan.

19 For those two grouped counts, the probation office  
20 supplied the guideline for obstruction of justice found at  
21 Guidelines Section 2A2.4 because that had the highest base  
22 offense level, which was 10.

23 The other count that was subject to the  
24 guidelines, the 1752(a)(1) count, the probation office found  
25 that the trespass guideline at Section 2B2.3 applied, and

1 that has a base offense level of 4.

2 Under the grouping analysis, probation applied the  
3 guideline with the highest base offense level, which was 10.  
4 There were no specific offense enhancements. There were no  
5 role reductions. There was no acceptance of responsibility  
6 reduction because Ms. Niemela chose to go to trial. That  
7 led to an adjusted offense level of 10.

8 Ms. Niemela was assigned one criminal history  
9 point based on a 2019 simple assault conviction in Nashua,  
10 New Hampshire, at an establishment called Dolly Shakers,  
11 which is terrific name and sounds like a pretty fun place.  
12 But be that as it may, neither of her other adult  
13 convictions were counted, and that led to a criminal history  
14 category of 1.

15 At Offense Level 10, that resulted in an advisory  
16 guideline range of 6 to 12 months.

17 Now, Mr. Pierce or Mr. Roots, I noticed in the  
18 latest supplement to your sentencing memo you noted an  
19 objection. There were no objections filed to the draft  
20 presentence report. There was no objection, I don't  
21 believe, to the base offense level in the initial sentencing  
22 memos. The morning of sentencing is not the time to raise  
23 objections to offense levels or guidelines calculations, so  
24 I believe you've waived that.

25 But, you know, obviously the Court has an

1 independent obligation to ensure that the guidelines  
2 calculation is correct, so do you want to be heard briefly  
3 on your objection to the Base Offense Level 10 or any other  
4 aspect of the calculation?

5 MR. ROOTS: Yes. I'll just say ironically it's  
6 the other case, the *Alberts* case, which we had before you,  
7 Judge, and we just encountered the same issue where the  
8 probation office appears to be wrongly giving ten points to  
9 disorderly conduct and suggesting that because the  
10 guidelines don't have a specific baseline, base offense  
11 level for disorderly conduct, that they then look to the  
12 base level for opposing and resisting officers, ten points.

13 Now, that actually is a felony baseline. That  
14 does not apply to this. This is a misdemeanor, Class A  
15 misdemeanor. And there's no evidence in the record and  
16 nothing in the indictment, the charging instruments, that  
17 she opposed or resisted officers. It just absolutely does  
18 not apply.

19 And, again, that's a felony application that the  
20 probation office is -- but they're also doing it in the  
21 *Alberts* case, which actually led me to investigate this. It  
22 just does not apply.

23 For Class A misdemeanors, the U.S. Sentencing  
24 Guidelines -- and I think there's a footnote put in there in  
25 what was filed today -- is six points. If there is

1 absolutely no designated similar offense in the guidelines,  
2 it's six points. And I --

3 THE COURT: Where is that?

4 MR. ROOTS: I believe it's in a footnote of what  
5 we just filed this morning.

6 For Class A misdemeanors without an assimilated  
7 charge -- in other words, where a Court can find no  
8 comparables -- it's six points --

9 THE COURT: Well, the question is what is the most  
10 analogous guideline to the --

11 MR. ROOTS: Yes, and there's another thing --

12 THE COURT: -- to the disorderly and disruptive  
13 count. Is it trespass, or is it the obstruction guideline  
14 that probation applies? And tell me why one is more  
15 analogous than the other.

16 MR. ROOTS: Well, I would say in this case  
17 specifically there is no evidence of opposing or  
18 resisting -- no contact with officers. No yelling at  
19 officers. No threatening officers.

20 THE COURT: Well, you don't have to contact  
21 or threaten in order to obstruct, right? And there's  
22 evidence -- and I'm sure Mr. Gordon will point this out --  
23 that she crossed three different police lines, and he will  
24 remind me how close she was to those lines when she did that  
25 and what effect it had.

1           Whether that was the crime charged or not, the  
2           question is whether the evidence supports the application of  
3           one guideline or another.

4           So, Mr. Gordon, why don't you pipe in.

5           MR. GORDON: Thank you, Your Honor.

6           So, first, Mr. Roots is sort of wrong as a  
7           matter of basic reading comprehension. So on Appendix A of  
8           the guidelines, there is an index that lists for every  
9           statute -- or actually, that's the point, not for every  
10          statute, for most statutes -- what the applicable guideline  
11          is. And then there are some statutes that are not addressed  
12          in the guideline, and that's where the catch-all provision  
13          that Mr. Roots is referencing comes into play.

14          Here, Page 567 of the 2021 guidelines manual is  
15          that index, and it shows that for convictions under 18 USC  
16          1752, which is the statute that comprises Count 1 and Count  
17          2 in this case, the applicable guideline is 2A2.4 and 2B2.3.

18          So the guidelines expressly designate the  
19          applicable base offense level for Ms. Niemela's offense as  
20          the one probation applied. There isn't --

21          THE COURT: Well, but those two provisions, those  
22          two sections of the guidelines, have two different base  
23          offense levels.

24          MR. GORDON: Yes, Your Honor.

25          THE COURT: So how does probation know which one

1 to apply?

2 MR. GORDON: Because 2A2.4 has to do -- it's  
3 basically under the assault or forcible resistance set of  
4 guidelines. Right? That's where that falls under. Whereas  
5 2B2.3 is a lesser conduct that does not rise to the level  
6 of, you know, forcible contact with officers, but instead  
7 conduct that is otherwise disorderly or disruptive to  
8 officers. So that's --

9 THE COURT: But if I find that her conduct did not  
10 involve forcible interaction with others, can I nonetheless  
11 apply the guideline at 2B2 -- 2A2.4?

12 MR. GORDON: Well, yes, Your Honor, you can  
13 anyway. Because if you look at the text of 2A2.4  
14 specifically, and I'll pull that up to read from it here --  
15 or I will as soon as my network complies. There we go.

16 So 2A2.4, obstructing or impeding officers, has a  
17 specific offense characteristic and enhancement if the  
18 offense involved physical contact or enhancement if a  
19 dangerous weapon was involved or an enhancement if there was  
20 bodily injury. Thus, those are not required as elements of  
21 the application of that guideline.

22 Here --

23 THE COURT: What required probation to apply 2A2.4  
24 based on a conviction of 1752(a)(2)?

25 MR. GORDON: Because in this case Ms. Niemela was

1 part of three separate breaches of police lines within the  
2 Capitol when the officers were trying to first block rioters  
3 from further progressing and then trying to clear rioters  
4 from the Capitol.

5 THE COURT: Okay. So let me just interrupt you.  
6 So the conviction itself, under that statute, does not  
7 require the application of 2A2.4. What requires it is her  
8 offense conduct, which may not qualify for an enhancement  
9 but the sort of heartland conduct involved breaching the  
10 police lines.

11 MR. GORDON: Correct, Your Honor. The same  
12 offense conduct that we've already, in the previous section  
13 of this hearing, accepted as established in the PSR.

14 THE COURT: Okay.

15 All right. Very quickly, Mr. Roots, last word.

16 MR. ROOTS: Yes. Well, there is no -- we're  
17 looking for the transcript -- through the transcript of  
18 these three breaches. I don't believe that's -- from my  
19 reading thus far, I don't see evidence that she breached --  
20 the most the prosecution has said -- in places they say that  
21 she moved to the front. Well, short people move to the  
22 front. If you look at a group photograph, short people move  
23 to the front. That just absolutely is so far away from  
24 resisting or opposing officers.

25 There's no evidence in the record -- and by the

1 way, going back to just the categorization of the charge  
2 called disorderly conduct in an unauthorized area, that  
3 statute and subsection apply to things like having your  
4 music too loud, you know, sitting when you should be  
5 standing, or standing when you should be sitting. There's  
6 nothing in there that's even remotely connected to opposing  
7 or resisting officers.

8 THE COURT: Okay. Again, the Court sat through  
9 the trial. Particularly the video evidence that the  
10 government displayed numerous times is consistent with the  
11 characterization that she, perhaps not at the very front of  
12 the line, was part of a group that breached three different  
13 police lines and supports the application of the probation  
14 office's chosen guideline at 2A2.4. The Court, therefore,  
15 finds that the probation office has correctly calculated the  
16 range, which is Level 10 at Criminal History Category 1, at  
17 6 to 12 months.

18 All right.

19 MR. ROOTS: Could I make --

20 THE COURT: Your objection is noted. Your  
21 objection is noted for the record, Mr. Roots.

22 And, Mr. Gordon, the government has objected to  
23 the sequencing of the grouping analysis. This has come up  
24 in a number of cases. It doesn't affect the calculation,  
25 and so I'm not going to address it, but I have sort of

1 counseled the U.S. Attorney's Office and probation to,  
2 perhaps, consult with the Sentencing Commission and come to  
3 ground on the proper sequencing of the grouping analysis so  
4 that we don't have to waste paper in further cases. And I  
5 would just reiterate that here.

6 MR. GORDON: Yes, Your Honor.

7 THE COURT: All right. So probation has made a  
8 recommendation of eight months imprisonment, which is  
9 squarely within the guidelines range that the Court has now  
10 calculated, plus 12 months of supervised release as to  
11 Counts 3 and 4, and six months concurrent on the two  
12 nonguidelines counts.

13 The government has recommended 12 months and one  
14 year supervised release, \$500 restitution, \$70 in special  
15 assessment, and a \$3,672 fine. I assume you will let me  
16 know why you got to that particular figure, so that's a good  
17 segue to the 3553(a) factors, Mr. Gordon.

18 MR. GORDON: Yes, Your Honor.

19 So I'd like to start with the defense's contention  
20 that this is just, as they call it over and over again, a  
21 mere trespass. That's not what this case is. That's not  
22 what any of the January 6th cases are.

23 This is not akin to jumping over your neighbor's  
24 fence to retrieve a ball that your kid accidentally threw  
25 over it. This is not reentering a store after the owner

1 told you you were not allowed to go back in and receiving a  
2 trespass notice. Those are also misdemeanor trespass  
3 offenses. They bear no resemblance to the defendant's  
4 conduct on this day, nor its impact.

5 Those kinds of offenses don't force Congress to  
6 halt the certification of an Electoral College vote, fear  
7 for their lives, evacuate the building, or take shelter in  
8 place. They don't cause interruption to the peaceful  
9 transfer of power that's the bedrock of our democracy.

10 Ms. Niemela's actions did that.

11 Now, not alone. She was one of the thousand  
12 rioters who entered the building. But the fact that she was  
13 not among the worst of them, the fact that she did not  
14 herself assault police or steal things or vandalize things,  
15 none of that is mitigated. If she had done those things,  
16 she would have been charged with those things, and we would  
17 be having an entirely different sentencing proceeding.

18 The government's recommendation -- which, Your  
19 Honor, I believe, is 11 months, not 12 -- the government's  
20 recommendation is not based on what anyone else did. It's  
21 based on what she did, and it's based on the impact that she  
22 has of not accepting responsibility, of going to trial, and  
23 of losing the three points for acceptance that she would  
24 have gotten had she, you know, chosen a different path.

25 So I know Your Honor sat through the trial. I

1 know that you heard all the witness testimony. I know you  
2 saw the exhibits. So I'm not going to sort of redo my  
3 closing argument now.

4 But I do want to highlight, as you mentioned a few  
5 minutes earlier, this defendant was part of three separate  
6 breaches of police lines. But before even we get to that,  
7 there's the matter of her entrance.

8 She entered the Capitol early on. Right? Just  
9 about 11 minutes after the first breach of the Senate Wing  
10 Doors. And as she did show, there were broken windows on  
11 either side that rioters were climbing through. There was  
12 broken glass in the Senate Wing Door itself that she walked  
13 through. And the video shows there were loud alarms  
14 blaring. Right? There can be no suggestion that she had --  
15 that she thought she was allowed in.

16 Counsel -- trial counsel tried to make that  
17 argument. The jury rejected it.

18 Not only that, but within minutes of entering --  
19 actually, within one minute of entering, she responded to a  
20 Tweet where the author wrote, "Breaking: Trump supporters  
21 have breached the Capitol building, tearing down four layers  
22 of security fencing and are attempting to occupy the  
23 building, fighting federal police who are overrun. This is  
24 the craziest thing I've ever seen in my life. Thousands.  
25 Police can't stop them." This is Government Exhibit 822.

1           And as established by the timing, the metadata,  
2 she responded to that with her own video, which we were not  
3 able to recover, within one minute of entering the Capitol  
4 building.

5           So she knew exactly what she was doing, and there  
6 can be no doubt about what her purpose was due to her own  
7 social media, text messages, and conversations with others  
8 in the days leading up to January 6th.

9           Ms. Niemela has gone on, you know, at least one  
10 YouTube interview after trial and argued that the government  
11 is trying to punish her for First Amendment protected  
12 speech.

13           I know Your Honor knows that as a matter of law  
14 that's wrong. It's, unfortunately, a view of the First  
15 Amendment that many people hold incorrectly because they  
16 don't understand it.

17           The government here isn't punishing Ms. Niemela  
18 for what she said. She was convicted because of what she  
19 did. And the things she said are relevant, they were  
20 admissible, because they provide a window into what she was  
21 thinking when she did them. That's evidence of intent, an  
22 important element.

23           So your speech -- partly I'm speaking to  
24 Ms. Niemela here and anybody who fortunately is listening --  
25 your speech is not in some isolated silo that the government

1 can't ever look at or use. If your speech is indicative or  
2 a window into or expresses your intent, then it will  
3 absolutely and can be used against you, and it's not  
4 violative of the First Amendment to do it.

5 Here Ms. Niemela provided that kind of evidence  
6 against herself.

7 So what did she do once she got into the Capitol?

8 First, she went down to the Crypt. There she  
9 encountered a line of police officers who had spread across  
10 the sort of middle of the Crypt; only about seven, eight,  
11 maybe ten total officers, far too few to block that area.  
12 Immediately overwhelmed. And these officers, for a very  
13 short amount of time, had blocked the rioters from further  
14 penetrating.

15 But then other rioters -- not Ms. Niemela --  
16 crashed through that police line. Admittedly, she was  
17 nowhere near the front of that. Right? She was many rows  
18 back from the front.

19 She is not one of the ones herself who pushed  
20 through or caused the brief breach, but she took advantage  
21 of it, and as sort of some of your colleagues have expressed  
22 in their own sentencing hearings, the strength of the mob on  
23 January 6th was in its numbers. That was its power. It was  
24 the officers' inability to block such a massive block of  
25 people when they were so massively outnumbered, and so they

1 didn't.

2           Could officers have, you know, pulled out a weapon  
3 and fired a shot in the air? Maybe.

4           Would have that scared rioters into dispersing?  
5 Maybe.

6           But there are extraordinary risks with doing that,  
7 including that none of these people had gone through any  
8 kind of security screening or metal detectors. Police had  
9 no idea who might have been armed in that crowd and with  
10 what.

11           And although there was no sort of conference among  
12 the officers, no chance to huddle up and discuss, no  
13 briefing from their supervisors, every single one of those  
14 officers in the Crypt made the decision not to use their  
15 weapons because they knew that doing so could have  
16 exacerbated the conflict.

17           So when the rioters started pushing through, the  
18 officers didn't really have much option other than to yield,  
19 which they did.

20           Ms. Niemela took advantage of that breach and  
21 progressed further.

22           From there she made her way to the next area,  
23 which was outside of the Memorial Doors. Here she pushed up  
24 toward the front where her co-defendant, Michael Eckerman,  
25 was in the very, very front of that line. Your Honor has

1 already sentenced Mr. Eckerman, and you've already watched  
2 the video of his conduct sort of frame by frame in our  
3 prior sentencing hearing; and so I'm sure you'll remember  
4 Mr. Eckerman was one who pushed an officer in the shoulder  
5 causing that officer to tumble down the stairs and then be  
6 sprayed with a fire extinguisher. And when that breach of  
7 the police line happened, the rioters streamed through.

8 At that moment Ms. Niemela was sort of --

9 THE COURT: Just let me interrupt you. I think  
10 there -- he pushed him. I think there was a factual dispute  
11 as to whether he tumbled down the stairs, but...

12 MR. GORDON: That's right, Your Honor. The  
13 government's interpretation of the video evidence and the  
14 statement of the officer is that he did tumble down the  
15 stairs.

16 I recognize that the video is less than sort of  
17 perfectly clear on that point, but that is what the officer  
18 says happened to him, and the video does not contradict  
19 that.

20 At that moment, when Mr. Eckerman did that,  
21 Ms. Chiguer was holding onto Mr. Eckerman's backpack. She  
22 was standing right behind him, and Ms. Niemela was right  
23 behind Ms. Chiguer. I think the three of them were at the  
24 very front with Eckerman in front.

25 From there, when that breach happened, they

1 charged up the stairs. And this is one of the moments where  
2 the rioters first gained access to the next floor of the  
3 Capitol. This was a really important breach. Right?

4 Each of these moments, first the Crypt allowing  
5 rioters to spread out through the Capitol, and then that  
6 breach at the Memorial Doors that gave rioters access to the  
7 stairway where they reached the main floor of the Capitol --  
8 because that's the floor that the Rotunda is on. That's the  
9 floor that Speaker Pelosi's office is on. Right? That's  
10 the floor that the House and Senate Chambers are on.

11 But that breach was a particularly important  
12 moment in the riot. And when it happened, Ms. Niemela was  
13 right behind Chiguer and Eckerman following sort of a  
14 column, and there they progressed up the stairs and made  
15 their way just outside of the House Chamber.

16 At that moment a large number of members of the  
17 House of Representatives and their staff were still in the  
18 House. They were being evacuated slowly. There were -- you  
19 know, there's -- remember, there's hundreds of members of  
20 Congress in there, plus their staff, so they can't all get  
21 out at once.

22 There are many members of Congress still in.  
23 Their evacuation routes have been partly compromised to the  
24 point where at that moment officers had used furniture  
25 within the House Chamber to barricade the door and have

1 drawn their weapons and are pointing them at the door. They  
2 are anticipating a breach. Some members of the House and  
3 their staffs had taken sort of cover underneath benches or  
4 desks. Some worked frantically trying to call their  
5 families, worried that they were about to die. Some were  
6 making make-shift weapons out of anything they could find.

7 That was one of the most critical and fraught and  
8 dangerous moments in all of January 6th, and Ms. Niemela was  
9 right towards the front of that mob outside the House  
10 Chamber banding to get through.

11 At that point there were about eight officers.  
12 Your Honor saw repeated video of that conflict, of where  
13 Ms. Niemela was. And as soon as rioters pushed through,  
14 she, from either the second or the third row of those  
15 rioters, followed suit.

16 It is, again, a minor miracle that no officers  
17 fired shots in that area and that no one died and that a  
18 massacre did not result.

19 Now, from there Ms. Niemela didn't exit the  
20 building. She continued through the hallways. She passed a  
21 clearly marked exit, and, instead, she posed for selfies  
22 within the Rayburn Room. Celebratory photographs.

23 Throughout the time inside the Capitol,  
24 Ms. Niemela wore her sunglasses, and she kept her gaiter  
25 pulled up over her face in an attempt, an obvious attempt,

1 to obscure her identity, something that she told her co-  
2 defendant or urged her co-defendant to do, Ms. Chiguer,  
3 repeatedly, well aware that there were cameras, that what  
4 she was doing was wrong, and taking any effort she could to  
5 obscure her face.

6 Obviously she's not somebody who is covering her  
7 mouth out of any kind of COVID precaution. She has, by all  
8 accounts in all forums, including the incident at the  
9 hospital, expressed over and over and over again, including  
10 on social media, her disdain for masks, her belief that  
11 COVID is largely a hoax, and her refusal to wear them  
12 wherever possible. This is not that she was protecting  
13 herself from a virus. She was attempting to protect herself  
14 from being identified.

15 Then she exited the Capitol approximately -- after  
16 spending approximately 20 minutes inside.

17 That's her conduct on January 6th.

18 But lest there be any suggestion that this was all  
19 just completely out of left field for her, right, that she  
20 never would have contemplated anything like this, her own  
21 statements or her own social media posts or shares or  
22 endorsements suggest otherwise. The most important one from  
23 there is Government Exhibit 818 where she shared a post by  
24 another person who wrote, "I gotta say if I were a  
25 Congressman called to D.C. on January 6th knowing every one

1 of the traitors are together at one location and there was  
2 some one million pissed off patriots outside, I would be  
3 rather nervous as to how I would safely exit the building.  
4 Not a good situation."

5 The threat to harm politicians -- that is not even  
6 implicit, that is explicit -- in that statement is  
7 unmistakable, and it is chilling and actually endorsed by  
8 Ms. Niemela in the week leading up to January 6th.

9 The fact that her conduct was endangering Congress  
10 and halting the certification was not an accident, mistake.  
11 It was not a, you know, ancillary problem of her behavior or  
12 side effect. It was the intended effect, and she achieved  
13 it.

14 Arguments to the contrary were raised by the trial  
15 counsel and quickly rejected by the jury. I anticipate that  
16 sentencing counsel will make the same arguments here. Your  
17 Honor should reject them just as the jury had.

18 But we're not here to relitigate the trial.  
19 we're here to decide what the appropriate sentence is for  
20 Ms. Niemela based on that conduct.

21 Now, guidelines put the range at 6 to 12 months  
22 for this conduct. Probation's recommended 8 months. While  
23 the government certainly respects probation's sort of  
24 assessment, we think they've got it wrong here because the  
25 recommendation that they've made does not account for Ms.

1 Niemela's past, does not account for her dangerousness in  
2 the future, and it is not in line with the sentencing that  
3 similarly situated defendants have received.

4 THE COURT: Why don't I stop you there.

5 I've read the analogs that you presented in your  
6 memo of misdemeanants who have gone on trial and been  
7 convicted, and the ranges tend to be somewhere in the 4- to  
8 12-month area.

9 Probation's recommendation is right in the  
10 heartland of that range.

11 Why is she at the top end as opposed to the low or  
12 middle end?

13 MR. GORDON: Right. Because the defendants who  
14 got towards the lower end of that each had sort of  
15 mitigating factors that did not have the kind of post-trial  
16 conduct that she does or the kind of past that she does.

17 So first just dealing with her January 6th  
18 conduct, those defendants didn't participate in three  
19 separate breaches. They weren't in the most -- some of the  
20 most sensitive areas. Right? They were at most in one  
21 breached area. So her conduct within that range is at the  
22 upper end of sort of the dangerousness and disorderly and  
23 disruptiveness and, frankly, obstructing the officers in  
24 multiple places at multiple times in multiple --

25 THE COURT: And these are all cases that did not

1 involve felonies, where folks were not charged with assault  
2 or violence or civil disorder or resisting officers or any  
3 of the standard felony charges we see?

4 MR. GORDON: Correct, Your Honor. These are  
5 people with the same situation as Ms. Niemela, charged only  
6 with the standard for misdemeanors, chose to go to trial,  
7 were convicted. So she's part of that -- the universe of  
8 six total people, including herself, who are in that  
9 situation.

10 And I'll note, Your Honor, that, you know,  
11 Ms. Niemela, of course, has every right to go to trial.  
12 She's not in any way being sort of punished or her sentence  
13 is not based on that right. But this was folly on her part,  
14 and we tried to express that to her.

15 Your Honor may not be aware that Ms. Arco and I  
16 flew to New Hampshire once before trial and sat down with  
17 Ms. Niemela, Mr. Garrity, and Mr. Monteith and conducted an  
18 extensive reverse proffer with Ms. Niemela. We were there  
19 for hours. We showed her probably 80 percent, if not more,  
20 of the evidence that we ended up presenting at trial.  
21 Right? We showed her the impact of the guidelines about  
22 pleading guilty. We showed her the sentencing ranges that  
23 people had received, you know, who had pled guilty and those  
24 who had not. We offered her a plea to the parading count.  
25 Right? The lowest charge.

1 She rejected all of that and chose to go to trial.

2 So be it. Right? She has every right to do that.

3 But it's important to understand -- and I think  
4 it's going to come up in a second in my presentation -- it's  
5 part and parcel of the rest of her mindset.

6 So going back, though, to the -- how she is  
7 different than the other defendants who received perhaps  
8 lower sentences, looking at Ms. Niemela's criminal history,  
9 all right, her past.

10 Mr. Roots and Mr. Pierce are right about the  
11 guidelines scoring, but they're wrong in their  
12 understanding, in their mistaken belief that if something  
13 does not receive points under the guidelines, that it is  
14 beyond the Court's consideration at sentencing under the  
15 3553(a) factors. Mr. Pierce and Mr. Roots seem to be  
16 completely unaware of the interaction between those two  
17 things and how they are distinct.

18 Remarkably, in their own sentencing memorandum  
19 they cite the Supreme Court case that establishes that,  
20 which I'll point the Court to *Nichols v. United States*, 511  
21 U.S. 738, showing that district courts have traditionally  
22 considered defendant's prior criminal conduct even when the  
23 conduct did not result in conviction. And that's the  
24 situation for Ms. Niemela here.

25 This is not her first run-in with the police.

1 THE COURT: As a matter of fact, the Court can  
2 consider acquitted conduct even if a defendant goes to trial  
3 and is acquitted by a jury; the Court is not precluded from  
4 considering that case or that conduct.

5 MR. GORDON: Exactly, Your Honor. And partly  
6 because the standard here at sentencing is different, right?  
7 We're dealing with preponderance of the evidence and not  
8 beyond a reasonable doubt, and we don't have to relitigate  
9 underlying cases from other courts at other times.

10 So Ms. Niemela's history here shows a concerning  
11 pattern. Right? She is by all accounts a heavy drinker.  
12 She is somebody who, when she drinks or otherwise, is known  
13 to be violent. Her co-defendant -- her prior co-defendant,  
14 now separately charged defendant, Stephanie Chiguer, with  
15 whom she was formerly in a relationship, once had to get a  
16 restraining order against Ms. Niemela due to that violence  
17 and did so.

18 Ms. Niemela has obstructed police previously given  
19 the incident in the hospital where she was outraged about  
20 being asked to wear a mask, in a hospital no less, during  
21 the height of COVID.

22 So she has demonstrated disrespect for the law  
23 previously, and these factors are relevant, and they're  
24 different from the lower level -- not lower level, the  
25 defendants who received lesser sentences who are similarly

1 situated to her because they speak to her likelihood of  
2 reoffending. Right? They speak to the need for specific  
3 deterrence.

4 And the same thing comes up with her post-trial  
5 conduct. Obviously the ship has long since sailed for  
6 Ms. Niemela to receive acceptance of responsibility under  
7 the guidelines, but perhaps, and as many defendants do, she  
8 can express remorse to the Court today and therefore ask for  
9 leniency under sort of a longer version of "I promise I'll  
10 never do anything like this again; I am sorry and humbled by  
11 what I did."

12 If Ms. Niemela were to say something like that  
13 today -- and I don't expect that she will -- it would be  
14 inconsistent with everything she has said in every available  
15 forum before, during, and after her trial.

16 Ms. Niemela has been, to the contrary, absolutely  
17 insistent that she did nothing wrong, that the system has  
18 been rigged against her from the start. Everything is  
19 someone else's fault but hers. Donald Trump didn't lose the  
20 election; it was rigged. Members of the Trump supporters  
21 are not responsible for January 6th; it was Antifa. It was  
22 the police's fault for letting them in or not acting  
23 differently. It was Speaker Pelosi's fault for not having  
24 ordered more guards to be present in the Capitol. She  
25 wasn't properly found guilty. Your Honor was unfair. The

1 jury was unfair. The prosecutors were unethical, which  
2 brings us to her, you know, so-called notice of grievances  
3 that she provided yesterday. It's always someone else's  
4 fault, never hers.

5 She's never satisfied with defense counsel,  
6 including apparently she has misgivings about sentencing  
7 counsel now because they don't tell her what she wants to  
8 hear. Right? They don't tell her that she's blameless.

9 In trying to take retaliatory action against  
10 prosecutors on her case, which is what she's doing here, not  
11 only is she further demonstrating her lack of remorse or any  
12 semblance of acceptance of the fact that she is to blame for  
13 her criminal conduct on January 6th, but it's also  
14 concerning that she tried to essentially fake or imitate the  
15 headers that would come on a properly filed document and  
16 wrote "Filed 6/7/23" on the notice that she so-called  
17 provided.

18 Ms. Niemela, at every stage, is doing the opposite  
19 of demonstrating a sort of changed perspective. She gives  
20 no suggestion that she will not do the exact same thing if  
21 the situation presented itself.

22 So, Your Honor, looking at all of these factors,  
23 we're not seeking the top end of the guidelines of the  
24 available sentence. Right? We're not seeking 12 months,  
25 which is what one of her similarly situated people received.

1 We're not asking for that. And we're not asking for  
2 consecutive sentences, which we could ask for. All right?  
3 So we're not asking for the top.

4 We're asking for her to receive 11 months in jail,  
5 which would be one month less than Alberts [sic] received,  
6 followed by 12 months of supervision. We feel at the end of  
7 that supervision period we think the Court should order her  
8 to seek a mental health evaluation or treatment as needed or  
9 as recommended by probation.

10 We're also asking Your Honor to, as a condition of  
11 her release, you know, forbid contact with Stephanie Chiguer  
12 for the duration of her supervision period as well as to  
13 forbid her from --

14 THE COURT: I'm sorry, is that a request that  
15 Ms. Chiguer has made, or is that a unilateral request by the  
16 government?

17 MR. GORDON: It is a unilateral request from the  
18 government based on our conversations with Ms. Chiguer and  
19 her counsel. We have not -- we did not ask specifically  
20 about this point, but Ms. Chiguer has expressed that she is  
21 physically fearful of Ms. Niemela, and they continue to live  
22 in the same community.

23 Ms. Niemela, I believe, believes that Ms. Chiguer  
24 may have helped the government in some manner against her,  
25 and therefore may wish to retaliate or harass Ms. Chiguer in

1 some manner.

2 MR. ROOTS: Your Honor, we would just object to  
3 all of this discussion. We haven't been able to cross-  
4 examine --

5 THE COURT: You'll get a chance, okay?

6 MR. GORDON: And as part of that, we'd also ask  
7 that she be prohibited from directing anyone else to contact  
8 Ms. Chiguer on her behalf.

9 Your Honor, I'm not trying to present Ms. Niemela  
10 as if she is one of the worst of the worst of the January  
11 6th. She isn't. Right? She isn't. There were hundreds --  
12 there have been hundreds of people charged with assaulting  
13 federal officers. She was not one of them.

14 But amongst those only charged with the  
15 misdemeanors, right, that's a universe of approximately --  
16 if I look at the number, it's approximately 312 defendants,  
17 about a third of the people charged so far. Within that  
18 312, 285 of them -- right? -- have been sentenced to  
19 parading charges, meaning that they were offered that plea  
20 and accepted it.

21 THE COURT: I'm sorry, two hundred and what?

22 MR. GORDON: 285 for parading have been sentenced.

23 THE COURT: Out of 312?

24 MR. GORDON: Uh-huh. Of those misdemeanor  
25 defendants, 48 of them were offered pleas to 1752(a)(1),

1 Count 1 in this case. Okay?

2 Looking at those defendants -- so those are not of  
3 the five that went to trial who were convicted of the top  
4 charge; these are people who pled to this as the top  
5 charge -- those people received sentences that have ranged  
6 from, you know, seven months in jail all the way down to two  
7 months of probation. But only 14 of those people received  
8 probation alone, which is what the defense is requesting.

9 THE COURT: Well, if you thought that her conduct  
10 was at the high end of misdemeanor defendants, why did you  
11 offer her the Class B misdemeanor as opposed to the Class A  
12 misdemeanor?

13 MR. GORDON: That's a good question, Your Honor.

14 We did it because at the time we were -- frankly,  
15 it's a resources issue. At the time we were dealing with  
16 these cases was in the sort of height of the Department of  
17 Justice charging and trying to move cases and having sort of  
18 a limited capacity to handle these. So relevant to --  
19 relative to misdemeanor defendants, she's at the high end.  
20 Relative to January 6th defendants, she was towards the low  
21 end.

22 So any of those cases that we could resolve,  
23 we were trying to resolve. And we were trying to give  
24 Ms. Niemela sort of the best benefit of the doubt we  
25 possibly could. So we made her the best offer we could.

1           And we expressed that to her. We expressed that  
2           to her in the reverse proffer, that this was a sweetheart  
3           offer, that we would not sort of take a similar approach at  
4           sentencing. We previewed that as not how we would argue  
5           this case where we are today.

6           Ms. Niemela is one of the worst misdemeanor-only  
7           defendants. And, frankly, I have some regret personally  
8           that we did not charge her with the 1512 based on her social  
9           media posts. But we didn't. And so the Court shouldn't  
10          consider that or sentence her accordingly.

11          But just in terms of, you know, squaring with the  
12          Court about how I view this case, that's how I view it. I  
13          think it's at the -- it would be at the lowest end of 1512  
14          cases, the high end of misdemeanors, and so erring on the  
15          side of leniency essentially. But that's where we are.

16          THE COURT: And how did you come up with the fine  
17          number?

18          MR. GORDON: The fine number, Your Honor, comes  
19          from Ms. Niemela's GiveSendGo fundraising. So this is a  
20          common avenue that defendants have used to try to raise  
21          funds, you know, crowd source funds nationwide.

22          Ms. Niemela created or her mother on her behalf  
23          created a GiveSendGo website and in it makes an appeal based  
24          on January 6th. It portrays Ms. Niemela as being wrongfully  
25          and politically persecuted, and sort of bemoans the cost

1 that Ms. Niemela has incurred as a result of going to trial,  
2 specifically buying new clothes for trial, hotel expenses  
3 for trial, travel expenses for trial, et cetera, and asks  
4 people to contribute money to that account.

5 At the time we filed the sentencing memorandum, it  
6 had the number that's in it. Ms. Niemela -- people have  
7 since contributed more money, so at the time the PSR was  
8 filed, which was after our sentencing memorandum, that  
9 number was up to \$5,466. And I can -- I'm actually going to  
10 access it now as we're here and see what it is currently.

11 The key here is that Ms. Niemela's appeal sort of  
12 cites, you know, unidentified legal expenses and then also  
13 personal expenses like those I described.

14 Mr. Pierce has largely on, you know, Twitter --  
15 largely on Twitter and other places has advertised his  
16 willingness to take cases of January 6th for free  
17 essentially and then has fundraised on the back of that  
18 reputation.

19 I don't know what the fee arrangement here is  
20 given that Mr. Pierce and Mr. Roots have been retained for  
21 sentencing, and it's obviously not my place to inquire, and  
22 so I don't -- I'm not seeking to do so. It is possible that  
23 they have the same arrangement with Ms. Niemela that they  
24 have with other defendants where they've taken the case for  
25 free and fundraising as a result of it, and that's how

1 they're getting paid. It's possible she's paying them some  
2 of this money.

3           Regardless, she does cite as part of the appeal  
4 the need to reimburse her for personal expenses, including  
5 lost income, as a result of -- you know, as a result of her  
6 involvement here. And so the Court should not allow her to  
7 profit financially from her conduct on January 6th. Any  
8 dollar she pockets for fundraising -- not that she doesn't  
9 give to her lawyer, that she pockets -- she'll reimburse  
10 herself for expenses or make up for lost income or anything  
11 else as a result of her participation here and appealing to  
12 the public as her page is titled "Support for J6 Freedom  
13 Fighter," the Court should take that from her. Not only for  
14 that reason, but --

15           THE COURT: Well, I hear your point, but, you  
16 know, for instance, reimbursing her travel costs from New  
17 Hampshire or her hotels, that's not profiting, is it?

18           MR. GORDON: I mean, not in the business sense in  
19 that you would sort of look at a spreadsheet and identify  
20 something as, you know, revenues versus profits, but in the  
21 sense that she is getting that money based on an appeal that  
22 she has done nothing wrong and is being politically  
23 persecuted. That's her pitch to donators. And so that is  
24 profiting. That is money that she would have had to expend  
25 by her own choice, and getting reimbursed for it on that

1 appeal is wrong.

2 Additionally, she had court-appointed counsel for  
3 trial. Right? The government paid for her lawyers. So the  
4 government should be reimbursed by her, then, for the money  
5 that she is raising to pay for her legal defense, if that's  
6 the idea, for trial defense, not for sentencing. Sentencing  
7 is separate. Right?

8 But that's not what her -- you know, part of what  
9 her pitch is now is for past expenses and part of it is for  
10 current expenses. I don't know how to parse that number --  
11 right? -- without, you know, further examination of  
12 financial records. It does say she now has to figure out a  
13 way to come up with the funds necessary to retain a private  
14 attorney who will actually fight for her, specifically  
15 through filing an effective appeal and representing her at  
16 sentencing.

17 We don't dispute that any funds raised to pay  
18 Mr. Pierce and Mr. Roots are appropriate and that she should  
19 keep. But any funds raised for her trial counsel and her  
20 own expenses should be clawed back.

21 THE COURT: All right. Anything else?

22 MR. GORDON: No, Your Honor. Thank you.

23 THE COURT: All right. Before I hear from  
24 Mr. Roots, Ms. Jenkins, I know we have another matter at  
25 11:00, which obviously we're not going to be able to get to.

1 Have we made arrangements to move that to the afternoon or  
2 later?

3 THE COURTROOM DEPUTY: I'm in communications now  
4 with the parties, Your Honor.

5 THE COURT: Okay. See if they could appear after  
6 lunch, 1:30 or 2:00.

7 THE COURTROOM DEPUTY: I will let you know.

8 MR. GORDON: I'm sorry, I just wanted to let you  
9 know that the amount in the GiveSendGo as of today is  
10 \$5,466, 5-4-6-6.

11 THE COURT: Okay. Thank you.

12 Mr. Roots.

13 MR. ROOTS: Thank you, Your Honor. My laptop is  
14 running on battery. I may have to move during this  
15 discussion to an outlet.

16 But let me just start by saying: Where was the  
17 picketing? Where was the parading? Where was the  
18 disorderly conduct?

19 Ms. Niemela obviously entered the Capitol along  
20 with hundreds of others, at least -- I honestly don't know  
21 the number. Scores of others.

22 As I said, in terms of whether there was  
23 sufficient evidence for a jury to find unauthorized entry  
24 and remaining, the counsel for the government pointed out,  
25 you know, there were alarms going off. There was broken

1 glass, everything the government said there, sufficient for  
2 a jury -- for it to go to a jury, at least.

3 But in some ways the January 6th, you know, entry  
4 into the Capitol building by all those hundreds of people is  
5 a lot like a soccer field. Like we've seen a baseball  
6 field, football, where at the end of the game the crowd  
7 rushes the field, and, you know, the first ten people who  
8 rush the field, you know, in a soccer victory or something,  
9 the first 10 or 20 or 50 or 100 people might be under the  
10 understanding they're doing something wrong. They're not  
11 supposed to be on the field.

12 But what about the second hundred? What about the  
13 third hundred?

14 THE COURT: Mr. Roots, let me interrupt you.  
15 Okay? The jury has spoken. They have made findings beyond  
16 a reasonable doubt that her conduct satisfied every element  
17 of those four offenses.

18 So we're not here to argue a Rule 29 insufficiency  
19 motion. We're here for you to tell me why her conduct,  
20 which violated those four statutes, does not merit the  
21 sentence that the government has proposed and merits a  
22 different sentence which you are recommending. Okay? So  
23 let's stick to that.

24 MR. ROOTS: Well, let me address that  
25 specifically.

1           Counsel for the government said they flew to New  
2           Hampshire and said they had this reverse proffer meeting  
3           and -- you know, to try to convince her she was guilty of  
4           picketing and parading. I would say it's the honorable  
5           thing to do -- for an American citizen, it is the honorable  
6           thing to do, when you're sitting there scratching your head  
7           saying, "Well, why would I plead guilty when I didn't picket  
8           and I didn't parade?"

9           And understood, the jury -- the jury came in  
10          otherwise. Your Honor has ruled otherwise.

11          But putting yourself in the perspective of  
12          Ms. Niemela at a reverse proffer session, it is the  
13          honorable thing to do -- when you think you have valid  
14          defenses, constitutional defenses, it is the honorable thing  
15          to do to say, "No, I am not guilty of this. I'm going to  
16          trial."

17          And she should not be punished for rejecting a  
18          plea to picketing and parading if, in her own good faith,  
19          she decided that that did not apply to the facts of her  
20          case, and she decided that she had a defense. It is to her  
21          honor. She should be rewarded. Americans should be  
22          rewarded for saying, "No, I'm not pleading guilty to  
23          something that I think I didn't commit." Americans should  
24          be honored, not punished.

25          You know, the government points to these social

1 media posts, things like where she observed things. Trump  
2 supporters breached four lines, quote, I'd be rather  
3 nervous. She shared that. Didn't write that. I would be  
4 rather nervous, you know, if I were in Congress or  
5 something. She shared that. She did not originate that.

6 So these are observations. These were not her  
7 intent. This was not her state of mind. She didn't say, "I  
8 breached four lines." She said, "Trump supporters breached  
9 four lines." No one should be punished for what they are  
10 observing.

11 You know, they talk about how -- I've already made  
12 the point she is a person of smaller stature, and short  
13 people -- I'm one of them myself; I'm not a tall person --  
14 we tend to go to the front because we want to see what's  
15 going on.

16 She shouldn't be punished for what other people  
17 do. There's no evidence here that she, in any aggravated  
18 sense, yelled, shouted, disturbed, jumped up and down.  
19 Disorderly conduct at a minimum requires jumping up and  
20 down. She didn't even do that. She should be at the very  
21 lowest end of these ranges that we're discussing.

22 I want to briefly address this stuff about the  
23 government trying to seize the very money -- the government  
24 has vast resources. Vast. Millions and millions of  
25 dollars. Congress keeps giving them more money to prosecute

1 these cases.

2 Most of the -- Ms. Niemela is not a wealthy  
3 person, and so she does what she has to do, which is reach  
4 out, "Hey, can someone support me?" Social media or on  
5 GiveSendGo. And she's raised a paltry sum. And I will just  
6 represent to the Court --

7 THE COURT: Mr. Roots, am I correct that she  
8 declined to cooperate with probation and did not submit a  
9 financial disclosure or consent to probation to access her  
10 financial information?

11 MR. ROOTS: Yes, I do believe that's true, but --

12 THE COURT: How am I to make a finding -- how am I  
13 to make a finding, then, that she doesn't have the ability  
14 to pay a fine?

15 MR. ROOTS: Well, let's put it this way:  
16 Probation can certainly analyze her job, her -- you know,  
17 it's not -- I don't believe it's even in question that she's  
18 not a rich person. I don't believe that's even contested.

19 THE COURT: Well, I'm not saying she's a rich  
20 person. I'm saying -- I'm not suggesting she's rich, but  
21 the question is not whether she's rich or poor. The  
22 question is whether she has the ability to pay a fine,  
23 including the fine that the government has proposed, which  
24 is \$3,500 or thereabouts.

25 MR. ROOTS: I would say the government's not

1 suggesting that as a fine. They are really suggesting it in  
2 a way that is theft. It is stealing from the defense.

3 So it's not restitution. She didn't damage any  
4 property.

5 They call it a fine, but what they're really doing  
6 is trying to toll it specifically to the dollar amounts that  
7 she has raised in her defense. And I will submit those are  
8 lower than her actual legal bill to us right now. So she  
9 isn't even able to pay her legal bills, and yet the  
10 government just wants to take the money.

11 And this chills -- this chills advocacy. It  
12 chills defendants, all these January defendants. When  
13 donors are out there wanting to help, and they hear the  
14 government just seizes and steals the money, this is  
15 designed by the federal prosecutors to chill donations.

16 This is really outrageous, what the government is  
17 trying to do here. And I think the Court has to step in and  
18 say, no, this cannot happen. We cannot send a signal that  
19 the American people cannot contribute to legal defense funds  
20 for these people because the government just takes the  
21 money. This is so chilling, and it's just outrageous that  
22 they're trying to do this.

23 I do want to say that she's also on a red flag --  
24 sort of a no fly list. Not a no fly list specifically, but  
25 she has been placed without due process on a red flag list

1 where she goes through extra security at airports. We would  
2 like the Court to step in -- this is without due process --  
3 and issue an order for the FBI and the U.S. Attorney's  
4 Office to remove her.

5 This is a misdemeanor case. She should not have  
6 travel restrictions.

7 THE COURT: Just on that point, Mr. Roots, there's  
8 a process at the Department of Homeland Security that  
9 administers the no fly list and the FBI that administers  
10 other travel watch lists. It's called the DHS TRIP program  
11 where there's an ability to file a grievance and get one's  
12 name removed from various lists.

13 So the Court has no jurisdiction over that. I  
14 would suggest she go to DHS if, in fact, she's on some no  
15 fly list or watch list. All right?

16 MR. ROOTS: Okay. Well, I would urge the Court  
17 to sentence Ms. Niemela at the bottom range, at the very  
18 bottom range. Ms. Niemela, you know, for all her advocacy  
19 and her -- you know, her stout -- and, again, I think she  
20 should be honored for her stern -- her stern standing on  
21 freedom.

22 She is a freedom activist. She is a gay rights  
23 activist. She should be honored, not punished. She should  
24 be honored for going to trial when she didn't believe she  
25 was guilty, not punished for going to trial.

1           If you really look at all the conduct, all the  
2 videos that we've seen, she doesn't even jump up and down.  
3 She is in the midst of large numbers of people; some of whom  
4 are doing wrong things, some of -- many of whom are not.

5           Ms. Niemela falls into the category of someone who  
6 is just really there. She's wearing a -- you know, a flag  
7 or a cape going around. And obviously it's persuasive, and  
8 she's expressing herself, and she is seeking redressive  
9 grievances.

10           She honestly and earnestly believed the election  
11 was improperly calculated in 2020, and I would urge the  
12 Court to sentence her at the very bottom of the range.

13           THE COURT: Okay. Thank you.

14           Ms. Niemela, is there anything you'd like to tell  
15 me before I impose your sentence?

16           THE DEFENDANT: Your Honor, I was told that I  
17 would be able to speak today, so --

18           THE COURT: This is your chance.

19           THE DEFENDANT: -- so I have prepared a speech.

20           So I've struggled quite a bit on deciding whether  
21 or not I was going to make a statement today. My three  
22 choices would be to either remain silent and never have my  
23 day in court, appease the Court by expressing remorse and  
24 accepting responsibility and essentially admitting guilt for  
25 crimes I do not believe I committed, or to stay true to

1 myself, defend my innocence, and speak out about the unfair  
2 and unjust treatment that I and other January 6th defendants  
3 have endured. I feel I have a duty and an obligation to  
4 speak out and stand up for what is right.

5 One of the reasons I feel compelled to speak today  
6 is because I was denied the opportunity in my trial. My  
7 court-appointed attorneys not only refused to present any  
8 evidence on my behalf that would contradict the prosecutor's  
9 vision of events, but they became extremely hostile and  
10 threatening towards me when I told them I wanted to testify.  
11 One of my lawyers literally screamed at me in a private  
12 room, which there are witnesses, that I would be F-ing  
13 insane if I got on that stand.

14 At that point I knew it was over. They not only  
15 failed to provide me with adequate representation and  
16 presented no evidence in my defense, they dismissed the  
17 wrong jurors on accident, and then they intimidated me not  
18 to testify. My Sixth Amendment rights to adequate  
19 representation were blatantly violated as well as my right  
20 to a trial by an impartial jury of my peers.

21 Since apparently my history and characteristics  
22 seem to have an impact on my impending sentencing, I would  
23 like to share a little background information.

24 Hopefully you have taken the time to read all of  
25 the leniency letters and character references that were

1 submitted to the Court. I think they clearly show me in a  
2 different light than how the prosecution has painted me.  
3 These letters are from people from all walks of life and  
4 even some of them who have different political views than I.  
5 They felt it was important to write in support of me as they  
6 have seen how all of us have been treated.

7 I am at no means a perfect person, but I am a good  
8 person, and I have a really big heart. From a young age I  
9 have suffered immense loss, pain, and trauma. For one,  
10 waking up to my mother screaming for someone to call 911  
11 because her boyfriend, who was like a father to me, had  
12 hanged himself was obviously extremely traumatic and  
13 heartbreaking.

14 I was then ripped away from my mother and my  
15 siblings and was caught in the middle of a custody battle  
16 that lasted many years. While living with my father, I was  
17 treated as an outsider. I was verbally and physically  
18 abused by his girlfriend.

19 After my mom finally won back custody, we moved to  
20 North Carolina, and I've never spoken to my father again.  
21 While living there, I was constantly being bullied for the  
22 color of my skin and being gay. It has affected me so much  
23 that I actually dropped out of school and ran away several  
24 times.

25 We later then moved to Florida, being closer to my

1 grandparents, and then I suffered another devastating loss  
2 when my grandfather passed away. At that same time I had  
3 also lost my best friend who was hit by a car while riding  
4 his scooter.

5 I have moved several times. I've been homeless  
6 more than once, and I've struggled financially. These  
7 experiences are just some of the challenges that I've faced  
8 in my life, and they would shape my future in both ways good  
9 and bad.

10 Because of how I was mistreated by others and felt  
11 betrayed and abandoned by my whole family, I know how  
12 painful it is to not be accepted or feel loved. This is why  
13 I make a point to never judge anybody based on race, sexual  
14 preference, or anything else. So when people label me as a  
15 racist, bigot, white supremacist, as the current narrative  
16 implies, it is very hurtful because nothing could be further  
17 from the truth.

18 When I make new friends, I tend to go out of my  
19 way to help support and encourage them in any way that I  
20 can. I am trusting and loyal, sometimes to a fault.

21 I have allowed many people who I thought were my  
22 friends to take advantage of me. I realize now that I  
23 didn't always choose the right kind of friends and, as a  
24 result, have made some poor decisions in my life. I do not  
25 claim to be perfect, as I am only human. I have lived and

1 learned, sometimes the hard way, but I have worked very hard  
2 to better myself and have grown tremendously over the years.  
3 But like everybody else, I make mistakes sometimes.

4 One such mistake was befriending Stephanie  
5 Chiguer, my current co-defendant. As a single mother,  
6 Stephanie was struggling with many issues that I tried to  
7 help her with. I babysat her children so she could work  
8 before she lost her job. I helped her with issues with her  
9 ex-husband, her family problems, and even assisting  
10 financially, even to the point where her own sister wanted  
11 to take away her kids.

12 Shortly after our trip to D.C., we had a falling  
13 out, and she got a temporary restraining order against me.  
14 Now, what the Court needs to know is that, when we went to  
15 court, the judge did not grant her a final because she lied.

16 I believe her efforts are to try and make me look  
17 worse to try and save herself from any punishment relating  
18 to January 6th. Throughout this investigation she has lied.  
19 She has contradicted her own statements that I was able to  
20 read but not obtain a copy of.

21 The same woman took a plea deal last August, was  
22 never called to testify against me, and still has yet to be  
23 sentenced.

24 It was my loyal, protective nature and genuine  
25 concern for her and her children that has landed me here

1 today. And I take full responsibility for that.

2 However, I cannot take responsibility and express  
3 remorse for actions and intentions of other people. My  
4 biggest regret that day was having the back of somebody not  
5 realizing that today she would stab me in the back.

6 Since I do not have -- I did not have adequate  
7 defense, my accounts of January 6th have gone unheard. I  
8 feel it is imperative that I get to share my experience from  
9 that day.

10 When I heard about the Trump rally being held at  
11 the Ellipse, Stephanie and I decided to go. My mom had also  
12 asked Mark -- who was not a chaperone, as the government has  
13 assumed -- who was also my boss at the time to accompany us  
14 since she couldn't go. She was worried about our safety  
15 because at the previous rallies we were followed and  
16 threatened by members of Antifa. So a bunch of Proud Boys  
17 had escorted us, who I did not know who they were, because  
18 they could see that we were in trouble.

19 On January 5th, we had traveled to D.C. We stayed  
20 overnight, got up very early, and spent most of the day at  
21 the Ellipse listening to other speakers before Trump.

22 Toward the end of the speech Trump suggested that  
23 we all walk down to the Capitol peacefully and patriotically  
24 to make our voices heard and to show our support to the  
25 brave members of Congress who were going to be objecting to

1 the state certifications. I can honestly say that it was  
2 the most peaceful and patriotic gathering I've ever been to.  
3 On our walk to the Capitol, everybody was singing the  
4 national anthem, waving American flags, and even praying  
5 along the way.

6 I had videos that were not presented in my case  
7 that show that I did not immediately go down to the Capitol  
8 from the Ellipse. We had stopped a few times, taken  
9 pictures, videos, and enjoyed the positive atmosphere. We  
10 did not hear anybody in the crowd making plans to storm the  
11 Capitol or take part in any violence.

12 We finally arrived at the Capitol at approximately  
13 2:00 p.m. And what really happened as opposed to what the  
14 prosecutors stated at trial in the sentencing memorandum is  
15 quite different. They insisted that we walked past fencing  
16 that had signs that said "Area Closed" and, despite these  
17 clear signs, that my presence on the Capitol grounds was  
18 unlawful. I was undeterred, climbed a tree, and took a  
19 selfie.

20 Well, I did climb a tree, and I did take a selfie,  
21 but the prosecutors' interpretation of that selfie is  
22 factually untrue. They said that the photo shows nobody  
23 else near me on the grass beyond the fencing, making it  
24 obvious that I was in a restricted area.

25 If you look at the photo, which the jury did, that

1 may seem like a factual statement; however, what the  
2 prosecutor didn't tell the jury was that there were a few  
3 other photos on my camera facing the other way, which would  
4 actually be the Capitol grass. Those pictures the  
5 prosecutors had access to as well as my attorneys show  
6 hundreds, if not thousands, of people on the lawn of the  
7 Capitol. What the prosecutors did was pick one photo off of  
8 my phone that fit my narrative and ignored the rest.

9 I was not alone in the so-called restricted areas  
10 the prosecution falsely and deliberately asserts as fact. I  
11 also never walked past and never saw any fencing with the  
12 "Area Closed" signs. Although there is some fencing in the  
13 background of the selfie I took, the fencing is behind me  
14 with signs facing outward towards a street, the street that  
15 I never walked down.

16 We came straight down Pennsylvania Avenue and  
17 entered the lawn from there. There was no fencing or  
18 barricades of any kind. In fact, the prosecution's own  
19 video montage and witness testimony confirmed that the  
20 fencing had been completely removed by 1:00 p.m. along with  
21 the signs that had been on it when we arrived. There was no  
22 indication that the lawn that was filled with thousands of  
23 people was a restricted area. I never saw any police  
24 officers in riot gear or fighting with protesters.

25 After entering onto the lawn, we found a tree off

1 to the left where we had planted -- where we had planned to  
2 stay for the protest. After about 10 to 15 minutes, I  
3 noticed Stephanie was missing. I immediately started to  
4 panic because I was pretty sure that Antifa and other bad  
5 actors would be among the crowd, and I was concerned for her  
6 safety.

7 I took off looking for her. Mark tried to follow  
8 me, but apparently had to turn back when a mutation landed  
9 on his boot and he was overcome by gas. I wasn't even aware  
10 that that happened until after I had left the Capitol.

11 Once again, the prosecutors twisted the facts and  
12 stated that I had -- I had to have smelled the gas because  
13 Mark and I were standing 10 to 15 feet apart. This claim is  
14 also factually untrue as I was not standing still. I was  
15 moving through the crowd frantically trying to locate  
16 Stephanie. I do not have eyes in the back of my head so I  
17 did not see nor smell anything that might have hit Mark.

18 By some miracle I was able to locate Stephanie and  
19 Mike, a guy that we had met the night before. We followed a  
20 crowd of people up a flight of exterior stairs and saw  
21 hundreds of people entering the building. Stephanie headed  
22 for the door and said, "I'm going in." I was determined not  
23 to let her out of my sight again because I did not want to  
24 be the one to tell her two children that were at my house  
25 that something had happened to their mother.

1 I followed Mike and Stephanie in through an open  
2 door. There were no officers in sight.

3 Though the prosecutors insist that because there  
4 were people climbing through broken windows and alarms were  
5 ringing, that those were clear signs of an unlawful entry.  
6 The assertion is also factually untrue. If an alarm goes  
7 off because some idiot decided to break a window or pull a  
8 fire alarm, that does not denote that it is unlawful to  
9 enter through an open door.

10 At some point everybody had stopped. We stood in  
11 place for about five minutes as confirmed in the memorandum.  
12 I do not think that armed insurrectionists would be so  
13 patient for five minutes.

14 Eventually a man got on a bullhorn and told us  
15 that police were going to let us in, that we just needed to  
16 be peaceful. Mind you, that man was standing side by side  
17 with an officer that he had just spoke to for five minutes.  
18 At no point did the cops get on any type of a loudspeaker  
19 and say, "You are committing a crime. You need to leave."

20 The next thing I know, the crowd starts moving  
21 forward. No officers issued any commands. We stood to the  
22 side, and when I saw that some of the protesters were  
23 banging on doors was when I told Stephanie and Mike that we  
24 needed to go. Mike would have testified in my trial to that  
25 had he been allowed by his counsel or my defense attorneys

1 really did any defense.

2 We did enter a room where we took a selfie in  
3 front of a portrait of George Washington, but it wasn't a  
4 celebratory photograph, as the prosecutors characterized it,  
5 and it certainly wasn't an act of violence.

6 At no time during the 20 minutes that we were  
7 inside did any member of law enforcement tell us that our  
8 presence there was unlawful, nor that we had to leave. I  
9 did not break anything. I did not steal, assault, or  
10 threaten anybody. I never engaged in any violence, and I  
11 never encouraged others to do so. I was not chanting,  
12 yelling, or acting in a loud, disorderly manner. And I was  
13 not demonstrating, parading, or picketing. I was simply  
14 following my friend to protect her from any potential harm  
15 or threat.

16 I'm glad I did because on our way out as we were  
17 exiting the building was when Ashli Babbitt, an unarmed  
18 female veteran, was shot and killed by Capitol Police. If I  
19 hadn't convinced her, that could have been her, I, or  
20 anybody else.

21 The prosecution claims that I responded to a Tweet  
22 one minute after entering the building. However, my phone  
23 died, and I only have an 11-second video that I recorded  
24 when I entered. The prosecutors took it upon themselves to  
25 speculate what this alleged video contained, yet they say

1 they can provide no such video; but they had full access to  
2 my phone and to my Facebook that they shut down.

3 The prosecution maintains that I breached three  
4 police lines inside; however, in their memorandum they  
5 acknowledge that inside what they call the Crypt I am  
6 towards the back of the crowd. Being 5'6" surrounded by  
7 people much taller than me, I couldn't really see what was  
8 going on, let alone if and where the police line was. I  
9 never purposely surged forward in any attempt to breach a  
10 police line. I was surrounded by people, so when the crowd  
11 moved, I had no other choice but to move with it.

12 The prosecution even admits that there were  
13 dozens, if not hundreds, of people in front of me. So it's  
14 safe to say they would have broken the police line with or  
15 without me present in the room.

16 Throughout the building I am simply following  
17 behind Stephanie, holding on to her, which is seen in  
18 videos. As I have never been inside the Capitol before, I  
19 had no idea where we were. I had no specific destination,  
20 plans, or intentions except to make sure nothing happened to  
21 my friend.

22 When we came upon a room that had velvet ropes to  
23 indicate where people should walk, I peacefully walked  
24 between the ropes. I remember seeing the police officer  
25 walking around, but he never approached us or said we were

1 not allowed to be there.

2 My heart goes out to anybody who was injured or  
3 killed that day or who felt the need to take their own life  
4 since this day. Nobody deserved to die. And to hear that  
5 people say that the four Trump supporters who died that day  
6 got what they deserved is absolutely despicable. I do not  
7 condone violence or vandalism, and I believe that anybody  
8 who engaged in such acts should be held accountable. That  
9 is also public in my interviews.

10 However, I also believe that anybody accused of  
11 assault, destruction of property, or any other crime that  
12 day should be afforded due process as the law requires and,  
13 if found guilty beyond a reasonable doubt with a jury of  
14 their peers, should receive an appropriate and just  
15 punishment. Unfortunately, this has not been the case with  
16 January 6th defendants.

17 Holding defendants in jail, some for up to two  
18 years while awaiting trial, is completely unacceptable and  
19 purely vindictive. Sending SWAT teams to raid people's  
20 homes with guns drawn at children is inexcusable.  
21 Threatening to add more charges or impose harsher sentences  
22 simply because a defendant refuses to take a plea deal is  
23 disgraceful. And there are plenty of witnesses that that  
24 has happened to. So many people's lives have been  
25 completely destroyed by these overly aggressive prosecutions

1 and inadequate sentences.

2           The weaponization of this Justice Department  
3 against conservatives, especially Trump supporters, is  
4 blatantly obvious, egregious, and completely  
5 unconstitutional. The Fourteenth Amendment guarantees all  
6 citizens equal protection under the law, yet somehow this  
7 right is being violated when it comes to anybody on the  
8 right side of the political aisle.

9           The Biden DOJ is putting politics before the rule  
10 of law and unjustly punishing anybody with a different  
11 opinion. There is a two-tiered justice system in this  
12 country, one for the left, and one that is very different  
13 for conservatives.

14           Many of the January 6th defendants committed no  
15 violence at all, like myself, yet they are being  
16 aggressively prosecuted and treated like mass murderers and  
17 actual terrorists. The left wing media and Democratic  
18 leaders go on TV saying that January 6th was the worst. It  
19 was worse than 9/11 and Pearl Harbor. That is absolutely  
20 insanity.

21           During the 2020 riots that lasted almost a year,  
22 violent mobs set fires to businesses, cop cars, police  
23 precincts, courthouses, assaulted hundreds of police  
24 officers, killed innocent people, destroyed and looted  
25 cities. And offenders were either never charged or they had

1 their charges dropped altogether.

2 There were never -- there was never a nationwide  
3 FBI manhunt issued to bring those criminals to justice. In  
4 fact, Kamala Harris went on Twitter asking people to donate  
5 to the Minnesota Freedom Fund to bail the violent rioters  
6 out of jail so that they could get back onto the streets and  
7 cause more destruction.

8 Now the prosecutors are crucifying January 6ers  
9 for setting up GiveSendGo accounts to help with their legal  
10 fees and other expenses, and they're asking judges to order  
11 defendants to pay the money they have collected as a fine.  
12 That is unbelievable.

13 One other issue I would like to raise is my issue  
14 with Special Agent Hastbacka. It came to my attention  
15 before my arrest that his stepson is best friends with Mark  
16 Leach's son. When I heard that people were being rounded up  
17 as domestic terrorists, I called Hastbacka -- and I have  
18 that recording, and I notified him I was recording --  
19 personally to ask him if I'd been indicted or if there was a  
20 warrant out for my arrest. My intent was to self-surrender  
21 as opposed to my home being raided or being arrested at my  
22 job. He told me no at this time.

23 When a warrant was issued, instead of calling me  
24 to let me know like they did for Ms. Chiguer, he had a  
25 Hudson cop wrongfully pull me over for kind of speeding,

1 which I wasn't, and then about six cars surrounded me. The  
2 cop almost pulled my arm out of the socket, which I had  
3 informed him that I have an issue with my shoulder. He then  
4 threatened to throw me on the ice.

5 Is this tactic -- it's the tactics like this that  
6 are completely uncalled for when I have -- when I would have  
7 self-surrendered had he extended me the courtesy of the  
8 phone call like he did to my other co-defendant.

9 My only intention when I woke up January 6th was  
10 to attend a Trump rally. Once we decided to walk to the  
11 Capitol, my only intention at that time was to exercise my  
12 First Amendment right to peacefully assemble and to petition  
13 the government for a redress of grievances.

14 We all want a fair and free election, and there  
15 always needs to be transparency. The prosecutors keep  
16 insinuating that my goal was to disrupt the election  
17 certification, which is the exact opposite of what I wanted.  
18 I wanted the proceedings to take place so that the  
19 objections could be made and debated and appropriate action  
20 taken.

21 While I am not trying to defend or downplay the  
22 violence that did happen that day, it is very hard to ignore  
23 how easily it was allowed to happen. While anybody who  
24 simply entered the people's house and walked around and even  
25 some who didn't are labeled as insurrectionists, domestic

1 terrorists, fired from their jobs, disowned by their  
2 families and have had their lives turned upside down, a lot  
3 of people cannot help but wonder if the events of that day  
4 would have played out differently if security had been  
5 better.

6 Trump authorized 10,000 to 20,000 National Guard  
7 troops to be present that day, but Nancy Pelosi and Mayor  
8 Bowser refused. Intelligence knew that there was a high  
9 probability that violent groups were coming to D.C. and  
10 there could also be a large crowd that they could see that  
11 morning, yet somehow they didn't have enough law enforcement  
12 in to control the crowd which is why they said stand down.

13 Why did they use bicycle racks as security fencing  
14 but then put up a nonscalable fence after January 6th?

15 When Capitol Police Chief Steven Sund requested  
16 the National Guard several times, which is on their own  
17 documents, why did it take several hours?

18 These are just some of the questions that people  
19 have asked for two years.

20 However, now there are even more questions that  
21 need to be answered.

22 Not long after January 6th videos came out online  
23 showing police removing bike racks, waving people on to the  
24 grounds, and standing in doorways allowing them to enter.  
25 These are videos that I gave to my attorney to argue, but

1 they refused to show any video or any picture in my defense.

2 We later found out that there are over 44,000  
3 hours of video footage that has been withheld from  
4 defendants, which I believe is a *Brady* violation. Some  
5 January 6th defendants have had access while others have  
6 not. Some of these -- this footage could exonerate people,  
7 but this exculpatory evidence is being wrongfully and  
8 illegally withheld.

9 Kevin McCarthy promised to release it to the  
10 public months ago. Never did. Tucker Carlson then said he  
11 was given access, which he would air the footage. He only  
12 showed a few clips before he was shut down. Fortunately for  
13 him, Jacob Chansley, who was already in jail, one of those  
14 clips aired of the Capitol Police escorting him. Mind you,  
15 he was not with a crowd. They could have arrested him, but  
16 they didn't. Several cops escorted him, opening the doors  
17 of the Senate, allowing him to pray and escorting him out.  
18 Shortly after this video he was released from prison.

19 Just this past week three independent journalists  
20 were granted access to the footage and have been releasing  
21 somewhat of what they have found. These videos show  
22 multiple undercover officers helping people climb up the  
23 scaffolding and walls, telling them, "keep going, go, go,  
24 go," and chanting along with protesters. They show magnetic  
25 doors, which is also on video for everybody to see, that

1 they were remotely opened from the inside, and that police  
2 were allowing people into the building.

3 One video also shows Nancy Pelosi's daughter, who  
4 was conveniently there filming that day, following Nancy  
5 around with a video camera and her and other Congress  
6 members calmly evacuating into a secure location. It's  
7 almost like it was a scripted movie, just like we found out  
8 the other day, that the January 6th Committee hearings were  
9 also scripted with Hollywood actors on their payroll.

10 Nancy Pelosi's daughter has also on video met with  
11 January 6th defendants and visits her Proud Boy member  
12 friends in jail. The video also shows that police brutality  
13 against protesters that day.

14 Probably the biggest question that remains  
15 unanswered is where is Ray Epps and why hasn't he been  
16 charged like the rest of us? He is seen in several videos  
17 inciting people to go into the Capitol.

18 He was never charged with anything. He has now  
19 been spotted in nearly -- in newly released videos on the  
20 Capitol steps later after he lied to the FBI saying that he  
21 was never on the grounds.

22 Videos like this are going to keep being released  
23 until the whole truth comes out about that day that has  
24 ruined so many lives including mine. I have been slandered,  
25 defamed because the FBI got a call from a tipster saying

1 that I had shown a video of me breaking a window in the  
2 Capitol. Now, mind you, this, as soon as you Google my  
3 name, is every article on the Internet, and that I was a  
4 member of the Proud Boys.

5           Apparently the FBI takes everything that a tipster  
6 alleges, whether false or not, and types it up as a  
7 statement of fact even though they are lies. Then they not  
8 only use that document to get an indictment against me, but  
9 then it gets released to the public.

10           I lost income, family, friends. Customers no  
11 longer wanted me to work in their homes because they thought  
12 I was a violent criminal.

13           I have also been red flagged at the airport, and I  
14 have to go through extra security while other passengers  
15 stare at me as if I'm a terrorist. I have had other  
16 passengers come up to me -- which I have videos of all of  
17 this -- and tell me that undercover police or air marshals  
18 were watching and following me, and they even peeked inside  
19 the ladies' room while I was in there.

20           This is extremely humiliating, totally  
21 unnecessary, and a violation of my privacy.

22           Now the government is issuing my arrest record to  
23 make me look like a career criminal. One indictment took  
24 place in 2019 at a bar where I had stopped and asked for a  
25 lighter. I was then verbally attacked and called a dyke and

1 a faggot. Then they called the police and lied about things  
2 that I didn't do. I was the one who was arrested, even  
3 though I was the one being attacked.

4 There is a brief mention that I tried to hang  
5 myself while in a holding cell. The statement on that  
6 report is untrue.

7 Your Honor, I did not try to hang myself. I did  
8 hang myself. I was at a breaking point in my life, and I  
9 wondered if it was worth living. Why? Because just a few  
10 months prior to the incident, which the prosecutors failed  
11 to mention -- they only chose half-truths of the things that  
12 they have quoted -- I went out one night with a close friend  
13 of mine who I considered a brother. Well, that night he  
14 raped me, and I felt so ashamed, used, betrayed, and abused.  
15 I was in physical pain, depressed, and felt so disgusted of  
16 my own body that I wanted to crawl out of my skin.

17 These feelings were still haunting me when I was  
18 sitting in that cell having been discriminated yet again and  
19 wrongfully arrested. I took my shirt off, and I hanged  
20 myself.

21 When a cop later found me in my cell, he realized  
22 that he didn't have the key, so they had to run back and  
23 find one while I was left there hanging in my cell. By the  
24 time they got to me, I had been -- I had to be intubated  
25 multiple times, and I woke up in a hospital in

1 Massachusetts.

2 When I finally got up the courage to confront my  
3 abuser, he blackmailed me and said if I was thinking about  
4 telling anybody to just remember that he knows that I was at  
5 the Capitol on January 6th.

6 In case you haven't made the connection yet, that  
7 FBI tipster that said I broke a window, which I didn't, said  
8 I was a member of a Proud Boys, which I am not, is the very  
9 man who raped me.

10 I thank God for saving my life that night. I was  
11 also told that I would never get my full voice back after  
12 that night. Fortunately God saved that, too, and that is  
13 another reason why I feel compelled to use my voice to fight  
14 for justice, freedom, and to stand up for children.

15 But in this very moment I am fighting for myself.  
16 So I am not sitting here begging the Court for mercy, as God  
17 is the only one who can grant me that. All I am asking is  
18 that you judge me only for my actions on that day and to not  
19 wrongfully punish me for actions of others.

20 Your Honor, can I just take a brief second just so  
21 I can --

22 THE COURT: All right. Why don't we take a brief  
23 five-minute recess. We've been at this a while. The court  
24 reporter needs a break anyway.

25 I will give you a few brief more words,

1 Ms. Niemela -- you've given me a lot to chew on -- and then  
2 I'll pronounce the sentence. Okay?

3 So let's stand in recess for five minutes.

4 (Recess taken)

5 THE DEFENDANT: Your Honor, if I could just have a  
6 few moments?

7 THE COURT: Okay.

8 THE DEFENDANT: So, you know, also the counsel  
9 says that I have a drinking problem, which I would like to  
10 note -- which they have access to those, too, and this is my  
11 issue with them only presenting half-truths -- is that I was  
12 ordered -- when I pled guilty to disorderly conduct, it was  
13 not simple assault, which I have those files so I'm not  
14 understanding the miscommunication, but I was ordered a  
15 LADAC as part of that. And I took a LADAC evaluation, and  
16 that is also in my file and --

17 THE COURT: I'm sorry, Ms. Niemela, I'm not  
18 familiar with that term. What is a LADAC?

19 THE DEFENDANT: LADAC is when you're court ordered  
20 to have a drug and alcohol evaluation. It's by a third-  
21 party that does not accept insurance, and nine times out of  
22 ten everybody gets ordered to take classes. I was not.

23 And, you know, to kind of point out -- touch on  
24 something that you had said, you know, I just feel like this  
25 is a retaliation against me for not taking their deal;

1       which, again, I would question why they offered me the deal  
2       they did if I'm such a violent criminal. That raises an  
3       issue of abuse of power and punishing me based off of  
4       statements from somebody who, A, did not get granted a  
5       restraining order, who has written multiple statements  
6       saying that, one, our relationship was platonic -- I mean,  
7       I've read these. I don't know if you have, but they're all  
8       over the place. And I just don't believe that these should  
9       be used against me.

10               And yes, I will admit, I used to drink. I used to  
11       drink to numb my feelings. But I am not that person. And I  
12       am court-ordered by you or this Court to go to counseling,  
13       which I do every single week, which my counselor wrote you a  
14       letter.

15               You know, this crime happened two and a half years  
16       ago. I've been on federal probation for a year and a half.  
17       I've had no violations. I'm drug tested. I'm red flagged  
18       on an airline.

19               I mean, you know, I missed some valuable things  
20       that I can never get back. And, you know, by everybody who  
21       knows me outside of what the prosecutors have painted me, I  
22       am a huge family person. I am the mother without the child.  
23       I will never get back missing that birth and the potential  
24       next birth.

25               THE COURT: All right. Ms. Niemela, thank you.

1           Where do I start after all that?

2           Let me say, I wish that you had cooperated with  
3 the probation office and had given me some of this  
4 information beforehand so that I would have a better  
5 opportunity to process it and get the government's responses  
6 to some of the things that you have said. But let me just  
7 start where you left off before the break.

8           Obviously you have a number of grievances. You  
9 have espoused a number of theories about why January 6th  
10 happened and how the government and why the government has  
11 responded to it, and you've asked that I not judge you on  
12 anything else but what you did as opposed to what other  
13 people did.

14           You know, I don't -- it's not my role to assess  
15 these various theories and your grievances about things that  
16 do not relate to your conduct or the conduct of people who  
17 may have done other things that day. And I want to assure  
18 you that in fashioning a sentence I have considered all of  
19 the factors that I am required to, but only as they relate  
20 to your conduct. All right?

21           As you know, we have -- we'll ultimately have  
22 upwards of a thousand of these cases in our district. I  
23 probably have 50 of them. And I can only sentence based on  
24 the individual before me, and I've done that in your case.

25           Let me start with what you did -- okay? -- the

1 nature and seriousness of the offense that you committed,  
2 not that anybody else committed.

3 You were only charged with misdemeanors. Right?  
4 And as we've discussed, that reflects many of the things  
5 that you and Mr. Roots have emphasized today: that you  
6 weren't a leader, that you weren't a Proud Boy, that you  
7 didn't break anything or hurt anybody, that you didn't  
8 assault law enforcement, that you didn't engage in any  
9 violence. All right?

10 You keep saying that, you know, the government  
11 thinks you're a violent terrorist or a violent offender, and  
12 "I'm not any of those things."

13 No one's saying you're any of those things, at  
14 least with respect to this offense. You're not charged with  
15 any violence or any felonious conduct whatsoever. So the  
16 government acknowledges all of the factors that you have  
17 indicated that suggest that you are a lower -- a relatively  
18 lower-level offender in the cases that have been brought in  
19 our court.

20 But I agree with Mr. Gordon that, as misdemeanants  
21 go, you did more than many and perhaps more than most. You  
22 touted violence both before and after. And Mr. Gordon has  
23 gone over the quotes, you know, "GITMO for our government,  
24 let's hang them." You reTweeted that you'd be rather  
25 nervous as to how I would exit the building.

1           And what those texts tell me is that your focus  
2 that day, at least at some point, was not just coming to a  
3 rally to hear the former president. Okay?

4           A lot of the misdemeanants that I sentence, I  
5 think that was their focus. They were there for the rally.  
6 They had no idea or didn't care what was going on in the  
7 Capitol, and they just happened to follow some folks there,  
8 and they went in, and they went out. Okay.

9           But those Tweets and texts suggest to me that it  
10 was also your focus what was going on at the Capitol, and  
11 that you knew what was going on there.

12           Now, you're not being charged with obstruction  
13 of the certification proceeding, but -- and you're not, as  
14 Mr. Gordon says, being charged for, you know, what you said  
15 in those quotes, in those Tweets. But your words have  
16 consequences. They -- you are free to express them, but  
17 they are not free. They have consequences. And so your  
18 words can be used to assess what your motivations were, what  
19 you intended to do, and that's all that your words here are  
20 being used for.

21           I'm not going to go over Mr. Gordon's  
22 presentation. I thought it was fulsome; it was  
23 comprehensive; and it accurately summarized the evidence at  
24 trial and the reasons that you were convicted of the  
25 offenses that you were.

1           But most importantly, you know, you helped breach  
2 three police lines along with your friends, and those lines  
3 included officers that were standing right outside of the  
4 House Chamber. And you went into private areas where  
5 members of the public were not otherwise or would not have  
6 otherwise been invited if the Capitol had been open that  
7 day. And so, you know, that places your conduct at least in  
8 the heartland and probably, you know, somewhat above average  
9 for the other misdemeanor defendants that we see in this  
10 court.

11           We've talked a lot about acceptance of  
12 responsibility. You obviously chose to go to trial. That  
13 is your right, and so you don't get any, you know, credit  
14 under the Sentencing Guidelines for acceptance of  
15 responsibility.

16           But your lack of acceptance of responsibility  
17 seems to me to go a lot farther than that, and, you know, it  
18 was just demonstrated, I think, in the statement that you  
19 made to the Court.

20           You have cast yourself as the victim. You say you  
21 didn't get a fair trial. You say your lawyers did not  
22 adequately represent you. You said that the government's  
23 witnesses lied. You said that you are a victim of political  
24 persecution, and I could go on. I think Mr. Gordon is  
25 absolutely right that you have attempted to blame virtually

1 everyone under the sun for conduct that you personally  
2 engaged in.

3 And let me just pause here to address a couple of  
4 those things. I don't have to do this, but I want to,  
5 particularly your criticisms of the trial, because at least  
6 in part it is my responsibility to make sure that you  
7 received a fair trial; and, frankly, I think that you did.

8 You know, I've seen some of your YouTube  
9 appearances, and you've said that you didn't have a  
10 pretrial. That's been a pretty consistent refrain.

11 And as I recall, we, for scheduling reasons, moved  
12 your pretrial to maybe the day before or even the day of  
13 jury selection. But I went back, and we covered everything  
14 in your pretrial that I would ordinarily cover in a pretrial  
15 conference in any case.

16 We dealt with motions, and I believe there were a  
17 couple of motions that your lawyers filed. There were some  
18 motions to keep out evidence of your, you know, potential  
19 QAnon affiliations. And I agreed with your lawyer. I  
20 thought that that would not be fair, and it wasn't relevant,  
21 so I didn't let that evidence come in.

22 I think we discussed evidence about your sexual  
23 orientation, which you have mentioned today. And I believe  
24 that I ruled -- I'm not sure, you know, but I believe that I  
25 ruled that unless it bore some relevance to the actual

1 charges and why you were there and who you were with, that  
2 that was irrelevant, and that the jury should not hear that.

3 We went over your lawyer's objections to some of  
4 the other government evidence. We went over the expected  
5 witnesses. We went over how jury selection would work. We  
6 went over courtroom procedures, how to use the AV system,  
7 all that routine stuff that I do in every single case. And  
8 so I don't understand the objection or the notion that you  
9 didn't get a pretrial.

10 I also think we selected a fair jury in this case.  
11 We spent a lot of time on jury selection, as you know,  
12 because you sat through it.

13 As a general matter, if you come to D.C., and you  
14 commit a crime, you should expect to be tried before a D.C.  
15 jury, okay, not a jury in Boston.

16 You know, there are a lot of stereotypes about  
17 D.C. jurors, but frankly I don't think that they bear that  
18 weight.

19 I went back and looked at the jurors that we had  
20 on your case. There was a sign language interpreter. There  
21 was a clerk at the Lowe's store. There was a customer  
22 service rep for a vacation rental company, a couple of  
23 retirees. There was an accountant. We had a law professor  
24 and a law student, people who obviously take the rule of law  
25 and the legal process very seriously.

1           These weren't politicians. These weren't partisans.  
2           These were not zealots. And as far as I could tell, there  
3           was no one who was directly affected by January 6th on the  
4           jury.

5           So I think your criticisms are misplaced; and  
6           frankly, I think that those jurors should be celebrated, not  
7           denigrated.

8           You've also said that you were innocent, and  
9           you've repeated that today, and that your lawyers didn't do  
10          enough to defend you. You called them public pretenders, if  
11          I'm not mistaken.

12          Obviously I'm not privy to your conversations with  
13          your lawyers about case strategy or whether to testify or  
14          not, but I did sit through the trial, and I observed the  
15          evidence. And it was not a very close case, ma'am. It  
16          really wasn't.

17          And I pointed this out to another defendant I  
18          think a week or two ago. While you or perhaps Mr. Roots  
19          might think it should be legal to enter the Capitol and  
20          express whatever opinions you might have while the Secret  
21          Service is there trying to protect the vice president, it's  
22          not, and it's not for an obvious and important reason.  
23          People want to assassinate those officials, and people have  
24          tried to assassinate those officials.

25          And I'm not judging you for what other people

1 said, but you could see it on January 6th. "Hang Mike  
2 Pence." Right? And the Secret Service is there to keep  
3 that from happening. And it makes their job a heck of a lot  
4 more difficult if anybody can just waltz into the Capitol  
5 and interfere with their responsibilities.

6 And that's exactly what happened on January 6th.  
7 Right? And that's why you were charged with those lead two  
8 counts.

9 And, you know, the elements were that the building  
10 was restricted. The government certainly proved that. That  
11 you entered; the government certainly proved that. You  
12 entered. You filmed yourself entering. That you remained.  
13 You were there for 20, 30 -- I forget the exact amount of  
14 time, but you remained there after you entered.

15 So the only question was whether you knowingly  
16 entered. All right? And I know that, you know, today  
17 you're saying that, you know, you didn't see the police.  
18 You didn't see the signs. You didn't hear the alarms. And  
19 even if you did, you know, it could have been just somebody  
20 setting off alarm -- an alarm inadvertently. All right?

21 You know, you were there long enough. You knew --  
22 when you saw people climbing through windows, through broken  
23 glass, you knew you weren't supposed to be there. All  
24 right?

25 I don't think you knew that you were going to get

1 caught or that, you know, the consequences would end up  
2 being what they are. I believe that. But there's no way,  
3 given when you went in, what was going on all around you,  
4 how long you stayed, what you obviously saw, whether you're  
5 5'2" or 6'4", that told you that that was a place where you  
6 were supposed to be that day. Okay?

7 And so I don't think it was difficult for the jury  
8 to make that finding. And, frankly, you could have had  
9 Johnny Cochran representing you, and I don't think the  
10 result would have been any different; or you could have had  
11 a jury up in Boston looking at the same facts, and I don't  
12 think the result would have been any different. All right?  
13 So I think you got a fair trial.

14 We've talked about the First Amendment issues.  
15 This is not about the First Amendment. It's not about your  
16 political views. It's not about who you affiliate with.  
17 It's about what you did and where you did it. Okay?

18 And, you know, we talk about acceptance of  
19 responsibility a lot. And it's not important just to, you  
20 know, bring a defendant to heel. Okay? That's not my job.  
21 All right? But it's important for what it says about  
22 deterrence, about deterrence of you specifically and about  
23 deterrence of people who might be listening to you or  
24 following you on social media, all these YouTube appearances  
25 that you've been making.

1           You know, you've made yourself a face, and you  
2           feel, as you've stated here in court, that you are a --  
3           you're being persecuted; that you're a martyr; that you're a  
4           tool in a broader political effort to silence certain  
5           people. And so, you know, folks are listening to you,  
6           whether you like it or not, and, you know, this sentence has  
7           to say something to those people.

8           We also have to consider -- and I do -- you know,  
9           your history as a person. Until you gave me your statement  
10          today, I didn't know very much about you as a person because  
11          unfortunately you didn't cooperate with probation. You  
12          didn't testify at trial, which is your right.

13          I've read the letters. They suggest to me that  
14          you are a good friend, you are a hard worker, that you do  
15          have goodness in your heart. I don't doubt any of those  
16          things.

17          In terms of the challenges that you face,  
18          including those that you have described here today, you  
19          know, I have empathy for that. But that doesn't detract  
20          from the need for the sentence here today to reflect what  
21          you did and to serve all of the other purposes of  
22          sentencing.

23          I also draw from the record a couple of things  
24          about you. You're stubborn. You resist authority. You  
25          have temper issues. Whether those have ripened into

1 violence or not, I wasn't at the Dolly Shakers, or I wasn't  
2 at the hospital, or I don't know the ins and outs of your  
3 relationship with Ms. Chiguer or why she put out a  
4 restraining order against you. I do know you have temper  
5 issues. You have impulsivity issues. You can exhibit  
6 really poor judgment, and you can make very poor decisions,  
7 which I think has been, you know, confirmed throughout this  
8 case.

9 I did not let in the QAnon stuff. I don't know  
10 what you believe and what you don't believe. You can  
11 believe whatever you want to believe.

12 When you talk about saving the children, I think  
13 you were wearing a T-shirt that said "Save the Children."  
14 If that is believing that there is some conspiracy among  
15 certain politicians to, you know, traffic in child  
16 pornography or that they're pedophiles or, you know, some  
17 other crazier stuff that QAnon has been spouting, all that  
18 shows me is that you are completely detached from reality --  
19 all right? -- which is relevant to the deterrent value of  
20 the sentence that I have to impose.

21 In terms of disparities, you know, look, it's  
22 clear -- I've looked at other misdemeanor defendants who  
23 have chosen to go to trial, have not gotten acceptance of  
24 responsibility points, and they range between four months to  
25 twelve months, and so the sentences that both probation and

1 the government have recommended are in the heartland of  
2 other cases and neither would create an undue disparity  
3 between you and other defendants.

4 At the end of the day, Ms. Niemela, I've got to  
5 say I was prepared to trend towards the probation office  
6 recommendation, but your complete lack of any responsibility  
7 for your actions, your attempts to blame everybody, from the  
8 Court to the jury to the prosecutors to your lawyers to  
9 other politicians, you know, I have no comfort or I would  
10 not be comfortable sentencing you to anything less than what  
11 the government has recommended in this case. So in many  
12 ways you have left me no choice.

13 So with that, pursuant to the Sentencing Reform  
14 Act of 1984 and in consideration of the provisions of 18 USC  
15 3553, as well as the guidelines range, it is the judgment of  
16 the Court that you, Kirstyn Niemela, are hereby committed to  
17 the custody of the Bureau of Prisons for concurrent terms of  
18 11 months on Counts 3 and 4, and six months on Counts 6 and  
19 8.

20 You are further sentenced to serve concurrent  
21 terms of supervised release of 12 months on Counts 3 and 4.

22 In addition, you are ordered to pay a special  
23 assessment of \$25 on each of Counts 3 and 4, and \$10 on each  
24 of Counts 8 and 6, for a total of \$70 in accordance with 18  
25 USC 3013.

1           While on supervision, you shall abide by the  
2 following mandatory conditions as well as all discretionary  
3 conditions recommended by the probation office in the  
4 presentence report, which are imposed to establish the basic  
5 expectations for your conduct while on supervision.

6           The mandatory conditions include:

7           You must not commit another local, federal or  
8 state crime.

9           You must not unlawfully possess a controlled  
10 substance.

11           You must not -- you must refrain from any unlawful  
12 use of a controlled substance.

13           You must submit to one drug test within 15 days of  
14 placement on supervision and at least two periodic drug  
15 tests thereafter as determined by the Court.

16           You must make restitution in accordance with 18  
17 USC 3663 and 3663A, or any other statute authorizing a  
18 sentence of restitution.

19           You shall also comply with the following special  
20 conditions:

21           You must undergo a mental health assessment.

22           You must undergo substance abuse testing to  
23 determine if you have used a prohibited substance.

24           You must not attempt to obstruct or tamper with  
25 the testing methods.

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

6           You must not incur any new credit charges or open  
7           additional lines of credit without the approval of your  
8           probation officer.

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

13          The Court will also accept the government's  
14          recommendation that you be ordered to not have any contact,  
15          physical or otherwise, with Stephanie Chiguer for the  
16          remainder of your supervised -- for the duration of your  
17          supervised release period.

18          Within 60 days of release from incarceration or  
19          placement on supervision, you will appear before the Court  
20          for a reentry progress hearing.

21          Prior to the hearing, the probation officer will  
22          submit a report summarizing your status and compliance with  
23          the release conditions. If you are supervised by a district  
24          outside of the Washington, D.C., metropolitan area, the  
25          probation office in that district will submit a progress

1 report to the Court within 60 days of commencement of  
2 supervision. Upon receipt of the report, the Court will  
3 determine if your appearance is required.

4 With respect to the fine, you know, I think  
5 Mr. Roots and Ms. Niemela make some valid points with  
6 respect to the government's position on charitable  
7 contributions for the support of defendants to defray  
8 certain court-related expenses. However, to the extent that  
9 the defendants attempt to raise money off of their notoriety  
10 by spreading or, you know, peddling information that is  
11 inconsistent with the facts or with the jury findings, you  
12 know, I think that there is a line between those two things.  
13 And so unfortunately I do not have a financial disclosure  
14 report by Ms. Niemela, which I otherwise would have had she  
15 cooperated with probation.

16 I infer from all of the facts that she is not a  
17 wealthy woman, but I do think that on principle, you know,  
18 raising money from the public based on misrepresentations  
19 from the record and the trial evidence is not something  
20 that should be countenanced and should go -- at least some  
21 of it -- back to the government who was put to great expense  
22 to prove these charges.

23 So with that, whether this is the right amount or  
24 not, I don't know, but you're ordered to pay a fine in the  
25 amount of \$1,000. The Court determines that you do not have

1 the ability to pay interest and therefore waives any  
2 interest or penalties that may accrue on the balance.

3 You are also ordered to make restitution in the  
4 amount of \$500 to the Architect of the Capitol. The Court  
5 determines that you do not have the ability to pay interest  
6 and therefore waives any interest or penalties that may  
7 accrue on the balance.

8 The restitution payments shall be made to the  
9 Clerk of the Court for the U.S. District Court here for  
10 disbursement to the Architect of the Capitol, and the  
11 address will be indicated in the judgment.

12 Payment during the term of supervised release will  
13 commence within 30 days after release from -- the  
14 restitution obligation, payment for that during the term of  
15 supervised release will commence within 30 days after  
16 release from imprisonment. The Court will set the payment  
17 plan based on an assessment of the defendant's ability to  
18 pay. So the Court will set restitution payments at \$50 over  
19 the course of ten months.

20 The probation office shall release the presentence  
21 investigation report to all appropriate agencies, including  
22 the probation office in the approved district of residence  
23 in order to execute the sentence of the Court. The Court  
24 will transfer supervision to -- Mr. Roots, Ms. Niemela plans  
25 to reside in New Hampshire upon her release presumably?

1 MR. ROOTS: I believe so.

2 THE COURT: Ms. Niemela?

3 THE DEFENDANT: Yes, as I own a house.

4 THE COURT: Okay. The Court will transfer  
5 supervision in this matter to the District of New Hampshire,  
6 but will maintain jurisdiction. So if there are any  
7 violations of supervised release conditions, those will come  
8 back before me.

9 The probation office shall release the presentence  
10 investigation report to all appropriate agencies including  
11 the United States -- strike that.

12 The financial obligations are immediately payable  
13 to the Clerk of the Court. Within 30 days of any change of  
14 address, you shall notify the Clerk of the Court of the  
15 change until such time as the financial obligation is paid  
16 in full. Obviously that is exclusive of the restitution  
17 obligation for which there is a payment schedule.

18 The probation office shall release the presentence  
19 investigation report to all appropriate agencies, including  
20 the probation office in the approved district of residence.

21 You have the right to appeal your conviction of  
22 guilt to the United States Court of Appeals for the D.C.  
23 Circuit. You also have a statutory right to appeal your  
24 sentence to the D.C. Circuit in certain circumstances,  
25 including if you believe the sentence was imposed in

1 violation of law or as a result of an incorrect application  
2 of the Sentencing Guidelines or is more severe than the  
3 maximum established in the guidelines range.

4 You may also appeal your sentence if you believe  
5 you received ineffective assistance of counsel at  
6 sentencing.

7 You also have the right to challenge the  
8 conviction entered or the sentence imposed under 28 USC 2255  
9 to the extent permitted by that statute.

10 Any notice of appeal must be filed within 14 days  
11 of the entry of judgment or within 14 days of the filing of  
12 a notice of appeal by the government.

13 If you are unable to afford the cost of an appeal,  
14 you may request permission from the Court to file an appeal  
15 without cost to you. On appeal, you may also apply for  
16 court-appointed counsel.

17 Any other objections that have not already been  
18 noted, Mr. Roots?

19 MR. ROOTS: We would move to stay the imprisonment  
20 pending the outcome of her appeal and would like to  
21 supplement that with some written arguments.

22 THE COURT: Mr. Gordon?

23 MR. GORDON: I would object to that, Your Honor.  
24 There's -- I don't think there's grounds to do that and, you  
25 know, that could be years in the process here. I think

1 there's a public interest in finality.

2 We would, however, have no objection to allowing  
3 Ms. Niemela to self-surrender --

4 THE COURT: Okay.

5 MR. GORDON: -- and give her a period to do that.

6 THE COURT: The Court will deny the defense's oral  
7 motion to -- for a stay pending appeal.

8 Mr. Roots, you're certainly welcome to move for  
9 reconsideration of that ruling based on any case law or  
10 factual submission you'd like to make, but the Court will  
11 deny the motion.

12 The Court will so permit Ms. Niemela to remain on  
13 her current conditions until she is informed of where she  
14 needs to report by the Bureau of Prisons.

15 Mr. Roots, a placement recommendation?

16 MR. ROOTS: I think somewhere closest to New  
17 Hampshire, lowest level.

18 THE COURT: All right. The Court will make a  
19 recommendation for an appropriate placement close to  
20 Ms. Niemela's home in New Hampshire.

21 Ms. Niemela, you know, you may not believe this,  
22 but it gives me no comfort to impose this sentence. I'm not  
23 entirely sure what all led you to this place. You know, you  
24 have lots of friends. You seem to have, you know, a  
25 supportive family.

1           I would counsel you -- and take this for what it  
2           is worth -- that, you know, perhaps when you get this  
3           experience behind you that you sort of take comfort in them  
4           as opposed to perhaps some of the other sort of external  
5           forces that you have been attracted to for whatever reason.  
6           All right?

7           You're a young woman. You have lots to give. You  
8           obviously -- as I said, you're a hard worker and a dedicated  
9           and good friend to many. And I would just counsel you to  
10          get through this and to focus on those aspects of your life.  
11          All right?

12          Anything else, Counsel?

13          MR. ROOTS: Nothing from the defense.

14          MR. GORDON: Not from the government, Your Honor.

15          THE COURT: Okay. We're adjourned.

16          (Whereupon the hearing was  
17          concluded at 12:36 p.m.)

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