

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CR No. 21-578
)	Washington, D.C.
vs.)	January 27, 2022
)	11:04 a.m.
ZACHARY WILSON (1),)	
KELSEY LEIGH ANN WILSON (2),)	
)	
Defendants.)	

TRANSCRIPT OF SENTENCING HEARING VIA ZOOM PROCEEDINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

COURTROOM DEPUTY: Good morning, Your Honor.

This is Criminal Case No. 21-578, United States of America versus Defendant No. 1, Zachary Wilson, Defendant No. 2, Chelsea Leigh Ann Wilson.

Jacob Strain and James Pearce for the government.

Joanne Slaight for Defendant Zachary Wilson.

Kira West for Defendant Chelsea Wilson.

And Jessica Reichler for the Probation Office.

Both defendants are appearing via videoconference for this hearing.

THE COURT: Okay. Good morning, everyone.

Mr. and Ms. Wilson, good morning to both of you. Can you both hear me okay?

DEFENDANT ZACHARY WILSON: Yes.

DEFENDANT KELSEY WILSON: Yes.

THE COURT: Okay. Terrific.

So we're here for sentencing this morning. I want to make sure that everybody is ready to proceed.

MR. STRAIN: Yes, Your Honor, the government is ready.

MS. SLAIGHT: Yes, Your Honor, for Mr. Wilson, Zachary Wilson.

MS. WEST: Good morning, Your Honor.

Yes, Ms. Wilson is ready to proceed.

1 THE COURT: Before we get going, let me confirm
2 with defense counsel, and then I'll turn to the Wilsons
3 themselves, that they are prepared to waive an in-person
4 sentencing hearing. We are proceeding remotely this
5 morning, and I want to make sure they understand what their
6 rights are and that they're waiving their right to appear in
7 person.

8 MS. SLAIGHT: Yes, Your Honor. Mr. Wilson does
9 waive his right to appear in person and agrees to a remote
10 appearance for a video hearing for this sentencing.

11 MS. WEST: Likewise, Your Honor, Mrs. Wilson also
12 waives her right to an in-person sentencing. And I wanted
13 to thank the Court for doing this remotely with regard to
14 what's going on with the pandemic.

15 THE COURT: So let me just confirm with the
16 Wilsons.

17 Mr. Wilson and Ms. Wilson, let me make sure
18 you understand that you have a right to an in-person
19 hearing; that is, you have a right to come to the courthouse
20 and be in the courtroom for your sentencing.

21 You understand that, Mr. Wilson?

22 DEFENDANT ZACHARY WILSON: Yes, Your Honor.

23 THE COURT: And, Ms. Wilson, do you understand
24 that?

25 DEFENDANT KELSEY WILSON: Yes, Your Honor.

1 THE COURT: And we are, however, proceeding
2 remotely today, and I want to make sure that this is
3 something you're agreeing to.

4 Mr. Wilson?

5 DEFENDANT ZACHARY WILSON: Yes.

6 THE COURT: And, Ms. Wilson?

7 DEFENDANT KELSEY WILSON: Yes, Your Honor.

8 THE COURT: Okay.

9 So I do find that the Wilsons are knowingly and
10 voluntarily waiving their right to an in-person sentencing
11 hearing. I further find that it is in the interest of
12 justice to proceed with sentencing remotely, given the
13 circumstances of COVID and importantly I know the Wilsons
14 are interested in bringing this matter to a close, and so
15 for that reason, it's in the interests of justice to
16 proceed. And further, we still do have authority under the
17 CARES Act by order of the Chief Judge to proceed remotely
18 for sentencing.

19 Okay.

20 COURT REPORTER: Judge, one second.

21 Can I ask the defendants to mute? I think their
22 background noise is drowning you out a little bit.

23 THE COURT: Oh, okay.

24 I'll just ask Mr. and Ms. Wilson to mute their
25 phone or whatever device they're using. Thank you.

1 All right. Let me first go over what I've
2 received and reviewed in advance of sentencing and then
3 we'll turn to the government and then to defense counsel.

4 Let me just first go over, as I said, what I've
5 received on behalf of Mr. Wilson: The Presentence
6 Investigation Report at ECF 45, and Probation's
7 recommendation at ECF 46, the government's memorandums in
8 aid of sentencing at 32 -- no, I'm sorry, I misspoke, hang
9 on -- at 49, there was the defendant's -- excuse me, the
10 defense sentencing memorandum at 47, and then the reply at
11 52.

12 On behalf of Ms. Wilson, I've received the
13 Presentence Report at 43, Probation's recommendation at 44,
14 the defendant's sentencing memo at 48, and the defendant's
15 response at 55, and the government's sentencing memo at
16 ECF 50.

17 I've received, also on behalf of Ms. Wilson, I've
18 reviewed the two letters that were submitted on her behalf.
19 And there were letters also submitted on behalf of
20 Mr. Wilson, I've reviewed those.

21 And I've also reviewed the government's
22 supplemental brief concerning 18 U.S.C. 3561 and their
23 request for a probationary sentence that includes a term of
24 imprisonment, and the legality of doing so, which is at ECF
25 53.

1 So that's all I've received, and I'll make sure
2 there's nothing I've missed on behalf of either defendant or
3 on behalf of the government.

4 MS. SLAIGHT: That's all for Mr. Zachary Wilson,
5 Your Honor.

6 MS. WEST: That's correct, Your Honor, for
7 Mrs. Wilson.

8 MR. STRAIN: And nothing else from the government.

9 THE COURT: All right.

10 Are there any objections to the Presentence Report
11 on behalf of either defendant that have not been addressed?

12 MS. SLAIGHT: No, Your Honor.

13 MS. WEST: With regard to Mrs. Wilson, our
14 objection about her criminal history, I believe, has been
15 addressed.

16 THE COURT: Right.

17 MS. WEST: I don't know that it's been resolved.
18 But as I said, Your Honor, in my memo, that's purely an
19 academic exercise, because it would still be zero criminal
20 history points, but I thought it was important for the Court
21 to know that Ms. Wilson doesn't really understand why that's
22 there.

23 THE COURT: Okay.

24 Well, I guess my view is that I agree it's not
25 material, at least insofar as sentencing computation,

1 because the Guidelines are not applicable here, so I'm not
2 being asked to consider and compute a Criminal History
3 score.

4 And if memory serves, I think that offense, to the
5 extent it was -- let me just make sure -- hang on one
6 second. Right. I mean, the offense was -- looks like a
7 traffic violation, maybe a little bit more than that;
8 I don't know what the Missouri law is. But in any event,
9 it's something that happened, if it happened at all, you
10 know, almost ten years ago, more than ten years ago, and
11 so I think its significance is fairly -- even if
12 it happened, I don't think it's all that weighty a
13 consideration, let's just put it that way, okay?

14 All right. Let's start with the government then
15 and hear from Mr. Strain. Although I do have a question
16 about the government's argument with respect to 18 U.S.C.
17 3561, and so I don't know whether Mr. Pearce is the person
18 to address that with in the first instance.

19 MR. PEARCE: I am, Your Honor. I'm happy to
20 respond to any of the Court's questions on that supplemental
21 filing.

22 THE COURT: Okay.

23 So let me just ask. It's a strange construction
24 of a statute, because it sets down a rule, then an
25 exception, but then it includes sort of an exception to an

1 exception.

2 And I'm talking about 3561(a)(3). And it says:
3 "A defendant who has been found guilty of an offense may be
4 sentenced to a term of probation unless the defendant is
5 sentenced at the same time to a term of imprisonment for the
6 same or different offense that is not a petty offense."
7 And the government's construction is that, as long as the
8 offense is a petty offense, then it's still eligible for a
9 term of imprisonment.

10 Can I ask -- and maybe I'm the only one to read it
11 this way, but I almost read this to suggest that the
12 eligibility for -- in a period of incarceration only for a
13 petty offense occurs -- excuse me, for -- right -- for a
14 period of incarceration only occurs for a petty offense when
15 the person is being sentenced to more than one offense.
16 In other words, you know, it says a defendant who has been
17 found guilty of an offense may be sentenced to a term of
18 probation unless the defendant is sentenced at the same time
19 to a term of imprisonment for the same or different offense.

20 So I almost read this to suggest that there have
21 to be two offenses, and it's only applicable when there are
22 two offenses which a person is being considered for
23 sentencing.

24 Mr. Pearce, am I reading that incorrectly, in your
25 view?

1 MR. PEARCE: So I don't think it is incorrect to
2 suggest that is a reading and that I think that is certainly
3 encompassed by the adjective, "a different offense." And so
4 we certainly wouldn't disagree that it would apply if a
5 defendant were facing multiple offenses, at least one of
6 which is a petty offense. That, I think, would fall under
7 the terms of the statute.

8 But I think, Your Honor, quite obviously, has to
9 construe all of the words there, and I think the same has to
10 do some work as well. And, in fact, that's exactly what the
11 Fourth Circuit relied on in the *Posley* case that we cite,
12 which, to our knowledge, is -- and, of course, we
13 acknowledge it's nonbinding here, it's out of Circuit, it's
14 unpublished, but it's the only court, one way or the other,
15 to really have dealt with this question.

16 And it, when it was dealing with a question of a
17 single petty offense where there was a term of both
18 incarceration and probation, in fact, quoted the language
19 the same and then used an ellipsis, because in that context,
20 "different" didn't make a difference, there was only one
21 petty offense which the defendant had been convicted.

22 So to give the word the same meaning, I think it
23 has to cover -- or at least our view is that it covers the
24 situation where a defendant is convicted of one.

25 It certainly also addresses or comes to --

1 THE COURT: I'm sorry to interrupt, but --

2 MR. PEARCE: Please.

3 THE COURT: -- how does that then explain the
4 "at the same time" language that's found in Subsection 3?

5 I mean, the defendant -- you know, the statute
6 begins with, "a defendant who has been found guilty of an
7 offense may be sentenced to a term of probation, unless he
8 is sentenced at the same time," which suggests to me that
9 when you're -- that there's something else happening at the
10 same sentencing, in addition to the sentencing with respect
11 to the offense to which the person has been found guilty.

12 MR. PEARCE: So we read "at the same time" to
13 refer to the imprisonment, right.

14 So at the same time imprisonment and probation.
15 Those are the two things that the Court is -- because,
16 otherwise, again -- and I think maybe the historical piece,
17 the fact that when Congress and the Sentencing Reform Act
18 first enacted this language, it enacted "at the same time"
19 to the same or a different offense, and then added, you
20 know, subsequently, as we set out in our briefing, that is
21 not a petty offense.

22 So I think if somebody is being sentenced just for
23 one offense and let's -- not a petty offense and they get
24 imprisonment, they are not eligible for probation.
25 And that's true if they get it on the same or another

1 offense; in other words, the "same time" refers to the same
2 time getting both imprisonment and probation, not the same
3 time multiple offenses; or at least -- maybe this is
4 better -- at least the multiple offenses is a different
5 offense piece, at the same time to two different offenses.

6 And I will certainly concede this is not a model
7 of clear draftsmanship, but we do think that this is the
8 best reading, again, taking into account not so much the
9 legislative history, although that's relevant, but the
10 statutory history, the fact that "that is not a petty
11 offense" is added after the language that precedes it.

12 MS. SLAIGHT: Your Honor --

13 THE COURT: Hang on one second, Ms. Slaight.

14 MS. SLAIGHT: Sure.

15 THE COURT: I guess I wonder why the word "same"
16 is even in there then. And maybe it's just to present a
17 distinction from "different," because if what you've
18 suggested is that -- why wouldn't it make more sense for the
19 statute to simply say, unless the defendant is sentenced at
20 the same time to a term of imprisonment for the offense that
21 is not a -- is not, I guess, for the offense if not a petty
22 offense?

23 MR. PEARCE: So, again, I agree that if we were in
24 a draftsmanship class, there would have been ways that this
25 could have been written more clearly to either make clear

1 that, you know, there is -- the view that we have is
2 correct, we think that is the natural and best reading, but
3 one could have written it more clearly to make it absolutely
4 crystal clear that that's correct and likewise could have
5 made it absolutely crystal clear that it is not correct.

6 I don't think that gives rise to a lenity problem,
7 because, again, lenity only kicks in where we've got such
8 ambiguity. But I don't disagree that there could have been
9 ways to draft this, perhaps avoiding the double, if not
10 triple, negative here that would have lent it -- made it
11 easier to interpret.

12 THE COURT: Okay.

13 Just -- I'm still trying to wrap my head around
14 the construction of this statute.

15 Ms. Slaight, I think you asked to be heard on
16 this.

17 MS. SLAIGHT: Your Honor, yes.

18 Initially I would say that your interpretation
19 agrees with the implicit interpretation of Judge Kotelly in
20 the *Spencer* case, which I had filed her opinion in that
21 case.

22 She doesn't specifically say what you said, but
23 the implication is obvious, especially the Court had
24 extensive briefing on that case and gave examples.

25 The defense filed a document -- a pleading, it was

1 ECF 69, and said exactly what you said, that it relied on --
2 that the -- that there were three ways that that clause was
3 applicable: If the person was sentenced to a petty offense
4 and a non-petty offense, two petty offenses or two non-petty
5 offenses, well, then it wouldn't apply, but the -- the
6 wording of the statute goes to people who were sentenced to
7 more than one offense, including one which is a petty
8 misdemeanor offense.

9 And I think that if you look at the statute in
10 relation to the Sentencing Reform Act in general and 3551 --
11 and I think that they -- we -- the defense and the
12 government agree that the Sentencing Reform Act was enacted
13 largely to abolish split sentences, which is exactly what
14 the government is trying to do today, which is have split
15 sentences, even though the point of this Sentencing Reform
16 Act was to abolish them. And the government says in its
17 pleading on page 3, in its most recent pleading, which is,
18 I believe, document 53 on page 3, that the point that a
19 major purpose of the Sentencing Reform Act was to abolish
20 split sentencing.

21 And the government and the defense also agree, as
22 the government said on page 5 of that pleading, ECF 53, that
23 it's clear that supervised release is not permitted for
24 petty misdemeanors. So for petty misdemeanors, the statute
25 is very clear that release is not permitted.

1 If the government, if the -- in light of the fact
2 that the Sentencing Reform Act, the purpose was to eliminate
3 these split sentences, if the legislature wanted to actually
4 go back and allow for supervision after incarceration, it
5 would have changed 3583, the supervised release statute, and
6 would have said -- would have taken out that 3553(a)(3) says
7 for a Class E felony or for a misdemeanor, other than a
8 petty offense, the maximum supervised release is not more
9 than one year. If the legislature wanted to continue --
10 wanted to change that and suddenly allow for supervision for
11 petty offenses, it would have changed the supervised release
12 statute, it wouldn't have changed the probation statute.

13 The probation statute was amended for
14 circumstances where persons are sentenced to two offenses or
15 more to allow for one offense, if it's a petty offense, for
16 the person to receive probation and the other offense to
17 receive incarceration.

18 That's the only way you can interpret that and
19 still follow the -- really, what the -- I would like -- it's
20 not plain reading of the statute, but follow the reading of
21 the statute, especially in conjunction with the supervised
22 release statute in 3551, if the government -- if the
23 legislature wanted to continue supervision, they would have
24 done it as supervised release after incarceration, which was
25 their intent of the Sentencing Reform Act.

1 THE COURT: Okay.

2 MR. PEARCE: May I briefly respond, very briefly,
3 Your Honor?

4 THE COURT: Sure, Mr. Pierce, go ahead.

5 MR. PEARCE: Yeah, thank you.

6 So I think it's certainly correct that in 1984,
7 Congress did aim to abolish the split sentences and set that
8 in the legislative history and did that basically across the
9 board.

10 I also think that when Congress amended
11 3561(a)(3), it brought them back, right. Although not
12 across the board, we certainly acknowledge that they are not
13 widely available, but they are widely available for an
14 offense that is not a petty offense.

15 And it would be particularly peculiar to read that
16 to suggest they brought it back but only in a situation
17 where there was at least two petty offenses or multiple
18 offenses, at least one of which is a petty offense. That
19 seems a very narrow universe in which to bring that back.

20 I think, again, the more consistent reading of the
21 text, as well as the more logical rationale of bringing back
22 some term of supervision, of course, in the context of
23 probation and not supervised release, is a reading that
24 would allow the Court to split the sentences.

25 And then very briefly, and I'll keep this quite

1 brief, we certainly -- and I'll defer to Mr. Strain in terms
2 of the nature of the recommendation and why we make it, but
3 here, in asking for 14 days, this Court also has the ability
4 under 3653(b)(10) to impose incarceration as a condition of
5 probation. In our view, a full 14 weeks is a brief period
6 that could be done continuously without needing to do it in
7 so-called intermittence -- intervals -- intermittent
8 confinement. As we said, intermittent would be fine as a
9 matter of the Court's legal authority, but, of course, we
10 recognize the conditions under which we are operating in the
11 pandemic and thus we have not been pressing Courts to do
12 that, although some of your colleagues, not at the
13 government's request, have imposed those sentences.

14 MS. SLAIGHT: All right, if I could reply.

15 THE COURT: Sure.

16 MS. SLAIGHT: I just point out that on page 3 of
17 the government's ECF 53, they actually talk about wording
18 for the statute, that one proposed amendment that didn't go
19 into effect, was they actually used the words, "for another
20 such offense," and I would suggest to the Court that had
21 been their intent all along, it's just poor drafting when
22 the statute was actually enacted, that they didn't include
23 those words when they finally passed the statute in
24 Congress.

25 THE COURT: Do either defense counsel have a view

1 on the government's alternative argument; that is, with
2 respect to 18 U.S.C. 3563, that, as a condition of
3 probation, intermittent incarceration is permissible,
4 including for the brief period of confinement, that, in the
5 government's view, was sort of a week or two?

6 MS. SLAUGHT: Your Honor, I would just say, as to
7 that section of the statute, the government, again, has, in
8 their brief at ECF 53, page 9, footnote 3, notes that the
9 point of that Section (b)(10) is not to give people split
10 sentences. It's really to -- I would suggest it's more to
11 allow for work -- when they talk about intermittent
12 confinement, it's more to allow for people for work, it's
13 not to effect a split sentence.

14 And if you have a 14-day sentence, that is
15 effectively -- you're effectively giving somebody a split
16 sentence. And that's what they're asking for, incarceration
17 or let's try another way to give them a split sentence
18 through this 3563(b)(10). It was never intended for that,
19 I would suggest. And their own brief notes that there is
20 reason to believe that that's just a way to finagle around
21 to get a split sentence which had not been intended. That
22 should be more for allowing work release.

23 MS. WEST: May I, Your Honor?

24 THE COURT: Sure, Ms. West, go ahead.

25 MS. WEST: First of all, I would like, for the

1 record, to join Ms. Slaight's reply that she filed; we would
2 take the exact same position.

3 With regard to the Court's question, does -- and
4 I'm just asking this question: Intermittent confinement to
5 me, in other cases I've had, is where somebody is sentenced
6 to a term of imprisonment, but they have a job and they get
7 to go to the D.C. jail on Friday at 6:00, and they get out,
8 you know, Sunday night at 10:00, and they do that for
9 14 weekends or 10 weekends and that's their sentence. To
10 me, that's intermittent.

11 But what's been happening in these cases is,
12 judges have been giving people, you know, 14 days or
13 20 days, and that person goes and spends their whole
14 20 days, they don't spend it intermittently, which I think
15 is a problem.

16 And my other issue is, would intermittent
17 confinement be the same as home confinement? Are we not
18 trying to address the same thing with the home confinement?

19 THE COURT: Well, I think -- yeah, I mean, the
20 issue is just what this means.

21 And we can move on shortly, but, you know, it says
22 that essentially, as a condition of probation, that
23 defendant can remain in the custody of the
24 Bureau of Prisons. So that's by virtue of that, that means
25 confinement, not home confinement --

1 MS. WEST: Right.

2 THE COURT: -- during nights, weekends, or other
3 intervals of time.

4 You know, the question is, what does "other
5 intervals of time" mean? The government's suggestion is it
6 can be a block of time, a continuous block of time, of up to
7 two weeks, I suppose, although, you know, I think the fact
8 that the other words in that sentence are all plural,
9 including nights, weekends, or other intervals of time,
10 suggests there being more than one period of incarceration.

11 I know the government suggests that, you know, the
12 singular ought to be treated as -- the plural ought to be
13 treated as singular and vice versa, though I'm not sure that
14 sort of general rule makes a lot of sense here, because
15 otherwise I suppose what this suggests is that, as a
16 condition of probation, somebody could be incarcerated for
17 one night, which would be a very odd sentence, but I
18 suppose, under the government's reading, that might be
19 allowable.

20 In any event, that's the issue, an interesting
21 one, I think, and one that we all ought to be thinking
22 about.

23 MS. SLAIGHT: I would suggest --

24 MR. STRAIN: Your Honor, may I just make just a
25 factual correction?

1 THE COURT: Go ahead.

2 MS. SLAIGHT: I was just going to say, I think
3 that's just a way of avoiding the prohibition on split
4 sentences --

5 THE COURT: Yeah.

6 MS. SLAIGHT: -- by not sentencing people for
7 the -- in intervals, which is specifically in the statute.

8 THE COURT: Mr. Pearce.

9 MR. PEARCE: Yeah.

10 Again, we don't think there's a prohibition on
11 split sentences as to a petty offense, but I'll leave that.

12 Just factually, to my knowledge, no court in a
13 Capitol breach case has imposed a sentence of a block of
14 15 or 20 days. I believe Judge Nichols and Judge McFadden,
15 in cases, have imposed imprisonment under this provision and
16 have imposed it over weekends, up to, I think, in one case,
17 ten days, in another, 20, and maybe in the third, 15.

18 And so there has not been a sentence of exceeding
19 weekends. Again, we think the statute is clear and the
20 legislative history makes clear that a week or two is fully
21 consistent with what Congress was trying to do. But that is
22 not a factually accurate description, to my knowledge, of
23 any sentence that has yet been imposed in a Capitol breach
24 prosecution.

25 MS. WEST: And I would just like to correct the

1 record there, Your Honor.

2 In my experience, in *United States versus Glenn*
3 *Croy* -- I'd have to get the Court the number --
4 Chief Judge Howell, it's a weird thing, my client was not in
5 the -- I guess he was in BOP custody, but he didn't go to a
6 Bureau of Prisons place, he went to Denver to a confinement
7 area. And he served his straight 14 days. It wasn't
8 intermittent. So I don't know if that's -- just for the
9 record, I know that that's what happened, he was there for a
10 straight 14 days.

11 THE COURT: But was he also -- was he then also on
12 probation or was it just that --

13 MS. WEST: Yes, he also got a sentence of
14 36 months' probation.

15 So I'm really struggling with what to do with
16 those cases now.

17 THE COURT: Okay.

18 All right. Well, look, let's sort of move forward
19 with the sentencing, and then if I need more information on
20 this, I can -- or if I need to think about it some more,
21 I will do that.

22 But, you know, I think this is the first time it's
23 been presented to me. This is, in fact, only the second
24 January 6th case I've actually had come to sentencing and
25 the first one in which this issue has been squarely

1 presented, so I wanted to have a conversation about it.

2 All right. Let's move forward then and let's
3 go ahead and we'll move forward with the traditional part of
4 sentencing and start with the government's allocution.

5 MS. WEST: Your Honor, I just wanted to let the
6 Court know the case number is 21-162 for Glenn Croy,
7 C-r-o-y.

8 THE COURT: Okay.

9 MR. STRAIN: Thank you, Your Honor.

10 I'll provide the Court with the sort of factual
11 background as the basis for our recommendation. And I won't
12 go over everything in the sentencing memo, I will just
13 highlight a couple of things that should stand out in the
14 Court's decision.

15 The January 6th riot interfered with the sacred
16 tradition in America of the peaceful transition of power,
17 and the government's view is that everyone who participated
18 in the breach of the Capitol needs to be held accountable.

19 And these two defendants drove to Washington, D.C.
20 to attend the "Stop the Steal" rally, where former President
21 Trump told the crowd that the election had been stolen and
22 that in reality he had won the election in a landslide
23 victory.

24 These defendants then marched to the Capitol,
25 where they trespassed on to the grounds, they bypassed

1 barriers, they witnessed at least one man shot with tear gas
2 or pepper spray, one or the other, and then proceeded to
3 trespass into the Capitol building.

4 Mr. Wilson entered through a window, Ms. Wilson
5 entered through the Senate wing doors, just right next to
6 the window, and then they were together after that inside
7 the building the entire time.

8 And once they were inside, they went pretty much
9 everywhere in the building. They went to the Crypt, the
10 Rotunda, the House wing, they entered Nancy Pelosi's office,
11 and they exited on the far south side of the building.

12 They spent --

13 THE COURT: Can I interrupt you for a moment?

14 Can you just -- what does the government know
15 about entry into the Speaker's office? In particular,
16 I guess a few things; one, how people were able to enter the
17 office? Was, for example, the exterior door to that office
18 closed, locked in some way, and it was broken into?

19 And then, you know, I don't have a sense of what
20 the Speaker's office looks like, and I think it's probably
21 unwise to provide a description of it, but can you at least
22 say whether, within the sort of perimeter of that office,
23 there were actual members of her staff or others in that
24 space while the outer part of the office had been breached?

25 MR. STRAIN: Judge, yes, I can answer some of

1 those questions.

2 So as far as I know, the Wilsons did not engage in
3 any violence or destruction, they didn't break in any doors.
4 So if there was a breach of Speaker Pelosi's area, the
5 Wilsons did not participate in it when -- and I had seen
6 them on camera walk up to an open door. And I -- to be
7 clear, I am not aware that that door was broken into or --
8 maybe it was, maybe it wasn't, I'm not sure.

9 But without getting into too much description of
10 what the office looked like, it had personal decorations,
11 you know, a desk, table, windows, paintings on the wall,
12 furniture, that kind of thing. I'm not aware --

13 THE COURT: And was this her actual office?
14 I mean, I envision the Speaker's office as having multiple
15 -- consisting of multiple rooms. And I know I've seen the
16 photo of another defendant with his feet up on the Speaker's
17 desk. Is that the room in which the Wilsons were able to
18 enter and did enter?

19 MR. STRAIN: I'm not sure, Your Honor. They may
20 have. We only have one -- the only -- there's no cameras
21 inside the Speaker's room.

22 THE COURT: Right.

23 MR. STRAIN: So we only have one video that the
24 defendant, Mr. Wilson, took. And in that video, it does not
25 look like it's the same room as the famous picture with the

1 individual with the feet up on the desk, it doesn't -- at
2 least not to me.

3 And to circle back to the Court's other question,
4 I think this is a large space with multiple rooms and
5 multiple areas. It's not just a single office, I think
6 there's multiple areas. And from what I understand, there
7 were staffers that were in a conference room that they had
8 locked the door, barricaded it, and were hiding under the
9 conference room table, and they could hear rioters outside
10 banging on the door.

11 We don't have any information that the Wilsons,
12 who were part of that, that they were near that. It's
13 unclear that that all happened in the same time and temporal
14 proximity. I'm unable to answer that definitively, Judge.

15 THE COURT: Okay.

16 MR. STRAIN: But in total, they spent
17 approximately 20 minutes inside.

18 And that video that I mentioned to the Court, they
19 did take their pictures and the video from the Speaker's
20 office and they did -- Mr. Wilson did post it on Facebook.
21 And the caption on Facebook is, "First ones in, and the
22 first thing we found was Pelosi's office."

23 And then shortly after the events on that day, the
24 FBI did go to the Wilsons' house and conduct an interview of
25 them, and they both lied to the FBI multiple times.

1 To their credit, they did sit down with the FBI and speak
2 with them. Unfortunately, they didn't tell the truth.
3 Mr. Wilson lied at least three times, mostly about
4 Ms. Wilson's involvement. And as far as I'm aware,
5 Ms. Wilson never told the FBI that she had entered the
6 building.

7 So they did -- I want to say as well, Judge, that
8 they did provide the FBI with videos and pictures that they
9 had, and they went through some effort to get the FBI those
10 videos and pictures. And so I don't want to suggest that
11 they didn't actually try. They did try.

12 And the Wilsons wore no tactical gear, they didn't
13 have any goggles on, they carried no weapons, they were
14 cooperative during the arrest process, and they complied
15 with their release conditions.

16 And given all these factors, Judge, those are the
17 factors that leads the United States to recommend the
18 14 days' incarceration, followed by 36 months' probation.

19 THE COURT: Let me ask, factors among the factors
20 you've identified, to the extent the U.S. Attorney's Office
21 has recommended either straight probation or home
22 confinement for others, how do you, in your view -- what
23 facts in this case set this case -- these defendants apart
24 from those as to whom probation and/or home confinement has
25 been recommended?

1 MR. STRAIN: I think the four main factors that
2 drive the United States' recommendation are the witness --
3 the witnessing of violence. As I said, they saw a man who
4 was pepper sprayed, they walked right past him. They
5 entered a private office, a private area of the Capitol, a
6 sensitive area of the Capitol. They posted a video from
7 that area on Facebook and bragged about it, and then they
8 lied to the FBI about it. Those are the main four reasons.

9 THE COURT: Okay.

10 Anything else, Mr. Strain?

11 MR. STRAIN: No, Your Honor. Thank you.

12 THE COURT: All right.

13 Why don't we begin with Ms. Slaight and hear her
14 on behalf of Mr. Wilson.

15 MS. SLAIGHT: Yes, Your Honor.

16 I would first ask that Mr. Wilson be allowed to
17 read his statement into the record before I speak.

18 THE COURT: If you want to do it in reverse order
19 than we traditionally do, if that's how you want to do it,
20 that's fine.

21 MS. SLAIGHT: Yes.

22 THE COURT: Okay.

23 So, Mr. Wilson, at this time, your lawyer has said
24 that you'd like to read a statement into the record, and you
25 can go ahead and do that.

1 DEFENDANT ZACHARY WILSON: Okay. I just want to
2 say --

3 THE COURT: And, Mr. Wilson, can I interrupt you?

4 DEFENDANT ZACHARY WILSON: Yes.

5 THE COURT: Just for present purposes, could I ask
6 you to move your screen over so that I can see your full
7 face? There you go. Thank you.

8 DEFENDANT ZACHARY WILSON: Okay.

9 I just want to say thank you, Your Honor, for your
10 time and consideration in my case. I wholly and fully
11 understand the consequences of my actions last year.
12 I understand how detrimental and divisive it was for our
13 country to be in such a fragile place. I know that what
14 I did was wrong, and I know how detrimental it was and
15 continues to be for our country, who is torn apart and
16 divided right now and how it will continue to hurt us for
17 years to come.

18 I cannot apologize enough or express remorse
19 I have for the actions that day. I can assure you that if I
20 could take it all back, I would in a heartbeat.

21 My wife and I went to Washington, D.C. to hear
22 former President Trump and his guest speakers. We had no
23 intention of interfering with congressional proceedings.
24 We saw the crowd and got caught up and followed them up to
25 the building.

1 I knew better and I realized that staff members
2 were in the building and I apologize to them and I apologize
3 for taking advantage of the gap in security and entering in
4 the building myself.

5 I'm incredibly sorry for my part in what is now
6 such a stain on American history. My life and my family's
7 lives are forever marred by my actions.

8 I am not a political person by nature, and that
9 was my very first time being anywhere involved in
10 politicians [sic] and my very first time ever voting.

11 I'm a family man. I just want to take care of my
12 family and give my kids the best life I possibly can. If my
13 wife and I are sentenced to jail, I fear that we will lose
14 everything that we've worked for for the past decade of our
15 lives.

16 Thank you.

17 THE COURT: Ms. Slaight, would you mind if I asked
18 Mr. Wilson a question?

19 MS. SLAIGHT: No, Your Honor.

20 THE COURT: I guess, Mr. Wilson -- and thank you
21 for your statement.

22 I guess what I'd like to understand is, when you
23 were there on January the 6th, what was going through your
24 mind as you were entering the Capitol building and why you
25 thought that was something that was permissible?

1 MS. SLAIGHT: Your Honor, Mr. Wilson -- I just
2 want to note, did you ask why he said he thought it was
3 permissible?

4 THE COURT: Right; in other words, why he --

5 MS. SLAIGHT: He's acknowledging that he knew it
6 wasn't permissible. So he's acknowledging he violated the
7 law.

8 THE COURT: Right.

9 I think my question is slightly different, at
10 least maybe I'm misunderstanding.

11 I know he's acknowledging that now. I assume at
12 the time when he actually entered the Capitol building,
13 he didn't understand it was not permissible. Maybe I'm
14 wrong about that, and so maybe needs some clarification.
15 But if he thought it was okay to enter the Capitol building,
16 I guess the question I have is why he thought that.

17 MS. SLAIGHT: I think that he acknowledges that he
18 knew it was wrong. He said, I knew better, but that --

19 THE COURT: Well, let me just ask him.

20 I mean, Mr. Wilson, when you entered the building,
21 what was your understanding at the time? Did you believe it
22 was okay to be there, acceptable, permissible, or did you do
23 so knowing that it was not allowed?

24 DEFENDANT ZACHARY WILSON: I think it really was
25 just kind of like a -- you know, a lack of my thought

1 process, I think, you know.

2 I did not believe it was okay. I mean, my common
3 sense told me that it -- maybe I didn't, like, register it
4 at the moment, but afterwards, I was like, that wasn't okay,
5 you know.

6 THE COURT: How do you explain the -- I mean, the
7 government has identified a social-media posting you made in
8 which, I think -- I don't remember the exact terms, but a
9 social-media posting in which seemed to suggest that you
10 didn't think it was wrong and you were sort of proud of your
11 actions.

12 DEFENDANT ZACHARY WILSON: Right.

13 I mean, I didn't realize that I had broken a law
14 at the time, you know. I didn't realize that I'd broken a
15 law.

16 I wasn't necessarily bragging, but I was just more
17 like -- I was caught up in, you know, what --
18 President Trump telling everybody that, you know, this
19 election got stolen, and he had kind of, you know, everybody
20 enraged and just -- I didn't really -- how do I explain
21 this -- like, I didn't -- I just really got up, you know.

22 And we didn't have any idea that when we were
23 going to do a march, we thought we were just there for the
24 speech. And then when he said, yeah, turn around and march,
25 and everybody was like, yeah, let's march. And he had

1 already everybody so worked up. When we got up there,
2 I just reacted wrongly. I really feel stupid, to be honest.

3 And I posted to Facebook not really -- not
4 thinking, you know. Like more or less of I felt like it
5 was, like, a movement-type deal. You know, like just -- not
6 necessarily -- yeah, when I realized it was wrong and I
7 realized the consequence, like, the gravity of my situation
8 and stuff, of course, I deleted it. I was like, whoa, okay,
9 I think I did cross a giant line there without thinking.

10 You know, and I honestly did not realize it at
11 first; that's why I posted it to social media. I just
12 thought we were being more of like activists type, you know.
13 And when I realized literally --

14 THE COURT: So why then not tell the truth to the
15 FBI? I mean, according to the government, you had multiple
16 opportunities to tell the truth and you didn't, at least
17 initially. You did eventually, but...

18 DEFENDANT ZACHARY WILSON: I just panicked,
19 Your Honor. I just panicked.

20 I didn't -- you know, it was a lot to take in at
21 once. Everything happened so rapidly.

22 And, you know, I was thinking of my kids.
23 I didn't want to lose my kids.

24 THE COURT: Is Ms. Wilson sort of whispering in
25 your ear? If she is, I understand, but I'd rather get

1 answers from you and I'll ask her some.

2 DEFENDANT ZACHARY WILSON: Right, right. I'll ask
3 her to stop. She's --

4 THE COURT: Okay.

5 Go ahead, if you want to finish the answer.

6 DEFENDANT ZACHARY WILSON: But, yeah, I mean,
7 I believe that I just panicked.

8 You know, seeing the FBI is a lot to take in all
9 at once and stuff. And not knowing -- you know, you just --
10 basically, your mind just goes to the worst thing possible.

11 And I didn't know how to react. You know,
12 honestly, I panicked. I was worried about my wife and
13 worried about my kids, you know.

14 And -- but we did, we really did try to just help
15 the FBI, come clean. We might not have been truthful about
16 absolutely every detail, but we weren't there to destroy or
17 hurt anybody or nothing like that.

18 THE COURT: I'll be honest with you, you're lucky
19 the government didn't charge you with making false
20 statements to the government. I mean, they could have done
21 that --

22 DEFENDANT ZACHARY WILSON: Yes, Your Honor.

23 THE COURT: -- and you could be looking at far
24 more worse consequences than you are right now. I hope you
25 appreciate that.

1 DEFENDANT ZACHARY WILSON: I do appreciate it very
2 much.

3 THE COURT: Okay.

4 All right. Ms. Slaight.

5 MS. SLAIGHT: Your Honor, first, I want to say
6 that I think that Mr. Wilson realizes -- I think it's clear
7 that he realizes the significance of his actions, and he is
8 remorseful for that day.

9 And he has had a very difficult background, as you
10 could see from his Presentence Report. But he really
11 insists on lifting himself up.

12 And he takes his rehabilitation seriously. He
13 really acted on it. After he was arrested here for this
14 case, he increases his workload actually. His wife was
15 fired. His feelings of panic were not unrealistic, because
16 his wife was actually fired from her job. And he increased
17 his workload; he worked overtime.

18 He has an excellent letter from his employer,
19 saying about his -- and I think this shows really what his
20 character is, that he's unafraid to help others. They've
21 seen him help other people at multiple times on his shift.

22 And he's continued that despite the stress of the
23 last year, the stress of this case. And I can't -- I can't
24 emphasize enough that this has been very stressful not only
25 because his wife lost her job, he's been publicly

1 humiliated, there's been things in the press, he's always
2 worried about his family.

3 He hasn't been able to talk to his lawyer in
4 person, and I want to point out to the Court that that is
5 really problematic. This is a very unusual thing to happen.
6 Yes, what happened on January 6th was unusual, but not being
7 able to communicate in person with your attorney is very
8 unusual. And despite that, he's cooperated fully; he, as
9 the government has acknowledged, gave the government -- made
10 every effort to give the videos to them.

11 The video that he made was only on January 6th.
12 And like other people, days later, he didn't continue to
13 post videos and say, you know, what I did was okay, I didn't
14 do anything wrong. He -- that was only in -- unfortunately,
15 when he was there as part of the mob, that he did that.

16 So I would ask the Court to talk about when he
17 posted a statement or posted a video, it was while he was in
18 the mob. And it is unfortunate that he made a choice to be
19 in the mob, but that it -- when he had an opportunity to
20 reflect, he didn't -- he realized what -- the actions that
21 he took.

22 And I want to address the point that the Court
23 made about him making a false statement. And I think that
24 it's true that obviously he was panicked, but I think the
25 Court should also understand that in this jurisdiction --

1 I don't know what happens in other jurisdictions, but in
2 this jurisdiction rarely, if ever, is someone prosecuted for
3 a false statement to the FBI. So this -- because the agents
4 realized, number one, that this happens, people don't have
5 an opportunity to talk with their lawyer first, and that
6 isn't --

7 THE COURT: Yeah, Ms. Slaight, you know, we
8 could -- it's okay. That's not a point we need to debate,
9 but there are plenty of people that are prosecuted in this
10 jurisdiction for making false statements.

11 MS. SLAIGHT: I'm sure there are people in this
12 jurisdiction. But I've certainly had plenty of people who
13 have made statements that they've later retracted that were
14 not prosecuted for false statements, particularly when they
15 cooperate with the FBI and resolve their case as quickly as
16 possible.

17 Certainly, I would note the U.S. has, and it's
18 undisputed, the highest incarceration rates in the world.
19 But still, for petty misdemeanors, the standard is -- and
20 the U.S. Sentencing Guidelines doesn't keep track of petty
21 misdemeanors, I don't believe, but certainly for petty
22 misdemeanors, the standard, I would suggest, would be
23 probation in not only U.S. District Court but in courts all
24 over the country. And I think that if the Court should take
25 that into account, that this is a petty misdemeanor.

1 The government -- and just one note in terms of
2 the split sentencing which I didn't bring up, is that if the
3 legislature had intended to read the statute, as the
4 government intended for the statute to be interpreted as the
5 government now says, the penalty for a petty misdemeanor
6 would actually be more punitive than for a Class A
7 misdemeanor or one-year misdemeanor, because for a Class A
8 misdemeanor, if the person was sentenced to six months'
9 incarceration, they could only get a maximum of one year
10 supervised release. But, according to the government's
11 interpretation, if they are sentenced to six months'
12 incarceration for a petty misdemeanor, they could get five
13 years' probation. So that doesn't make sense to me, that
14 the sentence, under the government's interpretation, would
15 be more serious for a petty misdemeanor than less serious.

16 The government in this case chose not to prosecute
17 Mr. Wilson for a felony, and they chose not to prosecute him
18 for insurrection because I believe they could not have met
19 the elements for that and they could not have gotten a
20 conviction. They chose not to prosecute him for assaulting
21 officers because he did not do that, so they could not
22 charge him for that felony. They chose not to prosecute him
23 for destruction-of-property felony because he, in fact,
24 didn't do that.

25 Mr. Wilson made a choice to be unlawfully in the

1 building, he acknowledges that, and he's fully accepting
2 that. That is a petty misdemeanor.

3 But he also made choices that have to be
4 acknowledged and that are ignored in the government's
5 sentencing memorandum; that he chose not to be involved in
6 violence; that he chose not to argue with law enforcement;
7 that he chose not to damage property.

8 There were people, and we saw them, and we've seen
9 many of the videos, in that mob who made different choices.
10 He made a choice, and that choice was responsibility for a
11 petty misdemeanor, and that's, I would suggest to the Court,
12 how he should be sentenced.

13 Because in the U.S., we are sentenced according to
14 our individual responsibility, not for the actions of
15 others, not for the actions of people who committed those
16 offenses, which we all acknowledge happened. But he did
17 not. He should not be penalized for other people's choices
18 and other people's actions.

19 And the government has not explained why a
20 sentence of probation is inadequate, especially for a person
21 who was working and who could really likely lose his job if
22 he got a 14-day sentence, lose his job and then lose his
23 mortgage, lose everything, because nobody pretends that the
24 Wilsons are making a lot of money, they need that job, they
25 need both of their jobs to continue.

1 So given that, given the responsibility that he
2 took, the early plea, he's probably -- and he helped the
3 government allow for Mrs. Wilson to be surrendered as soon
4 as possible, as soon as they decided to charge her and get
5 an attorney and work out a plea in record time. So he
6 certainly realized the severity of his actions and took
7 responsibility.

8 Given all of that --

9 THE COURT: I'm going to ask you to wrap up if
10 you've got final words.

11 MS. SLAIGHT: Sure.

12 Given this, probation is appropriate in this case
13 and a sentence of imprisonment would be more punitive than
14 necessary.

15 THE COURT: Thank you, Ms. Slaight.

16 All right, Ms. West.

17 MS. WEST: Yes, Your Honor. Thank you.

18 The Court has an opportunity today, an incredible
19 opportunity, to promote healing not only within this family,
20 but within the country. As the Court knows, these cases
21 are -- they're hard, these are hard cases.

22 With regard to Mrs. Wilson, I'm not going to go
23 through what I already put in my memo because I know you
24 read them.

25 But with regard to punishment, every day

1 Mrs. Wilson has to worry about her children. Why? Because
2 there's been threats on social media against her family.
3 And they have been consistent. They've had to put security
4 cameras around their home.

5 THE COURT: Ms. West, I'm going to -- can I
6 interrupt you for a second?

7 So, Mr. Wilson, can I just ask you to swing the
8 camera over to your wife while her counsel is -- there we
9 go. Thank you.

10 MS. WEST: Mrs. Wilson has already been fired from
11 two jobs, and has, during this time since January 6th, had
12 to find another job after being fired.

13 The first job that she was fired from, she was a
14 schoolteacher in a private Christian school where both of
15 her kids were students, and they fired her, even though she
16 hadn't pled guilty, she hadn't been sentenced, she had only
17 been charged.

18 And this is a constant, constant theme throughout
19 all these cases. So that's punishment. She's lost
20 friendships, and she continues to struggle every day.

21 And if the Court gives her probation, which is
22 what we've asked, it's not like she's not going to have
23 restrictions. Her liberty is still going to be restricted
24 and she's still going to have to report.

25 I want to tell the Court that the prosecutor in

1 this case, Jacob Strain, has been an unbelievable
2 prosecutor. He's given us discovery in record time, which
3 allowed us to have a record-time plea, 40 days. He answered
4 all of my questions, when I had questions similar as to what
5 the Court is asking. And I just really wanted to thank him
6 publicly for being so great.

7 On a positive note with regard to punishment,
8 Mrs. Wilson, since she's been on pretrial release, has been
9 a model person. In fact, her Pretrial Officer has said
10 she's just been fabulous.

11 So with regard to sentencing and the questions
12 specifically that the Court had, we're prohibited, the
13 defense lawyers, on these Capitol tours, from taking
14 pictures. So we can't -- I can't answer that same question,
15 you know, was it an out- -- I know it was an outer office,
16 because as the Court -- I had to Google how many offices do
17 all these -- somebody like the Speaker of the House have in
18 the Capitol, but we're prohibited from taking photographs,
19 we didn't even get to see the inside, so we can't answer
20 those questions.

21 With regard to the four issues that you asked, the
22 Court, what supports your sentence of incarceration?
23 Witnessing violence, being pepper sprayed. Mrs. Wilson
24 didn't have anything to do with that. When she witnessed
25 it, she ran away from it. I think that that's good conduct.

1 She did enter a private office. But I've been on
2 a Capitol tour three times, and if it's your first time, you
3 really don't know where you're going, and Ms. Wilson told me
4 that when I discussed it with her. She didn't post a video.
5 And I think the Court is absolutely correct that they're
6 very lucky that they've not been charged with a false
7 statement.

8 But we're not talking about somebody here with a
9 Ph.D. from Georgetown or Duke. We're talking about somebody
10 who raises two little kids, exhausted every day, trying to
11 do the best she can. And when the FBI shows up, all you're
12 worried about is your kids. You're a mom. I'm a mom, and I
13 can't say, if I were in her shoes, I wouldn't have done the
14 same thing to make sure that the police were not going to
15 take my kids.

16 Unfortunately, Your Honor, you weren't there,
17 I wasn't there, so we don't know how the FBI engaged in that
18 interview, except to say that they didn't read them their
19 rights, they didn't tell them they had a right to a lawyer,
20 and at the time she did --

21 THE COURT: But, of course, Ms. West, you know
22 they weren't required to do that unless they were arrested.

23 MS. WEST: I do, Your Honor.

24 But, you know, people that -- you're absolutely
25 correct, and I think that we would have lost that in a

1 motion.

2 But they don't know that. And foremost in her
3 mind is, what is going to happen to my kids? And that's not
4 an excuse for her conduct, but Ms. Wilson has said
5 I'm sorry, I did -- I said something that was wrong. And
6 she went to, as I put in my memo, extraordinary lengths to
7 cooperate with the FBI, did everything they asked, and even
8 more.

9 So I think when you try to discern what sentence
10 is appropriate, based on her past conduct of what she's done
11 since January 6th, since she was arrested in this case, you
12 can be assured that she is going to be on the straight and
13 narrow, because that's all she's done is been good.

14 So with that, Your Honor, we would ask that the
15 Court exercise grace and give her a sentence of 12 months'
16 probation without any incarceration. Thank you.

17 THE COURT: Thank you.

18 Would Ms. Wilson like to be heard?

19 MS. WEST: Yes, she would, Your Honor. She has a
20 letter that she would like to read to you.

21 THE COURT: Okay.

22 Ms. Wilson?

23 DEFENDANT KELSEY WILSON: My name is
24 Kelsey Wilson. I am a devoted wife and mother of two of the
25 sweetest boys that you could ever meet.

1 I'm a caring member of my community. I have fed
2 and visited with the homeless in my neighborhood. We have
3 frequently delivered cases of water and food to an area that
4 we know they congregate at out of our own pockets.
5 My husband and I even cooked up a turkey for them on
6 Thanksgiving.

7 I say all of this to hopefully help you get to
8 know me before you make your decision on what will
9 undoubtedly be one of the most life-changing things that
10 I will ever go through.

11 I know what I did on January 6th was wrong.
12 We got caught up in everything that had been happening over
13 the last year and we got swept up in the crowd. I'm deeply
14 and truly sorry and embarrassed for my actions that day.
15 And if I could go back in time and do things differently,
16 without a doubt, I would do it.

17 I'm incredibly sorry and embarrassed that I let
18 myself get caught up in that mess. I'm usually such a
19 levelheaded and careful person. I've never been a
20 risk-taker.

21 My life will never be the same after this.
22 My family and I have received threats of violence towards us
23 and our property to the point we had to get security cameras
24 to protect ourselves and our belongings.

25 I have already lost not one but two jobs because

1 of my actions that day and my family's struggling.

2 We've worked so hard to break the cycle of poverty
3 and give our kids the best life that we can in a two-parent
4 household, something my husband and I did not have ourselves
5 growing up.

6 I know what we did was wrong, but please consider
7 the fact that we did not break or steal anything and we did
8 not cause harm to any police officers or security.

9 My family is truly sorry for the embarrassment
10 that we brought on our country and we will definitely pay
11 for this for the rest of our lives. I sincerely hope that
12 you take this into consideration as you sentence us.

13 If myself or my husband are sentenced to jail
14 time, we'll lose our jobs, our home, everything we've worked
15 so hard for, and, most importantly, we'll lose our children.

16 Please, Your Honor, think about these things and
17 about how truly sorry we are as you make your decision.

18 THE COURT: Ms. Wilson and Ms. West, can I inquire
19 of your client?

20 MS. WEST: That's never a good idea, Your Honor.
21 But I've had many cases in front of you, and I have deep
22 respect for the Court and so okay.

23 THE COURT: Ms. Wilson, I'll just ask the same
24 question I asked your husband, which is sort of what was
25 going through your mind, to the extent that you can convey

1 it and describe it, on January the 6th that made you go into
2 the Capitol?

3 DEFENDANT KELSEY WILSON: Your Honor, I think a
4 lot of it just had to do with somewhat seeing everything
5 over the summer with -- you know, I love my country, I love
6 everything about it. Seeing the cities burn and people
7 divided for the last several years and then getting there
8 and getting caught up in the crowd. It was a stupid mistake
9 that I let myself get caught up. I thought I was doing a
10 good thing.

11 I never went with intention of stopping any
12 proceedings or hurting anybody. I simply got caught up in
13 it. I made a stupid decision.

14 THE COURT: All right. Ms. Wilson, thank you.

15 All right. I am going to take a few minutes,
16 collect my thoughts, and I will be back with you all
17 momentarily. Thank you.

18 (Recess from 12:10 p.m. to 12:17 p.m.)

19 THE COURT: Thank you, everyone, for your
20 thoughtful presentations, and the Wilsons also, for their
21 statements and their responses to my questions.

22 So ordinarily, I would be required to begin with a
23 Guidelines assessment. I do not need to do that here,
24 obviously, because this is a Class B misdemeanor, I believe,
25 and, in any event, everyone agrees that the Guidelines don't

1 apply.

2 That said, I still am required by law to consider
3 all the factors under 18 U.S.C. 3553(a) and impose a
4 sentence that's sufficient but not greater than necessary to
5 achieve the objectives of sentencing set forth in the
6 statute.

7 The factors I must consider are the nature and
8 circumstances of the offense and the history and
9 characteristics of the defendant and the need for the
10 sentence imposed to reflect the seriousness of the offense,
11 to promote respect for the law, and to provide just
12 punishment for the offense, to afford adequate deterrence,
13 to protect the public, to provide the defendant with any
14 needed educational, vocational training or medical care, and
15 I also should consider the kinds of sentences available and
16 the need to avoid unwarranted disparities.

17 Let me just begin with the nature and
18 circumstances of the offense. They have been described in
19 detail, but I'll just recap them.

20 The Wilsons were present in Washington on January
21 the 6th, began that day at a rally and ended up entering the
22 Capitol building that afternoon. Ms. Wilson entered through
23 a door. Mr. Wilson, as part of the crowd, entered through a
24 window.

25 To their credit, they were not involved in any

1 destruction of property or any assaulting or threatening or
2 even denigrating of police officers.

3 They did, however, make their way into the
4 Speaker's office. And they were there momentarily, but,
5 nevertheless, by being there, they contributed to the fear
6 that people in that office felt that day, and that is not
7 insignificant, I think in some sense having entered a
8 private office, and they knew it was a private office,
9 Mr. Wilson apparently knew he was in the Speaker's office,
10 because he posted on social media that he knew he was there,
11 makes their conduct a little different than others who might
12 not have entered a private office, because we do have
13 evidence here that their presence there did directly
14 contribute to the fear that people in the Speaker's office
15 felt that day.

16 They were there for about 20 minutes. As I said,
17 Mr. Wilson did post something on social media either that
18 day or soon after, including a video of their presence at
19 the Capitol.

20 When they were confronted by the FBI, they were
21 not truthful initially. Mr. Wilson, in fact, was not
22 truthful on three different occasions, initially denying his
23 presence at the Capitol, and ultimately denying his wife's
24 presence at the Capitol. Ms. Wilson also denied their
25 presence inside the Capitol.

1 They did, however, much to their credit,
2 eventually begin to cooperate, did go to great lengths to
3 provide videos and other evidence of their conduct to the
4 FBI, and that deserves a lot of credit.

5 You know, I'll just say this. And I think -- it's
6 hard to avoid getting on a soapbox in these cases, and I am
7 trying to resist doing that. But I don't think it would be
8 appropriate to at least not let any sentencing pass without
9 reflecting on the magnitude of what occurred on January the
10 6th and how you all contributed to it.

11 This was, as the government said, a day in which
12 the tradition of this country is to transition power
13 peacefully, and that's how it's always been. And
14 regrettably, you all made the decision to do something that
15 contributed to a transition of power that ultimately was
16 marred by violence, destruction, and death. It's not to say
17 that either of you contributed to that directly, but your
18 presence inside the Capitol building that day certainly
19 contributed to that.

20 And, you know, that's not something that anybody
21 ought to try and downplay or suggest was not significant or
22 could be justified by events earlier in the summer. It's
23 really not justifiable. There's no real good explanation
24 for it, except, I think, and I've said this at my one other
25 sentencing before, which is that I think in many ways people

1 like you, the Wilsons, were, in some sense, victimized
2 yourselves. You were told lies about election fraud, about
3 the country being taken from you. They were lies, and
4 regrettably you believed them and you acted on them.

5 And at the end of the day, people did act
6 differently that day. And some were certainly far more
7 culpable than the both of you are, but, nevertheless,
8 I don't want it to be lost that, in my view, anybody that
9 was in that Capitol building that day contributed to a very
10 sad and terrible day. I think Mr. Wilson described it best:
11 As a stain on our history.

12 But defense counsel is right that I do have to
13 consider the individual characteristics, and, in fact, what
14 you all did, and I have done that individually.

15 In terms of your characteristics I will say this:
16 That both defendants, it is my view, I think you are both
17 decent people. Do not think for a moment that I think that
18 by virtue of what you did that day, that reflects on who you
19 truly are. I think you are decent, hard-working Americans,
20 who regrettably were caught up in something that I think if
21 you could do again, I genuinely believe you would not.

22 I think very much of your two children, eight and
23 six, I have young children of my own, and what it must be to
24 have to describe to them why mom and dad are in trouble with
25 the law. I know that cannot be easy.

1 Mr. Wilson, I was very much taken by your life
2 story and the difficulties that you've overcome and what you
3 have made of your life.

4 Ms. Wilson, you know, I know your upbringing was
5 no walk in the park, the both of you have tried to make your
6 lives better not only for yourselves but for your children.
7 And truly, if there's anything that is American, it is that,
8 it's to try and make your lives better for your children
9 than it has been for you, and I think you all deserve a lot
10 of credit for that and my sentence will reflect that.

11 In terms of the other factors I'm supposed to
12 consider: Promoting respect for the law and just
13 punishment, deterrence, all of that, I think, will be
14 reflected in the sentence as I've considered it.

15 I don't think there's a need to protect the public
16 from these two individuals, as there's certainly nothing
17 about them that I think suggests that they will engage in
18 criminal conduct in the future, let alone this kind of
19 criminal conduct.

20 I've considered the various cases that the
21 government has cited, I think they are different in many
22 respects, the Ericson decision in which there is a 20-day
23 sentence over weekends. You know, the individual posed on
24 his feet -- posed at a desk with his feet on the desk and
25 took out a beer in the Speaker's office; Spencer case, the

1 person not only entered the Speaker's office but also
2 attempted to enter the House chamber. The cases against
3 Jancart and Rau, 45 days, where both involved disorderly
4 conduct.

5 Judge Chutkan in Miller, it's a little bit closer
6 to this, it seems to me, but certainly in that case, there
7 were multiple statements by both defendants suggesting no
8 remorse or recognition of wrongdoing in the aftermath of the
9 events.

10 The one person I've sentenced, I did sentence to
11 14 days in prison, and that was Mr. Lolos. And he, during
12 his sentencing, exhibited, well, let's just put it this way,
13 not nearly the level of contrition and acceptance of
14 responsibility that the Wilsons have here today.

15 I'm not going to accept the government's
16 sentencing recommendation of a period of incarceration;
17 however, I will sentence each of you to 24 months of
18 probation.

19 There will be a period of home incarceration for
20 each of you as part of that sentence. For Mr. Wilson, it
21 will be 45 days; for Ms. Wilson, it will be 30 days. That
22 difference is in recognition of the fact that Mr. Wilson did
23 make multiple false statements to law enforcement, and I
24 think that is worthy of some additional punishment. That is
25 not the case for Ms. Wilson.

1 Those sentences, to be clear -- and this will be
2 clear in my ultimate sentencing -- that is, your periods of
3 home detention -- if I said incarceration, I meant to say
4 home detention -- home detention will allow you to be
5 outside the house for, among other things, employment and
6 the like. And I will also add to that -- well, home
7 detention will allow you to be outside the home for
8 employment so you will not lose your jobs. I don't want
9 anything here to be -- anything to be done here that would
10 cause you to lose your employment.

11 I also will want to make clear in the sentencing,
12 in the judgment, that these periods of time will be served
13 consecutively; in other words, Mr. Wilson and Ms. Wilson
14 won't be serving their home detention periods at the same
15 time. Once one completes their home detention, the other
16 will then start. I don't want to put the family in a
17 position where both parents are unable to help the children
18 and get them to where they need to go and do the things that
19 they need to do in terms of their daily lives and to cause
20 the least amount of disruption to their lives as we can. So
21 let me just -- I'll also include a component of community
22 service for both of you of 60 hours as part of the sentence.

23 But let me go ahead and just formally enter the
24 sentence and all of its terms and conditions.

25 With respect to Mr. Wilson, as I said, it is the

1 judgment of the Court that you'll be sentenced to a term of
2 24 months of probation. In addition, you'll be ordered to
3 pay a special assessment of \$10 in accordance with
4 18 United States Code 3013.

5 While on supervision, you shall abide by the
6 mandatory conditions, as well as the standard conditions of
7 supervision which are imposed to establish the basic
8 expectations for your conduct while on supervision. Those
9 mandatory conditions include not committing any other
10 federal, state, or local crime; not -- you shall not
11 unlawfully possess a controlled substance; you must refrain
12 from unlawful use of a controlled substance; you also must
13 make restitution in accordance with 18 U.S.C. 3663 and
14 3663(a). And in this case, I think you all have agreed to a
15 restitution amount of \$500.

16 The Court will authorize supervision and
17 jurisdiction of this case to be transferred to the
18 United States District Court for the Western District of
19 Missouri.

20 Is that where you all are both located in
21 Missouri; is that correct?

22 DEFENDANT ZACHARY WILSON: (Nodding head.)

23 DEFENDANT KELSEY WILSON: (Nodding head.)

24 THE COURT: All right. For a moment, I thought
25 you were in Salt Lake, but then I realized that's where

1 Mr. Strain is.

2 You shall comply with the following special
3 conditions:

4 You must provide the probation officer access to
5 any requested financial information and authorize the
6 release of any financial information. The Probation Office
7 may share financial information with the
8 U.S. Attorney's Office.

9 You must complete 60 hours of community service
10 within 24 months.

11 The Probation Office will supervise the
12 participation in the program by approving the program, and
13 you must provide written verification of completed hours to
14 the Probation Officer.

15 Mr. Wilson, just because of some of the historical
16 facts of your background, you shall submit to substance
17 abuse testing to determine if you have used a prohibited
18 substance and you shall not obstruct or tamper with any
19 testing methods. You also must undergo substance abuse
20 assessment and participate in any inpatient or outpatient
21 substance abuse treatment program and follow those rules and
22 regulations, if that program is recommended by the
23 Probation Office.

24 And also I'm going to ask the Probation Office to
25 make available to Mr. Wilson, if appropriate, any mental

1 health services that it believes are appropriate for
2 Mr. Wilson.

3 While you are on supervision, you shall not own or
4 possess or have access to a firearm, ammunition, or
5 destructive device or dangerous weapon.

6 You also shall submit to a search of your person
7 or property, house, residence, office, vehicle, papers,
8 computers or other electronic communication or data storage
9 devices or media and effects to a search conducted by the
10 Probation Office at a reasonable time and in a reasonable
11 manner based upon reasonable suspicion of contraband or
12 evidence of a violation of a condition of release. Failure
13 to submit to a search may be grounds for revocation. The
14 defendant shall warn any other residents that the premises
15 may be subject to search pursuant to this condition.

16 As I said, you will be on home detention for a
17 period of 45 days, to be done by GPS. You must follow the
18 rules and regulations of a monitoring program. The cost of
19 the program will be waived.

20 Location monitoring technology can include GPS,
21 Smartlink, or voice recognition. This form of
22 location-monitoring technology will be used to monitor the
23 following restrictions of your movement. You will be
24 restricted to your residence at all times except for
25 employment, education, religious services, medical,

1 substance abuse or mental health treatment, attorney visits,
2 court appearances, court-ordered obligations, or other
3 activities that are pre-approved by the Probation Office.

4 The Court finds that you don't have the ability to
5 pay a fine and therefore waives the imposition of a fine in
6 this case.

7 You shall make restitution to the Architect of the
8 Capitol in the amount of \$500. The Court determines that
9 you don't have the ability to pay interest and therefore
10 waives any interest or penalties that may accrue on the
11 balance.

12 Restitution payments shall be made to the Clerk of
13 the Court for the U.S. District Court for the
14 District of Columbia, with reimbursement to the Architect of
15 the Capitol.

16 You also shall pay the balance of the restitution
17 owed at a rate of no less than, I'll make it \$50 each month,
18 and provide verification of that to the Probation Office.

19 Financial obligations are immediately payable
20 unless the Court has set a schedule, which I have, for
21 purposes of restitution to the Clerk of the Court for the
22 District of Columbia, 333 Constitution Avenue.

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

1 You shall, as I said, pay the financial penalty,
2 that is, the restitution, in accordance with the schedule of
3 payments. You also shall notify the Court of any changes in
4 economic circumstances that might affect your ability to
5 pay.

6 The Probation Office is authorized to release the
7 Presentence Investigation Report to all appropriate
8 agencies, which includes the probation office in the
9 approved district of residence, in order to execute the
10 sentence of the Court.

11 Any treatment agencies shall return the
12 Presentence Report to the probation office upon completion
13 or termination from treatment.

14 You have the right to appeal your sentence,
15 Mr. Wilson, if the sentence imposed by the Court is longer
16 than the statutory maximum. If you choose to appeal, you
17 must file an appeal within 14 days after the Court enters
18 judgment.

19 You also have a right to challenge the conviction
20 that's been entered or the sentence imposed if new and
21 currently unavailable information becomes available to you
22 or you believe that you have received ineffective assistance
23 of counsel in entering a plea of guilty to the offense of
24 conviction or in connection with sentencing. If you are
25 unable to afford the cost of an appeal, you may request

1 permission from the Court of Appeals to file an appeal
2 without cost to you.

3 All right. Ms. West, any questions or any
4 objections that you'd like to place on the record?

5 MS. WEST: No, Your Honor.

6 But I didn't hear you say the \$10 special
7 assessment. Maybe I missed it.

8 THE COURT: I thought I said it at the beginning,
9 but I'll say it again.

10 MS. WEST: Okay.

11 THE COURT: You will be ordered, Mr. Wilson, to
12 pay a Special Assessment of \$10, too, okay?

13 Let me then turn to Ms. Wilson.

14 MS. WEST: And Ms. Slaight is Mr. Wilson's lawyer.

15 THE COURT: I'm sorry.

16 MS. WEST: That's all right.

17 MS. SLAIGHT: I don't have any questions either.

18 THE COURT: All right. I apologize for that.

19 MS. SLAIGHT: No problem.

20 THE COURT: So with respect to Ms. Wilson, as I
21 said, you will be sentenced to a term of 24 months'
22 probation on Count 1. In addition, you'll be ordered to pay
23 a Special Assessment of \$10 in accordance with 18 U.S.C.
24 3013.

25 While on supervision, you shall abide by the

1 following mandatory conditions, as well as the standard
2 conditions of supervision which are imposed to establish the
3 basic expectations for your conduct while on supervision.

4 Those conditions include:

5 Not committing another federal, state, or local
6 crime; you must not unlawfully possess a controlled
7 substance and must refrain from any unlawful use of a
8 controlled substance; you must submit to one drug test
9 within 15 days of placement on supervision and at least two
10 periodic drug tests thereafter as determined by the
11 Probation Office.

12 You must make restitution in accordance with
13 18 U.S.C. 3663 and 3663(a) or any other statute authorizing
14 a sentence of restitution.

15 The Court is authorizing supervision and
16 jurisdiction in this case to be transferred to the
17 U.S. District Court for the Western District of Missouri.

18 You must provide the Probation Office any access
19 to -- requested access to financial information, authorize
20 the release of any financial information. The Probation
21 Office may share that financial information with the
22 U.S. Attorney's Office.

23 You shall complete 60 hours of community service
24 within 36 months -- excuse me, within 24 months.

25 The Probation Office shall supervise your participation in

1 the program by approving the program. You must provide
2 written verification of completed hours to the probation
3 officer.

4 While on supervision, you must not own, possess,
5 or have access to a firearm, ammunition, destructive device,
6 or dangerous weapon.

7 You also shall submit to a search of your person,
8 property, house, residence, office, vehicle, papers,
9 computer, or electronic communication or data storage device
10 or other media and effects to a search conducted by the
11 Probation Office at a reasonable time and in a reasonable
12 manner based upon reasonable suspicion of contraband or
13 evidence of a violation of a condition of release. Failure
14 to submit to search may be grounds for revocation. You
15 shall warn other residents that the premise may be subject
16 to search pursuant to this condition.

17 You will be monitored by a form of
18 location-monitoring technology for a period of 30 days, and
19 you must follow the rules and regulations of the
20 location-monitoring program. The cost of the program is
21 waived.

22 Location-monitoring technology, at the discretion
23 of the Probation Office, will include radiofrequency
24 monitoring, GPS monitoring, Smartlink or voice recognition.
25 This form of location-monitoring technology will be used to

1 monitor the following restriction on your movement in the
2 community.

3 You're restricted to your residence at all times
4 except for employment, education, religious services,
5 medical, substance abuse or medical treatment, attorney
6 visits, court appearances, court-ordered obligations or
7 other activities approved by the Probation Office.

8 The Court finds you don't have the ability to pay
9 a fine and therefore waives the imposition of a fine in this
10 case.

11 You're ordered to make restitution to the
12 Architect of the Capitol in the amount of \$500. The Court
13 is waiving any interest on any balance with respect to the
14 restitution.

15 The restitution payments will be made to the Clerk
16 of the Court for the U.S. District Court for the District of
17 Columbia, as I said, in the amount of \$500 to the Architect
18 of the Capitol.

19 You must pay the balance of the restitution owed
20 at a rate of no less than \$50 each month and provide
21 verification of the same to the Probation Office.

22 As I said, the financial obligations, including
23 the \$10, are immediately payable to the Clerk of the Court
24 for the District of Columbia.

25 Within 30 days of any change of address, you shall

1 notify the Clerk of the Court of the change until such time
2 the financial is paid in full. You shall, of course, also
3 pay the restitution according to the schedule of payments
4 I've just articulated.

5 The Probation Office is permitted to release the
6 Presentence Investigation Report to all appropriate
7 agencies, which includes the U.S. Probation Office in the
8 approved district of residence, in order to execute the
9 sentence of the Court.

10 You have the right to appeal, Ms. Wilson, if the
11 penalty -- or, excuse me, if the sentence is longer than the
12 statutory maximum. If you choose to appeal, you must file
13 an appeal within 14 days after the Court enters judgment.

14 As defined in 28 U.S.C. 2255, you also have the
15 right to challenge the conviction that's been entered or the
16 sentence imposed if new and currently unavailable
17 information becomes available to you or on a claim that you
18 have not received effective assistance of counsel in
19 entering a plea of guilty to the offense of conviction or in
20 connection with sentencing. If you cannot afford the cost
21 of an appeal, you may request permission from the Court to
22 file an appeal without cost to you.

23 All right. Ms. West, I'll get this right this
24 time, any objections you'd like to place on the record?

25 MS. WEST: None at all, Your Honor.

1 THE COURT: So that is the formal sentence of the
2 Court. I want to thank counsel for your presentations, both
3 written and here in person today.

4 For the Wilsons, let me just say this:
5 I appreciate that you all have reflected on what happened on
6 January 6th and are taking responsibility for it.

7 That said, as I said, I am confident that you are
8 both going to put that behind you, that you will put your
9 lives together again not only for yourselves but, more
10 importantly or as importantly, for your two young children.

11 You know, I think the hardest part of all of this,
12 frankly, is not the period of home detention or any of that,
13 it's what you all have endured so far and the fact that you
14 are going to have to explain to your kids what happened that
15 day and how their parents got caught up in something that
16 they shouldn't have. Hopefully, hopefully, that will be a
17 lesson to them and a lesson to others about the consequences
18 of actions, no matter how innocent they may seem at the
19 time.

20 I wish the both of you the best of the luck.
21 I have every confidence that you will get through this just
22 fine and become better people for it on the other end.

23 All right. Thank you, all, very much, and I wish
24 you all the best of luck. Thank you.

25 COURTROOM DEPUTY: Judge, I think the

1 Probation Office --

2 PROBATION OFFICER: Yes. I just ask the Wilsons
3 to hang on, because I have reporting instructions for them.
4 So if you could put us in a break-out room.

5 THE COURT: Thank you, everyone.

6 (Proceedings concluded at 12:43 p.m.)

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C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

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

Date: February 10, 2022



William P. Zaremba, RMR, CRR

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[1] 5/20
COURTROOM
DEPUTY: [2] 3/2 65/25
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