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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNETH KELLY,

Defendant.

- - - - - x

Criminal Action No.
1:21-cr-00331-CKK-1
Friday, January 14, 2022
10:00 a.m.

TRANSCRIPT OF SENTENCING HEARING
HELD BEFORE THE HONORABLE COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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P R O C E E D I N G S

THE COURTROOM DEPUTY: Criminal Case 21-331, *The United States vs. Kenneth Kelly*.

Counsel, would you please identify yourself for the record starting with the government.

MS. MIRELL: Good morning, Your Honor; Hava Mirell on behalf of the United States.

THE COURT: Good morning.

MR. TRAGOS: Good morning, Your Honor; George Tragos on behalf of the defendant.

THE COURT: All right. And I see Dr. Kelly is here, and we have a probation officer, I assume.

THE PROBATION OFFICER: Good morning, Your Honor; Hana Field with U.S. Probation.

THE COURT: All right. Let me start. Dr. Kelly, are you willing to proceed with this on Zoom video?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. So we're here for a sentencing. The defendant pled guilty to Count 4, parading, demonstrating or picketing in a Capitol Building. The statutory penalty is the maximum, so six months of incarceration, a maximum \$5,000 fine, five years maximum of probation. He agreed to a \$500 restitution. At the end of the sentencing the government will be dismissing Counts 1 through 3. He is in compliance with his Pretrial Services

1 report.

2 I have a presentence report dated November 23,
3 2021, the government's sentencing memorandum, the
4 defendant's sentencing memorandum, three character letters
5 in support of the defendant, and then a Dropbox with various
6 videos. I think that's all of the information that has been
7 provided to me for the sentencing.

8 Am I correct? Is there anything else I've missed?

9 MR. TRAGOS: Your Honor, with regards to the
10 government -- the defendant's sentencing memorandum, there
11 are three exhibits to that as well.

12 THE COURT: Yes, right.

13 MR. TRAGOS: Okay, because those are also
14 character letters, one of those exhibits, so I wanted to
15 make sure that it wasn't just three that the Court had.

16 THE COURT: So the character letters were from
17 Vincent, Mason, and Matsakis, and then there's a series
18 attached to it, a number of photographs and some additional
19 information. It's not clear to me -- I did look at the
20 attachments. Apart from the letters, I did look at the
21 attachments, which appear to be emails as far as I can tell.

22 MR. TRAGOS: A lot of them are in Exhibit C of the
23 memorandum.

24 THE COURT: Okay. And it's sort of To Whom It May
25 Concern, but they're related to the sentencing; am I

1 correct?

2 MR. TRAGOS: Yes, Your Honor.

3 THE COURT: Okay.

4 All right. In terms of objections to the
5 presentence report, there was one which related to Paragraph
6 76, which as I -- it's the listing of three vehicles. There
7 were quite a number of vehicles that were listed. They
8 relate to vehicles basically registered in New Mexico 1987,
9 1995, and 2012. The probation officer relied on Accurint
10 records so it's not clear to me -- it would appear that they
11 show registration dates.

12 So he was living in New Mexico at various points.
13 I mean, did he drive vehicles during that time that may have
14 been in his name but belonged to the hospital or something
15 else? It's unusual to have -- you know, to have it such
16 that they indicate that it's registered to him and then he's
17 objecting to it.

18 MR. TRAGOS: Your Honor, he has no memory of a
19 2012 BMW. Again, I don't think it has any consequence to
20 the sentencing, but it's just that he has no memory of ever
21 owning a 2012 BMW or any BMW.

22 THE COURT: Okay. The fact that he doesn't have
23 any memory is one thing. I mean, is he actually indicating
24 that it's not correct? Did you look at what probation had
25 in their report to support it?

1 I'm trying to figure out how you want it resolved
2 is, I guess, my question. It doesn't make any -- obviously
3 you want a presentence report to be accurate. Does it make
4 any difference in sentencing? No. But I obviously would
5 like to have it accurate.

6 So they relied on Accurint. He has no memory, but
7 is it likely to be wrong?

8 MR. TRAGOS: Your Honor, he just -- I mean, again,
9 he doesn't own a BMW, and he's never owned a BMW.

10 THE COURT: So the 1987 and the 1995 he's not
11 objecting to. It's only the 2012.

12 His objection related to the 1987 GMC pick-up,
13 1995 utility vehicle, and then the BMW for 2012. So the '87
14 and the 1995, is he objecting to that or not?

15 MR. TRAGOS: No, Your Honor.

16 THE COURT: Okay. So no objections to those. So
17 it's strictly the 2012.

18 And probation, you're relying on the Accurint; am
19 I correct?

20 THE PROBATION OFFICER: Yes, Your Honor. We're
21 relying on Accurint records for that. The vehicle was
22 associated with him by name, date of birth, driver's
23 license, and Social Security number.

24 THE COURT: Okay. I'm sorry?

25 MR. TRAGOS: Your Honor, there's another Ken Kelly

1 in that state who is related to the -- obviously not the
2 same date of birth, but the probation --

3 THE COURT: Okay. So what is the date of birth?
4 Do you have the Accurint report? Does it indicate what date
5 of birth they list?

6 THE PROBATION OFFICER: Yes, Your Honor, January
7 13, 1963, and it provides a driver's license number that was
8 also associated with Mr. Kelly, the K400-506-63-013-0.

9 THE COURT: Well, it's got the right birth date.
10 Let me put it this way, Mr. Tragos, how do you
11 want to resolve it? What are you asking for?

12 MR. TRAGOS: Your Honor, I think that the Court
13 can -- does the Court, I guess, have to resolve it because
14 it has --

15 THE COURT: I do because I need to make factual
16 findings for it. I mean, we could put that you don't recall
17 the BMW as an extra sentence there or depending on, you
18 know -- I mean, if they have his birth date and it's an
19 accurate one, I would think that it would be associated.
20 Well, I would think from 2012 you'd remember if you had a
21 BMW.

22 Go ahead. We can't get a record if two people
23 talk at once, and I'll just tell you they'll only record
24 what the judge says so you're going to be missing out. So I
25 didn't hear what you said. If you could repeat, Dr. Kelly,

1 what you said.

2 THE DEFENDANT: Oh, I've never owned a BMW. I
3 did -- I would have liked to, but I never bought one so I've
4 never owned one.

5 I leased a Jaguar. I thought that was what that
6 was about. That was a lease.

7 THE COURT: So have you leased one? Would your
8 wife have leased it?

9 THE DEFENDANT: I leased a Jaguar, but I never
10 owned a BMW.

11 THE COURT: Okay. Would your wife have owned it
12 and used your name?

13 THE DEFENDANT: We've always (inaudible) up until
14 this process; so, no, I don't know how this -- I'm just
15 afraid there are criminal charges for the BMW if I accept
16 it, so I cannot -- it's nothing I've owned.

17 THE COURT: Probation, would you agree to just
18 simply put that he only objects to the 2012 and just you put
19 a sentence next to it?

20 THE PROBATION OFFICER: Yes, Your Honor. We can
21 revise the presentence report to note at the end of that
22 paragraph that he has no memory or does not recall owning
23 the 2012 BMW, if that would suffice with the Court?

24 THE COURT: Does that work, Mr. Tragos?

25 MR. TRAGOS: Yes, Your Honor.

1 THE COURT: Okay. Well, we'll resolve it that
2 way. As far as I know, there was nothing else.

3 Let me just indicate, in terms of sentencing, the
4 advisory sentencing guidelines do not apply. There's no
5 authority to impose supervised release, and as I've
6 indicated, the maximum sentence is six months incarceration,
7 maximum five years probation, the \$500 restitution, maximum
8 fine is \$5,000, and there is a special assessment of \$10.

9 So for the undisputed parts of the presentence
10 report, the findings of fact are under Federal Rule of
11 Criminal Procedure 32(i)(3)(A). For the one disputed
12 paragraph, findings are pursuant to Rule of Criminal
13 Procedure 32(i)(3)(B). I'll adopt the presentence report as
14 written except. We'll do this additional statement relating
15 to -- at the end of Paragraph 76 indicating that the
16 defendant has no recollection of owning the 2012 BMW, and
17 there's no other way really that I can see resolving it at
18 this point.

19 All right.

20 And that will indicate that he's not objecting to
21 the other two, but he is objecting to this one.

22 All right. And let me, at this point, hear from
23 the government, then defense counsel, and then the
24 defendant.

25 And defense counsel, if you could -- when you

1 speak, if you could move forward a little bit more to make
2 sure. It's a little blurry in terms of hearing you, but let
3 me hear from the government first.

4 MS. MIRELL: Good morning, Your Honor. Thank you.

5 Your Honor, the events of January 6, 2021, have
6 left an indelible stain on the history and reputation of
7 this nation. Each rioter, including Dr. Kelly, contributed
8 to the global embarrassment that is the January 6th Capitol
9 Riot. By now this Court is familiar with what occurred just
10 steps away from its courthouse just a little over a year
11 ago, so I will not belabor it.

12 The government's sentencing recommendation today
13 in this case is based on Dr. Kelly's individual conduct.
14 Dr. Kelly drove alone from Florida up to Washington, D.C.,
15 to attend the Stop the Steal rally.

16 The morning of January 6th, Dr. Kelly met up with
17 his good friend, Leonard Gruppo, and Leonard Gruppo's wife
18 and walked to the Ellipse to hear President Trump's speech.
19 After President Trump had concluded delivering his remarks,
20 Dr. Kelly, Mr. Gruppo, and Mr. Gruppo's wife walked from the
21 Ellipse to the Capitol.

22 Upon entering the restricted grounds, Dr. Kelly
23 could see bike racks strewn across the lawn. Dr. Kelly and
24 Mr. Gruppo stood in the grassy area bordering the northern
25 staircase on the west front of the building. There you

1 could see rioters scaling the retaining walls of the Capitol
2 Building and climbing the white scaffolding that had been
3 erected over part of the staircase for the inauguration.

4 Instead of departing after witnessing rioters
5 engage in life-threatening behavior, Dr. Kelly instead
6 decided to join the parade and to contribute to the crowd by
7 hoisting himself onto the staircase ledge and by ascending a
8 jam-packed staircase leading up to the Upper West Terrace.

9 There Dr. Kelly witnessed law enforcement
10 violently clashing with rioters. Instead of departing at
11 that point, Dr. Kelly instead chose to enter the U.S.
12 Capitol Building by walking through an entryway littered
13 with broken glass.

14 The Court has now had an opportunity to review the
15 entirety of the surveillance footage of Mr. Kelly's pathway
16 to the Capitol on January 6th. As the Court has by now
17 seen, Dr. Kelly and Mr. Gruppo did appear to stop and ask a
18 law enforcement officer near the Senate Wing door how to
19 exit the building.

20 The government submits the law enforcement officer
21 repeatedly pointed Dr. Kelly and Mr. Gruppo to the Senate
22 Wing door, the door through which they had just entered. The
23 government further submits that nothing prevented
24 Dr. Kelly and Mr. Gruppo from exiting that door and leaving
25 the Capitol Building at that moment. Nevertheless, the

1 government does not dispute that, after speaking with the
2 law enforcement officer, the defendant and Gruppo and
3 Gruppo's wife spent the next five minutes walking straight
4 through the Capitol and did not further engage with any law
5 enforcement officers until their exit.

6 It's clear from the defendant's sentencing
7 memorandum that he now regrets and apologizes for his
8 conduct in light of the professional and personal
9 circumstances he has had to suffer, but in the hours
10 immediately following this violent attack on democracy the
11 defendant was not apologizing or expressing regret for his
12 actions. Instead, he was boasting to family members about
13 how he and other rioters had forced senators to hide
14 underneath their desks and to go into recess. He considered
15 his conduct patriotic, and he believed that when he and the
16 others threatened the lives of members of Congress and
17 halted the certification of the electoral vote that he had,
18 quote, watered the tree of liberty.

19 Overall, the defendant's statements and conduct on
20 January 6th establish the need for some type of restraint on
21 Dr. Kelly's liberty to demonstrate the need for specific
22 deterrence in this case. In sentencing Dr. Kelly, this
23 Court must recognize the significance of the defendant's
24 participation in a violent and destructive challenge to the
25 peaceful transfer of power and really what that means for

1 our democracy.

2 To be clear, the government is not seeking the
3 punishment of Dr. Kelly based on the actions of the worst
4 actors that day, but by being present Dr. Kelly did help
5 create the momentum for the violence that took place.
6 Whether or not he opened his mouth or engaged with any law
7 enforcement officers, the defendant's mere presence
8 validated and affirmed those around.

9 In terms of parity, the case most comparable to
10 Dr. Kelly's is Mr. Gruppo's since the two spent the entire
11 day together and engaged in nearly identical conduct.
12 Mr. Gruppo was sentenced by Chief Judge Howell in October
13 2021 to 90 days home detention as part of a 20-month
14 probationary sentence. As discussed in the government's
15 sentencing memorandum, there are some mitigating factors
16 with respect to Mr. Kelly, which is why the government is
17 recommending only 60 days home confinement as part of a 36-
18 month probationary term.

19 First, the defendant has been cooperative with law
20 enforcement, including by facilitating the self-surrender of
21 one of his closest friends, Leonard Gruppo. The defendant
22 has also provided passwords to his social media accounts and
23 consents to search his phone. Finally, unlike Mr. Gruppo,
24 the defendant did not swear oath to support and defend the
25 Constitution. He therefore lacks the aggravating factors

1 that were facing Mr. Gruppo.

2 Balancing the factors set forth in Title 18 United
3 States Code Section 3553(a), the government respectfully
4 requests that this Court sentence Dr. Kenneth Kelly to a
5 two-month term of home detention as part of a 36-month term
6 of probation and 60 hours of community service. Thank you.

7 THE COURT: All right. Mr. Tragos.

8 MR. TRAGOS: Your Honor, in one of the Court's
9 earlier colloquy of what the Court had reviewed, I think the
10 Court reviewed something it did not mention, and that was
11 the four videos that were under seal.

12 THE COURT: No, I did. That's the -- I mean,
13 you've attached some things, and that's the Dropbox.

14 MR. TRAGOS: Okay.

15 THE COURT: The Dropbox is what I was -- I was
16 trying to describe because you've got photos of things. The
17 videos themselves I watched through the Dropbox, so that's
18 what I was talking about.

19 MR. TRAGOS: Okay. Thank you, Your Honor.

20 THE COURT: I did see those.

21 MR. TRAGOS: Okay.

22 Your Honor, many years ago, in an earlier life, I
23 was chief of the criminal division for the United States
24 Attorney's Office in the Middle District of Florida, and as
25 such I had to establish policies to improve consistency.

1 And I understand the need for the government to have
2 consistency, to avoid embarrassment, and to make sure that
3 in a multidefendant-type case they have consistent policies,
4 and they really don't look at the individuals as
5 individuals.

6 And I admit 18 USC 3553 was not something I took
7 into account in a lot of cases when a plea agreement was
8 brought to me for approval, but just recently -- I don't
9 know if the Court ever met Judge Hodges from the Middle
10 District of Florida, but Judge Hodges passed away just a few
11 days ago. He was chief judge when I was the chief of the
12 criminal division, and we would meet regularly in his office
13 in order to school me on various aspects of criminal
14 procedure and criminal sentencing. And one of the things he
15 schooled me on was when you sentence a large group -- and
16 admittedly I've never had a group of 750 -- but when you
17 have a large group, you have a group of people who at the
18 top are the most culpable and at the bottom are the least
19 culpable.

20 At the top you have the most culpable, who
21 normally are people who give you a lot of cooperation
22 because they know a lot of the criminal activities. At the
23 bottom are the least culpable. They are sometimes because
24 they don't know. But you can never sentence, he said, the
25 most culpable to the less likely bottom of the triangle.

1 And then when you get to the bottom of the triangle, you
2 still have room if those people do cooperate --

3 (Court reporter interrupts proceedings
4 due to difficulties hearing)

5 MR. TRAGOS: Was the Court able to hear?

6 THE COURT: Go ahead.

7 MR. TRAGOS: Okay.

8 THE COURT: I would also ask that you not look
9 down because then it makes it harder for us to keep track.

10 MR. TRAGOS: Okay. So, Your Honor, just recently
11 we also heard a lot of speeches about what happened on
12 January 6th. They dealt with the violence, the destruction,
13 and the injury. And we've also seen a lot of video on
14 media, and there always are videos that are the worst of the
15 worst.

16 None of this was in the mind of Dr. Kelly when he
17 went through the Capitol, and I think when the Court takes a
18 look at the videos -- he wasn't armed. He didn't have
19 defensive gear. He didn't attack anyone. He didn't
20 confront anyone. He merely walked through the Capitol.
21 Yes, a violation of the laws. Yes, a violation of that
22 statute. But that's what he did.

23 And in that seven minutes -- we can take a look at
24 a five full minutes of the seven minutes that the government
25 has provided me and that I provided to the Court, and in

1 that five minutes we can see he was not with masses. He
2 walked out that door. He did not attempt to enter the
3 Senate Chamber or House Chamber. He did not look for the
4 Senate Chamber or House Chamber. He didn't look for the
5 Vice President. He didn't look for anybody. He just calmly
6 walked through with the police officers. And when he was
7 walking after his initial entry, he was just about by
8 himself, with Mr. Gruppo and a couple of other people.

9 And his entering the Capitol, the pictures, as
10 provided by the government that's in our sentencing
11 memorandum, Your Honor, show us what the packed crowd was
12 like outside that door. And it was chaos. Most everybody
13 can admit to that. The safest place and the safest route
14 was a criminal act, walking into the Capitol, which they
15 did.

16 And when they walked in the Capitol, the video
17 shows they started to go down a hallway. They didn't know
18 where they were going. They came back after a police
19 officer. He pointed out the door. Although we have a
20 situation in a text message where he talks about the
21 windows, he entered through the door, not through that
22 window. And when he came back and the officer pointed out
23 that door, the crowd -- there was no safe way to go out that
24 door. And the reason they came in was because they felt it
25 was unsafe.

1 So they walked down the hallway, talked to two
2 other officers, and finally one pointed down that other
3 hallway where they could exit the Capitol Building.

4 In the complaint the government showed us --
5 because they've gotten the data from his phone -- where he
6 was, and it was a straight line all the way across the
7 Capitol out that door. He didn't go anywhere else. He
8 didn't look for anything else. It was a straight line.

9 So there are 750 defendants. Somewhere along the
10 line there has to be some people that are deserving of the
11 privilege of probation. What does it take to deserve that
12 privilege? I would submit to the Court that no one could do
13 more than Dr. Kelly has done to deserve that privilege.

14 THE COURT: The government's not arguing for --
15 it's not indicating they're not recommending probation.

16 MR. TRAGOS: Well, they're recommending probation
17 with house arrest.

18 THE COURT: Right, which is an ankle bracelet or
19 something else, but it's still probation.

20 MR. TRAGOS: Right, but it is house arrest. And
21 that house arrest -- and the reason that we attached those
22 letters is to actually tell you the things other employers
23 were telling us; that they're not going to hire Dr. Kelly
24 because of this incident, and they specifically said that
25 the ankle bracelet would be an issue.

1 And we attached one of those letters as Exhibit A,
2 I believe, to the memorandum in aid of sentencing. If he's
3 under house arrest, they're not going to hire him.

4 THE COURT: Well, house arrest -- I guess the
5 question is whether they understand -- whether they think
6 it's sitting at home. It's not.

7 Basically you're allowed to go to work. You're
8 allowed to do all sorts of things, but the rest of the time,
9 you know, you're expected to be at home or with an ankle
10 bracelet they know where you are. I mean, as a practical
11 matter it's not sitting at home.

12 I raise this because a lot of people don't know
13 what house -- house arrest, everybody assumes, for those who
14 are lay people, that you sit at home. That's obviously not
15 what house arrest it, but go ahead.

16 MR. TRAGOS: But, Your Honor, I don't think that
17 they thought that because they were willing to hire him, but
18 the fact that he was under that sanction is what caused them
19 the problem. Plus in the court records he's trying to do
20 these home visits, this home care. He goes and visits
21 people in their homes all the time. It just would be a very
22 difficult thing for him to continue his practice of home
23 visits with the ankle bracelet, plus, again, I think his
24 employers would consider that just a killer as opposed to
25 just straight probation.

1 And the government admits this defendant
2 cooperated. He immediately contacted them through the
3 lawyer saying that he wanted to plead guilty to it. He
4 certainly has the remorse. He has certainly suffered. He
5 is in a divorce because of it. He's lost his children. He
6 can only visit them on holidays. He has lost -- he's living
7 in an RV now. Even the probation office says that he can't
8 afford to pay a fine. That's their recommendation.

9 So he has lost everything because of this, and he
10 knows that he has lost everything, and he lost them because
11 he made a decision which he wish he didn't make. He knows
12 it was wrong. It was wrong then. He knows it's wrong now.

13 He has character letters that are attached to talk
14 about his compassion, his ability to help people, the way he
15 helps people, how he cares for those he helps, and it would
16 be a shame to deprive the country of this support,
17 especially doctors that have been in underserved areas,
18 someone like Dr. Kelly.

19 And keep in mind that those character letters are
20 about the humanitarian acts of what he does and how he tries
21 to help people. He's been trying for years setting up the
22 Mahala Project in South Africa as well as he helps
23 (inaudible) \$920 a month so that they can have a doctor who
24 can operate in one of the poorest areas of Mexico.

25 So, Your Honor, he has seen the repercussions of

1 his actions. He has learned from it, and looking at that
2 video the Court knows nothing probably is a stronger bit of
3 evidence in any trial than when the government puts on a
4 video and the jury actually sees the crime as it's
5 happening.

6 In this case the Court got to see the crime as it
7 was happening, the crimes of the participation of Dr. Kelly.
8 I just don't see any of these defendants be of any lower
9 level in the pyramid of sentencing than Dr. Kelly. So we
10 ask the Court to please give him probation.

11 Dr. Kelly would also like to speak to the Court.

12 THE COURT: All right. Dr. Kelly.

13 THE DEFENDANT: I present myself humbly before
14 your Court a different man than I was on January the 6th. I
15 admit that on that date on top of the stairs I panicked and
16 didn't think rationally. Looking for the safest and fastest
17 way to exit, I realized that the choice through the Capitol
18 was the worst decision of my life. I never could have
19 imagined what effect on my life those seven minutes cost me
20 as I transited through the building.

21 I greatly regret my error in judgment, and I know
22 it was wrong, and it always will be wrong. Congress, my
23 country, and my loved ones deserve better from me. I
24 realize that the country I love was built on the very laws
25 that I breached. I add to this that I fully cooperated with

1 the government, which included convincing my best friend to
2 surrender himself. I feel that up to this point I was a
3 very loyal citizen to my country. I put a lot of energy
4 into contributing to society.

5 I'm sorry for my bad decision that day, and I'm
6 sorry for causing the Court to be faced with such a burden
7 in deciding on how to appropriately discipline me. I know I
8 leave you with a tough decision. I truly regret this.

9 Whatever the Court decides, it will actually only
10 be a small part to what I've lost and the pain that I've
11 experienced. When I say that I stand before you a different
12 man than I was on January the 4th, I do not say -- I mean on
13 the 6th, I do not say this with light consideration. I will
14 repeat what one of my patients said to me. Sometimes we
15 must be heated to the highest degree to be purified to do
16 God's work. I know that committing a crime, pleading
17 guilty, being sentenced, and being labeled a criminal
18 forever along with the loss of my wife, custody of my
19 children, and my finances, my profession, are certainly the
20 firing furnace that purified me for the future.

21 I feel that the purpose of my life is clear thanks
22 to the tribulations that I've created for myself. I want to
23 love my country, to be a compassionate and caring physician,
24 which has always been my life's purpose, and to honor our
25 country and their laws. I'm an intelligent doctor who knows

1 the difference. I blame no one but myself for the decisions
2 I made that day, and I accept full responsibility. I humbly
3 respect your decision, Your Honor.

4 THE COURT: All right. In part of the information
5 that was indicated -- I realize that you're in a hiatus in
6 terms of your employment. Are you planning on trying to
7 stay in Florida and, you know, go back to the hospital you
8 were working for? Are you looking for something else? Do
9 you have some idea of what your plans are?

10 THE DEFENDANT: I have attempted to get a job with
11 13 different emergency room groups, or about that. I've
12 been blocked on all of those. The letter that we received
13 said that under no condition would I be employable if I have
14 an arrest. If probation, they'd allow me in the level that
15 I've worked. I've worked as director for at least 15 years,
16 and they mean I'm not employable as an ER doctor.

17 So if I have that -- if that's what is decided,
18 I'll probably try to do some sort of primary care but not as
19 an emergency room board-certified ER doctor because that
20 does not seem to be able. So it will depend on what you
21 say, ma'am.

22 MR. TRAGOS: Right now, Your Honor, he is
23 practicing. He is doing some home visits in New Mexico.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. So are you in Florida? I'm

1 also trying to figure that out. You're living in an RV. Is
2 that in Florida or someplace else?

3 THE DEFENDANT: No, ma'am. I moved it -- I moved
4 it to New Mexico where I was able to get malpractice
5 insurance, but now --

6 THE COURT: Okay.

7 THE DEFENDANT: -- New Mexico is coming for my
8 medical license for the insurrection.

9 THE COURT: Okay. The reason I ask is that I know
10 probation generally wishes to have the supervision. They
11 ask for jurisdiction. I don't transfer jurisdiction. But
12 the supervision -- and at this point they're thinking it's
13 Florida so obviously it's not.

14 MR. TRAGOS: It will probably -- depending on I
15 guess the Court's sentence, his office is in -- still in
16 Florida, but New Mexico is the only place he can practice.
17 So he's been going back and forth with his RV.

18 Right now, Your Honor, frankly the RV broke down
19 in -- where?

20 THE DEFENDANT: Nacogdoches.

21 MR. TRAGOS: Nacogdoches, Texas. It broke down on
22 his way here, and it's being repaired in Nacogdoches, so the
23 RV is actually in Texas right now. He has to go back, pick
24 it up, and take it back.

25 THE COURT: All right. I think I would not put in

1 a specific supervision transfer to a particular place since
2 we're not sure where he's going to wind up.

3 So I'm keeping jurisdiction, but I perhaps will
4 plead it -- depending on where he winds up, as the best
5 place to do this, any supervision of him. I'm going to
6 plead that to a decision that probation makes once he's --
7 you know, once the sentence is done to figure out the best
8 place to do the supervision, whether it's Florida or
9 someplace else, rather than putting in Florida because it
10 may be that that's not the best option.

11 All right. What I'm going to do is I'm going to
12 take a short break at this point so I can go over what
13 you've talked about and review things, and then I will come
14 back. I have roughly -- I'll make it 20 to 11:00. At five
15 to 11:00 I'll come back.

16 I would just stay on the screens. You can walk
17 off, but don't get off the Zoom because we always have
18 problems getting back on again. So if you -- you don't have
19 to sit there, if you don't want to, but just leave it on,
20 and I'll be back.

21 (Recess taken)

22 THE COURT: All right. I have to say I've been a
23 judge for 37 years or a little over. Sentencings never get
24 any easier, no matter how long you do them. So let me
25 proceed.

1 The Court considers the presentence report,
2 pleadings, argument, exhibits, and record in this case in
3 addition to the following information in determining a fair,
4 appropriate, and reasonable sentence in conformance with the
5 factors set out in 18 USC 3553(a) except for (e).

6 The defendant is 59 years old. There is no
7 criminal history. A summary of his background in terms of
8 education: Bachelor of science in 1985 at the University of
9 Central Arkansas; medical degree in '91, University of
10 Arkansas College of Medicine; internships and residencies in
11 internal medicine in Philadelphia at the Thomas Jefferson
12 University Hospital in 1994. He was board-certified in
13 emergency medicine in 2019. That will have to be renewed in
14 2023. He has active medical licenses in Florida, New
15 Mexico, and Washington, the state of Washington.

16 Job history. This is going to be in summary form
17 since he's been involved at various places, but at the time
18 of his arrest he was employed at the Advent Hospital in
19 Ocala, Florida, and Lake Wales as an emergency room doctor.
20 And this would have been from 2019 to 2021. Since April
21 21st he's been the emergency room director at Mora County
22 Emergency Medical Services. He's actually been the director
23 since 2013 but evidently he's become more active this past
24 year.

25 2016 to 2019, emergency room doctors at Plains

1 Regional Medical Center in Clovis, New Mexico. He was the
2 area director.

3 2020 -- excuse me, 2012 to 2016, emergency room
4 director at Alta Vista Hospital in Las Vegas, Nevada.

5 He self-reports 2011 to 2016 emergency room doctor
6 at Gerald Champion Hospital in Alamogordo, New Mexico.

7 Unfortunately the hospital records don't seem to show the
8 defendant has also been associated with the company Romaris,
9 R-O-M-A-R-I-S, Incorporated. He's the director and
10 treasurer. His wife is the president. It's active in both
11 Florida and Nevada. I believe that he uses the company for
12 contracts for his medical services so this would be the
13 company for which he's an independent contractor.

14 In terms of nonprofits, he's done quite a bit of
15 work. Dr. Kelly and his sister founded the Mahala Love
16 Project, healthcare for students for one thing at an
17 orphanage, many of whom have immune deficiency diseases.
18 The other project is Doctor's House Call. The defendant's
19 sister protocols for cloud-based healthcare systems for
20 remote areas in the United States and elsewhere.

21 In terms of finances, present income is very
22 limited. He does have assets that could be liquidated, but
23 he's the sole financial provider for his spouse, who is an
24 at-home mother, three children. He and his wife are in the
25 process of a divorce. After reviewing his extensive

1 financial records at this point I'll find he has no
2 financial ability to pay a fine.

3 There are no issues with mental health, substance
4 abuse. He's not been drug-tested so he will -- I will be
5 putting him on probation as one of the conditions. He will
6 need to take the initial tests, which if they've come out as
7 he's reported that will be the end of it, but we don't have
8 any test results on the record at this point.

9 Physical condition. Not vaccinated, not tested,
10 but he treated himself for what could be, in his view,
11 symptoms for COVID, and he has described himself as an
12 expert on COVID. But there's no particular issues that need
13 to be addressed.

14 On a personal basis, he was born into an intact
15 union. His father's deceased. His parents divorced when he
16 was 15. Mother now lives in South Carolina. He has one
17 sister. His mother has remarried two times. The first was
18 to someone who is now deceased. Her present husband -- the
19 last marriage, the present husband, is still alive. After
20 his parents divorced, he shared time between his parents in
21 terms of custody.

22 The defendant got married in 2004, separated in
23 September of 2021. They're in the process of getting
24 divorced. There are three children ages 13, 11, and 7. The
25 children and wife are now living in Hawaii. As I understand

1 it, the wife will have primary physical custody. Defendant
2 will have supportive custody. As of yet there is no court
3 order of child support payments. The children are in
4 school, healthy. There are no issues. And I have
5 authorized his traveling to Hawaii in order to be able to
6 see his children.

7 He's resided as an adult in the state of Florida,
8 New Mexico, South Carolina, the state of Washington and
9 Arkansas. Numerous residents in various states. I won't go
10 through all of them. And the last home that he resided in
11 has now been sold. He owns a recreational vehicle, and
12 evidently that is where he has been living, on campgrounds
13 in Florida.

14 In terms of letters of support, there was, I
15 guess, a number of sets of them. There were some that were
16 separate and some attached to the memorandum in aid of
17 sentencing. I'll start with the ones that were separate.

18 A letter from a fellow physician praising his
19 medical skills and concern for family noted that the
20 defendant made house calls, which is a rarity in these days.

21 A letter from his aunt that he was very helpful in
22 providing medical advice for the family and for his
23 grandmother, which would have been the aunt's mother; asked
24 for leniency.

25 One of the defendant's attorneys that has known

1 the defendant in various capacities has described him as a
2 dedicated physician caring for patients during COVID in
3 emergency rooms, made state-of-the-art telemedicine
4 available to remote areas, went out into the community to
5 provide care. His nonprofit work in South Africa with the
6 orphanage and the immune deficiency children is also the
7 telemedicine to provide access to care to remote areas or
8 where medical care is not accessible. The defendant's
9 approach is described as, quote, to do the right thing,
10 unquote, and the request is that he not be sentenced such
11 that it will affect his continuing to be able to practice
12 medicine.

13 I must say that in this case he forgot to do the
14 right thing.

15 But in terms of what's attached, there was
16 Exhibit A, which is, as you've indicated, an employer of a
17 potential -- a potential employer, not the one he had been
18 with, which indicates that house arrest would negatively
19 affect his being hired.

20 Exhibit C is nine letters of support. All attest
21 to the high quality of his medical services, his community
22 outreach and service, and his care for his family. The
23 letters are from his stepfather, three colleagues, his
24 sister, who talks about the Mahala Love Project, among other
25 things, a patient who has praised the excellent care he

1 received from Dr. Kelly, a letter from his former brother-
2 in-law, from a nurse, and from an insurance company
3 regarding malpractice insurance in New Mexico.

4 In terms of the statement of offense, I have found
5 that instead of trying to summarize it, it works better to
6 frankly just read what he actually agreed to. So I am going
7 to put this in context so that some of the remarks that I
8 make later make sense.

9 So we're talking about the Capitol located in
10 D.C., which is secured 24 hours a day by the Capitol Police.
11 Their restrictions generally include permanent and temporary
12 security barriers and posts manned by the Capitol Police.
13 Only authorized people with appropriate identification are
14 actually allowed in the Capitol.

15 So this is generally what has been put in place
16 for quite some time.

17 On January 6th, in addition, the exterior plaza of
18 the U.S. Capitol was closed to members of the public, and on
19 that date a joint session of the United States Congress
20 convened at the U.S. Capitol, which is located on First
21 Street in D.C. During this joint session, elected members
22 of the U.S. House of Representatives and the U.S. Senate
23 were meeting in separate chambers of the U.S. Capitol to
24 certify the vote count of the Electoral College of the 2020
25 Presidential Election which had taken place on November 3,

1 2020. The joint session began at approximately 1:00 p.m.
2 At around 1:30 the House and Senate adjourned to separate
3 chambers to resolve particular objections. Vice President
4 Mike Pence was present presiding first in the joint session
5 and then in the Senate Chamber.

6 As the proceedings continued in both the House and
7 Senate, and with Vice President Pence present and presiding
8 over the Senate, a large crowd gathered outside the U.S.
9 Capitol. As noted, temporary and permanent barricades were
10 in place around the exterior. Capitol Police were present
11 and attempting to keep the crowd away from the Capitol
12 Building and the proceedings that were underway inside.

13 At approximately 2:00 p.m., certain individuals in
14 the crowd forced their way through, up, and over the
15 barricades and officers of the U.S. Capitol Police, and the
16 crowd advanced to the exterior facade of the building. The
17 crowd was not lawfully authorized to enter or remain in the
18 building, and prior to entering the building no members of
19 the crowd submitted to security screenings or weapons checks
20 by the Capitol Police or other authorized security
21 officials.

22 The certification proceedings at that point were
23 still underway and the exterior doors and windows of the
24 U.S. Capitol were locked or otherwise secured. Capitol
25 Police attempted to maintain order and keep the crowd from

1 entering the Capitol.

2 Shortly after 2:00 p.m. individuals in the crowd
3 forced entry into the Capitol, including breaking windows,
4 assaulting members of law enforcement, as others in the
5 crowd encouraged and assisted those acts. The riot resulted
6 in substantial damage to the U.S. Capitol requiring the
7 expenditure of more than \$1.4 million for repairs.

8 At approximately 2:20 members of the U.S. House of
9 Representatives and U.S. Senate, including the president of
10 the Senate, which was Vice President Pence, were instructed
11 to and did evacuate the chambers. Before that, they had
12 been staying and hiding under desks. All proceedings of the
13 U.S. Congress, including the joint session, were effectively
14 suspended until shortly after 8:00 p.m. the same day in
15 light of the dangerous circumstances caused by the unlawful
16 entry to the Capitol, including the danger posed by
17 individuals who had entered the Capitol without security
18 screenings or weapons checks.

19 Congressional proceedings could not resume until
20 after every unauthorized occupant had left the Capitol and
21 the building had been confirmed secured. That didn't occur
22 until 8:00 p.m. when the proceedings resumed. Vice
23 President Pence remained in the Capitol from the time he was
24 evacuated from the Senate Chamber until the session resumed.

25 Now as to Dr. Kelly. At approximately 3:00 -- so

1 I've given the other times, so this is after there has been
2 the breach into the Capitol -- the defendant entered the
3 Senate Wing door on the northwest side of the Capitol. He
4 then walked through the Crypt and eventually exited through
5 the Hall of Columns on the south side of the U.S. Capitol at
6 approximately 3:07. So it's seven minutes.

7 The defendant texted a family member a photograph
8 from inside the U.S. Capitol with the caption, "Inside White
9 house" -- obviously it was not the White House, but the
10 Capitol -- "via breaking in windows. Tree of liberty was
11 watered today!"

12 The same day defendant also texted a family member
13 a photograph showing several individuals climbing a
14 retaining wall of the U.S. Capitol with the caption
15 "Patriots storm the White house" -- again, it was the
16 Capitol -- "Broke in while Senate was in session debating
17 Arizona. They were hiding under their desks, forced into
18 recess. Patriots took back our Capitol today."

19 Defendant knew at the time he entered the U.S.
20 Capitol Building he didn't have permission to enter the
21 building and, as he's indicated, he paraded, demonstrated,
22 and picketed.

23 So the defendant pled guilty. He indicated his
24 interest at an early stage and so promptly resolved the
25 case. He identified the second person who was with him,

1 assisting law enforcement and facilitating the self-
2 surrender of the other individual, his friend, quote, fellow
3 rioter who accompanied him into the Capitol.

4 On arrest, Dr. Kelly was immediately cooperative
5 with law enforcement regarding his social media accounts and
6 cell phone. During his interview with law enforcement he
7 didn't lie. He accepted responsibilities for his action in
8 entering the Capitol with the rest of the mob. He was only
9 in the Capitol for approximately seven minutes. He entered
10 later in time to the first breach of the Capitol. He has no
11 criminal history. He's a respected emergency room doctor
12 and physician in general. He's been involved for some time
13 in two projects to provide state-of-the-art medical services
14 in South Africa, the Mahala Love Project, and the Doctor's
15 House Call, which provides it to remote areas and to those
16 who are underserved.

17 So I certainly view that as community service, and
18 that appears to be what he's doing now, has done in the
19 past, and presumably will continue to do that.

20 The defendant drove from Florida to D.C. to attend
21 the rally of Former President Trump on January 6, 2021. He
22 met a former colleague and friend and friend's wife. He
23 spent some time on the Mall after the speech and then walked
24 to the Capitol. So he was some time on the Capitol grounds
25 before entering the Capitol.

1 The Capitol grounds were clearly packed with
2 people. You can see it in all of the things. So frankly it
3 makes no sense to me that you would go into the Capitol to
4 be safer than staying on the grounds. Walking up to the
5 Capitol you had to have seen all of these people and how
6 packed they were and, frankly, could have walked away and
7 never got on the grounds and just left.

8 He self-reports that in entering that he had to be
9 pulled up onto the staircase by the rioters because the
10 ledge was too high to climb over to get on the staircase to
11 get into the Capitol, and there were too many people already
12 on the staircase.

13 I must say these do dry out your throat.

14 He agreed he saw bike racks strewn over the
15 grounds, rioters scaling the outside of the Capitol, and he
16 agreed he saw broken windows next to the door that he
17 entered and that the goal of this insurrection was to stop
18 the certification of the Presidential Election and
19 importantly the peaceful transfer of power as guaranteed in
20 the Constitution, which is the bedrock of our democracy. He
21 was -- he admitted he was unauthorized to enter the Capitol
22 and was clearly aware from his texts what was going on at
23 the Capitol and his interest in interrupting it.

24 As I said, after the attack on the Capitol he sent
25 these texts to his family expressing pride in his role as

1 part of the riot insurrection. He boasted that he and
2 others entered the building -- although he called it the
3 White House -- via breaking windows while the Senate was
4 debating Arizona's electoral vote count. He lauded the fact
5 that he was part of the insurrection that caused senators
6 to, quote, hide under the desks and forced Congress into
7 recess so that they were not able to proceed with the
8 electoral process. He described and celebrated the obvious
9 destruction and violent acts of his fellow insurrectionists
10 texting inside via breaking windows. And you can see he --
11 there certainly have been enough videos that indicate the
12 breaking windows, how it was done, glass all over the place.
13 "Inside via breaking windows. Tree of liberty was watered
14 today!" He described his actions as, quote, patriotic,
15 unquote.

16 He gets credit for pleading guilty and
17 acknowledging that he was unauthorized to be in the Capitol
18 while the certification of electoral votes were counted.
19 His commentary, however, gives me pause. His texts reflect
20 his mindset and intent on that day.

21 Has Dr. Kelly learned his lesson for the future?
22 Does he fully appreciate the significance of having
23 participated in an insurrection, albeit for only seven
24 minutes, but clearly to disrupt the peaceful transfer of
25 power by stopping the certification of the Presidential

1 Election, which he clearly knew he was doing?

2 His regret now of having been involved in light of
3 the consequences to him -- which are severe, there's no
4 question of that. He's lost his job. His medical licenses
5 are in jeopardy as well as his malpractice insurance. It's
6 resulted in the dissolution of his marriage. He's now
7 living in an RV. He's separated from his children. He's
8 not in the same position he was. And so the question is,
9 you know, the negative effects and consequences is not the
10 same as appreciating the significance of what he
11 participated in.

12 If you engage in criminal conduct, there are
13 always consequences, and here -- his have certainly been
14 negative and very personal to him in terms of himself, his
15 family, and his profession, but I guess -- you know, I don't
16 see them as the same thing as appreciating the significance
17 of what he did.

18 And also, has he considered the consequences to
19 himself, but to the hundred -- approximately 140 law
20 enforcement officers that were injured, some very seriously?
21 And I would say he didn't involve himself in any of that,
22 but this is sort of like the getaway driver of a bank
23 robbery. He's sitting outside. His compatriots go in.
24 They have a gun in order to get the money, and somebody
25 shoots him, and the getaway driver is going to have some

1 responsibility for the others' actions.

2 So I can't totally separate it. I certainly give
3 him credit that he didn't damage or engage in any violence.

4 Now, I would point out that the only other time
5 the Capitol's been invaded was when the British, in 1814,
6 invaded it. Besides the Civil War, which is certainly not a
7 small matter, there have been difficult times and divisions
8 in our country based on political divisions, racial
9 violence, presidential assassinations, unpopular wars and
10 economic woes. In spite of those difficult times, there
11 have been peaceful transfers of power during that period of
12 time.

13 His explanation that he wasn't stopped, didn't
14 damage anything, and did not engage in fighting law
15 enforcement, I certainly give him credit, but it doesn't, in
16 my view, lessen his guilt. It just appears to support a
17 lack of acceptance of the import of his actions on that day.
18 But he does get credit for not damaging property, not being
19 violent, because he didn't engage in any of that, but his
20 presence did help sustain the momentum of the other
21 insurrectionists who engaged in violence.

22 The videos that were provided shows a lot of
23 people milling around, but the point of it is that by
24 participating he encouraged the others. Having a large
25 number of people, which he could certainly see from outside

1 and while he was trying to get in, including the defendant,
2 participating in this insurrection provided safety for those
3 that engaged in the violent actions of others. So it
4 provided safety. He didn't need to do it, but he's there,
5 and his presence does help.

6 The violence of January 6th is an unacceptable way
7 to resolve political differences. There are lawful means
8 available in the democracy to change or challenge actions
9 you disagree with which don't include violent insurrection.
10 Your presence and actions by joining other insurrectionists
11 was an inexcusable attack on our democracy and the peaceful
12 transfer of power according to the Constitution and a
13 disrespect for the rule of law which governs civilized
14 societies. As an educated man, you should have appreciated
15 that.

16 You should also appreciate what an extraordinary
17 country you live in with a vibrant democracy. And I hope
18 you teach your children how lucky they are to live in this
19 democracy as opposed to some other country ruled by an
20 authoritarian. It's my hope that my sentence sends a
21 message to you, to deter you into considering going forward
22 and others -- and that's important -- from ever engaging in
23 this type of disruptive behavior in the future recognizing
24 you live in a country with incomparable freedoms which are
25 protected by the rule of law. Eliminate the rule of law,

1 and you jeopardize those freedoms.

2 Now, I do want to go back and talk a little bit
3 about parity, which are in another part of my notes, if I
4 can get them back here. I want to talk also about the
5 videos briefly.

6 The videos that have been provided do show the
7 insurrectionists milling around. Law enforcement's present.
8 There's no fighting. There's no violence. There's no
9 damage being done certainly during the period that evidently
10 or at least what's captured when Dr. Kelly was there. Most
11 of it would have been done presumably at an earlier point.
12 But certainly in coming -- walking down from the Mall and
13 the speech, you could not have missed the crowd of people
14 and what they were doing even though it was later. You can
15 see from the photo, in terms of the people getting up
16 outside on the scaffolding, some, you know, engagement
17 between law enforcement. Although he wasn't doing it, and
18 it wasn't in the Capitol, he certainly was involved.

19 In terms of parity, parity in these cases, which
20 is what I'm looking at in terms of the January 6th
21 defendants -- ordinarily we would look at parity across
22 criminal sentences, but I don't think that works for these
23 January 6th cases. I think misdemeanants involved in other
24 crimes probably wouldn't get these sentences. These
25 sentences are more lenient, to be frank, than in many -- not

1 all, but in many instances, if you looked at misdemeanants
2 across the board.

3 So I'm not looking at it that way. I don't think
4 that's a good way to do it. I don't think it's fair to the
5 January 6th group of defendants to compare them to other
6 misdemeanants.

7 So I'm doing what I think all other judges are,
8 which is we all have -- the government has put together a
9 list of defendants, the charges in terms of the statutes,
10 what the government has recommended, and what the Court has
11 done. The Court itself has also done one that sets out and
12 has a little more detail in which we have shared with all of
13 us -- and each of us individually have cases and we have
14 also -- I've done my own, and I've also indicated trying to
15 make distinctions in terms of what people have done and why
16 so that I'm fair to the group of people that come here.

17 I don't want to be an outlier at one end or the
18 other. I want to have parity and be fair to those that were
19 involved in these January 6th cases.

20 So I've done my own sort of view of the continuum
21 in terms of what's involved in providing -- in sentencing
22 particular defendants. So I've done individual sentences
23 taking a look at specific things to make sure that I'm fair
24 to the individuals, but also doing it in context of the
25 broader group of defendants that have been sentenced as well

1 as my own sentences.

2 So in terms of what the government -- I'll deal
3 with what the government starts with.

4 I think I will not do community service. I
5 frankly think he's already doing it, and I think he'll
6 continue to do it. I see no reason to require some
7 additional time. He's obviously going to have to spend some
8 time and some focus on getting himself employed so he can
9 support himself, but probably more importantly his children
10 and his wife. But most specifically his children.

11 I will put him on probation. I will not do --
12 I've debated back and forth about the length of the
13 probation. I think based on what I see as remorse -- I'm
14 still a little concerned about his -- based on his texts as
15 to what his understanding of the seriousness of his
16 participation was as opposed to just that it's had dire
17 consequences for him, which I can understand, and that may
18 be enough. It may certainly serve as a deterrence, but I'd
19 also like to feel more comfort in feeling that he really
20 understands this was not the way to challenge an election.
21 You don't do it this way. You don't try and overturn the
22 government.

23 So his comments are what have given me --
24 particularly since some of them were after the fact so it
25 would have been -- I would have hoped he'd have given some

1 thought at that point to what he had actually been engaged
2 in and what the effect had been. I think he clearly was
3 happy that the process was stopped, that the -- their
4 insurrection cowed senators who were hiding under desks.
5 Those comments give me great pause, and so I will do --
6 understanding this may create problems for his employment,
7 at least for an initial period, but I think those comments
8 merit some home detention.

9 So in terms of the sentence, pursuant to the
10 Sentencing Reform Act of 1984 and in consideration of the
11 provisions of 18 USC 3553 it's the judgment of the Court
12 that you, Kenneth Kelly, are hereby sentenced to a term of
13 12 months -- one year -- of probation on Count 4 and to
14 serve 60 days of home detention while on probation. The
15 location monitoring -- you'll be monitored in the form of
16 location monitoring technology for a period of 60 days. You
17 must follow the rules and regulations of the location
18 monitoring program. The cost of the program is waived.

19 Location monitoring technology will be at the
20 discretion of the probation office. It can include
21 radiofrequency monitoring, GPS monitoring, SmartLink or
22 voice recognition. This form of location monitoring
23 technology will be used to monitor the following
24 restrictions on your movement in the community.

25 You're restricted to your residence, wherever that

1 is, at all times except for employment, education, religious
2 services, medical -- should there be need for substance
3 abuse; unlikely, but we'll see the drug test -- any mental
4 health treatment -- although I don't think that's probably
5 necessary -- attorney visits, court appearances, and court-
6 ordered obligations. And the probation office can
7 preapprove other activities that are appropriate in terms of
8 your going about your life and your employment.

9 The Court authorizes supervision of this case to
10 be transferred to the district where they will be
11 supervising him. I will not put something in there at this
12 point, since it's unclear to me, and what you need to do is
13 to talk to our probation here to work out where is the best
14 place to be supervised.

15 I am not shifting jurisdiction. Jurisdiction will
16 remain in this court.

17 The Court finds you don't have the ability to pay
18 a fine and, therefore, waives imposition of a fine in this
19 case. You do have to pay a special assessment of \$10, which
20 I can't waive. It's required by the statute.

21 The financial obligations are immediately payable
22 to the -- let me see -- payable to the Clerk of the Court
23 for the District of Columbia, and you will be paying
24 restitution in the amount of \$500. That can be paid -- do
25 you plan on paying all together, or are you asking for

1 something that is done over time?

2 MS. MIRELL: Your Honor, I believe restitution has
3 already been paid in this case.

4 THE COURT: Have you paid it? Okay. Let me
5 indicate, then, that restitution has been paid. I will --
6 it should be listed as there was restitution that was
7 required and that he's paid it so it's clear that the
8 condition that he agreed to in the plea agreement has been
9 satisfied and that it actually was considered.

10 Probation will release the presentence
11 investigation report to all appropriate agencies -- which is
12 the U.S. Probation Office -- in whatever the approved
13 supervision in order to execute the sentence, and the
14 treatment agencies will return the presentence report to the
15 probation office upon completion or termination from
16 treatment.

17 In terms of the notice of appeal, pursuant to 18
18 USC 3742, you have a right to appeal the sentence imposed by
19 the Court. The only condition that is left is if
20 imprisonment is longer than the statutory maximum, which
21 it's not. There is also one other exclusion, but that would
22 be relating to ineffective assistance of counsel. Your
23 notice of appeal is pretty narrow, but you should talk to
24 counsel, if you wish to appeal; and if you choose to do so,
25 you have to file it within 14 days of the Court entering

1 judgment. If you can't afford to file it, the Court can
2 grant you leave to file without your having to pay the
3 costs, and you also can ask for appointed counsel should you
4 need appointed counsel and not be able to afford it.

5 As defined in 28 USC 2255, you also have the right
6 to challenge the conviction entered or sentence imposed if
7 new and currently unavailable information becomes available
8 or on a claim that you received ineffective assistance of
9 counsel. Again, if you cannot afford it or you need counsel
10 appointed, you can do so with a request to the Court.

11 In terms of -- I would have you talk to probation.
12 They're on -- you can either talk now or later as to how you
13 want to go about this in terms of making some decisions.
14 I'll give you a period of time in terms of -- that the
15 probation supervision does not have to begin until February
16 4th; so that gives you enough time to figure out where you
17 want to live. They can work with you about where you're
18 going to be supervised. So the probation and the home
19 detention would start at that point, which would give you a
20 couple of weeks to figure out where you're going to be and
21 work with probation about where you're going to be
22 supervised since it doesn't -- it's not clear it's going to
23 be, you know, Florida.

24 Pursuant to D.C. Circuit opinion, which is the
25 *Hunter* opinion decided back in 2016, are there any other

1 objections to the sentence that we haven't already
2 discussed? If there's something else, this is the time to
3 bring it up.

4 So let me ask probation first. Is there anything
5 that -- in terms of the sentencing form or anything else
6 that I need to bring up? It's a year probation with the 60
7 days of home detention, and he's already paid the
8 restitution so he basically has the \$10 to pay. Anything
9 else that I need to address?

10 THE PROBATION OFFICER: I just want to clarify.
11 Probation doesn't start until February 4, 2022; is that
12 correct?

13 THE COURT: Yes, I'm sorry, I should have put the
14 year in. Yes, 2022.

15 THE PROBATION OFFICER: Okay. Thank you, Your
16 Honor. The only other thing I would ask is that the Court
17 ask Dr. Kelly to make himself available by telephone so that
18 I can go over the conditions of probation and get some more
19 information about where he's living so that I can -- we can
20 figure out where he can be supervised.

21 THE COURT: Okay. And I would add -- I will put
22 in as part of the sentencing format the mandatory conditions
23 as well as the standard conditions will be -- there are
24 basic expectations, and you should just be aware that the
25 mandatory conditions include not committing another federal,

1 state, or local crime; not unlawfully possessing a
2 controlled substance. You must refrain from any unlawful
3 use of a controlled substance. You must submit to one drug
4 test within 15 days of placement on supervision and at least
5 two periodic drug tests thereafter.

6 I will leave that to the probation office. They
7 have a protocol as to, depending on if your tests come back
8 negative, how often or lack thereof you need to do drug
9 tests. I'm not exempting him from -- because frankly we
10 don't have any drug tests so it's only self-reporting that
11 there isn't any problem. But if they come back negative,
12 then this will not be a continued condition.

13 So anything else?

14 But I would -- Dr. Kelly, you should call her to
15 talk over the supervision. I've gone over the mandatory,
16 but there may be other things; and also to discuss with
17 her -- which may be an ongoing discussion -- about where
18 you're going to be, where they're going to supervise you,
19 which also relates to the kind of location monitoring they
20 do. So different places have different ways of doing it so
21 you may wish to engage in a discussion with them relating to
22 that, but I'll give you the time until February 4th of this
23 year to work all of that out.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Government, anything from you?

1 MS. MIRELL: No, Your Honor.

2 THE COURT: Okay. And Mr. Tragos, anything from
3 you?

4 MR. TRAGOS: Yes, Your Honor, I just want to clear
5 something up with the drug testing. He's going to do an
6 initial drug test. If that initial drug test is negative, I
7 thought the Court indicated that there wouldn't be a need
8 for --

9 THE COURT: They do it within 15 days of placement
10 on supervision, is the usual. At least that's my
11 understanding, and the probation officer can correct me.
12 Generally they do one 15 days on supervision, and then there
13 may be periodic drug tests, two periodic afterwards.

14 Probation has their own protocol so instead of my
15 deciding it, they have a protocol, which I would adopt,
16 which indicates if the test comes back negative how many
17 times you need to test or don't need to test. If it comes
18 positive, then they have another protocol.

19 I'm correct, Probation Officer; am I?

20 THE PROBATION OFFICER: That's correct, Your
21 Honor.

22 THE COURT: Okay. So there will be a first one,
23 and then depending on what comes back it will -- the
24 protocol will kick in.

25 MR. TRAGOS: I'm just going -- because he has a

1 DEA license and therefore -- he has a DEA license so
2 therefore it has to come back negative. That's why I was
3 saying I don't know why they want the initial one, but I
4 understand the Court is letting them do their protocol.

5 THE COURT: Part of the -- since we didn't have
6 anything on our records about his tests, it's appropriate to
7 be -- as a standard condition to have the test, and then,
8 you know, if it comes back negative, and if there's other
9 ways that are being tested there's no reason to duplicate --
10 a duplication. So if he's doing it as part of his medical
11 license or some other way of doing it, probation may very
12 well feel that that's enough. We'll leave it to them.

13 Usually you don't -- there's no need to duplicate,
14 you know, testing. But I -- that's something that they're
15 going to have to work out.

16 Usually they have language about -- determined by
17 the Court. I don't think -- my point is he doesn't have to
18 come back to me or probation to me. I want them to use
19 their own protocol after the first test, okay? So I'm
20 giving them discretion to use their protocol.

21 MR. TRAGOS: All right. Your Honor, the other is
22 house calls, as we've mentioned during the course of this
23 sentencing, is a situation where he actually goes to the
24 home and treats patients. It has been, at least in some
25 jurisdictions, when someone's put on probation or house

1 arrest, particularly the initial probation, they normally
2 are strict about that. So we would ask that if the Court
3 would tell them that he can continue to do house calls
4 during probation and during house arrest.

5 THE COURT: Okay. Generally -- I'll hear from
6 probation about this. Generally, for additional things
7 besides what I've already put in, which is part of the
8 judgment, we leave it to probation because they will check
9 as to what house calls you're making and if they decide that
10 you're going to be doing it. In other words, I'm not going
11 to approve it without knowing he's going to do them and
12 what's involved with it.

13 Probation will talk to him about his house calls;
14 and if they're doing it, they may very well go ahead and
15 approve it.

16 MR. TRAGOS: I just -- I guess I can inquire of
17 probation if they have a situation where they do have a 60-
18 day restriction or can they start this right away? Or do we
19 need a court order, I guess is what I'm asking?

20 THE COURT: I guess, Ms. Field, I don't know
21 whether it's done by different probation officers or there's
22 a uniform one across the board. Do you want to address the
23 issue of house calls?

24 My assumption is the house calls -- that they
25 would want to check that there actually are house calls in

1 terms of your going. They're not going to, you know -- in
2 terms of being able to do it, I don't know whether they'd
3 approve it or not.

4 Ms. Field, do you want to address it?

5 THE PROBATION OFFICER: It sounds to me, Your
6 Honor, that house calls are part of his employment, if I'm
7 correct. So in that case he would submit a schedule --
8 traditionally in D.C. he would submit the schedule a week
9 prior to whatever employment obligations, but where and when
10 he would need to be, and those are approved by the probation
11 officer. So it sounds like these house calls are a part of
12 his employment that are permitted. Probation will go over
13 the employment obligations by his supervising officer.

14 MR. TRAGOS: Your Honor, the house calls situation
15 is where he can get called and have to leave immediately.

16 THE COURT: Well, he may need to call and let
17 them know that that's what he's doing. I mean, I have to
18 say to you home detention/location monitoring has
19 restrictions. That's what it is. So they will make an
20 effort, if it's part of his employment, to do it, and they
21 may have procedures for -- he's, I'm sure, not the first
22 doctor that's under home detention. They will have
23 procedures for if an emergency arises, which can be true of
24 other professions as well.

25 But I'm not going to get into the fine details

1 because frankly it needs to be done by the office who is
2 actually going to supervise him as to -- and where he is as
3 to doing it. If he's got a regular schedule of things, then
4 provide it. They'll approve it, and he goes, and he doesn't
5 need to do any other additional ones. If an emergency comes
6 up, he'll have to talk to them about what their procedures
7 are if you get an emergency call that you view as an
8 emergency in terms of going there.

9 MR. TRAGOS: I think the Court did say travel to
10 Hawaii. The Court's approving Hawaii travel to see his
11 family.

12 THE COURT: In terms of travel, my recollection in
13 probation is -- and Ms. Field can change this -- that
14 generally speaking they have some limitations to start with,
15 but I do believe that with visits to family -- but I will
16 defer to her as to whether it's -- the procedure, the
17 general procedure in probation and home detention. If
18 you're doing it during home detention, you're going to have
19 to get approval from the probation office in terms of
20 supervising you as to whether they'll let you do that.

21 But in terms of the probationary term itself, the
22 year, what is -- what do they usually do if it's going to be
23 outside of the area where he's supervised, Ms. Field?

24 THE PROBATION OFFICER: Your Honor, he's permitted
25 to travel to Hawaii. Requests will need to be submitted

1 prior to his intent-to-travel date.

2 These are all things I can go over with defense
3 counsel once we go over the conditions after the sentencing
4 hearing. Travel to Hawaii is permitted, but requests need
5 to be provided to the probation prior though.

6 THE COURT: Okay. So generally what it is is that
7 you set out whatever your travel is, and they -- you let
8 them know. They approve it. They know they're going to be,
9 you know -- going to be out of wherever it is that you're
10 living, and they approve it unless there's some issue.

11 If you're in compliance, there's not going to be a
12 problem. If you're not in compliance with your conditions,
13 then they're not going to let you travel, to be frank, but
14 what you do is you work it out with probation in terms of
15 their letting you.

16 Generally speaking, if you're in compliance, there
17 shouldn't be a problem of your being able to -- you're still
18 within what's considered the United States. You're not
19 traveling internationally. So it should be something that
20 is worked out, but that's something you need to talk to them
21 about.

22 MR. TRAGOS: And for the phone call, can we do
23 this initial conversation right after the sentencing?

24 THE PROBATION OFFICER: Yes, my request is to do
25 it right after the sentencing hearing.

1 THE COURT: Okay. What I can do -- let me finish
2 things, and what I can do is leave you on Zoom. You know,
3 our deputy courtroom clerk needs to be the host and around,
4 but she's not going to be paying any attention to this.
5 We'll get off and you and probation, while the three of you
6 are there, can have a discussion.

7 Ms. Field, are you prepared, or do you need other
8 material to have a discussion with him?

9 THE PROBATION OFFICER: No, I'm prepared to have a
10 discussion. Thank you.

11 THE COURT: Okay. So once we're done, I'll get
12 off, the government will leave, and you can talk so that
13 you -- instead of doing a phone call, you'll actually be
14 able to eyeball each other.

15 So let me make sure that I've done what I need to
16 do in terms of the sentencing. And let me just say if
17 there's some additional issues once they have spoken, you
18 can come back -- I'm keeping jurisdiction so you can come
19 back to me to ask, if things are not worked out with
20 probation or there's some question.

21 But you're getting into the minutiae, and that
22 really is something that probation -- they have regular
23 procedures uniformly that they do across the board.
24 Obviously home detention is going to have some more
25 limitations than just the rest of the period of time on

1 probation.

2 So let me just look through and make sure I've
3 covered everything.

4 All right. I think I have. I don't think there's
5 anything else, Ms. Field, that I need to cover for the
6 sentencing; am I correct?

7 THE PROBATION OFFICER: That's correct, Your
8 Honor. Thank you.

9 THE COURT: All right. Dr. Kelly, I certainly
10 don't expect to see you back here. I'm not switching
11 jurisdiction; so if something comes up and you violate it,
12 you'll be back in front of me. You're going to disappoint
13 me to no end. I've given you, you know, a shorter period of
14 probation.

15 Hopefully you will be able to get your employment,
16 since you need to support your family, but I also want you
17 to give very careful thought about what I said to you about
18 the significance of what you got involved in and how, you
19 know, the attack on the democracy is not something to be
20 lightly taken, and I would hope that you would not
21 participate in the future in. I still have some pause,
22 which is why you're on home detention. If I didn't have a
23 pause, I wouldn't have done that, but I think your texts
24 give me some pause.

25 And I hope that is you -- if you talk to your

1 children, at least the two older ones, that you -- if you're
2 going to explain what you did, that you explain that this is
3 not the way to deal with a democracy in terms of overturning
4 it. But also, you should explain that when people make
5 mistakes, they own up to it, they get the consequences, they
6 get their punishment, and then they move on with their life,
7 which is what I would expect you to do.

8 THE DEFENDANT: I have done that, Your Honor.

9 THE COURT: All right. The parties are
10 excused other than we'll leave Ms. Field and Mr. Tragos and
11 Dr. Kelly, and take care. Be safe.

12 THE DEFENDANT: Thank you, Your Honor.

13 THE COURT: Do you have some sense of how long
14 this is going to be because Dorothy needs to head out as the
15 host?

16 THE PROBATION OFFICER: Ten minutes at the most,
17 if that's okay.

18 THE COURT: Okay. That's fine. She can do other
19 work at the desk.

20 (Whereupon the hearing was
21 concluded at 11:47 a.m.)
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CERTIFICATE OF OFFICIAL COURT REPORTER

I, LISA A. MOREIRA, RDR, CRR, 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.

NOTE: This hearing was held remotely by Zoom or some other virtual platform and is subject to the technological limitations of court reporting remotely.

Dated this 8th day of February, 2022.

/s/Lisa A. Moreira, RDR, CRR
Official Court Reporter
United States Courthouse
Room 6718
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Washington, DC 20001