

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA                      CR No. 1:21-cr-00052-TJK-3  
  
v.    Washington, D.C.  
    Wednesday, December 22, 2021  
MATTHEW GREENE,                                      2:00 p.m.  
  
    Defendant.  
- - - - - x

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TRANSCRIPT OF PLEA AGREEMENT HEARING  
HELD BEFORE THE HONORABLE TIMOTHY J. KELLY  
UNITED STATES DISTRICT JUDGE

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APPEARANCES VIA VIDEOCONFERENCE:

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Proceedings recorded by machine shorthand; transcript  
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P R O C E E D I N G S

1  
2 THE DEPUTY CLERK: We are on the record in  
3 criminal matter 21-52, United States of America v. Defendant  
4 3, Matthew Greene.

5 Present for the Government is Erik Kenerson;  
6 present for the defendant is Michael Kasmarek; also present  
7 is the defendant, Mr. Greene.

8 THE COURT: All right. Well, good afternoon to  
9 everyone.

10 Mr. Greene is here to enter a plea of guilty to  
11 Counts 1 and 2 of the first superseding indictment charging  
12 him with conspiracy, in violation of 18 United States Code  
13 371; and obstruction of an official proceeding, in violation  
14 of 18 United States Code 1512(c)(2).

15 Mr. Kasmarek, is that correct?

16 MR. KASMAREK: It is, Judge, and I would also just  
17 note Mr. Spano -- Michael Spano's here with me. We recently  
18 completed his pro hac vice motion which the Court granted.  
19 So he's here, as well. And yes, Judge, we are here to enter  
20 pleas to those two counts.

21 THE COURT: Very well. Welcome, Mr. Spano.

22 MR. SPANO: Yes, Judge. Thank you.

23 THE COURT: Before we proceed, I guess I want to  
24 just raise a couple of preliminary matters.

25 I have right now, and I'm prepared to go forward

1 with, the waiver and the plea agreement and the factual  
2 basis all signed by -- I believe it was -- you,  
3 Mr. Kasmarek, on behalf of Mr. Greene. I do expect to have  
4 submitted to me to be filed on the docket versions of this  
5 -- copies of this that are signed by the defendant himself.  
6 I'm certainly going to ask him here today whether he's read  
7 those documents and has authorized his attorney to sign on  
8 his behalf, but given the parties wanting to come in, I --  
9 again, I'm prepared to proceed, but I do expect to receive  
10 -- to have -- I guess it can be either party, but one party  
11 or the other file versions of these that are signed by  
12 Mr. Greene.

13 Is that -- Mr. Kasmarek, do you foresee any  
14 difficulty getting that done?

15 MR. KASMAREK: No, Judge, not at all. And we  
16 appreciate the Court being willing to proceed in this  
17 manner. We will endeavor to get copies of the documents  
18 with Mr. Greene's signature, and I'll certainly coordinate  
19 with Mr. Kenerson and make sure they're filed.

20 THE COURT: How long do you think -- I mean, I  
21 should have pulled up a calendar. How long do you think  
22 that will take? I know we have the holidays in here. I'd  
23 like to at least get a deadline established so I know when  
24 to expect them by.

25 MR. KASMAREK: Judge, the mail with respect to

1 reaching Mr. Greene is sometimes a little bit difficult just  
2 because it has to go through the correctional facility's  
3 process. That being said, Judge, I think two weeks would  
4 allow us enough time to get it done.

5 THE COURT: All right. Why don't I just say by --  
6 two weeks would be January 5th. We build in a few more days  
7 just, you know, because of the problems you mentioned.  
8 Let's set the deadline to be January 7th with just a few  
9 more days, by that Friday. All right.

10 MR. KASMAREK: Great. Thank you, Judge.

11 THE COURT: Very well. Absolutely.

12 THE DEPUTY CLERK: Your Honor --

13 THE COURT: Yes?

14 THE DEPUTY CLERK: Your Honor, I just want to  
15 interject. If counsel could send those documents to me,  
16 because I need to put them on the docket instead --

17 THE COURT: Oh, all right.

18 THE DEPUTY CLERK: -- of them filing them on the  
19 docket. So if they could just provide them to me by that  
20 date, then I'll make sure that they go on the docket.

21 THE COURT: Perfect. If you can email them to  
22 Ms. Harris, that would be perfect.

23 Thank you, Ms. Harris --

24 MR. KASMAREK: I will do that, Judge.

25 THE DEPUTY CLERK: You're welcome.

1 THE COURT: -- for chiming in.

2 There's two other quick things I want to mention.

3 One is, as I do in every plea, I had the  
4 Government submit to chambers, in addition to the documents  
5 we have here, a document laying out the elements of the  
6 various offenses at issue. And I just want to make sure --  
7 and, Mr. Kenerson, the document you provided for the 1512(c)  
8 charge rightfully laid out, you know, the first element of  
9 that, that the defendant obstructed, influenced, or impeded  
10 any official proceeding; and then the second element, that  
11 the defendant acted corruptly. You added, With  
12 consciousness of wrongdoing. And I think -- here's what I  
13 -- how I'd like to proceed. I don't think it's necessary to  
14 further slice and further define "corruptly" at least at  
15 this point. I have no problem -- and here, I'll just pause  
16 and say you all don't have the benefit of my impending  
17 opinion laying out my thoughts on, you know -- other judges  
18 have done so in the last few days on why this charge is not  
19 unconstitutionally vague as applied to this conduct. But my  
20 thought is why don't we proceed -- because I don't think  
21 it's necessary to get into anything further, why don't we  
22 just proceed acknowledging the statutory elements that are  
23 laid out in the statute without further defining  
24 "corruptly." And, again, as I said, based on the factual  
25 basis I have here, I have no problem concluding that I have

1 a factual basis for the plea for the 1512 charge.

2 Mr. Kenerson, do you -- are -- is that a  
3 reasonable way to proceed from your perspective?

4 MR. KENERSON: I think that's reasonable, Your  
5 Honor. Yes. Thank you.

6 THE COURT: All right. Mr. Kasmarek, any problem  
7 proceeding that way?

8 MR. KASMAREK: No objection, Judge. Thank you.

9 THE COURT: All right.

10 And one other quick little housekeeping note  
11 somewhat similar to that but not exactly. The Section  
12 231(a)(3) count -- and here, the defendant is only pleading  
13 guilty to conspiring to violate that charge -- the third  
14 element of that is that the civil disorder has to, in some  
15 way or degree -- obstructed, delayed, or adversely affected  
16 the conduct or performance of a federally protected  
17 function. In my view -- and I think Judge Mehta mentioned  
18 this briefly in his opinion, although it wasn't squarely  
19 presented to him -- the federally protected function here is  
20 the Secret Service's statutorily prescribed duty to protect  
21 the Vice President as opposed to the congressional  
22 certification, and the Government argued both of those to me  
23 in other cases. I think I have a factual basis, based on  
24 what you all have submitted, to proceed. The statement of  
25 facts does recount how the Vice President was President

1 [sic], how he had to be evacuated from the Capitol,  
2 etcetera, and so I don't have any problem proceeding in that  
3 way. I just want to make sure both parties are comfortable  
4 with that.

5 Mr. Kenerson?

6 MR. KENERSON: Yes, Your Honor. I think the  
7 Secret Service function is sufficient to satisfy the  
8 statute. Saying -- setting aside whether the Government  
9 could prove it otherwise, that is sufficient. So we're  
10 happy going that way.

11 THE COURT: All right. Mr. Kasmarek, any --  
12 again, just, I guess, same question. Any concerns about  
13 proceeding based on what I just said?

14 MR. KASMAREK: No, Judge, we don't have an  
15 objection to proceeding in that manner. Thank you.

16 THE COURT: All right. Very well.

17 All right. All of that put to bed, we have a few  
18 other little housekeeping matters we have to deal with in  
19 terms of proceeding via videoconference.

20 First, Chief Judge -- I'll just mention that Chief  
21 Judge Howell, in her most recent standing order on the topic  
22 entered on November 22nd which is Standing Order 21-70, has  
23 authorized courts to conduct plea hearings via  
24 videoconference, obviously, because of the COVID-19  
25 pandemic.

1           Second, I have to conclude that the case -- or the  
2           proceeding cannot be further delayed without serious harm to  
3           the interests of justice, and given that Mr. Greene has been  
4           detained since, I believe it was, April; he wants to move  
5           forward with this agreement; the agreement does contain a  
6           cooperation component; so I think, based on all of those  
7           things, I can conclude, again, that this hearing cannot be  
8           further delayed without serious harm to the interests of  
9           justice.

10           And finally, the defendant has to consent to enter  
11           his plea via video.

12           So I turn to you, Mr. Kasmarek, to confirm that  
13           your client does consent to go forward here today via video.

14           MR. KASMAREK: He does, Judge. And we certainly  
15           agree with the factors that the Court just pointed to with  
16           respect to us proceeding in this manner. Mr. Greene  
17           understands his rights with respect to proceeding in this  
18           manner and he wishes to move forward with the plea  
19           virtually.

20           THE COURT: All right. Very well, then. I'll  
21           just ask Ms. Harris to administer the oath to Mr. Greene.

22           THE DEPUTY CLERK: Mr. Greene, would you please  
23           raise your right hand.

24           Do you solemnly swear or affirm that you will well  
25           and truly answer all questions propounded to you by the



1 Court?

2 THE DEFENDANT: I do.

3 THE DEPUTY CLERK: I'm sorry?

4 THE DEFENDANT: I do.

5 THE DEPUTY CLERK: Thank you.

6 THE COURT: All right. Mr. Greene, do you  
7 understand that you're now under oath and if you do not  
8 answer my questions truthfully, you could be prosecuted for  
9 perjury or for making a false statement?

10 THE DEFENDANT: I do, Your Honor.

11 THE COURT: All right. Now, this is a very  
12 important hearing. So I need you to listen closely to me.

13 It's important because in order for me to accept  
14 your guilty plea, I need to be satisfied that you're capable  
15 of understanding all the implications that come with  
16 pleading guilty and that you are entering your plea  
17 voluntarily.

18 It's also important because whenever anyone  
19 chooses to plead guilty, they give up some of their  
20 constitutional rights, and I want to make sure you  
21 understand the rights you're giving up by deciding to plead  
22 guilty today.

23 And finally, this hearing is also important  
24 because before you plead guilty, I want to make sure that  
25 you understand the charges against you, the plea agreement

1 that your lawyers have negotiated with the Government, and  
2 exactly how sentencing will work.

3 So if -- at any point during our hearing today, if  
4 there's something you don't understand, let me know and I'll  
5 try to explain it better. And in a real case where it might  
6 be necessary, we might even be able to have you consult with  
7 your lawyers if we take a break.

8 So let me start with a few questions.

9 Mr. Greene, how old are you, sir?

10 THE DEFENDANT: Thirty-four, Your Honor.

11 THE COURT: And how far did you go in school?

12 THE DEFENDANT: I believe it was 10th grade before  
13 I dropped out, Your Honor.

14 THE COURT: All right. Can you read and write,  
15 sir?

16 THE DEFENDANT: I can.

17 THE COURT: And where were you born?

18 THE DEFENDANT: Syracuse, New York.

19 THE COURT: And are you a U.S. citizen today?

20 THE DEFENDANT: I am, Your Honor.

21 THE COURT: All right, you've told me that you are  
22 a U.S. citizen. Do you understand that if you were not --  
23 if you were not -- a U.S. citizen, pleading guilty to these  
24 offenses could affect your immigration status and could  
25 result in your deportation, exclusion from the United

1 States, or denial of citizenship under our immigration laws?

2 Do you understand all that?

3 THE DEFENDANT: I do, Your Honor.

4 THE COURT: Have you taken any alcohol, drugs, or  
5 medicine in the last 48 hours that could affect your ability  
6 to understand and follow our proceedings here today?

7 THE DEFENDANT: No, I have not.

8 THE COURT: Have you received any treatment  
9 recently for any type of mental illness or emotional  
10 disturbance?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: And let me ask both Mr. Kasmarek and  
13 Mr. Kenerson, do either of you have any reason to question  
14 Mr. Greene's competence to plead guilty at this time?

15 Mr. Kasmarek?

16 MR. KASMAREK: We do not, Your Honor.

17 THE COURT: And, Mr. Kenerson?

18 MR. KENERSON: No, Your Honor.

19 THE COURT: All right. I do find, then,  
20 Mr. Greene fully competent and capable of entering an  
21 informed plea.

22 Now, Mr. Greene, I want to explain to you those  
23 rights we mentioned -- I mentioned before and make sure you  
24 understand them.

25 I have here in front of me a signed waiver of

1 trial by jury form in front of me that I'm holding up to the  
2 screen, (indicating.) Now, ordinarily, Mr. Greene, I'd ask  
3 you if that was your signature above the line -- on the line  
4 that says, Defendant. But it's not, is it, in this  
5 particular case?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Okay. It's -- whose is it?

8 THE DEFENDANT: It's my defense attorney, Michael  
9 Kasmarek.

10 THE COURT: Okay. And did you give him permission  
11 to sign this document on your behalf?

12 THE DEFENDANT: I did, Your Honor.

13 THE COURT: Okay. And is it your intention to  
14 give up your jury trial rights in this matter?

15 THE DEFENDANT: Yes, it is, Your Honor.

16 THE COURT: Okay. Let's discuss what the trial  
17 rights consist of.

18 So you have a right, Mr. Greene, to plead not  
19 guilty and to have a jury trial in this case. Do you  
20 understand that you have the right to plead not guilty?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And if you were to plead not guilty,  
23 you would have a jury trial, and that means that 12 citizens  
24 of the District of Columbia would determine your guilt or  
25 your innocence based upon evidence presented in my

1 courtroom. Do you understand that, sir?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And do you understand that if you had  
4 a trial, you would have a right to be represented by your  
5 lawyer at that trial and at every other stage of the  
6 proceeding?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And do you understand that lawyer  
9 could make motions on your behalf, including motions to  
10 exclude evidence or statements from the trial?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And do you understand that at a trial,  
13 you would have the right, through your lawyer, to confront  
14 and cross-examine any witnesses against you?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you understand that at a trial, you  
17 would have the right to present your own witnesses and that  
18 you would have the right to require or compel them to  
19 testify in your defense?

20 (Brief pause.)

21 Do you understand that, sir?

22 THE DEFENDANT: Yeah, I -- yes, Your Honor.

23 THE COURT: Okay. Do you understand that if there  
24 were a trial, you would have the right to testify and to  
25 present evidence on your own behalf if you wanted to but

1 that no one could force you to testify or present any  
2 evidence if you did not want to because you have the right  
3 to remain silent at your trial? Do you understand all of  
4 that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And if you were to make a decision not  
7 to testify at trial, you could request that the jury be told  
8 that that decision could not be held against you. Do you  
9 understand that right, as well?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And do you understand that unless and  
12 until I accept your guilty plea, you are presumed by the law  
13 to be innocent because it is the Government's burden to  
14 prove your guilt beyond a reasonable doubt and until it does  
15 you cannot be convicted at trial?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And do you understand that if you went  
18 to trial and were convicted, you would have a right to  
19 appeal and to have a lawyer help you prepare that appeal?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And do you understand that by pleading  
22 guilty, you are giving up all the rights I just explained to  
23 you, with a few exceptions as to your appeal rights that we  
24 will go over, because there will be no trial? Do you  
25 understand that?

1 THE DEFENDANT: I do, Your Honor.

2 THE COURT: All right. And do you also understand  
3 that by pleading guilty to felony offenses, you may later be  
4 deprived of civil rights such as the right to vote, the  
5 right to hold public office, the right to serve on a jury,  
6 and the right to possess any kind of firearm? Do you  
7 understand that?

8 THE DEFENDANT: I do, Your Honor.

9 THE COURT: And finally, having discussed all  
10 these rights with you, do you still want to plead guilty in  
11 this case and give up these rights?

12 THE DEFENDANT: I do, Your Honor.

13 THE COURT: All right. Mr. Greene, your attorney  
14 and the prosecutor have also given me another document that  
15 is -- well, it actually -- it's funny. It doesn't have a  
16 title. Usually, they have a title on them that say  
17 "statement of facts" or something like that. But it's a  
18 document that I'm going to hold up the first page,  
19 (indicating.) The -- it -- with it -- it begins with a  
20 background section and it's about 10 pages or so long. And  
21 it describes what the Government would be prepared to prove  
22 about your criminal conduct if this case were to proceed to  
23 a trial. Again, ordinarily, I'd ask if -- and this is the  
24 last page of the document that I'm holding up for -- to the  
25 computer for you to see, (indicating.) Again, ordinarily,

1 I'd ask if that's your signature on the docket -- on the  
2 document. Again, that's not your signature; is it,  
3 Mr. Greene?

4 THE DEFENDANT: No, it's not, Your Honor.

5 THE COURT: All right. And, again, is this your  
6 lawyer's signature on the document on your behalf?

7 THE DEFENDANT: Yes, it is, Your Honor.

8 THE COURT: And did you give your lawyer  
9 permission to sign your name on your behalf?

10 THE DEFENDANT: I did, Your Honor.

11 THE COURT: Okay. And have you read this document  
12 and discussed it fully with your lawyer?

13 THE DEFENDANT: I have, Your Honor.

14 THE COURT: And, Mr. Greene, is everything in that  
15 document true and accurate?

16 THE DEFENDANT: It is, Your Honor.

17 THE COURT: All right. Mr. Kenerson, would you  
18 please state the elements of the charges to which the  
19 defendant is pleading guilty and consistent with our earlier  
20 discussion.

21 (Brief pause.)

22 MR. KENERSON: Just one moment, Your Honor. I'm  
23 bringing them up.

24 (Brief pause.)

25 The elements of Count 1, conspiracy, are that the



1 defendant entered into an agreement with at least one other  
2 person to commit a specific offense -- in this case,  
3 obstruction of an official proceeding and obstructing,  
4 interfering, or resisting with certain law enforcement  
5 officers during the course of a civil disorder -- that the  
6 defendant knowingly participated in the conspiracy with the  
7 intent to commit the offense; and that at least one overt  
8 act was committed in furtherance of the conspiracy.

9 As to Count 2, obstruction of an official  
10 proceeding, the elements are that defendant obstructed,  
11 influenced, or impeded any official proceeding; and that the  
12 defendant acted corruptly.

13 With regards to the civil disorder violation that  
14 is the other object of the conspiracy, the elements of that  
15 substantive offense would be that the defendant knowingly  
16 committed an act or attempted to commit an act with the  
17 intended purpose of obstructing, impeding, or interfering  
18 with one or more law enforcement officers; that at the time  
19 the defendant's -- of the defendant's actual or attempted  
20 act, the law enforcement officer or officers were engaged in  
21 the lawful performance of their official duties incident to  
22 and during a civil disorder; and, third, that the civil  
23 disorder in any way or degree obstructed, delayed, or  
24 adversely affected the conduct or performance of any  
25 federally protected function. In this case, that of the

1 United States Secret Service protecting the Vice President  
2 of the United States.

3 THE COURT: All right. Mr. Greene, do you  
4 understand the charges against you, sir?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: And have you reviewed the first  
7 superseding indictment against you and discussed that  
8 document and the charges in that document and the case in  
9 general with your counsel?

10 THE DEFENDANT: I have, Your Honor.

11 THE COURT: And, Mr. Kasmarek, do you agree that  
12 the Government could prove all the elements of the offenses  
13 to which Mr. Greene is pleading guilty beyond a reasonable  
14 doubt?

15 MR. KASMAREK: I do agree, Judge.

16 THE COURT: All right. The parties have also  
17 submitted a written letter outlining the plea agreement.  
18 Before the -- we discuss the terms of the agreement, let me  
19 just ask Mr. Kenerson whether this agreement reflects the  
20 most favorable or lenient plea offer made to the defendant  
21 in this case.

22 MR. KENERSON: It is, I suppose, the only plea  
23 offer that has been made to the defendant in this case. So  
24 yes.

25 THE COURT: That answers that question. Correct.

1 All right. Mr. Greene, I'm showing you -- this is  
2 the last document I'll awkwardly hold up to the camera for  
3 you to see, (indicating.) It's a copy of the plea agreement  
4 in your case. It's a letter to your lawyers, the first page  
5 of which looks like this, (indicating.) And, again, the  
6 last page, similar to the other documents we've seen, has a  
7 signature page that, again, has a space for you to sign.  
8 Again, this document is signed by Mr. Kasmarek on your  
9 behalf; is that correct?

10 THE DEFENDANT: It is, Your Honor.

11 THE COURT: And, again, you gave him permission to  
12 sign this document on your behalf; is that correct?

13 THE DEFENDANT: I did, Your Honor.

14 THE COURT: Okay. Did you read and understand the  
15 document before Mr. Kasmarek signed it on your behalf?

16 THE DEFENDANT: I did, Your Honor.

17 THE COURT: And have you had enough time to talk  
18 with him about the document?

19 THE DEFENDANT: Yes, I did, Your Honor.

20 THE COURT: All right. We're going to discuss the  
21 terms of the plea agreement now. We're not going to mention  
22 every term -- every single thing in there. But you  
23 understand that as long as it's in that agreement, even if  
24 we don't talk about it here today, you are still bound by  
25 it? Do you understand --

1 THE DEFENDANT: I do, Your Honor.

2 THE COURT: Okay. Mr. Kasmarek, will you briefly  
3 summarize, at least at a high level, the terms of the plea  
4 agreement.

5 MR. KASMAREK: Yes, Judge.

6 In exchange for Mr. Greene admitting  
7 responsibility with respect to the two counts outlined by  
8 Mr. Kenerson, we are agreeing to a point allocation as to  
9 each of the offenses. For the offense for Count 1, the  
10 points were a total of 25. For Count 1 -- I'm sorry, 18  
11 U.S.C. 231, the agreement was for a total of 16. We had  
12 agreed to a three-point potential reduction for  
13 responsibility acceptance for a total estimated offense  
14 level of 22. Mr. Greene has no prior criminal history. So  
15 there was no additional points on there. And based on that,  
16 Judge, the guideline range was 41 to 51 months. There is a  
17 fine range outlined of potentially 15,000 up to 150,000.  
18 Judge, there is part of this -- a restitution agreement  
19 which I believe, without finding it -- and Mr. Kenerson can  
20 correct me if I'm wrong -- I believe it was somewhere in the  
21 neighborhood of \$2,000, and that was something that was  
22 spread across many of the prosecutions that are taking place  
23 with respect to the larger case. Judge, there is also --  
24 yes, it is 2,000. There is also a cooperation agreement in  
25 here which allows that, at the time of sentence, the

1 Government may make a recommendation about a further point  
2 reduction based on what has taken place and what may take  
3 place in the future with respect to Mr. Greene. I should  
4 also note, too, Judge, that Mr. Kenerson and I and Mr. Spano  
5 have discussed the possibility that even after Mr. Greene is  
6 sentenced and that he is committed potentially to the Bureau  
7 of Prisons or he is on some sort of supervised release, that  
8 he may be able to come back if the Government requires more  
9 cooperation and then a motion would be made to allow him to  
10 be resentenced to something that is in line with his  
11 cooperation at that point.

12 Judge, I believe that that broadly defines the  
13 terms that are in the 13-page agreement.

14 THE COURT: All right. Very well. I'll also add,  
15 obviously, it -- the agreement contemplates, for the charges  
16 in the first amended indictment to which he's not pleading  
17 guilty, that those would be dismissed at sentencing;  
18 correct?

19 MR. KASMAREK: That is correct, Judge. And I  
20 should also note -- and Mr. Kenerson and I have had some  
21 discussions about this -- relative to the points and the  
22 guideline range -- and I'm sure the Court is going to  
23 address this with Mr. Greene -- it's our intent to argue  
24 that in Mr. Greene's case, a reduction in the total number  
25 of months or any additional prison time is something that

1 will be appropriate. And certainly, Judge, we intend to do  
2 that based on our sentencing memorandum, and also, when the  
3 Court allows us to be heard at sentencing.

4 THE COURT: Very well.

5 I do accept that this plea agreement, then, is of  
6 the type authorized by Federal Rule of Criminal Procedure  
7 11(c)(1)(A) and specifies that the Government will not bring  
8 other charges for the conduct set forth in the factual basis  
9 for plea and will request that the Court dismiss other  
10 charges -- the other charges pending in the indictment at  
11 the time of sentencing.

12 Mr. Greene, let me just -- I'll start walking now  
13 through the different aspects of the plea agreement.

14 First, have you and your lawyer talked about  
15 sentencing and how the statute -- both the statute --  
16 statutes at issue and the sentencing guidelines may apply in  
17 your case?

18 THE DEFENDANT: We have, Your Honor.

19 THE COURT: Okay. Now, do you understand that if  
20 I accept your guilty plea in this case, for Count 1, which  
21 is a violation of 18 United States Code Section 371, you  
22 could receive -- could receive -- a maximum sentence of five  
23 years' imprisonment, a fine of \$250,000, or twice the  
24 pecuniary gain or loss from the offense under 18 United  
25 States Code Section 3571(b)(2) and (3); you could receive a

1 term of supervised release of not more than three years; you  
2 could have mandatory restitution imposed under 18 United  
3 States Code Section 3663A; and you may have an obligation to  
4 pay any applicable interest or penalties on fines and  
5 restitution not timely made? Do you understand all of that  
6 is what could -- you could receive for Count 1?

7 THE DEFENDANT: I do, Your Honor.

8 THE COURT: Okay. I'll note that -- I mentioned  
9 just a moment ago the term "supervised release." Supervised  
10 release means that if you were sent to prison, then upon  
11 your release, you would be under the supervision of the  
12 Probation Office and expected to follow rules and conditions  
13 while you were on release, and if you violated any of those  
14 conditions, you could be sent back to prison for an  
15 additional period of time. Do you understand that, sir?

16 THE DEFENDANT: I do, Your Honor.

17 THE COURT: All right. Now, do you understand --  
18 as for Count 2, a violation of 18 United States Code Section  
19 1512(c)(2), do you understand if I accept your guilty plea  
20 for Count 2, you could receive a maximum sentence of 20  
21 years of imprisonment, a fine of \$250,000, or twice the  
22 pecuniary gain or loss of the offense under 18 United States  
23 Code Section 3571(b)(2) and (3); you could receive a term of  
24 supervised release of not more than three years pursuant to  
25 18 United States Code Section 3583(b)(2); you could have

1 mandatory restitution imposed under 18 United States Code  
2 Section 3663A; and you may have imposed an obligation to pay  
3 any applicable interest or penalties, again, on fines or  
4 restitution not timely made? Do you understand all of that  
5 is what you could -- what could be imposed on you for Count  
6 2?

7 THE DEFENDANT: I do, Your Honor.

8 THE COURT: All right. And, again, it's important  
9 to understand that I could never sentence you to more than  
10 the statutory maximum term of imprisonment for either Count  
11 1 or Count 2.

12 Do you also understand that you will have to pay a  
13 special assessment of \$100 for each of those counts -- so  
14 for a total of \$200 -- to the Clerk of the Court?

15 THE DEFENDANT: I do, Your Honor.

16 THE COURT: And do you understand, as part of this  
17 agreement, you've agreed -- as Mr. Kasmarek just  
18 mentioned -- you've agreed to pay restitution to the  
19 Architect of the Capitol in the amount of \$2,000? Do you  
20 understand that?

21 THE DEFENDANT: I do, Your Honor.

22 THE COURT: All right. So let me pivot for a  
23 moment to the sentencing guidelines which judges have to  
24 consider in determining the sentence in every federal  
25 criminal case. I don't have to follow the guidelines --



1 it's, kind of, confusing -- I don't have to follow them, but  
2 in determining your sentence, I do have to calculate them  
3 and consider the applicable sentencing range recommended in  
4 the guidelines for your offense with a person with your  
5 criminal history. As I mentioned, the guidelines apply in  
6 every federal criminal case.

7           Again, have you and your attorney talked about the  
8 advisory sentencing guidelines and how they might apply to  
9 you?

10           THE DEFENDANT: We have, Your Honor.

11           THE COURT: Now, the parties have estimated in the  
12 plea agreement what they think your guidelines sentencing --  
13 sentence range is. But do you understand I won't be able to  
14 determine what your guidelines sentencing range is until  
15 after what's called a presentence report is completed and  
16 after you, your lawyer, and the Government have had an  
17 opportunity to object to that report and tell me what they  
18 think the applicable sentencing guideline range is? Do you  
19 understand that?

20           THE DEFENDANT: I do, Your Honor.

21           THE COURT: Now, part of your guidelines  
22 sentencing range calculation is your offense level. And the  
23 parties have stated in the plea agreement what they estimate  
24 your offense level to be at this point. The parties have  
25 agreed that the base offense level for Count 2 and

1 conspiracy to -- the conspiracy to violate Section 1512(c),  
2 as charged in Count 1, is 14. And with two enhancements  
3 because the offense involved property damage, and also,  
4 involved substantial interference with the administration of  
5 justice, the offense level rises to 25. The parties have  
6 also agreed that the base level for conspiracy to violate 18  
7 United States Code Section 231, as charged in Count 1, is a  
8 10 with an enhancement for an official victim. So that  
9 rises to 16. And the Government agrees that you are  
10 entitled to a two-level reduction if you accept  
11 responsibility for your actions, adhere to the plea  
12 agreement, and display acceptable conduct between now and  
13 sentencing. The Government also agrees that you're entitled  
14 to an additional one-level reduction because you've provided  
15 timely notice of your intent to plead guilty, saving the  
16 Government the time and the resources to prepare for trial.  
17 Therefore, netting all of that out, the parties estimate  
18 that your guideline offense level will be a 22. The parties  
19 also estimate that you have zero criminal history points  
20 which places you in Criminal History Category I for purposes  
21 of the sentencing guidelines. And the corresponding  
22 recommended sentence range for an offense level of 22 and a  
23 criminal history category of I is 41 months to 51 months of  
24 imprisonment. Do you understand that, Mr. Greene?

25 THE DEFENDANT: I do, Your Honor.

1 THE COURT: All right. And the recommended fine  
2 is between \$15,000 and \$150,000. Do you understand that, as  
3 well?

4 THE DEFENDANT: I do, Your Honor.

5 THE COURT: Okay. Now, do you understand that if,  
6 in your case -- in -- that in your case, the Government has  
7 agreed to consider filing what's called a motion for  
8 downward departure from your guideline range as a result of  
9 your cooperation, but it's their decision, and only theirs,  
10 whether or not to file a downward departure motion and that  
11 neither your lawyer nor I can force them to file such a  
12 motion? Do you understand that?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: All right. Now, the Government can  
15 refuse to file a motion for downward departure even if -- if  
16 you've given assistance but not enough to satisfy them that  
17 your assistance has been substantial. Do you understand  
18 that it's only the Government that determines whether your  
19 assistance has been substantial?

20 THE DEFENDANT: I do, Your Honor.

21 THE COURT: All right. And even if the Government  
22 files a motion, do you understand that I make the final  
23 determination on any motion by the Government for a downward  
24 departure? So I decide whether to grant that motion. Do  
25 you understand and -- understand that, Mr. Greene?

1 THE DEFENDANT: I do, Your Honor.

2 THE COURT: All right. And, sir, do you  
3 understand that the advisory guidelines sentence that is  
4 eventually calculated may be either more severe or less  
5 severe than the -- than what the parties have estimated in  
6 the agreement?

7 THE DEFENDANT: I do, Your Honor.

8 THE COURT: Do you understand, again, that I won't  
9 know exactly what -- your guidelines range until after I've  
10 had a chance to review the presentence report that will be  
11 prepared and hear from the parties in this case?

12 THE DEFENDANT: I do, Your Honor.

13 THE COURT: And do you also understand that after  
14 I've decided -- after all of that -- after I've decided what  
15 guidelines applies to your case, what the advisory guideline  
16 range is, that at the end of the day, the guidelines aren't  
17 binding on me and I have the authority, when I consider all  
18 the sentencing factors that the law requires, to impose a  
19 sentence that is either more severe or less severe than the  
20 sentence recommended by the guidelines?

21 THE DEFENDANT: I do, Your Honor.

22 THE COURT: All right. And do you understand that  
23 you cannot withdraw your plea just because the sentence I  
24 impose happens to be either more or less severe than the  
25 sentence recommended by the guidelines or more or less

1 severe than the parties may recommend or request or more or  
2 less severe than you happen to expect? Do you understand  
3 that?

4 THE DEFENDANT: I do, Your Honor.

5 THE COURT: All right. Mr. Greene, let me give  
6 you a quick preview of the factors I have to consider and I  
7 have to take into account in determining your sentence.

8 In addition to the sentencing guidelines, I have  
9 to consider the nature and circumstances of the offense;  
10 your particular history and characteristics; I have to  
11 consider whether the sentence serves the purposes of  
12 criminal sentencing; that is, whether it reflects the  
13 seriousness of the offense and whether it provides just  
14 punishment; I have to consider whether it deters you and  
15 others from engaging in criminal conduct; and I have to  
16 consider whether it provides you with helpful treatment and  
17 services that might be available and helpful to you; I have  
18 to consider the kinds of sentences available; I have to  
19 consider the sentencing guidelines, which we've already  
20 discussed; and I have to ensure that the sentence in line --  
21 is in line with sentences given to similar defendants who  
22 have been found guilty of similar conduct; and I also have  
23 to consider the need to provide restitution to any victims  
24 of the offense.

25 Do you understand that I must consider all these

1 factors in selecting a sentence for you?

2 THE DEFENDANT: I do, Your Honor.

3 THE COURT: And finally, do you understand that if  
4 I sentence you -- if I sentence you -- to a term of  
5 imprisonment, you will serve the full amount of time to  
6 which I sentence you with a possible reduction of -- for  
7 good time of up to 54 days per year but that you will not be  
8 released early on parole as used to be the case before  
9 parole was abolished? Do you understand that?

10 THE DEFENDANT: I do, Your Honor.

11 THE COURT: All right. Finally, let's talk for a  
12 moment about the appeal provisions in your plea agreement.

13 Do you understand that by pleading guilty, you are  
14 giving up all your rights to appeal your conviction in this  
15 case except on the basis of ineffective assistance of  
16 counsel?

17 THE DEFENDANT: I do, Your Honor.

18 THE COURT: Do you understand that you're also  
19 giving up your right to appeal the sentence imposed except  
20 to the extent that I sentence you above the statutory  
21 maximum or above the guidelines range that I -- (inaudible)?  
22 Do you understand that?

23 THE DEFENDANT: I do, Your Honor.

24 THE COURT: Do you understand that under the plea  
25 agreement, you're also giving up the right to what's called

1 collaterally attack your conviction -- sorry -- collaterally  
2 attack the conviction or sentence except to the extent the  
3 challenge, again, is either based on a claim that you  
4 received ineffective assistance of counsel or based on  
5 newly-discovered evidence? Do you understand that?

6 THE DEFENDANT: I do, Your Honor.

7 THE COURT: All right. Mr. Greene, that's a  
8 summary of the terms of your plea agreement.

9 Let me ask both counsel whether they agree that  
10 we've -- I've accurately stated the terms of the agreement.

11 Mr. Kasmarek?

12 MR. KASMAREK: We do agree, Judge. Thank you.

13 THE COURT: All right. And, Mr. Kenerson?

14 MR. KENERSON: Yes. Thank you, Your Honor.

15 THE COURT: All right. Mr. Greene, is all of that  
16 what you agreed to, sir?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And are you completely satisfied with  
19 the services of your lawyer in this case?

20 THE DEFENDANT: I am, Your Honor.

21 THE COURT: And have you had enough time to talk  
22 with your lawyer and discuss the case, the charges, the plea  
23 offer, and whether or not you should accept it?

24 THE DEFENDANT: I have, Your Honor.

25 THE COURT: Mr. Greene, are you entering this plea

1 of guilty because you are, in fact, guilty?

2 THE DEFENDANT: I am, Your Honor.

3 THE COURT: Has anyone forced, threatened, or  
4 coerced you in any way into pleading guilty?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Has anyone made any promises to you in  
7 connection with your guilty plea other than those contained  
8 in the written plea agreement or those stated in open court  
9 here?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Do you understand that at this time, I  
12 do not know what sentence I will impose in your case  
13 because, again, I have not yet heard from the lawyers, the  
14 Probation Office, or from you if you choose?

15 THE DEFENDANT: I do, Your Honor.

16 THE COURT: Is there anything that you don't  
17 understand about this proceeding or about your plea in this  
18 case?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: And is there anything you want to ask  
21 me or your lawyer about before your -- before you enter your  
22 plea, sir?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: All right. Mr. Greene, what is your  
25 plea to Count 1 of the first superseding indictment charging



1 you with conspiracy, in violation of 18 United States Code  
2 Section 371; and Count 2 charging you with obstruction of an  
3 official proceeding, in violation of 18 United States Code  
4 Section 1512(c)(2), guilty or not guilty?

5 THE DEFENDANT: Guilty, Your Honor.

6 THE COURT: All right. I do find that Mr. Greene  
7 is fully competent and capable of entering an informed plea;  
8 that he understands the nature of the charges and the  
9 consequences of the plea; that the plea of guilty is knowing  
10 and voluntary and that he is acting of his own free will in  
11 pleading guilty; and that there is an adequate factual basis  
12 containing each of the essential elements of the offenses;  
13 therefore, I accept the plea and the defendant is now  
14 adjudged guilty of Counts 1 and 2 of the first superseding  
15 indictment.

16 Mr. Kenerson, how do the parties wish to proceed  
17 in terms of sentencing, especially given the cooperation  
18 aspect of the plea agreement here?

19 MR. KENERSON: Thank you, Your Honor.

20 I think we've -- I've -- we've talked about that  
21 -- this with Mr. Kasmarek. Our request is actually to set a  
22 sentencing date today. We expect this, in what we know, to  
23 be able to go forward in the normal course to sentencing.  
24 If, for some reason, that changes, we can move to continue  
25 it.

1 THE COURT: Very well. Ms. Harris, can you give  
2 us a proposed sentencing date.

3 THE DEPUTY CLERK: Monday, March 14th.

4 THE COURT: All right. Why don't -- is setting it  
5 for the 10th -- I think the -- is setting it for the 10th  
6 too soon, do you think, Ms. Harris?

7 THE DEPUTY CLERK: No, that's fine, because the 80  
8 days actually fell on Saturday. So that's why I pushed it  
9 to the --

10 THE COURT: Okay.

11 THE DEPUTY CLERK: -- 14th. But the 10th would be  
12 fine because Probation has 70 days and we just add the extra  
13 10 for the sentencing memoranda.

14 THE COURT: All right. I'd like to do -- I have  
15 an availability on the 10th. I'd like to do it on the 10th,  
16 assuming counsel are available. Let's say the 10th at 2:00  
17 o'clock p.m.

18 Is -- Mr. Kenerson, are you available at that  
19 time?

20 MR. KENERSON: Your Honor, as of now, I am  
21 scheduled to begin a trial on the 24th of February. It  
22 likely will be done by the 10th. So I'm happy to set it  
23 then, but if I'm in trial, we may be moving to continue.

24 THE COURT: Okay. If that happens or -- well,  
25 what I could do is in -- additionally is perhaps -- perhaps

1       instead of setting it in the afternoon, I can set it in the  
2       morning, and you may, you know -- that may increase the  
3       likelihood that if your case is continuing on, the judge may  
4       let you -- may give you a little time in the morning to deal  
5       with the sentencing and then start after that. So why don't  
6       we say 9:00 -- is 9:00 -- would 9:30 work on the 10th, then?

7               MR. KENERSON: That's good, Your Honor, with the  
8       same caveats. Thank you.

9               THE COURT: Right. Same -- understood.

10              Mr. Kasmarek -- and I guess I'll say this. I've  
11       been doing all my sentencings for quite a while -- I've been  
12       trying to do them in person. I think, you know, given the  
13       nature of the proceeding, that's appropriate, and especially  
14       given when -- given the fact that many defendants want to  
15       address me, and I think my ability to, kind of, hear from  
16       them is enhanced by having that proceed in person.

17              Mr. Kasmarek, do you know -- there are defendants  
18       who, because of the quarantining and other issues, don't,  
19       you know -- would, frankly, rather not do that, but that's  
20       my inclination. So let me ask you. Do you know whether  
21       Mr. Greene has a view -- do you and Mr. Greene have a view  
22       about the nature of the proceeding we set?

23              MR. KASMAREK: Yes, Judge. We've -- we have  
24       discussed it, and we concur with the Court completely; that  
25       it's our preference that we be permitted to address the

1 Court in person; that that's going to be critical to the  
2 Court making a determination to hear from Mr. Greene and as  
3 well as myself and Mr. Spano in person. So it is our  
4 preference to be there.

5 THE COURT: Perfect. We're all on the same page,  
6 then. So is -- and is the 10th at 9:30 available to you  
7 all?

8 MR. KASMAREK: It is, Judge. Thank you.

9 THE COURT: Okay. So we'll set it for that time  
10 and we'll set it for in-person. And I usually just ask the  
11 parties to file their sentencing memoranda a week  
12 beforehand. So that would be by March 3rd.

13 Let me ask, I guess, Mr. Kenerson this question.  
14 I, you know -- in many cases, setting the memos to be  
15 simultaneous makes sense. My gut tells me that that is fine  
16 in this case, but there are other cases where the Government  
17 perhaps -- well, whether it's the Government wanting to  
18 respond to the defense or vice versa, the parties like the  
19 -- prefer a -- staggered, sort of, submissions. What -- let  
20 me just start with Mr. Kenerson. What's your sense about  
21 whether that is something that makes sense here or whether  
22 having them set on the same day is fine?

23 MR. KENERSON: I think that's fine from the  
24 Government's perspective to have them due on the same day,  
25 but if Mr. Kasmarek prefers staggered, we don't have an

1 objection to that either.

2 THE COURT: Okay. Mr. Kasmarek, what's your view?

3 MR. KASMAREK: Judge, we have no objection filing  
4 them on the same date. Mr. Kenerson, myself, Mr. Greene,  
5 Mr. Spano, we've had the opportunity over the past couple  
6 months to engage in some very detailed discussions about all  
7 aspects of this case. And so I think we're all pretty well  
8 informed about each other's positions. So --

9 THE COURT: There won't be -- there won't be  
10 surprises that you feel you need to --

11 MR. KASMAREK: I don't think so, Judge.

12 THE COURT: All right. So we'll make them due,  
13 then, March 3rd. Very well.

14 All right. Mr. Greene, let me just quickly remind  
15 you about how sentencing will work. A written presentence  
16 report is going to be prepared by the Probation Office to  
17 assist me at sentencing. You will be asked to give  
18 information to that report and your attorney may be present  
19 if you wish. You and your lawyer will have the opportunity  
20 to read the report before I see it and, again, before your  
21 sentencing and object to anything in the report you think it  
22 is appropriate to do so. And you and your lawyer,  
23 obviously, will have an opportunity to speak with me at your  
24 sentencing hearing.

25 All right. I suppose the Government will request

1 that Mr. Greene remain detained pending sentencing; is that  
2 correct, Mr. Kenerson?

3 MR. KENERSON: That's correct, Your Honor.

4 THE COURT: All right. I think probably,  
5 Mr. Kasmarek, you've agreed to that in the plea agreement,  
6 but you'll correct me if I'm wrong.

7 MR. KASMAREK: We have, Judge, and we're prepared  
8 to move forward with Mr. Greene remaining detained and to  
9 address those arguments at sentencing.

10 Judge, one quick question with respect to the  
11 presentence report. Does the Court or Mr. Kenerson know,  
12 will the officer be visiting Mr. Greene in person? Will  
13 they set up a virtual interview of him?

14 THE COURT: I don't think -- I -- well, I don't  
15 know for sure the answer. My sense is that they have tried  
16 to do them remotely, but, maybe, Mr. Kenerson might have  
17 additional or different information.

18 MR. KENERSON: I actually don't have any  
19 information either way --

20 THE COURT: Okay.

21 MR. KENERSON: -- to add. So I don't know.

22 THE COURT: Okay. Yeah. Mr. Kasmarek, you can --  
23 obviously, you can follow up --

24 THE DEPUTY CLERK: Judge, I have an answer to  
25 that.

1 THE COURT: All right. Ms. Harris, thank you,  
2 once again.

3 THE DEPUTY CLERK: They have been conducting them  
4 remotely.

5 THE COURT: Oh. They have? Okay. Yeah, that was  
6 my impression, as well.

7 MR. KASMAREK: Right. I appreciate that. I just  
8 want to prepare Mr. Greene for how it's --

9 THE COURT: Yep.

10 MR. KASMAREK: -- going to proceed. Thank you.

11 THE COURT: Yep. Very well.

12 All right. Anything else either side thinks we  
13 need to address today?

14 Mr. Kenerson?

15 MR. KENERSON: No, Your Honor. Thank you.

16 THE COURT: All right. Mr. Kasmarek?

17 MR. KASMAREK: No, Your Honor. Thank you.

18 THE COURT: All right. Very well. We will --  
19 I'll see everyone in March. Until then, everyone have a  
20 good holiday and New Year, and the parties are dismissed  
21 until then.

22 MR. KASMAREK: Appreciate that, Judge. Thank you.

23 MR. KENERSON: Thank you, Your Honor.

24 (Proceedings concluded at 2:48 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, TIMOTHY R. MILLER, RPR, CRR, NJ-CCR, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability, dated this 6th day of January 2022.

Please note: This hearing occurred during the COVID-19 pandemic and is, therefore, subject to the technological limitations of court reporting remotely.

/s/Timothy R. Miller, RPR, CRR, NJ-CCR  
Official Court Reporter  
United States Courthouse  
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Washington, DC 20001