

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF COLUMBIA

3 UNITED STATES OF AMERICA,

4 Plaintiff(s),

5 v.

6 KYLE J. YOUNG,

7 Defendant(s).

Criminal Case  
No. 21-291 (ABJ)

Washington, D.C.

September 27, 2022

8 -----  
9 SENTENCING HEARING  
10 BEFORE THE HONORABLE AMY B. JACKSON  
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 FOR THE PLAINTIFF(S): Kimberly L. Paschall, Esquire  
14 Cara A. Gardner, Esquire  
15 United States Attorney's Office  
16 District of Columbia  
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19 FOR THE DEFENDANT(S): Samuel C. Moore, Esquire  
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1 The following proceedings began at 1:03 p.m.:

2 THE COURTROOM DEPUTY: Good afternoon, Your Honor.  
3 This afternoon we are here for a sentencing. We have Criminal  
4 Case No. 21-291-3, United States of America v. Kyle J. Young.  
5 Mr. Young is present and in the courtroom, Your Honor. The  
6 probation officer present for these proceedings is Officer  
7 Lustig.

8 Will counsel for the government please identify  
9 herself and her colleague for the record, and then we will do  
10 counsel for the defendant.

11 MS. PASCHAL: Good afternoon, Your Honor. Kimberly  
12 Paschall for the United States along with my colleague Cara  
13 Gardner.

14 THE COURT: Good afternoon.

15 MR. MOORE: Good afternoon, Your Honor. Sam Moore on  
16 behalf of the defendant, Kyle Young.

17 THE COURT: And I note that he is present. I also  
18 want to note, in addition to the people we have in the  
19 courtroom, there are members of the press or the public  
20 listening on a public line. And you have an absolute right to  
21 attend in this manner and to report on what transpired during  
22 these court proceedings, but the recording or dissemination of  
23 a recording of these proceedings would be a violation of our  
24 court rules.

25 Mr. Moore, the final presentence report was filed in

1 this case on September 19. Have both you and your client had  
2 an opportunity to read it?

3 MR. MOORE: We have, yes, Your Honor.

4 THE COURT: And I don't believe -- other than the  
5 dispute with respect to the one guideline, there are no factual  
6 or legal disputes for me to resolve at this point.

7 MR. MOORE: That's correct, except for that one  
8 enhancement, yes, Your Honor.

9 THE COURT: All right. So I am going to accept the  
10 presentence report as undisputed as part of my findings of fact  
11 for sentencing.

12 I also have received additional materials concerning  
13 the defendant including the government's memorandum in aid of  
14 sentencing and a set of video exhibits referenced in the  
15 memorandum.

16 I received the defendant's memorandum in aid of  
17 sentencing with a number of attachments including letters from  
18 Andrea Young, his wife. And I do know the names of who all the  
19 rest of the letters are from, but given what the reaction of  
20 community members can be when people participate in these  
21 proceedings, I am going to list them without naming them.

22 I received a letter from the defendant's  
23 mother-in-law, the defendant's sister-in-law, two letters from  
24 Mr. Young's sisters, a very personal and long letter from a  
25 young woman who has come to know the family through her

1 relationship with the defendant's cousin. It was totally  
2 authentic and candid, and it gave me a great snapshot of the  
3 family. A letter from a long-time friend of Andrea's and a  
4 good friend who's known the defendant for ten years. And  
5 significantly, I have received a letter from the defendant,  
6 Mr. Young, himself.

7           And I want you to know that I read and considered and  
8 appreciated all of those letters.

9           In a criminal case, there's a statute that tells me  
10 how I am supposed to go about deciding what the sentence should  
11 be. It's 18 U.S. Code, Section 3553. It lists a number of  
12 important factors I'm supposed to think about, and the advisory  
13 sentencing guidelines are one of the factors I must consider in  
14 determining the appropriate sentence for your offense and in  
15 every case.

16           I am required to calculate what the guidelines would  
17 recommend. And the purpose is to arrive at a recommended  
18 sentencing range based on the offense and various aggravating  
19 and mitigating factors. Ultimately, it's going to sound more  
20 like a math exercise than a legal exercise, but I have to begin  
21 with that calculation, and I note that it's just one part of  
22 the analysis this afternoon.

23           The defendant pled guilty to Count 4 in the  
24 indictment, assaulting, resisting, or impeding officers in  
25 violation of 18 U.S. Code, Section 111(a)(1). The statute

1 provides for a maximum sentence of up to eight years or 96  
2 months imprisonment for that offense.

3 Under the guidelines, though, when you look at the  
4 offense levels, the base offense levels, which the parties  
5 agree to in the plea agreement, is found under Section 2A2.2,  
6 the guideline for aggravated assault. That starts us out at a  
7 level 14 on the guideline chart.

8 There are specific offense characteristics that affect  
9 the calculation. It's also agreed that there's a five-level  
10 enhancement under Section 2A2.2(b)(3) because the victim  
11 sustained serious bodily injury. So now we are up to level 19.

12 It's further increased, as agreed, pursuant to  
13 Section 3A1.2(a)(1) because the victim of the assault was a  
14 government officer and the attack on him was motivated by that  
15 status. And that takes us up six more levels to level 25.

16 But there is a dispute, and the parties agreed to  
17 disagree at the time of the plea, as to whether that is the  
18 total offense level. There is another victim-related  
19 guideline, which is Section 3A1.3, and it calls for a two-level  
20 enhancement, quote, if a victim was physically restrained in  
21 the course of an offense, closed quote.

22 The guideline points you to a commentary to the  
23 application instructions in Section 1B1.1 where application  
24 note 1L to that guideline states, quote, physically restrained  
25 means the forcible restraint of the victim such as being tied,

1 bound, or locked up, closed quote.

2           The parties have briefed this issue pretty thoroughly  
3 in their submissions, but I will permit each side to address it  
4 briefly if you want to add or emphasize anything before I rule  
5 on whether that guideline applies.

6           Ms. Paschall.

7           MS. PASCHAL: I think for the government, Your Honor,  
8 we wanted to briefly address the Mikalajunas case that is  
9 discussed in the defense's briefing.

10           We think that Mikalajunas is an outlier compared to  
11 other circuits. Our circuit has not commented on it. We would  
12 urge the Court to go with both the Third and Tenth Circuit's  
13 interpretations.

14           Mikalajunas is a unique fact pattern in that it did  
15 involve a manslaughter through a stabbing, and the Fourth  
16 Circuit found that that inherently caused restraint. There is  
17 a Tenth Circuit case that disagrees with that, but we need not  
18 take that dispute up here because the count that Mr. Young has  
19 pled guilty to is not similar to a stabbing nor is it similar  
20 to a kidnapping which the note does state would be a charge in  
21 which this would be inapplicable because it is inherent to the  
22 count itself.

23           Mikalajunas says that the stabbing inherently involves  
24 restraint, and that is one of the reasons why they did not  
25 apply the two-point enhancement there.

1           We think that while the briefness of the hold, which  
2 Mikalajunas also addresses, is probative for Your Honor, it's  
3 not dispositive and it's not dispositive in this case.

4           THE COURT: All right. Thank you.

5           Mr. Moore.

6           MR. MOORE: Your Honor, may I remove my mask while I  
7 argue?

8           THE COURT: Yes.

9           MR. MOORE: Thank you, Your Honor.

10           We briefed this, as noted. I think you can tell from  
11 our briefing, it was difficult to find authority directly on  
12 point in this circuit. I think the specific -- without trying  
13 to create a bright-line rule regarding assault, I think with  
14 the specific facts and the specific allegation and you have the  
15 evidence in front of you with the video that we have here, I  
16 think the act subsumes the restraint in this case, and I don't  
17 think there would be anything to distinguish that from the  
18 cases we cited. I think with this specific action, this  
19 specific assault, that it does not meet the criteria for  
20 restraint.

21           I think you can see the purpose of the guidelines  
22 enhancement even with their examples, which we agree are not  
23 exclusive, you can see the purpose of that enhancement, to make  
24 it above and beyond what would otherwise just be an assault.

25           With the facts that you have here, the evidence in

1 front of you, and the case law that, while not binding, is  
2 certainly informative, I don't think it should apply here.

3 I am happy to answer any further questions you have,  
4 but I don't need to belabor --

5 THE COURT: No, I don't have any questions. And one  
6 of the reasons I don't is because both parties were very  
7 thorough in their briefing on what their positions are and what  
8 they are relying on. So I appreciate all that.

9 No one is arguing here that the victim of this assault  
10 was tied, bound, or locked up. But the binding circuit  
11 authority, United States versus Drew, 200 F.3d 871, 880 D.C.  
12 Circuit 2000 tells me that, because the list in the definition  
13 in the application note says such as being tied up, et cetera,  
14 it's meant to be an illustrative and not an exhaustive list.  
15 These are meant to be examples, not a limit on what the concept  
16 could entail.

17 The Third Circuit has attempted to distill case law  
18 from all the other circuits including this one creating a list  
19 of factors to consider such as use of physical force, exerting  
20 control over the victim, providing the victim with no  
21 alternative but compliance, focusing on the victim for some  
22 period of time, or placement in a confined space.

23 Again, not even all of those potential circumstances  
24 apply. The victim here was not placed in a confined space and  
25 whatever "some period of time" means, this was not an extensive



1 period of time.

2           But I note that the Bell factors, which is what I was  
3 quoting, are not inconsistent with the plain meaning of the  
4 term in the text of the guideline. If you go to the Oxford  
5 English Dictionary, restrain means to restrict, limit, confine,  
6 to check, hold back, or prevent a person or thing from some  
7 course of action, to keep a person in check or under control,  
8 or to confine or imprison a person, to restrict freedom of  
9 movement or action using some means of restraint. That one, I  
10 think, does not apply, but the others do.

11           It's also important to remember, though, that the  
12 guideline here requires that it be forcible restraint.

13           I find that the government has met its burden to  
14 establish by a preponderance that this guideline applies. This  
15 is not a circumstance that's already an element of aggravated  
16 assault.

17           A defendant, as he swore when he admitted the facts in  
18 the statement of offense, held Officer Fanone's left wrist in  
19 his right hand and pulled the officer's arm away from his body.  
20 I reject the characterization in the defense memo that he,  
21 quote, touched, closed quote, the officer's wrist for a few  
22 seconds. He used his body. He used his physical strength and  
23 force to exert control over the officer's body to restrict the  
24 officer's movements, to hold him back, to prevent him from  
25 using that arm.

1           And he immobilized the officer the very moment the  
2 officer desperately needed the use of both of his arms. This  
3 is exactly when other rioters were calling for him to be killed  
4 with his own gun.

5           The fact that he was rendered unable to fend the  
6 rioters off for even that short period of time enabled another  
7 individual to reach in and strip him, not only of his badge,  
8 but his lifeline, his radio.

9           While I agree with the defense that the brevity of  
10 this action bears on the appropriate guideline under -- I'm  
11 sorry, the appropriate sentence under the statute, it doesn't  
12 render the guideline inapplicable.

13           Therefore, back to the guidelines calculation, the  
14 total offense level is level 27. There is no dispute that, due  
15 to the entry of his plea of guilty in this case, the defendant  
16 is entitled to the three-level reduction for acceptance of  
17 responsibility under Section 3E1.1(a). That brings us to level  
18 24. Had we not added the two levels for physical restraint, we  
19 would be at level 22.

20           The defendant's criminal history category is IV,  
21 that's not disputed, based on the score computed in the  
22 presentence report. His advisory sentencing guideline range  
23 then, at a level 24, would be 77 to 96 months. That's what the  
24 guidelines would recommend. If it had been level 22, it would  
25 be 63 to 78 months.

1           The government has asked me to impose a sentence in  
2 the middle of the guideline range, 86 months, or a little more  
3 than seven years.

4           The defendant has asked for no more than 24 months,  
5 well below even the guideline that he maintains applies.

6           I note that the defendant has already been detained  
7 for approximately 17 months.

8           So now we are at the point of the proceedings where I  
9 want to ask if the government would like an opportunity to  
10 speak. And this would be also the point, either before or  
11 after your remarks, however you choose, to introduce the  
12 victims who are present to speak regarding the appropriate  
13 sentence in this case.

14           MS. PASCHAL: Thank you, Your Honor.

15           At this point, I think we will have our victims speak.  
16 So if we could please have Capitol Police Officer Moore come to  
17 the lectern to address the Judge.

18           THE COURT: Good afternoon, Officer Moore.

19           OFFICER MOORE: Good afternoon to you.

20           THE COURT: I know you have probably possibly  
21 testified in court from a witness stand before, but you  
22 probably haven't stood there and had to direct your remarks  
23 directly to a court. But I am happy to hear and consider  
24 anything you have to say this afternoon. I appreciate your  
25 being here.

1           OFFICER MOORE: Okay. My name is Officer Moore,  
2 United States Capitol Police, 35 years with the department.

3           That day, while working at Delaware Avenue, hearing  
4 calls going out as far as what's going on on the Hill with the  
5 West Front being taken over, hearing about the RNC and DNC  
6 buildings possibly bombs around, it was a challenging day. But  
7 I called my office about at least three times because of the  
8 cries of the officers needing help.

9           And I couldn't get in touch with any sergeants or  
10 lieutenants because they were out in the fight. So I just so  
11 happened to see a lieutenant from PD, patrol division, walking  
12 across the street. And I said, hey, look here, I can't get in  
13 touch with anybody. He's like (indicating), pointed at his  
14 name, shut it down, get over here.

15           So from there, I went over to the West Front and  
16 engaged in a lot of rioters on the front line, barricades, also  
17 being maced and sprayed, you know, knives thrown at me, eyes  
18 burning, putting water in my eyes, decontaminating, getting  
19 back out in the fight basically, and people going down helping  
20 them the same way and going back out there in the fight.

21           You know, just some of my fellow officers going down  
22 and helping them out to possibly, you know, get help or helping  
23 them to get back in the fight and just trying to hold the Lower  
24 West Terrace down, you know, until troops get there. You know,  
25 we had fences and everything. We were like struggling with

1 fences and things like that.

2           So as the rioters came up from the West Front, you  
3 know, we started moving back because we had less officers than  
4 rioters coming up. So every level, every level, we kept moving  
5 back and forth, back and forth until I got into -- before the  
6 Lower West Terrace door, I saw a helmet on the ground,  
7 Metropolitan helmet. I grabbed it, put it on, strapped it up,  
8 kept on struggling.

9           As we reached the Lower West Terrace door, there was  
10 almost like a tug of war pushing back and forth, back and  
11 forth. Many officers we had in the building pushing the  
12 rioters from that entryway. So it was a struggle back and  
13 forth. Sticks were thrown, bottles, mace, things like that.

14           It was just a challenge that day being -- it was  
15 almost like a war. Never been in a war, but being in a war  
16 like that, it was crazy. But I can remember canisters of tear  
17 gas being thrown, but also I can remember pushing so much and  
18 getting pushed down, almost down the steps, going down the  
19 steps, because that's how things were.

20           Then I remember being pushed down to the steps into  
21 the crowd. And I remember two rioters. One -- two white  
22 males, one was possibly about 6-3. He had on all black with a  
23 ballistic vest. And there was another one, probably about 5-8  
24 to about maybe 6 feet tall. He had on all tan. He had on a  
25 ballistic vest.

1           They mentioned to me, hey, look here, you don't want  
2 to go over that way, follow us. So, actually, they guided me  
3 out of the fray up to the north side of the building. So, you  
4 know, I was kind of thankful for that. But also, you know, the  
5 fight was still going on. In the building, you know, the fight  
6 was still going on. Out on the West Front, you know, the fight  
7 was going on.

8           I lost my baton. Then I went over to -- my detail  
9 officer wanted me back over there. And I was basically just  
10 looking for a baton to get back to the fight because it was  
11 still going on. And that's how -- you know, I just wanted to,  
12 you know, protect the officers that was there.

13           You know, being angry and everything, it was a rough,  
14 rough night and everything, you know, your eyes burning and  
15 everything. But still, you know, I played college football,  
16 and the coach always said, you know, leave it on the field,  
17 every bit.

18           And I just felt that that particular day, I wanted to  
19 leave it out there on the West Front. And that night,  
20 afterwards, you know, being in a hotel and having dreams of,  
21 you know, rioters chasing you up the steps and getting up to  
22 the top.

23           I can still remember. And we had rookies up at the  
24 top. And I'm screaming to them, you know, get your guns out,  
25 get your guns out. They are coming. Get your guns out. That

1 was like one of the dreams I had, you know, because the way  
2 that it had impacted my life, I never been in a type of  
3 situation like was on J6. I have been at demonstrations, but  
4 not the magnitude of that demonstration. Because I look back,  
5 you know, watching movies and, you know, basically seeing the  
6 movie 300 and just taking Capitol Police, Metropolitan, other  
7 law enforcement, the little people that we had fighting against  
8 thousands like in that movie. But also, seeing all of  
9 demonstrators coming up, climbing up the walls, I thought about  
10 a zombie movie, you know, they climbing up the walls, like wow,  
11 crazy, canisters of tear gas being thrown at you, taking them  
12 and throwing them back at them.

13 So that was, I guess, you know, my impact of that  
14 whole day. But also, you know, I still think about it, about,  
15 you know, January 6, I mean, the way how it impacted us. I  
16 mean, you know, as officers, we still talk about it. But, you  
17 know, we did our best.

18 THE COURT: There's no question about that, sir.

19 THE WITNESS: Yeah, we did our best.

20 THE COURT: Thank you. Thank you very much, Officer  
21 Moore.

22 Is there anything more you wanted to add? I don't  
23 want to cut you off, but I thought you were kind of -- it's  
24 hard to talk about, I'm sure.

25 THE WITNESS: Yeah. I mean, you know, basically

1 that's my story. That's my story, the way it impacted me.

2 THE COURT: Okay. Thank you. And I think the  
3 government is pointing me to videos that involve you and things  
4 that you might not even be able to talk about given the  
5 condition you were in in the videos. But they have given me  
6 information also about what happened to you, and I'm certainly  
7 going to be taking it into consideration this afternoon.

8 OFFICER FANONE: Okay. Thank you.

9 THE COURT: All right. Thank you.

10 MS. PASCHAL: Next the government would ask that  
11 former MPD Officer Fanone come to speak to the Court.

12 THE COURT: All right.

13 OFFICER FANONE: Good afternoon, Your Honor.

14 THE COURT: Good afternoon to you.

15 OFFICER FANONE: On Wednesday, January 6, 2021,  
16 Congress met in the joint session to count the electoral votes  
17 and certify the 2020 election results. Due to the significance  
18 of this date, a pro-Trump organization planned a large-scale  
19 First Amendment assembly opposing the 2020 election results.  
20 This assembly took place on the Ellipse in front of the White  
21 House in which the President of the United States attended the  
22 event and delivered a speech to the crowd.

23 At approximately 1200 hours, during President Trump's  
24 speech, intelligent asset to the Metropolitan Police Department  
25 began reporting that large numbers of the estimated 30,000



1 attendees were starting to migrate towards the United States  
2 Capitol Building. In response to this movement, the CDU branch  
3 director, Lieutenant Andrew Horos, began repositioning CDU  
4 platoons to cover areas between the White House and the United  
5 States Capitol.

6 At approximately 1245 hours, one group converged on  
7 the west lawn of the U.S. Capitol and quickly overran the  
8 outermost fencing and line of U.S. Capitol Police officers  
9 fighting to defend it. The group pushed their way up the  
10 inaugural stage in the Lower West Terrace of the United States  
11 Capitol where greatly outnumbered U.S. Capitol Police force  
12 barely held the police line to prevent the demonstrators from  
13 entering the Capitol.

14 United States Capitol Police command staff, realizing  
15 they were vastly outnumbered, placed a 1033 or an officer in  
16 distress call, but in this case, it was an agency in distress  
17 call, to the United States Capitol. Inside the Capitol, there  
18 was a joint session in which each member of Congress including  
19 the Vice President, Michael Pence, were present and the Capitol  
20 Police recognized they were in grave danger.

21 At approximately 1305 hours, Special Operation  
22 Divisions Commander Robert Glover and Lieutenant Ronald  
23 Wilkins, Sixth District Captain Daniel Harrington were the  
24 first officers to arrive at the United States Capitol grounds  
25 along with a CDU platoon from the Sixth District, platoon 64,

1 and from the Fourth District, platoon 44.

2           These members -- excuse me. The members were the  
3 initial response to the West Terrace of the United States  
4 Capitol where thousands of demonstrators had now converged and  
5 were attempting to violently force their way into the building.

6           Commander Glover quickly made an assessment, realized  
7 the gravity of the situation. The commander began setting  
8 lines of defense and ordered additional MPD CDU units  
9 dispatched to the West Terrace. Commander Glover organized a  
10 plan of defense and incorporated the remaining United States  
11 Capitol Police units into an organized cohesive unit to defend  
12 the position.

13           For approximately 90 minutes, MPD CDU members and  
14 members of the United States Capitol Police engaged in  
15 hand-to-hand combat with the now extremely violent group  
16 attempting to storm the United States Capitol.

17           During the initial engagement on the West Terrace, MPD  
18 members were subjected to repeated onslaughts of projectiles  
19 that included metal piping ripped from the scaffolding, rocks,  
20 bottles, any other form of projectile that demonstrators could  
21 use as a weapon to inflict injury on the police.

22           In addition to these projectiles, these demonstrators  
23 used improvised commercial-grade fireworks and bear spray as  
24 well as other chemical irritants against the defending  
25 officers.

1           The Metropolitan Police Department members who were on  
2 the steps of the West Terrace fought gallantly and courageously  
3 using less than lethal fired munitions, hand-thrown munitions,  
4 CS gas, and their asp batons to keep the crowd at bay until the  
5 Vice President and members of Congress could safely be  
6 evacuated from the Capitol Building.

7           At approximately 1435 hours, with rapidly mounting  
8 injuries and most of the MPD less than lethal munitions  
9 expended, the defending officers were forced to conduct a  
10 fighting withdrawal back towards the United States Capitol  
11 Building entrance. This is the first fighting withdrawal in  
12 the history of the Metropolitan Police Department.

13           The goal was to reestablish defensive lines in an  
14 attempt to keep the crowd that had swelled to approximately  
15 20,000 from storming the U.S. Capitol.

16           During the fighting retreat, many of the CDU units  
17 were split up from their platoons. While most of the MPD  
18 members that made it to the West Terrace continued to evacuate  
19 to a higher level, a small group of separated MPD members and  
20 U.S. Capitol Police officers entered through the West Terrace  
21 exit. This doorway is on the mid level of the West Terrace and  
22 the members quickly realized that there were only a handful of  
23 officers left there to defend it.

24           The MPD group led by Commander Ramey Kyle and assisted  
25 by Lieutenant Ronald Wilkins and Lieutenant Jason Bagshaw

1 quickly realized the vulnerability and the direct access to  
2 both House and Senate Chambers from this doorway at the West  
3 Terrace exit. Commander Kyle gave the order to hold the door  
4 at all costs.

5           The members did not know the significance of the West  
6 Terrace exit, which is the hallway and doorway that the  
7 President Elect exits from to take the oath of office on  
8 inauguration day.

9           With the handful of officers who were separated from  
10 their platoons, the officials assessed the casualty status of  
11 the remaining officers and formed a plan to put the least  
12 wounded of the officers and officers with protective gear at  
13 the entrance to the hallway, the least wounded of the officers.

14           Commander Kyle positioned himself on top of a baggage  
15 x-ray machine inside of the doorway where he had a line of  
16 sight and rallied the handful of officers.

17           Commander Kyle told us that this was our stand. We  
18 were not retreating any further. And with his command  
19 presence, the remaining officers prepared for the onslaught of  
20 rioters that were amassing at the bottom of the steps  
21 reorganizing from the barrage of CS gas that had covered the  
22 officers' withdrawal from the open terrace.

23           Within minutes of establishing a defensive position at  
24 this entrance, the violent group of rioters had forced their  
25 way up the landing steps. The rioters used a hammer and

1 smashed through the glass of the doors and began to push their  
2 way through the officers at the West Terrace exit.

3           It should be noted that many of these officers had  
4 deployed to the initial 1033 call from the United States  
5 Capitol Police in haste to assist their fellow officers and did  
6 not have their protective masks with them and had already  
7 fought for well over an hour on the actual terrace itself where  
8 bear spray, OC spray, and CS gas were being used. These  
9 officers were exhausted, injured, some severely, and suffering  
10 from a chemical irritant exposure.

11           With this door being secured by the original 30 to 40  
12 separated members and many of them wounded, this push quickly  
13 turned violent as the demonstrators realized that this was the  
14 only entrance on the west side of the Capitol and that this  
15 particular entrance gave them direct access to the Rotunda and  
16 both chambers of Congress.

17           The violence quickly escalated to hand-to-hand combat  
18 within a tight, confined space. These initial members faced an  
19 onslaught of projectiles ranging from batteries, shoes, flag  
20 poles, hammers, ladders, sledgehammers, and other debris.  
21 Further, the rioters continued to use bear spray at pointblank  
22 range on the officers.

23           These men showed unmatched courage and heroism by  
24 refusing to retreat out of the hallway continuing to fight  
25 while injured and refusing entry to the demonstrators.

1           Within the first 30 to 40 minutes, additional MPD  
2 members from varying units were able to fight their way through  
3 the Capitol Building from the east side and locate these  
4 members to assist.

5           It was upon entry and arrival of these units that it  
6 was learned that the rioters had entered the U.S. Capitol from  
7 the east side and had stormed the Rotunda, seized control of  
8 both chambers of Congress, and had essentially cut off the  
9 small force of defending officers from all sides.

10           When the additional members arrived and realizing that  
11 it would be a prolonged fight before any sizeable relief force  
12 would be able to assist, Commander Kyle, Sergeant Paul Riley,  
13 and Sergeant Terry Thorne organized a system of frontline  
14 relief for the beleaguered and battered members at the front  
15 door.

16           Lieutenant Wilkins and Lieutenant Bagshaw organized  
17 members, myself included, into squad-sized elements  
18 coordinating the defense of the rear steps that led down to the  
19 entrance and established a casualty collection point in one of  
20 the adjacent hallways.

21           The members began pulling the original battered  
22 officers, some of whom had lost consciousness, back into the  
23 hallways where other officers were attempting to attend to  
24 them.

25           With no availability to get medical personnel into the

1 area, these officers, without hesitation, cared for each other  
2 until they were physically able to pick themselves back up and  
3 get back out on the line.

4           During this battle for the West Terrace exit, the  
5 demonstrators pushed the lifeless body of an adult female  
6 demonstrator to the front of the police door. The members were  
7 able to pull the female through the police line and into the  
8 hallway.

9           MPD members and a member from the U.S. Park Police  
10 performed CPR and utilized an AED on the female; however, they  
11 were not able to resuscitate her.

12           Every time I read this part, Your Honor, it strikes me  
13 the fact that, while these officers were busy fighting for  
14 their lives, they still took time to attend to an  
15 insurrectionist who was injured during that battle.

16           The female was eventually evacuated from the building  
17 by using an improvised stretcher.

18           During the onslaught at the door, I was dragged from  
19 the front of the police line, pulled into the crowd, and  
20 violently beaten and electrocuted with a stun gun. The  
21 attackers attempted to remove my pistol from my utility belt;  
22 however, they were unsuccessful. I was eventually dragged back  
23 to the police line by demonstrators who intervened on my  
24 behalf.

25           It is likely that without the intervention of those

1 demonstrators, I would have lost my life.

2           At approximately 1640 hours, Lieutenant Ronald Wilkins  
3 radioed the last of many 1033s from this position and advised  
4 that they would only be able to hold the position for another  
5 ten minutes or more based on the amount of casualties that they  
6 were taking.

7           In response, Commander Glover organized and  
8 coordinated a rapid response push with MPD CDU members and  
9 members of the Prince George's County Police Department Civil  
10 Disturbance Unit to clear the upper terrace and deprive the  
11 rioters of the high ground. This push allowed for additional  
12 officers from MPD's DSO unit and the Virginia State Police  
13 Civil Disturbance platoon to reach the West Terrace from within  
14 the Capitol Building.

15           With additional munitions and manpower to make the  
16 final push, the beleaguered and battered MPD members were able  
17 to clear the doorway entrance in the adjacent West Terrace.

18           It needs to be remembered that on January 6, 2021,  
19 over 850 members of the Metropolitan Police Department  
20 responded to the U.S. Capitol Police to defend it from what is  
21 now described as a violent insurrection. These members  
22 responded without hesitation and fought to restore democracy  
23 with valor.

24           Your Honor, this is not my first rodeo. I have been  
25 here in this courthouse many, many times before. In fact, when



1 I was using the restroom just before I came in here, I  
2 remembered how I thought I used to live in this building. I  
3 have been here many, many times for cases with some  
4 similarities to this one in which I was assaulted by  
5 individuals as part of my law enforcement duties.

6 Those individuals were trying to escape. And I get  
7 it. Jail sucks. But this case is unique. The assault on me  
8 by Mr. Young cost me my career. It cost me my faith in law  
9 enforcement and many of the institutions I dedicated two  
10 decades of my life to serving.

11 I remember a few months back when I listened to the  
12 plea over the phone and I heard the description of the assault  
13 on me and how sterile it was. Mr. Young reached out and  
14 grabbed ahold of my hand, pulled it away from my body. Well, I  
15 would like to add some context to what Mr. Young was doing when  
16 he grabbed my hand and pulled it away from my body.

17 At that point, I was out in a crowd of thousands of  
18 people, no threat to anyone, being ruthlessly beaten for no  
19 reason other than the fact that I was a police officer there to  
20 prevent them from gaining entry into the Capitol.

21 When Mr. Young restrained my arm, what he was doing  
22 was preventing me from accessing my firearm, whether to prevent  
23 others from taking it from me or to use it in self-defense.  
24 Mr. Young also prevented me by restraining my arm from  
25 accessing my radio to call for help. My radio is my lifeline.

1 I also think that it's important that we take into  
2 consideration the type of man that Mr. Young is. I am quite  
3 certain that many family members have written letters, and it  
4 is their right, describing him as a loving, caring father.  
5 Well, to me, Mr. Young is nothing but the career criminal that  
6 his actions over the past however many years earned him the  
7 moniker even here within this courtroom.

8 While Mr. Young was committing felonies, I was serving  
9 the citizens of the District of Columbia and this country with  
10 distinction. That's all over now.

11 I am very grateful for the prosecutors in this case.  
12 They have put up with quite a lot from me. And I have never  
13 differed from their handling of any of these matters. But I am  
14 here to ask for a ten-year sentence for Mr. Young, because in  
15 my mind, that is what is justified.

16 But more important than the ten-year sentence is what  
17 you do with that time, Mr. Young. What I hope you do with that  
18 time is I hope you suffer.

19 THE COURT: Ms. Paschall, this is your opportunity to  
20 speak regarding the sentence in this case.

21 Thank you for your comments, Officer Fanone, and for  
22 being here today.

23 MS. PASCHAL: Thank you, Your Honor.

24 The government does not wish to belabor what it has  
25 already put forward in its memo, but a couple of things from

1 listening to those victims strike me as important again to  
2 reiterate.

3           Officer Fanone mentioned how sterile the plea sounded  
4 to him. It sounds sterile to me and the government as well.

5           Officer Moore talked about it feeling like a movie,  
6 like 300 or something like that. And I think what the  
7 government hopes to relay to the Court today is that this was  
8 very, very real.

9           Judge Kollar-Kotelly in her findings in the Rivera  
10 case said it best when she said, just as heavy rains cause a  
11 flood in a field, each individual raindrop itself contributes  
12 to that flood. Only when all the flood waters subside is order  
13 restored to the field.

14           It is our job now to restore that order, but we also  
15 have to distinguish this raindrop from all the others. How do  
16 we do that?

17           We spent a lot of our memo going through the timeline  
18 for Your Honor. And I think it's important to reiterate some  
19 of that which isn't even necessarily elements of the offense  
20 that he has pled guilty to, but to put that somewhat  
21 sterile-on-paper moment into a broader context for Your Honor.

22           So in our sentencing memo, we start with a CCTV camera  
23 that picks up Mr. Young for the first time at around 2:42 p.m.  
24 at the mouth of that tunnel on the Lower West Terrace. Both  
25 Officer Moore and Officer Fanone have now described what was

1 happening before them. And what Officer Fanone has said about  
2 the withdrawal of the fight is so important, because for over  
3 two hours -- well, over 90 minutes, there is a line of officers  
4 behind barricades on the first level, what we call the west  
5 plaza, and all these CDU units have come in to defend the  
6 building behind them. In the history of the Metropolitan  
7 Police Department, a CDU line like that has never broken, ever.

8           So I say that to Your Honor to think about the context  
9 in which Mr. Young and his minor son would have found himself,  
10 because the first rioters reach that Lower West Terrace tunnel  
11 at 2:41. He gets there at 2:42. That CDU line breaks between  
12 2:30 and 2:35. So he must have been with the thousands of  
13 rioters that historically overran the department for the first  
14 time in its history. And officers are having to retreat back  
15 into that building at that chokepoint that you can see on the  
16 government's exhibits and reestablish a line behind two double  
17 doors.

18           At 2:42, when we see the defendant appear there,  
19 rioters are only several feet ahead of him breaking the glass  
20 and busting through those doors to a line of officers with  
21 their shields who think in that moment that they are the last  
22 stand. How could they not?

23           And the defendant is there with his son in a tunnel  
24 full of people creating that movie-like atmosphere that remains  
25 in Officer Moore's mind.

1           And I just want to play for Your Honor a part of  
2 Government's Exhibit 4 that we have submitted, because  
3 something that doesn't come off in the papers and doesn't even  
4 come off in the CCTV camera is the noise and the intention of  
5 the mob, which is singular at that moment, that the defendant  
6 has joined. This is one of those videos.

7           (The videotape was played.)

8           MS. PASCHAL: Stopping at 24 seconds, that's where you  
9 can see the defendant on this video, and the noise and the  
10 alarms and the pulling of the helmets and the shields is  
11 happening right in front of him. So from the earliest entrance  
12 to the tunnel, he knows why he's there. It's incredibly clear  
13 what everyone in this tunnel is trying to do. They are trying  
14 to break through that line and get into that building.

15           And as Your Honor looks through our timeline in our  
16 sentencing memo, it's really important that over the next 20  
17 minutes, the defendant is watching this happen and is able to  
18 make specific decisions about what he's doing there. He  
19 doesn't see this line of officers. He doesn't see the helmets  
20 going back and the shields going back and think this is a  
21 moment where I should turn back. When any reasonable person  
22 should have made that decision, he does not.

23           And so for the next 20 minutes, we see him doing  
24 several things that are relevant and we note it in our memo.  
25 On the CCTV camera, you can see him and his young son as a part

1 of two heave-ho pushes against that police line.

2           You can see him hand a black object that the  
3 government submits is the electroshock weapon that was handed  
4 to Defendant Daniel Rodriguez. He shows him how to turn it on.  
5 He is flashing a light at the police line, which Your Honor has  
6 seen in the CCTV camera. It's difficult for us to watch.  
7 Imagine what it must have been like for the people on the  
8 police line who in that moment are trying to push back as the  
9 rioters are slamming their bodies against them and they are  
10 losing ground back into the Capitol.

11           At 3:00, he assists another rioter in throwing a  
12 speaker at the police line.

13           At 3:01, he throws a pole.

14           And at 3:02, he finally leaves with his young son.

15           That's 20 minutes of a lot of activity that isn't even  
16 at the heart of the charge here.

17           And I'm taking Your Honor through this timeline before  
18 the assault ever happens to try and put us in the mind-set of  
19 what this defendant must have been thinking and feeling at that  
20 point in time. We can never know. It's always the  
21 government's trouble in cases to try and get into the mind of a  
22 defendant.

23           But spending 20 minutes in this tunnel with this noise  
24 with these people doing these actions is really important  
25 because this is not a standard APL. This is not a standard

1 111. This is a 111 that happens after he has spent 20 minutes  
2 trying to break into the United States Capitol.

3 And what comes next, of course, is the factual basis  
4 of what he has pled guilty to. There's about 15 minutes or so  
5 where we believe he's on the Lower West Terrace. We do not  
6 have video that we have submitted to the Court of that.

7 But what Officer Fanone described of the moment of him  
8 getting to the mouth of the tunnel at around 3:18 p.m., it's  
9 the first time that MPD and Capitol Police, since they have had  
10 to retreat into the building, have gained back any ground. It  
11 is the first time they are able to clear that tunnel of rioters  
12 and reestablish a new line at the mouth of that tunnel.

13 So it's a critical moment in the fight for these  
14 officers, for both Officer Fanone and Officer Moore to be there  
15 to help establish that new line, and yet it's the moment that  
16 both of them end up getting pulled out into the crowd.

17 I think Government's Exhibit 12 is particularly  
18 instructive, and so I would like to play that for Your Honor  
19 because it shows, not an incredible angle of the assault  
20 itself, but it shows how far Defendant Young had to go upstream  
21 of the rioters who were currently being pushed out of the  
22 tunnel to make his way to Officer Fanone. He's not moving with  
23 the crowd. He's not swept up with the crowd. He affirmatively  
24 seeking out an officer who is in distress. And I think  
25 Government's Exhibit 12 shows that.

1 (The videotape was played.)

2 MS. PASCHAL: I will stop it there at ten seconds.

3 You can see in the purple circle there is Officer  
4 Fanone and Codefendant Albuquerque Head. And quite a ways  
5 down, there are steps there, is the defendant.

6 Government's Exhibit 10 and 10.1 shows exactly what  
7 the defendant does in that moment when he makes the decision to  
8 go forward.

9 (The videotape was played.)

10 MS. PASCHAL: He points. He points at his target, and  
11 then he goes.

12 (The videotape was played.)

13 MS. PASCHAL: The defendant is not pulling other  
14 rioters out of the way to assist the officer. He's pulling  
15 other rioters out of the way so he can get his hands on him.

16 (The videotape was played.)

17 MS. PASCHAL: One of the reasons the government  
18 briefed so strongly and fought for that restraint enhancement  
19 is exactly what Officer Fanone testified to. After he has been  
20 shocked, there's a small window of time where he can get back  
21 to safety. He credits some of the other rioters there with  
22 helping him in what he believes was a momentary act that may  
23 have saved his life.

24 Kyle Young is doing the exact opposite. He is right  
25 there able to see and hear the tasing that happens. As you can



1 see in the video, Officer Fanone has taken his left hand to put  
2 it up near his face to block any further tasing, and Kyle Young  
3 grabs it, not because he's trying to help.

4           And what is so insidious about that -- and the  
5 government doesn't argue that he does that in some sort of  
6 coordinated effort with Rodriguez. We have no reason to  
7 believe that they knew each other or knew what the other was  
8 doing. But what he's been able to witness up until now, he  
9 would know the danger that could befall this officer next by  
10 doing this. He's seeing the crowd push him. He's heard the  
11 taser go off.

12           And in Government's Exhibit 8, which is Officer  
13 Fanone's body worn camera, he's heard this terrible scream for  
14 help. I will pull Government's Exhibit 8.1 ahead to about 20  
15 seconds.

16           (The videotape was played.)

17           MS. PASCHAL: He's heard that scream before he reaches  
18 out his hand. It's a scream you don't really forget.

19           And one of the things that makes all of this so  
20 insidious is that the defendant's 16-year-old son is right  
21 behind him. Officer Fanone screams out in an attempt to get  
22 the rioters to assist him that he has kids, and that does not  
23 stop this defendant from assaulting him while his own son is  
24 behind him.

25           I also think it's particularly insidious that the

1 defendant is holding the hand, as Officer Fanone has described,  
2 that would keep him from reaching towards his belt, and that in  
3 the intervening seconds, another defendant grabs for his radio,  
4 which is his lifeline, but he also grabs for his police badge  
5 in sort of a cruel symbolic event.

6           Officer Fanone has now told you he lost his identity  
7 on that day. He lost his ability to be a police officer. He  
8 lost that badge, that life that he used to have.

9           Those badges, by the way, are emblazoned with a  
10 picture of the United States Capitol Building, the building he  
11 was there to defend.

12           We go through most of the 3553(a) factors in our memo,  
13 so I am not going to repeat them here, but I do want Your Honor  
14 to know that the government is extremely concerned with the  
15 factor about deterrence.

16           We are so inundated in this courthouse with these  
17 cases now that I think it's important to take a step back and  
18 remember what they experienced on this day and what conduct the  
19 government hopes with these strong allocutions we will deter  
20 from ever happening again.

21           The government can't restore Officer Fanone and  
22 Officer Moore to what their lives were on January 5, but it's  
23 our great hope that with a strong allocution and a strong  
24 sentence from this Court, that consistent drumbeat of the  
25 government's allocutions in these cases remains clear to the

1 general public, don't do this again. The justice system will  
2 not stand by. The judicial system will not stand by. We are  
3 asking for these sentences so that everyone knows what Kyle  
4 Young now knows, actions have consequences. And we hope that  
5 the sentence of this Court will reflect that.

6 So, Your Honor, the government is respectfully  
7 requesting 86 months at the middle of the guidelines range. We  
8 take into consideration the defendant's self-surrender attempt.  
9 We take into consideration his guilty plea. But we are asking  
10 for 86 months because of the specificity of this singular  
11 event. It's different than others that have come before Your  
12 Honor thus far. The criminal history is higher. The injury to  
13 the officer is severe. And the consequences should reflect  
14 that.

15 Are there any questions I can answer for Your Honor?

16 THE COURT: I have no questions for you. Thank you.

17 Mr. Moore, before I give you an opportunity to speak,  
18 can I see one of the CSOs up here for a second. Can I just  
19 talk to you for a second. I am just going to talk to him over  
20 here.

21 (Discussion off the record.)

22 THE COURT: Mr. Moore, this is your opportunity to  
23 speak on the defendant's behalf.

24 MR. MOORE: Thank you, Your Honor. Good afternoon  
25 again. Your Honor, obviously with these cases, it is difficult

1 to get the very real and raw emotion of the victims who you  
2 have heard testify today in great detail and emotion. You have  
3 the offense you have in front of you for which the sentencing  
4 event is called, and you have the defendant who is a  
5 38-year-old father, husband, individual who has been confined  
6 for the past year and a half.

7 With all of that, I would say the sentencing  
8 guidelines in this case are inadequate to address proper  
9 sentencing framework. While they are certainly guidance the  
10 Court takes into account, I don't think they should be the end  
11 of the analysis in this case.

12 With that and with a case like this that is so unique  
13 in its facts and circumstances, I am left with where --

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

15 MR. MOORE: Yes, ma'am. Sorry.

16 -- I would suggest that we go back to 18 U.S.C. 3553.

17 The nature of the offense, while I don't want to  
18 belabor it needlessly, I do think it is worth mentioning  
19 because of much of what was brought up. I would suggest a  
20 couple of things. To be clear, the assault for which he has  
21 pleaded and that the evidence has been shown in front of the  
22 Court is a singular grabbing, touching -- we don't disagree  
23 with the Court's characterization -- by grabbing or touching  
24 and restraint of the wrist for two to three seconds, not making  
25 excuses for that, but to suggest that there is no larger or

1 separate assault. There's no punch. There's no kick. There's  
2 no spit. There's no weapon. There's no separate allegation --  
3 or, excuse me, fact of intent by Mr. Young to commit harm.

4 There's a robbery allegation that I would generally  
5 not address with the Court because it was not pleaded to, but I  
6 do want to note here that that is an allegation that was  
7 brought in the indictment to which has now plead that is going  
8 to stick with Mr. Young for the rest of his life because it has  
9 been widely reported both in the national news and his hometown  
10 news.

11 The reason I bring it up in this context with the  
12 Court is, in my entire review of the evidence, there is no  
13 evidence to suggest that he committed or attempted to commit a  
14 robbery of any sort. I say that to say that that was not a  
15 tradeoff or a bargain of a plea from the defense's mind-set.  
16 The government may disagree.

17 What you have is a 38-year-old man who is has a  
18 criminal history that is over a -- the last event is over a  
19 decade ago. You can see from the presentence report, from our  
20 letters, from his own statement, that these are singularly  
21 revolving around mental health and substance abuse. The fact  
22 that he went a dozen years with no subsequent criminal offense,  
23 frankly I should said, should not be held against him. It is  
24 certainly under the guidelines but not in the manner in which  
25 the government is attempting to do so. We should be glad, we

1 should be proud, we should be thankful that he was able to  
2 achieve rehabilitation to such a degree of success throughout  
3 those dozen years and to not reoffend in a similar nature.

4           The reason I say that the guidelines are of such a  
5 difficult perspective in this case is that he is going to  
6 receive a sentence under the guidelines that is many fold, many  
7 years longer than someone who without his criminal history  
8 would receive. If it was similar in nature or if it was  
9 similar in time, I would say that it may be more informative,  
10 but here it is not.

11           What you have is this brief encounter. You heard the,  
12 you know, very relatable testimony of Officer Moore as he  
13 testified as to what he went through and what he's still going  
14 through.

15           You had the testimony of the other officer, Officer  
16 Fanone, who testified as to everything he has gone through on  
17 that day and since.

18           I can tell you that Kyle Young didn't need today,  
19 while it was helpful for him to hear that, he did not need  
20 today to understand how vicious and how difficult this assault  
21 in this incident was on both the larger government institutions  
22 but the individual defendants.

23           He will tell you, and we have talked about it often,  
24 that as he walked away and turned around, you know, just a  
25 couple hundred yards away from this incident that day, that he

1 was able to immediately realize, what have I done. What have I  
2 done with my son. I have done wrong. This is not acceptable.

3           And I say that because the Court does have so many  
4 individuals come before it, and it is not an incident where he  
5 struck out in a defiant tone, not an incident where it took him  
6 to be arrested before he realized he was wrong, not an incident  
7 where it took the plea or even today or even at sentence that  
8 the Court will impose to realize he was wrong. He realized  
9 immediately that what he had done that day and really the  
10 larger incident that occurred was not right, was not -- was  
11 something that he should feel shame for. And he does feel  
12 shame, and he's felt shame for every day since that day, not  
13 the least of which, as the government has mentioned, because  
14 his son was there with him that day.

15           He has both inwardly and outwardly taken  
16 responsibility in every way that he can. As the government has  
17 mentioned, you see some of the pleadings, as soon as he  
18 realized he was one of the individuals who was sought, he tried  
19 to turn himself in. While it was not immediately effective  
20 because there was not a warrant quite yet, he turned himself in  
21 as soon as he was able to. He has taken responsibility through  
22 a plea. He's taken responsibility through the statement he  
23 makes to the Court in writing. He would also like to allocute  
24 to the Court as well in a manner to show his responsibility.

25           I would just suggest that, you know, what is somewhat

1 unique and difficult about his case for him is he is not a  
2 life-long political follower of any kind. I think that's  
3 really difficult both for him, A, and the larger context of  
4 this. He's not an individual who has a larger passion greater  
5 than this.

6 I think it's an individual who in that moment in that  
7 point of history and time was drawn there, believed he was --  
8 he was caught up in that moment, certainly, but believed he was  
9 participating in the proper First Amendment rights. That's why  
10 he traveled there that day is what I mean, traveled there to  
11 participate in the First Amendment expression of his political  
12 interests believing he was supporting the cause that at that  
13 moment in history he believed was right.

14 He has certainly subsequently realized how damaging  
15 and destructive much of what he has been taught at the time and  
16 what brought him to the Capitol is and what that has done to  
17 both the larger country, the attack on the turnover of power,  
18 but also to him in his life.

19 He's realized that because he spent 18 months almost  
20 during COVID restrictions and difficult times in jail away from  
21 his family, away from his children, away from the freedom he  
22 previously enjoyed. And he understands that no matter what  
23 took him there that day, that is solely his responsibility that  
24 he must bear.

25 And so it's a difficult case because you have the



1 larger framework, the larger assault of the peaceful turnover  
2 of power, the larger -- even the statements from the victims of  
3 what they went through. All of that suffering is not at  
4 Mr. Young's hands. I don't say that to minimize what they went  
5 through. But I mean that to pinpoint exactly his role in this  
6 in what the Court, we would suggest, should be considering for  
7 sentencing when it comes to the nature of the offense.

8 His role, his action, was two to three seconds of  
9 holding the officer's arm, his wrist, which we do not dispute,  
10 as the Court found in the role regarding restraint and as was  
11 the statement made. The problems and the dangers and the  
12 violence that was attendant to his role in that, we don't  
13 dispute that. I just mean to suggest that his singular role at  
14 that point in time is that two to three seconds.

15 And to the officer -- excuse me, to the government  
16 playing the video and talking about his mind-set and what he  
17 must have been thinking at the time and what he must have been  
18 planning for, I would say that his mind-set at that point in  
19 time, I would suggest, if you asked him, he doesn't know. He's  
20 in that moment. He is in that time. And he would do anything  
21 he could obviously to not be there, to not have been involved  
22 in this, and to not have been caught up in this moment in time.

23 He understands that's not a defense. He understands  
24 that's not an excuse. But I would say that, in a sense, that  
25 as far as deterrence is needed regarding Mr. Young, no further

1 amount of incarceration is going to be needed to deter this  
2 specific defendant.

3           Now, we appreciate the government's point and concern  
4 about the larger, you know, population that also must be  
5 generally deterred, and frankly, I think that could be a bigger  
6 concern than his specific deterrence. There's nothing about  
7 his history, his past, his actions that day that suggest to me  
8 that longer than what we have asked for is going to be needed  
9 for his specific deterrence.

10           He would like nothing more than to return home to be  
11 with his family, to take care of, to feed, to finance, care  
12 for, and love his family, be with his wife and his children  
13 and, frankly, never return to the region or politics in any  
14 sort ever again for the rest of his life. That's what he seeks  
15 to do is return to being a productive member of society.

16           Beyond that, we understand and we appreciate the  
17 government's concern about general deterrence, but I would say  
18 that their request for 86 months or the statements that were  
19 made previously far outsize his specific criminal conduct. And  
20 it's difficult to put this case in context for the Court. The  
21 government, my office, we deal with criminal matters routinely.  
22 And to put this specific offense in context of other offenses  
23 that we deal with of interpersonal violence, suffering that  
24 humans go through is very difficult, I think, for all of us as  
25 we struggle with how these cases should be handled, or at least

1 I will, I struggle with how they should be handled.

2 I would just suggest, going back to those principles  
3 of sentencing, of punishment, deterrence, rehabilitation, needs  
4 of the community, and protection of the community, I just do  
5 not see that those principles are met through an outsized  
6 punishment that is beyond his individual action.

7 And I pull it back to that again because his actions  
8 those days -- that day, unlike many, did not involve a vest,  
9 did not involve planning --

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

11 MR. MOORE: Yes, ma'am. I'm sorry.

12 He did not come with zip ties. He did not come with  
13 mace or pepper spray or some sort of other chemical agent.  
14 That day he did not use any of those either. While that was  
15 touched on by the government and the witnesses, he did not use  
16 pepper spray. He did not use a violent --

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

18 MR. MOORE: A violent weapon. I'm sorry.

19 His singular action, as you have seen in front of you  
20 that he has pled to, is that assault. So to punish him for  
21 that, again, our position is that longer than what we have  
22 requested does not serve the principles of sentencing in that  
23 the sentencing guidelines in this case outsize and outweigh his  
24 older criminal history. I think if it was more recent and if  
25 it was more relevant in nature, it would have a bigger

1 determinative factor, but it is not.

2           So his guidelines are inflated because of the  
3 enhancements, which we agree with, and with his criminal  
4 history. But taking a look at his specific actions and the  
5 needs of principles of sentencing, we say that the request by  
6 the government goes far beyond what is needed. And we would  
7 suggest the principle -- that the guidelines -- excuse me, a  
8 sentencing order and a period of incarceration that addresses  
9 it that meets the needs of society, the Court, the justice  
10 system, and Mr. Young's rehabilitation. Beyond that is not  
11 going to serve those principles.

12           I know Mr. Young would like to address the Court  
13 before you issue your ruling, but if there is anything else the  
14 Court would like, we would be happy to answer.

15           THE COURT: I don't have of any questions for you.

16           Mr. Young, this is your case. I did read your letter,  
17 but this is your opportunity to come to the lectern and say  
18 anything that you would like me to consider before I impose  
19 sentence.

20           THE DEFENDANT: Thanks, Your Honor, for letting me  
21 speak.

22           Officer Fanone, I am so sorry about my actions that  
23 day. And I know that --

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

25           THE COURT: I know you want to look at him, but you

1 need to --

2 THE DEFENDANT: I hope some day that you forgive me,  
3 and it means a lot to me if you would. If it takes time or  
4 years, I am willing to accept that. I am willing to accept  
5 whatever punishment comes with what happened that day. But I  
6 know how much you have to hurt over that and what happened to  
7 you, and I am so, so sorry. If I could take it back, I would.  
8 That's all I have to say. I am just sorry.

9 First, I would like to say sorry to all the police  
10 officers and their families for my actions that day and -- I'm  
11 sorry.

12 I am not honored by what I did and my part of that.  
13 And I had my son there. It eats at me every day. It really  
14 does. I feel very ashamed. My past criminal history is what  
15 it is, but this is, like, horrible to me, not just that it  
16 affects me, but my family. My kids have to go to school and  
17 hear about their dad, what he did. And it's -- I just wish I  
18 could take it back. And I know I can't. And I am very sorry.  
19 And whatever you give me as a punishment, I accept and I  
20 probably deserve it. And that's all I have to say.

21 THE COURT: All right. Mr. Young, thank you.

22 I am going to take a brief recess just to incorporate  
23 some of the things I have heard into what I was planning to  
24 say. I don't think it will be long. You can remain seated.  
25 We will be in recess for a few minutes.

1 (A recess was taken at 2:18 p.m.)

2 THE COURTROOM DEPUTY: Your Honor, recalling Criminal  
3 Case No. 21-291-3, the United States of America v. Kyle J.  
4 Young. Mr. Young is present and in the courtroom. The  
5 probation officer is Officer Lustig. Counsel for Mr. Young is  
6 Mr. Moore. Counsel for the government are Ms. Paschall and  
7 Ms. Gardner.

8 THE COURT: Mr. Moore and Mr. Young, you can return to  
9 the lectern.

10 As I said when I started, there is a statute that  
11 tells judges what they are supposed to consider when they  
12 sentence someone. It has a number of factors in it. And I am  
13 going to go through every single one of them. It may take a  
14 while, but they are all important.

15 The first thing I am supposed to think about is the  
16 nature and circumstances of the offense, which is basically  
17 what did you do.

18 On January 6, a mob descended on the United States  
19 Capitol which was closed to the public as the Vice President of  
20 the United States and members of Congress were performing their  
21 constitutionally assigned duty to certify the results of a  
22 democratic election, small D.

23 The building was closed to the public and it was being  
24 protected by members of the United States Capitol Police and  
25 the District of Columbia Metropolitan Police Department as some

1 members of the angry mob fought and ultimately succeeded to  
2 force their way inside.

3           The defense would like me to conclude that the  
4 defendant was a peaceful protester who simply got caught up in  
5 the violence going on all around him, that there were a few  
6 seconds of minor incidental participation, and then he withdraw  
7 in disgust.

8           But that's not what happened. That's not even  
9 anything like what happened.

10           The nature and circumstances of the offense involved a  
11 series of deliberate choices to do battle with the officers, a  
12 series of affirmative steps where he was not protecting himself  
13 or anyone else. They were intentional acts of aggression  
14 against law enforcement officers. They were some of the  
15 darkest acts committed on one of our nation's darkest days.

16           The defendant traveled to the district with his son to  
17 attend the rally scheduled for that date. There's nothing  
18 wrong with that. But afterwards, he made his way along with  
19 thousands of others to the Capitol. As Officer Fanone  
20 elegantly described, in events that took place before the  
21 events in this particular defendant's case, the barricades  
22 around the building and the lines of officers behind them could  
23 not withstand the size and the force of the group that  
24 converged upon them. And for the first time in American  
25 history, they were forced to retreat to guard the doors inside

1 the Lower West Terrace of the Capitol Building, the very spot  
2 where dignitaries and the newly-elected President would exit  
3 the building for the inauguration two weeks later.

4           There was a tunnel leading from that stage to the  
5 Capitol itself, and the rioters broke through, not one, but two  
6 sets of glass doors to engage in hand-to-hand combat right in  
7 front of this defendant into what has been described as a  
8 brutal, medieval battle between a line of police officers who  
9 were already bruised and battered from the hours-long battle  
10 that preceded this, struggling to keep the mob back, and a mob  
11 that refused to yield attacking them with their hands, with  
12 chemical spray, with bottles, poles, batons, and other homemade  
13 weapons all in a small, confined space.

14           At approximately 2:43 p.m., this defendant pushed  
15 through the crowd to enter the tunnel. This was a deliberate  
16 choice. He was not supposed to be there. His reaction to the  
17 mayhem around him was, not to back away or to depart, but to  
18 film it.

19           He joins in with those pounding on the walls, chanting  
20 at the officers, pushing forward. This is also a choice.

21           The video shows the defendant speaking to someone else  
22 and then shortly thereafter reaching out and tapping another  
23 rioter, Daniel Rodriguez, on the shoulder and handing him  
24 something black that turned out to be a taser or electric shock  
25 weapon.



1           This was another deliberate choice, an affirmative  
2 aggressive step on your part with devastating consequences.

3           There's a lot we don't know about how you got it and  
4 why you reached past several other people to give it to him in  
5 particular, but none of that matters. If the facts of the case  
6 stopped right there with the giving of the taser to Danny  
7 Rodriguez, we would be talking about a substantial sentence.  
8 You knew you were handing this weapon to a person with zero  
9 knowledge about how to use it. You had to teach him how to  
10 turn it on. You took the time to do that. And he tried it out  
11 under your supervision.

12           I want to think about that for a moment. You arm  
13 someone who, as far as you knew, had no experience and no  
14 training in how to use the weapon at all much less how to do it  
15 safely. He had no training in, for example, where on a  
16 person's body it's supposed to be directed or about the need to  
17 avoid the head and the neck to avoid potentially  
18 life-threatening consequences.

19           He had no training such as a police officer would  
20 receive on how long to hold it against a person who actually  
21 needs to be temporarily stunned or immobilized. He's had no  
22 training in how many times you can use it or the length of the  
23 intervals in between or the best way to avoid injury.

24           The sum total of your consideration of the danger you  
25 had just deliberately unleashed was to say, here you go, yeah,

1 that's how you turn it on.

2 This is a little inconsistent with the statement in  
3 the sentencing memorandum that you did not encourage others to  
4 violate the law. You armed one of them.

5 And a few minutes later, that person applied the taser  
6 directly to the officer's neck. But after that exchange, even  
7 after that exchange, your work in the tunnel was not done.  
8 Somehow, while you didn't come to D.C. with any tools or  
9 weapons of your own, you got your hands on another one and you  
10 joined the pitched battle in the tunnel by holding up a strobe  
11 light and directing it into the officers' faces so they could  
12 not see what they were doing and protect, not only themselves,  
13 but the members of Congress huddling for their safety directly  
14 behind them.

15 This, by my count, was your fourth choice, another  
16 deliberate step.

17 And you then permitted, invited your son to take part  
18 in this plainly illegal activity by passing the strobe light to  
19 him to do the same.

20 And you don't leave the warfare or the chaos of the  
21 tunnel at that point either. You become part of what Officer  
22 Fanone described as the onslaught of projectiles. You and  
23 another rioter choose to pick up a very large speaker and hoist  
24 it and throw it into an area where the rioters were directly  
25 confronting the police. You miss. You strike another rioter,

1    though, drawing his blood, another intentional act on your part  
2    followed by wielding the strobe light all over again.

3                And then, before you leave the tunnel, you choose to  
4    wield another object as a weapon and strike at the line of  
5    officers with a pole, affirmative step number six.

6                But I guess you didn't recognize it was wrong until  
7    after you left the building. Somehow that did not impress  
8    itself upon you.

9                At 3:18 p.m., another individual who has pled guilty  
10   in this courtroom grabbed Officer Michael Fanone, a DC MPD  
11   police officer who, like Officer Moore, had come to the Capitol  
12   to assist the outnumbered and exhausted members of the United  
13   States Capitol Police. And that gentleman grabbed Officer  
14   Fanone around the neck and pulled him into the crowd. You can  
15   hear the disgusting excited calls on the videos, I've got one.

16               And you don't stay put and avoid this encounter.  
17   Exhibit 10 shows that you point in that direction, and then you  
18   stride towards it with your son in tow.

19               This is your seventh choice, the decision to join the  
20   assault. You could have tried to break it up. You could have  
21   at least backed away. That's not what you chose to do that  
22   day.

23               You had to force your way through the crowd to get  
24   towards trouble. It wasn't easy. You had to want to get  
25   there. And what is going on when you arrive? The officer is

1 being tased directly on his neck with the taser you supplied  
2 more than once. You can hear screams on the video, screams.

3 And even then, you weren't done. While he's still  
4 screaming, while he's still regaining his ability to move after  
5 being incapacitated by the weapon you passed to someone who had  
6 no business using it, while he is still vulnerable and under  
7 attack, while he is begging I have children, you choose to join  
8 in. You aid the others surrounding him and you help to hold  
9 him down. This is another deliberate act.

10 The defense sentencing memorandum does not begin to do  
11 it justice. Page 3, Mr. Young briefly made contact with the  
12 wrist of a member of law enforcement. Page 5, he only made  
13 brief contact with the victim's wrist.

14 Mr. Moore, you cannot minimize this. You cannot will  
15 it away by substituting less objectionable verbs or using the  
16 passive voice for the truth.

17 He grabbed the officer's wrist. He held his arm down.  
18 He held it away from the officer's body. He had control of it.  
19 Officer Fanone did not.

20 Another rioter was able to reach in and steal his  
21 badge and his radio, the only way he could call for help, and  
22 the crowd was chanting for his gun.

23 After the officer was finally dragged away from the  
24 scene, when he finally regained consciousness responding to his  
25 partner's desperate calls and he came to, the first words out

1 of his mouth were, did we hold the line? Duty came first.  
2 Bravery and service of his fellow officers, in service of his  
3 country, hold the line at all costs. And what did Officer  
4 Moore tell us this morning? He just wanted to go back. He  
5 wanted to go back. He wanted to keep going back to protect the  
6 other officers. He had to leave it all on the field.

7           Those words tell us everything that anyone needs to  
8 know about the difference between you and them that day. What  
9 did you do? Where did you go after someone else's act, the  
10 police shield that got pushed between you and the officer,  
11 broke your hold on his wrist?

12           What you saw, what you heard still wasn't enough to  
13 sicken you to move you to withdraw. You turned and noticed  
14 another officer, Officer Moore, who had been pulled into the  
15 crowd. He had just been sprayed with bear spray. He's  
16 disoriented. He's unable to defend himself. And to you, on  
17 January 6, an officer down was an opportunity, a target. You  
18 choose your ninth decision to deliberately engage, and you grab  
19 and push and strike that officer. And it's not you, it's other  
20 people who come to his aid and get him out of there.

21           In sum, you were a one-man wrecking ball that day.  
22 I'm not sure, Mr. Young, I can fully accept your statement that  
23 immediately after January 6, you were horrified by the  
24 violence, because on January 6, the violence was you.

25           And if the brutality of it all did sink in later, not

1 just what you saw, but what you did, and I believe you were  
2 genuinely upset about it when you wrote your letter to me and  
3 what you said in court this morning, it was many deliberate  
4 actions too late, because for these men, for Officer Fanone,  
5 even today, more than a year and a half later, it's still not  
6 over.

7           The next thing I am supposed to think about is the  
8 history and characteristics of the defendant, who are you. I  
9 want to say, at the outset of this case, you pled guilty. You  
10 announced your intention to do that early and you never  
11 wavered. You never came in. You never tried to mislead the  
12 Court. You never tried to deny your participation. That says  
13 something positive about who you are.

14           It's true it's not your first brush with the criminal  
15 justice system. You were sentenced to two consecutive terms  
16 for manufacturing meth and a precursor to meth, lithium, in  
17 2003. You had problems with misconduct when you were locked up  
18 including violent conduct. Your parole was revoked when you  
19 didn't comply with your conditions, and then you were  
20 rearrested. In 2007, a knowing violation of the conditions of  
21 your supervision and the law, you were a felon in possession,  
22 you were convicted of that, incarcerated again, parole revoked  
23 again; 2010, distribution of meth.

24           But I do agree that given the age of those  
25 convictions, the fact that for guidelines purposes the score is

1 multiplied because each is committed while you were on release  
2 for the one before, and the fact that there had been none after  
3 2012, the score tends to overstate the seriousness of your  
4 criminal history, and I can consider that fact in determining  
5 the appropriate sentence.

6           It's also important to note that when you became aware  
7 that the FBI was circulating images of you as someone to look  
8 out for, you turned yourself in. You didn't flee. You didn't  
9 wait for them to come knock on your door. That's also  
10 positive; although, it's a little less praiseworthy than your  
11 recitation of that circumstance would suggest since you walked  
12 in and said you were at the Capitol but you didn't have  
13 anything to do with the riot.

14           The sentencing memorandum emphasizes that you didn't  
15 come intending to engage in combat. You weren't prepared for  
16 warfare. But somehow you ended up in the possession of tools  
17 that significantly increased the dangerousness of your  
18 participation.

19           I guess the absence of threatening communications does  
20 count in your favor. There were people who said a lot more  
21 about why they were coming and riling up other people and  
22 getting them to come than you did.

23           And the lack of preparation is a positive factor, but  
24 you don't seem to have shied away from what became available to  
25 you, so in the end, that part doesn't make that much

1 difference.

2           You most certainly did not turn anything you  
3 discovered over to the appropriate authorities, but you used  
4 them to stun and immobilize those authorities.

5           You tell me that, as you walked away, while you are  
6 still there, you were overcome with remorse. You were sickened  
7 and disheartened by what you saw immediately after it happened.  
8 You were not disgusted or concerned when you were in the tunnel  
9 with the pitched battle going on around you. You called for it  
10 to be documented. You were filming it yourself. And you were  
11 still on the Capitol grounds at 4:00 p.m. pontificating on  
12 camera about good cops versus bad cops.

13           So although your wife echos your account of your  
14 weeping that evening when it all sank in, it's not clear to me  
15 how soon you truly came to the realization that what had  
16 happened was indefensible and that you were a part of it and  
17 not just a witness to it.

18           But it is also true that your life and your character  
19 include more than that one day. You seem to have made a  
20 serious effort to turn your life around and stayed away from  
21 drugs and alcohol and generally out of trouble since you met  
22 and married your wife. You got trained in HVAC to be able to  
23 support your family. You are a hardworking man, a father of  
24 four. You are an involved father. You are the one who takes  
25 them out for their activities. You were there every minute of



1 your son's heart surgery. You have been renovating your house  
2 yourself so that they can all have a better place to live.

3           People tell me that you are helpful to friends and  
4 neighbors and family members that need things fixed. You put  
5 things together for them. You help the homeless and total  
6 strangers who are stranded on the road. You opened your home  
7 to people like your sister when she needed it. And you've  
8 warmly embraced new additions to the family like your cousins'  
9 girlfriend.

10           The commitment to family, friends, and community is  
11 positive. And I believe you are completely sincere when you  
12 tell me how deeply you regret the time you have spent away from  
13 them since your incarceration, and I know from the letters I  
14 received from them and the people who love them that you are  
15 missed and you are needed.

16           And there's no question that your children have  
17 suffered and your wife has borne the brunt of it in your  
18 absence. It says a lot of about you that your wife and her  
19 mother and her sisters all wanted to take the time and go to  
20 the trouble to write to me and let me know they stand by you  
21 notwithstanding that. Not everyone has that support.

22           I want to assure you and them that I understand that  
23 your conduct that day and the sentence are not all there is or  
24 will ever be to you as a human being. No matter what the  
25 sentence is, you will be able to do what you wrote is most

1 important to you, to go home, to be a good husband and a good  
2 father and a good provider. You have the raw material and you  
3 can and you will do those things.

4 I have to say, though, that given all of that, it  
5 defies understanding that the presence of your 16-year-old son  
6 by your side on January 6 did not inspire you to curb your  
7 behavior in the slightest. Again, this is something that the  
8 defense uses the passive voice, his son was with him. But his  
9 son was given by you the tools to participate. This  
10 inexcusable performance of yours was not only carried out in  
11 his presence, but you permitted and encouraged him to get  
12 involved and you gave him the strobe light to hold himself.

13 The statute also tells me that I am required to impose  
14 a sentence that is sufficient but not greater than necessary to  
15 accomplish the purposes that are set out that I am about to  
16 list. Therefore, I also have to consider the need for the  
17 sentence imposed, first, to reflect the seriousness of the  
18 offense, to promote respect for the law, and to provide just  
19 punishment for the offense; also to afford adequate deterrence  
20 to criminal conduct, not just yours, Mr. Moore might be right  
21 about you, but also other people.

22 I also have to protect the public from further crimes  
23 of the defendant and to protect -- and to provide you, and I  
24 don't think this is a big factor here, with needed educational  
25 or vocational training or medical care in the most effective

1 manner.

2           But this means that I am required, I must, think about  
3 a sentence that will punish you and recognize the seriousness  
4 of the conduct. And when I say that, I need to make it clear  
5 what you are being punished for and what you are not being  
6 punished for.

7           I am told you came for the rally and believed it would  
8 be peaceful. There is absolutely nothing wrong with coming  
9 here for that. You are not standing where you are standing  
10 today because you supported the former President. You are not  
11 standing here because you came to the District of Columbia.  
12 You are not standing here because you cheered for him at the  
13 rally or even because you walked up the street to continue the  
14 protest at the Capitol. Those are not crimes.

15           The essence of a democracy is that each citizen gets  
16 to express his views, exercise his choice with the right to  
17 vote. You were not prosecuted for being a Trump supporter.  
18 You were not arrested or charged and you will not be sentenced  
19 for exercising your First Amendment rights.

20           You are not a political prisoner. What you did had  
21 nothing to do with your rights under the Constitution at all.  
22 What you were trying to do was undo the indisputable result of  
23 other people's votes and to do it by force. And you were  
24 trying to stop the singular thing that makes America America,  
25 the peaceful transfer of power. That's what stop the steal

1 meant.

2           And that's exactly the opposite of what the  
3 Constitution means. And the breach of the building you helped  
4 to advance with your obstruction and interference with the  
5 outnumbered officers struggling to hold the crowd back  
6 accomplished its goal as the Vice President had to be rushed to  
7 safety and the constitutional process of counting the electoral  
8 votes, other Americans votes that counted just as much as  
9 yours, had to be suspended.

10           I agree that you have been punished to some extent  
11 already. The time you have served has been particularly harsh,  
12 and you have been very far from home. I appreciate the fact  
13 that you wrote me a letter and that you started it and you  
14 start today by apologizing to the officers. You would be  
15 surprised how many people don't do either of those things.

16           But I cannot find that the sentence the defense has  
17 proposed would be sufficient to reflect the seriousness of the  
18 offense I've just described in detail or that it would amount  
19 to just punishment.

20           And I also have to think about a sentence that will  
21 deter, not only you, but other people from thinking that they  
22 get to take matters in their own hands again.

23           The sentencing memo assured me, Mr. Young's conduct on  
24 January 6 is isolated to a unique set of circumstances that  
25 unfolded that are not likely to be replicated. I wish I could

1 feel comforted by that optimism, but it's not as if the  
2 divisions in our country have eased in any way.

3 I am not satisfied that the proposed option would  
4 serve those statutory purposes either. The heated,  
5 inflammatory rhetoric that brought the defendant to the  
6 district has not subsided. The steady pumping of  
7 misinformation on the air and online has not abated.

8 The threat did not evaporate or dissipate just because  
9 the election got certified. The lie that the election was  
10 stolen or illegitimate is still being propagated. Indeed, it's  
11 being amplified, not only on extremist social media sites, but  
12 on mainstream news outlets. And worse, it's become heresy for  
13 a member of the former's president's party to say otherwise.

14 So his supporters are still upset. And I get that.  
15 But some people are still cynically manipulating and stoking  
16 that anger for their own ends. High-ranking members of  
17 Congress and state officials who know perfectly well the claim  
18 of fraud was and is untrue and that the election was legitimate  
19 are so afraid of losing their own power, they won't say so.

20 And they are actively shunning the few who think  
21 standing up for principle is more important than power and have  
22 stepped forward to educate the public and to speak the truth.

23 Meanwhile, right now, government servants involved in  
24 the investigation of alleged crimes related to January 6 or the  
25 former President are under attack and subject to threats in

1 unprecedented numbers. And some prominent figures in the  
2 republican party and the former President himself are cagily  
3 predicting or even outright calling for violence in the streets  
4 if one of the multiple ongoing investigations doesn't go his  
5 way.

6 So, yes, as Ms. Paschall said, the judiciary, if no  
7 one else, has to make it clear, it has to be crystal clear,  
8 that it is not patriotism, it is not standing up for America to  
9 stand up for one man who knows full well that he lost instead  
10 of the Constitution he was trying to subvert. And it is not  
11 justified to take to the streets to descend on the nation's  
12 capitol or to attack law enforcement officers doing their sworn  
13 duty at the behest of that one man.

14 What happened on January 6 and the effort to keep that  
15 spirit alive a year and a half later is the utter antithesis of  
16 what America stands for. It is the pure embodiment of tyranny  
17 and authoritarianism. So, yes, deterrence has to be a factor  
18 in this sentence even today.

19 I agree entirely that we have to make sure that  
20 January 6 protesters that broke the law are not treated more  
21 harshly than others who break the law. But we also can't set  
22 up some separate category and say, oh, it's okay on January 6  
23 for somebody to attack a line of police officers when they are  
24 trying to protect a building and control a crowd when we all  
25 know perfectly well it wouldn't be considered acceptable at all

1 in the middle of some other protest.

2 And I have to say that out loud today because you  
3 can't help notice when you watch these videos that Officer  
4 Fanone was brutally attacked directly under the swirling banner  
5 of a Blue Lives Matter flag.

6 Blue Lives Matter. To say that this is ironic would  
7 be an understatement that does not begin to capture the gravity  
8 of the situation. It was obscene. Apparently the people  
9 fighting the officers inside the tunnel and outside where they  
10 dragged Officer Fanone and attacked Officer Moore didn't think  
11 blue lives mattered very much at all when the men and women in  
12 uniform were standing in their way. They only matter if they  
13 are in a standoff with other people.

14 I'm not saying this double standard characterized  
15 everyone who was there that day. There was a woman in the  
16 tunnel screaming at the others to stop attacking the officers.  
17 There were people who came to the officers' aid. There were  
18 people yelling to let Officer Fanone go, rioters who helped him  
19 and Officer Moore to safety.

20 But even when officer protesters were calling for you  
21 to stop, Mr. Young, you didn't listen.

22 The sentencing statute also requires me to consider  
23 the need to avoid unwarranted sentencing disparities among  
24 defendants with similar records who have been found guilty of  
25 similar conduct. That means your sentence has to be fair when

1 you compare it to the sentences that other people get who did  
2 the same thing.

3           You cannot paint all participants on January 6 with  
4 the same brush. Some came to protest what they had been told  
5 falsely was a stolen election, but they didn't go inside, they  
6 didn't engage with the police, and they weren't charged with  
7 crimes at all.

8           Some entered, but they didn't hurt anybody or break  
9 anything or interfere with law enforcement. That's not this  
10 case. The defendant fits in the category of the more serious  
11 offenders who did interfere with the outnumbered besieged  
12 officers struggling to do their job while under attack. But  
13 there are levels of culpability even within that group. There  
14 was a subset of individuals who engaged in the most egregious  
15 conduct, assaulting officers directly with weapons or chemical  
16 sprays and in some cases causing serious injuries.

17           This defendant, notwithstanding things that you can  
18 say that have been positive about him in his life, falls into  
19 that category. You are one of the most serious January 6  
20 offenders in my caseload, and you were personally involved in  
21 and instrumental to one of the most horrific attacks on  
22 officers in any case in the building. I have seldom in my  
23 years on the bench been presented with anything like this.

24           When I got to the sentence in the government's  
25 memorandum telling me that you were the person who handed



1 Mr. Rodriguez the taser, it was like a punch in the stomach.  
2 And then as I continued to read about the strobe lights and the  
3 fact that you went on to attack another officer after Officer  
4 Fanone, I could easily have concluded, comparing your case to  
5 others, that you deserve nothing less than the statutory  
6 maximum, which is eight years and not ten had you not entered  
7 the guilty plea and accepted responsibility in this case. I do  
8 have to consider those things.

9           And, finally, I also have to consider that while the  
10 guidelines are supposed to serve the function of ensuring  
11 parity among similarly situated defendants, there are  
12 circumstances they don't cover.

13           I agree with the defense that it's important to take  
14 into consideration the fact that the conditions you had to  
15 endure during the approximate 17 months that you were awaiting  
16 trial or today's proceedings have been particularly harsh. You  
17 were locked up through no one's fault but your own, but your  
18 jail experience was also overshadowed by the specter of the  
19 virus and the need for more isolation and less contact with  
20 counsel and family and less opportunity to move around the  
21 facility than others usually have to go through.

22           So in my view, credit for the time served alone might  
23 not account for that time sufficiently, and in my discretion  
24 when looking at all the sentencing factors, that will also be  
25 something I consider.

1           Finally, the statute tells me I am supposed to think  
2 about the need to provide restitution to any victims of the  
3 offense. In each felony plea to date including this one, the  
4 parties have set the amount of \$2,000 as a way to have each  
5 defendant bear some portion of the more than \$1.4 million worth  
6 of damage to the building, which is probably a vast  
7 underestimate. But in this case, we are not talking about  
8 damage to a building. We are talking about damage to and  
9 ongoing suffering by a human being.

10           And, therefore, restitution is permissible and  
11 appropriate under the Victim Witness Protection Act, 18 U.S.  
12 Code, Section 3663, and also it's required under the Mandatory  
13 Victims Restitution Act, 18 U.S. Code, Section 3663(a).

14           Since the latter takes into consideration costs  
15 occasioned by the victims' injuries that were reimbursed by  
16 other entities, the government has asked me to brief this issue  
17 separately and to order the \$2,000 today but to delay  
18 calculation of the total amount due under 3663(a).

19           I agree it's appropriate to order a subsequent  
20 submission and a response by the defendant, and I would ask  
21 that when you file those, you should also address the situation  
22 that we have here of when more than one individual bears  
23 responsibility for the same harm.

24           All of that being said, in the exercise of my  
25 discretion, after consideration of all the statutory factors,

1 the sentence to be imposed is as follows:

2           It is the judgment of the Court that you are hereby  
3 sentenced to a term of 86 months on Count 4 with credit for the  
4 time you have already served.

5           This is based on a consideration of all the statutory  
6 factors, and it would have been my sentence whether I applied  
7 the enhancement for restraining the victim or not.

8           You are further sentenced to serve a 36-month term of  
9 supervised release. I find that you do not have the ability to  
10 pay a fine and, therefore, waive the imposition of a fine.

11           You are required, though, because this is a felony, to  
12 pay the \$100 special assessment. It's due immediately, payable  
13 to the Clerk of the Court for the U.S. District Court for the  
14 District of Columbia.

15           Once you are released, within 30 days of any change of  
16 address, if you haven't paid it in full, you have to notify the  
17 clerk of any change of address until such time as the  
18 obligation is paid in full.

19           While you are incarcerated, you shall make payments on  
20 the assessment through your participation in the Bureau of  
21 Prisons Inmate Financial Responsibility Program.

22           I hereby order you to pay \$2,000 to the Architect of  
23 the Capitol. And this order may be amended pursuant to 18 U.S.  
24 Code, Section 3664(d)(5) once the subsequent submissions have  
25 been reviewed and we have another hearing within 90 days from

1 now.

2           Within 72 hours of your release from custody, you must  
3 report in person to the probation office in the district to  
4 which you are released.

5           I will transfer supervision to the district in which  
6 you reside, but I will not transfer jurisdiction over this case  
7 to another court.

8           While you are on supervision, you may not possess a  
9 firearm or other dangerous weapon. You may not possess or use  
10 an illegal controlled substance and may not commit another  
11 federal, state, or local crime.

12           You must also abide by the standard conditions of  
13 supervision adopted by the U.S. Probation Office which were set  
14 forth verbatim in the presentence report, paragraph 138A, on  
15 pages 28 to 30, as well as the following special conditions:

16           You must submit to the collection and use of DNA  
17 identification information while incarcerated or at the  
18 direction of the U.S. Probation Office.

19           You must pay the total amount of the balance of any  
20 restitution owed at the time of your release in an amount to be  
21 determined by the probation office but no less than \$100 a  
22 month beginning 30 days after your release from confinement.

23           In connection with that, you must provide the  
24 probation office with access to any requested financial  
25 information and authorize the release of any financial

1 information.

2           You must also notify the probation office in advance  
3 of taking out any new credit obligations and obtain permission  
4 to do so, and the probation office can share the information  
5 with the U.S. Attorney's Office.

6           You must also participate in drug testing including  
7 random drug testing to determine if you have used a prohibited  
8 substance. You must not attempt to obstruct or tamper with the  
9 testing methods.

10           Also, given the information contained in the  
11 presentence report about previous substance abuse and previous  
12 mental health diagnoses, given the record of noncompliance with  
13 the recommended treatment in some instances and a lack of  
14 information about completing substance abuse treatment in other  
15 instances coupled with your utter lack of self-control and the  
16 violence exhibited on January 6, it will be a condition of your  
17 supervised release that you undergo an assessment or  
18 assessments at the discretion of the probation office to  
19 determine whether substance abuse or mental health treatment or  
20 anger management therapy is indicated.

21           If so, you must participate in any outpatient  
22 substance abuse, mental health, or anger management treatment  
23 or therapy at the direction and under the supervision of the  
24 U.S. Probation Office as it directs. The probation officer  
25 will supervise your participation in the program determining

1 the location and duration, intensity, et cetera.

2           You must sign any releases necessary to enable the  
3 probation office to monitor your compliance with that  
4 condition.

5           You must complete a hundred hours of community service  
6 of a nature and at a location approved in advance by the  
7 probation office under the supervision of the U.S. Probation  
8 Office and provide verification of those hours.

9           Pursuant to United States versus, Malenya, 736 F.3d  
10 554, I find that these conditions are reasonably related to the  
11 factors set forth in 18 U.S. Code, Section 3553, and they  
12 involve no greater deprivation of liberty than is reasonably  
13 necessary for the purposes identified in that section.

14           Finally, within 60 days of the commencement of  
15 supervision, I am going to ask the U.S. Probation Office  
16 supervising you to submit a progress report to the Court. Upon  
17 receipt of that report, the Court will determine if your  
18 appearance is required at a reentry hearing or whether we  
19 should set up a video conference for that purpose.

20           Mr. Moore, are there any objections to any of the  
21 special conditions?

22           MR. MOORE: No, Your Honor.

23           THE COURT: All right. Is there any facility that you  
24 would ask that I recommend to the Bureau of Prisons that he be  
25 designated to?

1           MR. MOORE: Your Honor, we talked about that, but  
2 based on where he lives, we would not have a specific request.

3           THE COURT: I will recommend that he be sentenced  
4 somewhere as close to his family as possible.

5           MR. MOORE: Yes, ma'am. Thank you.

6           THE COURT: The probation office must release the  
7 presentence investigation report to all appropriate agencies in  
8 order to execute the sentence of the Court, and treatment  
9 agencies shall return the presentence report to the probation  
10 office upon the completion or termination from treatment.

11           Mr. Young, you have the right to appeal the sentence  
12 if the period of imprisonment is longer than the statutory  
13 maximum or the sentence departed upwards from the applicable  
14 sentencing guideline range.

15           If you choose to appeal, you must file any appeal  
16 within 14 days after the Court enters judgment. If you are  
17 unable to afford the cost of an appeal, you may request  
18 permission from the Court to file an appeal without cost to  
19 you.

20           At this point I believe the government needs to make a  
21 motion to dismiss the other charges in the indictment.

22           MS. PASCHAL: Yes, Your Honor. At this time we would  
23 move to dismiss the remaining counts of the indictment.

24           THE COURT: All right. And that motion will be  
25 granted.

1           And what I need to do is set a hearing on the  
2 remaining restitution order. It has to be within 90 days. And  
3 my calculations puts that at about December 19th through the  
4 21st.

5           And I am going to ask for submissions about ten days  
6 before that. So I could not -- I don't want to do this on the  
7 20th as I have another sentencing proceeding -- another  
8 proceeding on that date, I'm sorry, not a sentencing. So I  
9 could do it on Monday, the 19th or Wednesday, the 21st.

10           MR. MOORE: Your Honor, may I check my calendar?

11           THE COURT: Yes.

12           MS. PASCHAL: Would Your Honor be available the week  
13 before, the week prior? I think some of the government counsel  
14 may be unavailable. But if you are not, we will make it work.

15           THE COURT: I think that will be fine. I've got a  
16 trial in December, but it should be over by then. So,  
17 Mr. Moore, the 15th or 16th of December?

18           MR. MOORE: Your Honor, I am available both those days  
19 except for the very early morning on the 15th, but otherwise  
20 either day is fine.

21           THE COURT: Why don't we -- can we do this at 9:30 in  
22 the morning on the 16th?

23           MR. MOORE: Yes, Your Honor.

24           MS. PASCHAL: Yes, Your Honor.

25           THE COURT: All right. I would like the



1 submissions -- well, I guess you need to see what they say  
2 before you can respond to it. So I won't have them be  
3 simultaneous the way I usually do with sentencing submissions.

4 The government's submission will be due on the 5th,  
5 and the defendant's response will be due on the 12th.

6 All right. Mr. Moore, is there anything else I need  
7 to take up right now on behalf of the defendant?

8 MR. MOORE: No, Your Honor, nothing on behalf of the  
9 defendant.

10 THE COURT: Ms. Paschall, anything further from the  
11 government?

12 MS. PASCHAL: No, Your Honor.

13 THE COURT: Okay. Thank you very much, everybody.

14 I want to thank the officers who came and spoke today  
15 about their experiences. I know you have to relive them every  
16 time you talk about them, but your information was of value to  
17 the Court. Thank you.

18 (The hearing concluded at 3:20 p.m.)

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C E R T I F I C A T E

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

9/29/22

s/ Tammy Nestor  
Tammy Nestor, RMR, CRR  
Official Court Reporter  
333 Constitution Avenue NW  
Washington, D.C. 20001  
tammy\_nestor@dcd.uscourts

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