

1 THE COURTROOM DEPUTY: Your Honor, this afternoon,
2 this is scheduled as a video sentencing proceeding. We have in
3 front of us criminal case No. 21-303-1, the United States of
4 America V. Michael Joseph Rusyn.

5 Will the probation officer please identify herself
6 for the record?

7 THE PROBATION OFFICER: Good afternoon, Your Honor.
8 Jessica Reichler on behalf of the United States Probation
9 Office.

10 THE COURT: Good afternoon.

11 THE COURTROOM DEPUTY: Counsel for the government,
12 please identify yourself and your colleague for the record.

13 MR. ROMANO: Good afternoon, Your Honor. Michael
14 Romano on behalf of the United States. I'm joined today by
15 James Pearce.

16 THE COURT: Good afternoon.

17 THE COURTROOM DEPUTY: Counsel for the defendant,
18 please identify yourself for the record.

19 MS. BERGMAN: Good afternoon, Your Honor. Andrea
20 Bergman, Assistant Federal Public Defender, appearing on behalf
21 of Mr. Rusyn.

22 THE COURT: Good afternoon.

23 THE COURTROOM DEPUTY: Will the defendant state his
24 name for the record and verify that he is able to see and hear
25 the judge, the probation officer and the attorneys.

1 THE DEFENDANT: Good afternoon, Your Honor. I'm
2 Michael Joseph Rusyn. And, yes, I can.

3 THE COURT: All right. Now, I want to say that we're
4 here this afternoon for Mr. Rusyn's sentencing. I understand
5 that members of the public and the press may be listening in on
6 our public line, which they have an absolute right to do and
7 you're welcome to attend and report on what transpires in court
8 proceedings, just as you would be if the courtroom were open.
9 But I do want to remind you that just as if the courtroom were
10 open, the recording or dissemination of a recording of these
11 proceedings would be a violation of our court rules.

12 Second thing I want to talk about before we move
13 forward is to ask you, Ms. Bergman, whether you've consulted
14 with the defendant about whether he wishes to proceed by video
15 conference this afternoon?

16 MS. BERGMAN: Yes, Your Honor. I have consulted with
17 Mr. Rusyn about that and we are prepared to go forward by
18 video.

19 THE COURT: All right. And, Mr. Rusyn, do you agree
20 with that? You understand you have a constitutional right to
21 be in the courtroom, in person, at a critical stage in your
22 case, and this is one of those. And do you agree to
23 participate by video this afternoon?

24 THE DEFENDANT: Yes, Your Honor. I understand and I
25 do agree.

1 THE COURT: All right. And I find, pursuant to the
2 CARES Act, and given your written waiver and the standing order
3 of this Court calling for remote proceedings, particularly now
4 in order to protect the health and safety of you, and also the
5 court personnel and the lawyers involved, that these are all
6 specific reasons why the sentencing in this case can't be
7 further delayed without serious harm to the interest of
8 justice.

9 I just want to start by saying that I really
10 appreciate the quick work and responsiveness on the part of the
11 parties and the probation office in answering a question that I
12 posed for the first time this morning. I have, as you are
13 probably aware, a number of these sentencings going on at the
14 same time and in another case the government took the position,
15 for the first time, it had been arguing that I could put
16 someone on probation after incarceration, even though I can't
17 put someone on supervised release after incarceration. And
18 since it sensed some resistance on my part to that concept, it
19 offered up a short period of intermittent incarceration, but it
20 proposed up to 14 days for that.

21 I think everybody agrees and everyone knows that if
22 the defendant is placed on probation under 18 U.S. Code § 3563,
23 the Court has the discretion to impose intermittent confinement
24 or confinement in a community correctional facility as a
25 condition of probation, that's not really an issue. But I was

1 interested in how you interpret the notion of an interval under
2 that provision, the intermittent confinement provision, and
3 what you thought of the 14 days.

4 I very much appreciated the detail and the
5 thoughtfulness that went into the letter from the federal
6 public defender that was turned around on an incredibly short
7 period of time. But I think at this point it's fair to say
8 that the defense doesn't dispute that I have the authority to
9 do that. What your dispute is, whether that would be the
10 appropriate thing to do under the circumstances.

11 Is that a fair compressed summary of your letter,
12 Ms. Bergman?

13 MS. BERGMAN: I think that I should probably clarify
14 that. I think that if you interpret the statute faithfully,
15 that you have to give the operative word "intermittent" its
16 due. And that if the intent is to do a 14-day consecutively-
17 served period of days, that that is not intermittent. And that
18 when we look to the purpose of that special condition of
19 probation, with Congress's intent being to, one, make it the
20 least restrictive on the defendant and provide for the Court's
21 other concerns, which might be whether or not the defendant was
22 able to keep his appointments or meet other family obligations
23 and that kind of thing, that it might become more fact-specific
24 what that length of -- or, interval might be, when you look at
25 the statute and the purpose of the statute.

1 And, so, I would suggest, in Mr. Rusyn's case, that
2 14 days -- because he would lose his employment -- that that
3 would not be an appropriate reading of the statute or an
4 appropriate interval because it's not, in fact, intermittent
5 and it would do violence, I think, to the spirit of the
6 statute.

7 I also think that it would appear to be an end run
8 around 3551's command that the Court has separate options, in
9 the disjunctive, either to impose periods of incarceration or
10 impose probation, and that --

11 THE COURT: I don't disagree with you that the term
12 "intermittent" has to mean something. I guess what I was
13 really trying to figure out, whether -- what the upper boundary
14 was of an interval, presuming that the Court gave a sentence
15 that appropriately had intervals in this situation. And I
16 don't want to get ahead of myself here or suggest that's what
17 I'm planning to do.

18 But, there are sentences where a sentence of
19 incarceration of 30 days, 60 days, 90 days can be appropriate
20 for individuals who are also working, or for other reasons you
21 wouldn't want to give up the option of other forms of
22 supervision or to remove them from the community entirely for
23 that period of time. But I had never seen an intermittent
24 sentence for anything other than weekends.

25 So, it was the length of the 14 days that struck me,

1 but I absolutely take your point about the fact that if you
2 just make it 14 in a lump, doesn't sound very intermittent.

3 MS. BERGMAN: Right.

4 THE COURT: Mr. Pearce, I think you're here for this
5 issue. Is there anything you want to add about this before I
6 go forward?

7 MR. PEARCE: Certainly. Thank you, Your Honor. The
8 word "intermittent," of course, does not appear in 3563(b)(10).
9 As Your Honor quoted, it talks about nights, weekends and other
10 intervals of time. And so then the question really becomes
11 what does "other intervals of time" mean? And I think Your
12 Honor laid out where at least a handful of district courts
13 interpreting this provision have said, kind of, that you could
14 not have more than 60 days, 90 days, 30 days, even, as one
15 consecutive lump.

16 But, one of those courts, the *Mize* court, the
17 decision, I think, out of the District of Kansas, quoted the
18 legislative history, which I think is useful here. And,
19 specifically, what 3563 -- at the time it was enacted it was
20 (b)(11), now it's (b)(10) -- sets out are both the opportunity
21 for the courts to impose intermittent confinement, what I think
22 the legislative history referred to as split intervals, as well
23 as a brief period of time, and the Senate report suggests up to
24 a week or two.

25 And so in our reading of that, you either can do

1 intermittent or you can do a brief period of time. We
2 certainly recognize that consistent with what the cases have
3 held -- frankly, we think once you get above 14 days, that's
4 not a brief interval of time or a brief period of time. But
5 we've do believe, consistent with the legislative history and
6 the statute's history, that 14 days is permissible under
7 3563(b)(10).

8 THE COURT: All right. The other issue that we're
9 facing is that while we can have an academic conversation about
10 this, no matter which way it comes out you have to deal with
11 the practical realities of what would be available in the
12 district in which the defendant is going to be sentenced. And
13 even if there were facilities that were prepared to accept
14 probationers under the kinds of sentences that are being
15 discussed, whether those exist now and whether those options
16 are either compromised or limited or eliminated entirely due to
17 the presence of the coronavirus in the community and in the
18 facility at large.

19 So there's a lot to think about legally and
20 practically in terms of what we can do with sentencing. I
21 think it's important to think about all this in connection with
22 this series of misdemeanors. The Court is probably doing more
23 misdemeanor sentencing than it's ever done before in this
24 building in -- at least in this volume. So, it's useful to
25 know what some of these options are. But then it still may

1 turn out that they're not options.

2 So what I think is more important to do is to go
3 forward now and discuss what we ordinarily would discuss, which
4 is the sentencing factors. And so I would like to get into the
5 substance of the sentencing directly.

6 First, I would say, for the record, that I received
7 the final revised presentence report, and it was filed on
8 December 8th. Ms. Bergman, have both and you Mr. Rusyn had an
9 opportunity read the presentence report?

10 MS. BERGMAN: Yes, Your Honor, we have. We did
11 identify one correction to be made at paragraph 35 with respect
12 to what sentence was actually imposed in that prior matter for
13 Mr. Rusyn. In an email received from the probation department
14 yesterday, I understand that the probation department is in
15 agreement that the correction should be made. I don't know if
16 that was yet communicated to the Court.

17 THE COURT: All right. I did note that you had that
18 objection. And with that correction, then, do you have any
19 objections to the presentence report at this point?

20 MS. BERGMAN: No, Your Honor.

21 THE COURT: All right. And I don't believe the
22 government has any factual or legal objections to the
23 presentence report either.

24 MR. ROMANO: We do not, Your Honor.

25 THE COURT: Okay. So with that correction, I'm going

1 to accept the presentence report as undisputed.

2 I've also received additional materials concerning
3 the defendant, including the government's memorandum in aid of
4 sentencing and a video and some photographs from January 6th;
5 the defendant's memorandum in aid of sentencing; his academic
6 records that reflected struggles with learning issues as a
7 young man; a letter from his great aunt who told me a great
8 deal about his character, in particular, his role in supporting
9 his elderly grandmother; a letter from a fellow volunteer
10 firefighter; a letter from another parent, one of his
11 daughter's best friends, who have witnessed the defendant's
12 love of and commitment to his daughters.

13 A letter from a parent who witnessed interest in his
14 daughters' little league activities, and ultimately recruited
15 him to be a coach himself, who talks about his maturity and
16 composure; another parent interested in sharing softball
17 coaching duties, and; the defendant's father, who was worried
18 that maybe he had a conflict of interest. But he's a person
19 who knows the defendant quite well and he had valuable things
20 to say. He wrote about not only Mr. Rusyn's extraordinary
21 efforts caring for his grandmother, but the way he stepped up
22 to help raise his younger brothers when his mother passed away.

23 There were also supplemental submissions from the
24 defense regarding information regarding his new employment and
25 recent injury sustained during heroic efforts to fight a fire

1 and saved one of the members -- one of his subordinates. I
2 also received a letter from counsel that dealt with the prior
3 assault conviction, which we've now addressed through the
4 probation report.

5 I would note -- and I wasn't going to say anything
6 about this in connection with today's letter, given the
7 turnaround -- our local rules actually require docketed
8 submissions and not letters to the Court. So if you have other
9 cases, just keep that in mind.

10 Finally, I received a letter from the defendant
11 himself. And I read and very much appreciated all of that.

12 In a criminal case, as I said at the time you pled
13 guilty, there's a statute that tells me the things I'm supposed
14 to think about when I sentence someone, it's 18 U.S. Code
15 § 3553. It list a number of factors that we're supposed to
16 think about, and one of the things it tells me you're supposed
17 to think about is what the sentencing guidelines would
18 recommend in your case. But the parties have all agreed that
19 given the plea to the misdemeanor charge of parading,
20 demonstrating, or picketing in a Capitol building, in violation
21 of 40 U.S. Code § 5104(e)(2)(G), that is the type of
22 misdemeanor to which the guidelines do not apply, and so we
23 don't have to talk about them or calculate them or think about
24 them. However, what we do know is that for this offense
25 Congress has said that the maximum sentence that could be

1 imposed would be up to six months.

2 Would the government like an opportunity to speak
3 regarding the appropriate sentence in this case?

4 MR. ROMANO: We would, Your Honor.

5 THE COURT: All right. Go ahead, Mr. Romano.

6 MR. ROMANO: Thank you. So, Your Honor, I don't --
7 I'll begin by noting that we've argued in this case, as we've
8 argued in other cases arising out of the riot on January 6,
9 that the scope of the riot and the presence of numerous people
10 who participated in it, whether they committed conduct that was
11 charged by misdemeanors or felonies, enabled the riot to
12 persist for the length of time that it did, enabled the
13 violence that took place during that day, and contributed to a
14 criminal offense of historic proportions.

15 We treat the riot very seriously, and the defense
16 does as well. The defense acknowledges that the size of the
17 riot made the riot more dangerous, made this a significant
18 criminal offense. There are several areas where we and the
19 defense disagree. I want to highlight those.

20 I actually want to begin, though, by addressing the
21 defendant's points about his own personal history in relation
22 to his family, his children, and his care of his grandmother.

23 These absolutely are to his credit, Your Honor. His
24 commitment to his children, his commitment to be an active
25 parent, to work hard at getting education, provide a good

1 education to his children, they're all to his credit, they're
2 worthy of consideration. There's one point that I thought was
3 especially important for me to highlight in the defendant's
4 memorandum, that his -- that speaks well of him. He wrote of
5 having been ashamed of participating in the events of January
6 6th. He noted that he believed his daughters had lost faith in
7 him. One of his daughters told him she has difficulty trusting
8 him after the events of January 6. I'm sure that was
9 tremendously difficult for the defendant to hear. I'm sure it
10 was difficult for him to engage with.

11 But, it's important that he's having conversations
12 like this with his children and others. It's important that
13 he's working, as he's demonstrated through Ms. Bergman's
14 arguments, to better himself, to work with a therapist, to care
15 for his grandmother, to find gainful employment. Again, it
16 also sounds like he is separating himself from people in groups
17 that encouraged the sort of conspiratorial thinking and the
18 behavior that led to the crimes on January 6. And this is what
19 we would hope any person coming before the Court for sentencing
20 would do.

21 But, I think the Court is well aware that not all
22 defendants in January 6 matters are doing this. There are
23 certainly some that are becoming more entrenched, there are
24 some that are refusing to engage. There may be an ecosystem
25 that will allow people to continue to buy into conspiracy

1 theories. The work the defendant is doing to separate himself
2 is noteworthy and I think deserves our acknowledgment.

3 The area we largely disagree with the defense is our
4 interpretation of the defendant's conduct that day. And
5 reading the defendant's memorandum, I was struck by some things
6 that when I put them next to each other, did not appear to make
7 sense to me. On the one hand, the defendant acknowledged that
8 the riot was serious. He wrote in his letter to the court
9 that, "After my first few footsteps, I had a terrible feeling
10 about this and I should have known that nothing good could
11 happen." In his original sentencing memorandum he wrote that
12 he was ashamed of himself in the immediate aftermath of the
13 events of January 6th.

14 But, reading both the original and the supplemental
15 sentencing memorandum, in my view, Your Honor, fails to answer
16 the question of why? Why he had that terrible feeling, why he
17 was ashamed of himself immediately. And, of course, all of us
18 here virtually today for this hearing know that the conduct was
19 wrong and understand that it was wrong and criminal. But to
20 read the defendant's sentencing memorandum, it sounds like he
21 was oblivious to what was going on around him.

22 He claims that he didn't see how the building's doors
23 were opened, that he was forced inside the Capitol building,
24 that he didn't see the group of people inside the statuary hall
25 connector, just outside of the house chamber, pushing against

1 the police line. So, based on what he describes of his
2 conduct, it's not clear how or why he came to the understanding
3 of the seriousness of what he did.

4 Now, it's the government's view that his statements
5 about not seeing these things and not understanding these
6 things are not credible and that the Court shouldn't credit
7 those statements. The defendant claims he didn't see how the
8 door on the east side of the Capitol building leading into the
9 rotunda was breached. And, in a way, that statement could be
10 read as true because the door was opened from the inside. But
11 he was at the doors and close enough to the front of the crowd
12 to be able to see them.

13 Exhibits 2 and 3, which we submitted with our
14 sentencing memorandum, show that he was using his phone to film
15 these doors for a full ten minutes before other rioters at the
16 front of the crowd tried to break through them. Other videos
17 that we highlighted for the Court show clashes between other
18 rioters and police officers right there at the door.

19 So, for the length of time that rioters were trying
20 to break into the Capitol, he was there. Breaking in wasn't a
21 fast process either, as we identified in our sentencing
22 memorandum; it was four minutes from the time the rioters first
23 broke parts of the glass, when somebody inside the building got
24 those doors open. So, if the defendant was standing in the
25 crowd recording those doors and watching for a period of 14

1 minutes, and hearing and watching as other rioters clashed with
2 police, he, of course, would have understood the violent nature
3 of this event before he ever stepped foot inside the building.
4 It would have been inescapable, it boggles the mind, Your
5 Honor, to think that he wouldn't have known what was going on
6 around him.

7 I want to highlight one piece of evidence that we
8 didn't submit, and this was something that came to our
9 attention after we filed our original sentencing memorandum and
10 which I informed Ms. Bergman about. There were a handful of
11 videos recovered from the defendant's phone that initially did
12 not appear to be videos, it was sent after. We dug a little
13 deeper and we found that these files that appeared to be
14 nothing were actually videos. I informed Ms. Bergman about
15 this and her legal assistant as soon as we found out.

16 There is a video -- if the Court would find it
17 useful, I would be happy to share my screen and show it -- and
18 it is from the defendant's cell phone of that door that shows
19 the spiderweb fractures in the window as other rioters were
20 trying to break in.

21 So, again, it makes no sense that he didn't know that
22 this was happening. And I think, even without consideration of
23 that video, the Court can tell this based on the totality of
24 the circumstances and the other exhibits that we've submitted.

25 So, now we move to the defendant's point that he

1 claims he was forced into the Capitol against his will. And if
2 there was any risk of him being trampled by the crowd, it was
3 only because he put himself at the front of the crowd and
4 remained there for 14 minutes while other people were trying to
5 break into the building.

6 The claim doesn't make sense, Your Honor. And as the
7 Court can see from the videos we submitted from the U.S.
8 Capitol police security footage taken from inside the building,
9 when the defendant got in he certainly didn't act like a person
10 who was forced inside. He didn't take any time to collect his
11 bearings, he didn't take any time to process what had just
12 happened to him. He didn't look around in confusion and try to
13 make sense of where he was. He and Deborah Lee, who he was
14 with, continued forward.

15 Next, the defendant and Ms. Lee moved through the
16 rotunda to the statuary hall connector. That's the room beyond
17 the statuary hall that has a number of statues of people from
18 different states that leads up to the House of Representatives
19 chamber. Now, there again, he would have been in a position to
20 see and hear what was going on. The defense and the government
21 agree that he was a few rows of people back from the front of
22 the crowd. But, in our view, he was not so far back that his
23 view would have been obstructed.

24 The defense and I disagree about whether or not he
25 would have heard one of the people at the front of that crowd

1 yell the phrase, "Tell Speaker Pelosi we're coming for that
2 bitch." The video shows that she said this at around the time
3 that Mr. Rusyn arrived in the statuary hall connector. And it
4 was not, at that time, so crowded that there was a mass of
5 people and wall to wall, but it's possible that he didn't hear.

6 Nonetheless, even if he didn't hear that, he would
7 have heard people call police officers traitors, he would have
8 heard people swear at police officers, he would have heard
9 people demand to be let past the police line.

10 You can tell he heard and was generally aware of what
11 was going on because the video makes abundantly clear that he
12 at one point stood at the front of the crowd and joined in a
13 "We want Trump" chant. And, again, he can be picked up in
14 other pieces of video, not very far from the back of the crowd,
15 in a position to see and hear what was going on.

16 Next, after he pressed through that group, he was
17 part of a crowd that reached the house antechamber. And there,
18 as anywhere else, there's no indication that Mr. Rusyn was
19 violent. But there were people in that antechamber who were
20 calling to have the window leading into the House chamber
21 smashed in. The photo that we submitted that has people on the
22 other side, the video shows people in defense of the
23 representatives in the House chamber having barricaded that
24 door, holding guns on the other side of the window and on the
25 side of the chamber where Mr. Rusyn was. There were people who

1 were calling for parts of body armor or crowbars to smash in
2 the window. That is audible on the video taken by
3 Mr. Sullivan, another defendant in one of these rioting cases.
4 And at times Mr. Sullivan was standing right next to Mr. Rusyn.
5 Again, it makes no sense to think that he didn't understand
6 what the crowd was trying to do.

7 There's also another moment that, again, appears on a
8 video that I didn't share with the Court for the same reasons.
9 And if it would be useful, I would be happy to share it now.
10 But, otherwise, I'll just proffer it is, again, from the
11 defendant's phone. This is from the rotunda. It's from a
12 period of time after which it's difficult to see, from the
13 rotunda security footage, where he went.

14 And there is a video of the defendant filming a third
15 attempt by other rioters to get through a police line. There,
16 those police officers stood in front of a door that led from
17 the rotunda to a set of stairs. I believe, but I'm not
18 certain, that those stairs led down from the rotunda into the
19 area where police officers were staging to defend the tunnel at
20 the lower west terrace, that I'm sure the Court is familiar
21 with through other cases. And for over a period of several
22 minutes there were rioters yelling at those police officers,
23 pushing against those police officers. And the defendant,
24 again, did not push police officers himself, but stood right
25 there at the front of the crowd and filmed other rioters doing

1 that.

2 Then, we submit that Deborah Lee's statements after
3 the defendant and she left the Capitol were revealed. I know
4 in his sentencing memorandum he distances himself from
5 statements that Ms. Lee made and says he did not agree with
6 them, but that day the statements that we quoted came right
7 after he and she had left the Capitol, right after a period of
8 time when their conduct within the Capitol was largely
9 identical, where it is fair to infer that there was a unity of
10 purpose that day, even if he came to a point later where he
11 didn't agree with her.

12 All of this evidence taken in conjunction shows that
13 he was a willing participant. And so, this speaks to a point
14 about the nature and circumstances of the offense, but also the
15 history and characteristics of the defendant. It speaks to the
16 nature and circumstances of the offense because it shows that
17 the defendant's conduct was more serious than that of a number
18 of other people who were in the building that day. It shows
19 that he lent his presence to groups of people, several times,
20 who were trying to penetrate police lines, even if he didn't
21 engage in physical violence himself. And it speaks to the
22 history and circumstances of this particular defendant in
23 thinking about acceptance of responsibility and accountability.

24 The defendant absolutely has accepted responsibility
25 by pleading guilty. He's acknowledged the factual nature of

1 what he did and he is doing the work to repair the
2 relationships damaged by his participation in January 6th, but
3 it doesn't appear that he is acknowledging the gravity of his
4 actions or a full understanding of what he would have seen and
5 known.

6 It is unlikely, Your Honor, that he went into the
7 Capitol completely oblivious to what was going on around him
8 but, nonetheless, immediately came to an understanding that it
9 was problematic. It's much more likely, and we think the
10 evidence shows, that he shared a common goal with other rioters
11 and he wanted to be part of the goal that they were trying to
12 achieve, even if he was not willing to use violence to achieve
13 it. And it was after leaving and after thinking back on the
14 things that he had seen and had done and had known that he
15 realized how wrongful and problematic his conduct and other
16 people's conduct were. That explanation, we submit, makes much
17 more sense.

18 Lastly, I want to talk about the issue of sentencing
19 disparities. The defense raises a number of cases that they
20 view as comparable, the government does not. I'm happy to
21 speak to specific cases, if it would be helpful to the Court.
22 But I think there are two general points that I take away from
23 the defendant's discussion of comparable cases.

24 One is that it seems that the defense has a view that
25 the thing that is an aggravating factor in misdemeanor cases is

1 bragging about the riot on social media or spreading lies about
2 the election. To be clear, that is an aggravating factor, the
3 government has argued it is an aggravating factor in a number
4 of cases, but it is not the only aggravating factor. So the
5 government submits that it is incorrect to look at the
6 defendant's conduct and look at the conduct of somebody who is
7 more a loudmouth and say the conduct of somebody who was more a
8 loudmouth is categorically worse.

9 The defendant did not participate in the kind of
10 disinformation or bragging on social media that other rioters
11 did. That is clear. But, his conduct in the Capitol, lending
12 his support to efforts to breach police lines, watching as
13 other people breached police lines, and be a part of that
14 numerous times and trying to record those interactions is
15 problematic in a way that other defendants' conduct is not.

16 And I think I rolled up both of the points that I was
17 going to make about comparable cases into one, so if it would
18 be helpful to the Court to hear the government discuss any
19 particular cases that the defense cited, I would be happy to do
20 so. But, otherwise, I would rest my argument there and, again,
21 ask Your Honor that the Court impose a sentence of 45 days of
22 straight time, which the government submits is warranted given
23 the nature of the conduct in this case.

24 THE COURT: Okay. Thank you. I'm not sure, I think
25 when you have to compare these cases, the need to avoid

1 unwarranted sentencing disparities, you have to look at these
2 cases writ large. What are the cases that are generally moving
3 in the direction of probation? What are the ones that are
4 generally moving in the direction of incarceration? And
5 there's going to be outliers on both sides, there's going to be
6 individual factors that we can't tell just from the sentence,
7 what it was that moved a particular judge to go one way or the
8 other.

9 There's going to be multiple sentences that any judge
10 in the courthouse might have handled differently in that
11 particular sentence than the judge assigned, either a harsher
12 sentence or a lighter sentence. So, really, you have to see
13 what the picture is as a whole. And I'm happy to have people
14 point out particular sentences to me, but I think it's
15 important, really, to focus more on what this defendant did and
16 what this defendant deserves under all of the sentencing
17 factors.

18 And, so, with that, Ms. Bergman, I would like to hear
19 from you on the defendant's behalf. And one of the things you
20 do mention frequently is the impact a sentence would have on
21 his job. So, you said that with some certainty at various
22 points, so I would like to know more about that. But, also, if
23 I end up crafting something that has him at home but home
24 confinement, I want to know, before you're finished, what his
25 schedule is in terms of when he goes to work in the morning,

1 and the same thing with the fire station.

2 MS. BERGMAN: Thank you, Your Honor. First, you
3 know, we've submitted comprehensive briefing. I'm not going to
4 belabor most of the points that I've set forth in the papers
5 that have been submitted to the Court, which I know Your Honor
6 has gone over very carefully.

7 I will say that I think that, with due respect to
8 Mr. Romano, he overstates the point that I was attempting to
9 make for Mr. Rusyn with respect to the nature and circumstances
10 of the offense and his particular remorse or realization very
11 soon after coming out of the Capitol about how serious his
12 participation in the riot was. I don't think I ever suggested
13 that Mr. Rusyn was oblivious to what was going on around him
14 before he went into the building.

15 I do think it was extremely chaotic, that a lot of
16 people were using their cell phones over their heads to capture
17 video that they didn't necessarily even see, but only later,
18 looking at their own video, were able to see. I'm not
19 suggesting in this particular case or pointing to a particular
20 piece of video in Mr. Rusyn's case, I'm just saying that he
21 would acknowledge, before he went into the building, that he
22 shouldn't have been there and that it was wrong to go in.

23 It is equally true that, given the chaos of the
24 situation and having seen other people be trampled on that
25 staircase, that he held that fear before going in. I think

1 that that's what he was trying to convey to the FBI, when he
2 was initially interviewed by them. But, he has always said,
3 from the beginning, that if that was truly the only concern,
4 that he would have been able to find his way out of the
5 building before going further, and that he acknowledges the
6 wrongdoing at every moment that he stayed in the building.

7 The real point that I was hoping to make for the
8 Court is because these sentences require such an individualized
9 evaluation, not just the individual's conduct in the building,
10 but all of the 3553(a) factors, that we have someone who had
11 been at the Capitol a couple months prior and really
12 appreciated the historical significance of the city and the
13 building. I think I mentioned he brought souvenirs home for
14 his kids on that particular occasion. And that it is perhaps
15 why, very shortly after coming out of the building, that he was
16 really overwhelmed by this sense of remorse, notwithstanding
17 his participation.

18 But an individualized assessment, I think, has to
19 take into consideration not just what the person's acts were,
20 or assume that an opportunity to observe something is the same
21 or as culpable as someone who was engaging in the kind of
22 conduct. So, for instance, of pushing through the police line
23 or, you know, holding a makeshift weapon, you know, those kinds
24 of things. So that was really the only point that I was trying
25 to make with respect to distinguishing the offense conduct for

1 Mr. Rusyn.

2 I really want to speak about the distinguishing
3 personal history and characteristics that I think ultimately
4 are important for this Court to pay attention to, especially as
5 it pertains to disparity in sentencing.

6 I agree that just the sheer number of these cases
7 right now, that we are starting to see what appear to be
8 inconsistencies, different judges are viewing facts in
9 different ways and that it is hard to make one-to-one
10 comparisons with cases. But, you know, the 3553(a) says that
11 the Court has to consider disparity in sentencing, and the way
12 to do that is learned.

13 I look at what appear to be similarly situated
14 defendants, whether it's offense conduct or some other factor.
15 And that, you know, my second letter to the Court was really
16 about whether a probationary sentence was necessary because
17 when you look at some of the factual underpinnings of the cases
18 where some individuals got probation, that it's hard to
19 distinguish Mr. Rusyn's from those cases, and that there would
20 be a disparity in sentencing if Mr. Rusyn were not to get
21 probation.

22 And, you know, conversely, that if the Court were to
23 determine that the offense conduct in the building warranted
24 some more severe imposition of sentence than a probationary
25 sentence, that there is basis here for a warranted disparity at

1 sentencing, and that those factors, particularly with respect
2 to Mr. Rusyn's devotion to the community, his long history of
3 community service -- I detailed, you know, just coincidentally,
4 this fire that happened on December 12th in Olyphant,
5 Pennsylvania, where Mr. Rusyn was seriously injured in his
6 capacity as a volunteer firefighter, that those kinds of
7 factors that are personal to Mr. Rusyn would outweigh, in
8 comparison to the nature and circumstances of the offense
9 conduct, would, you know, I think, provide a basis for this
10 Court to determine that there's a warranted disparity in
11 sentencing Mr. Rusyn to probation.

12 And there are other, of course, factors that I
13 presented to the Court; the issue of his employment, the issue
14 of his taking care of his grandmother, who would otherwise be
15 in a nursing home if it were not for his decision to move from
16 his father's house to her home to care for her. And, you know,
17 being, of course, the Court is well aware of what his
18 commitments are to his children.

19 So, I want, then, to answer this Court's specific
20 questions about his schedule. As I understand it, the current
21 schedule is 7 a.m. to 3 p.m., there is some overtime. I
22 honestly don't know the answer to the question of whether or
23 not that overtime is a schedule that he gets, you know,
24 initially, at the beginning of the week, or if it's a more
25 ad hoc thing, on a day-to-day basis. But it's my understanding

1 that his standard hours are Monday through Friday from 7 a.m.
2 to 3 p.m., or 7:30 to 3:30, if I'm correct.

3 And with respect to the children, I believe that he
4 sees them on weekends and one day during the week, as I
5 understand it, although I don't know that that is necessarily a
6 schedule that is set in stone. I think that he would be able
7 to work with the probation department, if he were placed on
8 probation, to set a schedule that was appropriate, especially
9 if the Court accedes to the request to give him 30 days of
10 house arrest, which is the incremental penalty that I have
11 suggested is the more appropriate one, given the particular
12 offense conduct and, you know, perhaps Mr. Rusyn's history of
13 misdemeanor convictions, which might differentiate himself, if
14 I'm candid with the court, to some of these other cases.

15 But, with that home confinement provision, that would
16 allow him out for purposes of work, that he would be able to
17 work with the probation department to set a set schedule for
18 him to see his children, as well. I don't know if that answers
19 the Court's particular question.

20 THE COURT: No, I think that's helpful. Is there
21 anything else you wanted to say before I turn to Mr. Rusyn
22 himself?

23 MS. BERGMAN: I'll just make one last comment about
24 the social media piece of it, because I think it goes not just
25 to the disparity in sentencing, but also to the acceptance of

1 responsibility. And that's something the government has sort
2 of hammered hard on, about questioning the sincerity of his
3 acceptance of responsibility. And I think that it is pretty
4 good corroborating evidence that he felt very remorseful in the
5 immediate aftermath of the events of January 6th because he did
6 completely disassociate himself from others that he knew, like
7 Ms. Lee, and also completely shut down any activity on his own
8 social media. And that was the only point that I wished to
9 make with respect to that.

10 THE COURT: All right. Mr. Rusyn, this is your
11 opportunity, if there's anything you would like to say to me
12 that I should consider before I impose sentence in your case.

13 THE DEFENDANT: Thank you, Your Honor. Your Honor, I
14 would like to start by saying I'm sorry. And I apologize and I
15 would like to take this time to express my remorse on this
16 terrible situation. This was not my intentions, but
17 understanding the wrong that I have done, along with the impact
18 that it has on me, but more importantly, my family, my friends,
19 my loved ones. I'm full of regrets and I'm full of shame.

20 Moving on into the future, I plan to continue to live
21 with my grandmother and being my grandmother's caretaker and
22 provider for all of her needs. I call my daughters every
23 morning to make sure they are up and getting ready for school,
24 along with making the bus on time, making sure that they were
25 doing their homework and studies, making sure they understand

1 the work to help pick up their grades. Spending as much time
2 as I can with them as possible. Within the few days to come,
3 signing Mikaila and Nadia, my daughters, up for softball and
4 taking on the role of being head coach. This year will be
5 quite the challenge, as they will be in different leagues; high
6 school and youth. Be a provider, making sure they have
7 everything they need, along with transportation, practices,
8 games, pitching and batting lessons through a private
9 instructor.

10 I plan to further my education for my career with the
11 union pipe fitters, welders program. I have worked very hard
12 to be where I am today. I went through five years of school,
13 apprenticeship, to become a journeyman and I want to continue
14 to climb the ladder to be, some day, a foreman, a general
15 foreman, a superintendent, and be able to run work, along with
16 helping out my community and giving back any way possible. And
17 I have enrolled in counseling classes, which I find help very
18 much, and will continue with counseling.

19 Thank you for this opportunity, Your Honor.

20 THE COURT: All right. Thank you very much,
21 Mr. Rusyn.

22 I've heard a lot and it's hard to harmonize all of it
23 because the personal qualities point in one direction and the
24 events of the day point in another. And I want to take a few
25 moments to leave the bench and put everything together in my

1 mind before I tell you what your sentence is going to be. I'm
2 going to ask everybody to just stay connected so we don't lose
3 this well-attended Zoom proceeding that we have right now,
4 where we haven't lost anyone, frozen anyone yet. And I will
5 probably be back in about ten minutes. So thank you very much.

6 (Recess.)

7 THE COURTROOM DEPUTY: Your Honor, recalling criminal
8 case No. 21-303-01, the *United States of America v. Michael*
9 *Joseph Rusyn*. The probation officer is Officer Reichler.
10 Counsel for the government are Mr. Romano and Mr. Pearce.
11 Counsel for the defendant is Ms. Bergman.

12 THE COURT: Okay. I couldn't see her before. I
13 wanted to make sure she was here before I went forward.

14 All right. As I said earlier, there's a statute that
15 tells me what I'm supposed to think about when I sentence
16 someone. It list a number of factors and I'm going to go
17 through each one of them.

18 The first thing I'm supposed to think about is the
19 nature and circumstances of the offense. What happened? What
20 did you do? On January 6, 2021, you left your home in
21 Pennsylvania to attend the rally for the former President of
22 the United States. There's nothing wrong with that.
23 Afterwards, you walked to the east side of the U.S. Capitol
24 building. The U.S. Capitol was closed to the public while, in
25 accordance with the Constitution, a joint session of Congress

1 was convened to certify the vote of the Electoral College in
2 the 2020 presidential election. Vice President Mike Pence, a
3 Republican, was present and presiding, as the Constitution
4 required him to do.

5 You were in the first waive of people to approach the
6 building and attempt to gain entry through the east rotunda
7 doors, which were unquestionably closed. People began breaking
8 windows to gain entry. You saw this. You didn't walk away.
9 You suggested that you were going along with the crowd, but you
10 had choices. And you could see from the very start that the
11 line had been crossed and it wasn't about listening to speeches
12 anymore.

13 Officers were unable to disperse the large crowd and
14 ultimately one of the rioters forced the doors open as others
15 engaged in combat with police on the outside and chemical spray
16 was deployed. You were there for the entire seven minutes it
17 took for this to happen. Apparently you were waiting to get
18 in. There is no other explanation.

19 Eventually people forced the door open. There were
20 officers just inside trying to keep the demonstrators out, and
21 officers outside doing the same thing. The woman traveling
22 with you got inside the partially opened doors first and turned
23 around to take your hand so you could step over the threshold
24 as well.

25 At approximately 2:27 p.m., according to the

1 government, you two were among the first 30 to 40 people to
2 enter the building. An officer was knocked to the ground at
3 that very spot just seconds earlier and was still lying there
4 when you walked in. And you didn't just simply step in and
5 then step out either. As the government said, you didn't seem
6 surprised to be there or confused or try to get out. You
7 walked through the rotunda, through the statuary hall and into
8 the small connector leading to the main entrance to the House
9 of Representatives chamber itself. This is exactly where the
10 certification proceeding was taking place.

11 While you were not one of the members of the group
12 pushing through the connector, shouting threats to the speaker
13 that they were coming for her, you were right up front. You
14 joined in the chants of "We want Trump" and you and Ms. Lee
15 were directly in front of the officers trying to hold the group
16 back. No one is pushing you. No one is making you go
17 anywhere.

18 There is plenty of video of your literally strolling
19 through the building arm-in-arm with Ms. Lee. It was striking
20 to me how calm you were, notwithstanding your statements that
21 this was all something that was offensive to you.

22 The members of the unruly group swelled to the point
23 where the police line got overwhelmed and the crowd surged
24 forward into the anteroom immediately outside the chamber door.
25 Officers were telling everyone to get back. You were in the

1 middle of this. You're walking forward yourself, you're not
2 pulling back. You don't bail out down a side hallway, you're
3 not listening to the officers.

4 Police and congressmen of both parties are trying to
5 barricade the door from the other side as members of the crowd
6 urged others to use various means to break it down. This is
7 all to the refrain of "Stop the Steal."

8 The police were eventually able to get the crowd to
9 leave the immediate area with smoke canisters, but you didn't
10 leave the building then either. You and Ms. Lee wandered into
11 the hallway, back through the rotunda, filming with your
12 cameras. And you're still there at about 3 p.m. And when you
13 get outside, Ms. Lee crows about it, "We F'ing did it. It's
14 our house," while you preserve her remarks in the video you're
15 recording.

16 In sum, on that day the U.S. Capitol police officers,
17 federal law enforcement officers, doing their job, surrounding
18 the building, were overcome. You were one of the many
19 individuals who made their way illegally into the building and
20 past the officers who were attempting to keep the crowd away
21 from the building. You were one of the individuals who entered
22 the closed building and the certification process was
23 interrupted as members of Congress and the Vice President
24 himself had to struggle to hold the crowd back themselves or
25 were forced to hide.

1 That was the point of the trip, to disrupt the
2 process. You can say you were only one man and only a minor
3 participant, but it took the force of a crowd, a large number
4 of people to overcome the police, to breach the building. And
5 it couldn't have been accomplished without the power of numbers
6 and without people like you. And the building had to be
7 cleared of the people who had not gone through security before
8 Congress could resume. So the mere fact of remaining inside
9 put the democratic process, the constitutional proceedings that
10 were underway at risk.

11 One of the recent submissions said something to the
12 effect about being there for 11 minutes. But I think the
13 statement of facts agree that you were there for an hour. And
14 when we talk about disparities, most of the people that I've
15 put on probation at this point were generally people who walked
16 in and walked right out.

17 It is true, though, and it is also an aspect of the
18 nature and circumstances of this offense that you weren't a
19 person circulating violent rhetoric or whipping up enthusiasm
20 about an attack on Washington beforehand, and you didn't do
21 anything personally destructive once inside. You didn't arm
22 yourself to come here, you didn't dress for war. You didn't
23 break anything, you didn't hurt anyone. And the sentence also
24 should reflect that, too. Although, people who did those
25 things aren't generally getting probation.

1 However, while you report now that you were horrified
2 then, you didn't say or do anything to demonstrate that you
3 were chastened or shocked by the news reports afterwards, when
4 one can see the defilement and destruction that was left behind
5 and could learn what happened to so many law enforcement
6 officers, and some of the other rioters, as well.

7 You were interviewed on February 24th, after you'd
8 had more than a month to think about it, and couldn't quite
9 bring yourself to tell the truth. You denied traveling with
10 another person, despite your obvious chumminess on the video.
11 You insisted that what you were doing was disarming other
12 people and turning their weapons over to the police and getting
13 wounded in the process. And maybe you did discourage others or
14 removed weapons from others by turning things over to the
15 police.

16 You insisted you were swept inside by the force of
17 the crowd; it was not conscious, it was not voluntary, you were
18 just trying to keep yourself from getting trampled. And,
19 Mr. Rusyn, I just don't think that's what the evidence shows.

20 Even the sentencing memo was still trying to advance
21 that narrative, that it was, quote, in part, close quote, true.
22 That would not begin to justify the amount of time you spent
23 inside, or where you headed once you got there. Your lack of
24 candor, even after the benefit of time, is a troubling fact.

25 So I want to make a few things clear. You're

1 standing before me and a sanction is warranted, in my view, but
2 not for exercising your First Amendment rights. You're not
3 here today because you supported the former President.
4 Millions of people voted for him and didn't heed his call to
5 descend on the nation's capital. You pled guilty to breaking
6 the law. And you didn't get swept away and it wasn't anybody
7 else's fault. You walked in on your own two feet, filming it
8 for posterity.

9 You were convicted because you were a participant in
10 an effort to disrupt and undo the electoral process, to
11 interrupt the certification of an election, to subvert
12 democracy -- which is based on the will of the people -- and
13 replace it with the will of the mob. You may very well have
14 sincerely believed at the time the misinformation you'd been
15 receiving from your news sources of choice that the election
16 had been unfair and tainted. But by that time, even the
17 Republican election officials in the challenged states had
18 said, over and over again, and more than 60 judges across the
19 country had found -- including judges appointed by both parties
20 and even some appointed by the President himself -- had said
21 over and over again that there's no evidence behind the claims.

22 Now, you've told me you've sworn off politics, but
23 that isn't the point. I want to assure you that you did and
24 you still do have an absolute right to support whoever you want
25 to support, to rally for whoever you want to rally, and to vote

1 for whoever you want to vote for. Acceptance of responsibility
2 in this courthouse does not require you to renounce your
3 allegiance to any candidate or any party, but it does include
4 the notion of accepting the fact that you went too far, that
5 forcing your way into the closed building and trying to force
6 your way into the House chamber itself is not being a tourist,
7 it's not being a part of history, and it doesn't honor that
8 history that you said you were so impressed with when you were
9 at the Capitol before. It's not a political activity. It was
10 an illegal action motivated by an illegal purpose.

11 The nature and circumstances of the offense aren't
12 the only thing I'm supposed to think about. I'm also supposed
13 to think about the history and characteristics of the
14 defendant. And I have received considerable information that
15 you are a decent and hard-working person, who does a great deal
16 for your family and for your community. You are a volunteer
17 firefighter. You understand exactly what it means to put your
18 own self in danger to serve the public. It requires bravery
19 and it requires character. You've been involved since you were
20 a teenager, and now you've risen to the chief's position,
21 training and managing others, and you risked your own life just
22 the other day to save a colleague.

23 You provide much needed assistance so that your
24 elderly grandmother can live in her home and doesn't have to be
25 in a nursing home. You live with her, you cook for her, and

1 you take her to medical appointments. There aren't many people
2 who would step up in such a committed fashion. You are a
3 devoted father, notwithstanding the strained relationship with
4 the mother of your two daughters.

5 You struggled academically as a boy and still
6 struggle with that self image. But I want to tell you that the
7 various forms of construction work you've been trained to do
8 are complicated, that take years, as you said, to learn, and
9 not everybody is up to that task either. And firefighting,
10 that's difficult, it requires a knowledge of science and
11 engineering, it requires judgment, it requires management
12 skills and split-second decision making. It's proof that
13 whether a person has a particular sort of learning skills that
14 are suited to a classroom or not, that's not the measure of
15 whether they're smart or not. You are obviously an intelligent
16 and capable person. And I have to take all of that into
17 consideration.

18 But I have to tell you, it gave me pause because it
19 also points to the conclusion that you, the chief of a
20 firefighting unit, a public safety supervisor, yourself knew
21 exactly what role the officers were performing that day and
22 knew exactly why it was wrong to interfere with them. And that
23 really bothers me. It makes your failure to respect their line
24 more troubling than that of other people.

25 Also, your history and characteristics include a few

1 prior criminal convictions; not terribly serious, but this
2 isn't your first brush with the law. When you were 23 you were
3 convicted of being in a building where you weren't supposed to
4 be, recklessly endangering someone else. And it actually
5 continued into your 30s; harassment, violating court orders,
6 issues where the disputes with your ex-wife got out of hand.
7 Blame can't all be laid at one person's feet, but there were
8 some anger issues on your side; an assault, DUI, apparently
9 arising out a bar fight. Again, you've reached the age where
10 you need to know better. And the important role you play in
11 guiding your daughters surely taught you to exercise better
12 judgment than you did on January 6th.

13 I'm also supposed to impose a sentence that's
14 sufficient, but not greater than necessary, to accomplish a
15 number of purposes set out in the statute. I have to think
16 about the need for the sentence to reflect the seriousness of
17 the offense, to promote respect for the law and to provide just
18 punishment for the offense.

19 I'm also supposed to think about a sentence that
20 deters not just you, but other people from doing criminal
21 conduct in the future. I'm supposed to protect the public from
22 further crimes that you might commit and to provide you with
23 the best environment for vocational or educational training or
24 medical care or other treatment. And I'm supposed to think
25 about what your lawyer talked a lot about, avoid unwarranted

1 disparities, differences among sentences imposed with
2 defendants who had similar records who had been found guilty of
3 doing similar things.

4 The guidelines are supposed to help with that, but
5 they are of no utility here. Ensuring that this sentence
6 fairly reflects where you fall on the spectrum of individuals
7 arrested in connection with this offense has largely been
8 accomplished by the offer of a misdemeanor plea, which reduced
9 your exposure substantially.

10 But I also have the benefit of the other information
11 of cases across this court arising out of January 6th. And the
12 majority of the people who have been sentenced so far have also
13 been sentenced to misdemeanors. But I agree with the
14 significant number of judges on this court who have insisted
15 that probation isn't the default option. It doesn't really
16 recognize the seriousness of the offense, it doesn't fulfil the
17 legitimate statutory goals of deterrence and punishment.

18 You're a father. You've had to teach your daughters
19 lessons. And I think you can understand why the judges in this
20 building have been reluctant to let this searing event in our
21 history pass without real consequences. It's why it's been
22 difficult for me to decide what to do with you.

23 I also agree with the government that this case
24 doesn't really fall within the very small category of
25 individuals who have received probation, at least from me,

1 either because of such a brief involvement in the offense or
2 unique postconviction steps that have been taken to acknowledge
3 the wrongfulness of their conduct.

4 The government recommended 45 days. And while the
5 circumstances it laid out in detail could have supported even
6 more in my view, the -- and in the probation officer's view,
7 I'm not going to consider more than what the government is
8 asking for.

9 But at the end of the day, as Ms. Bergman mentioned,
10 every defendant who stands before me is an individual and I
11 have to fashion each sentence on an individual basis. And so
12 I've wrestled a great deal with your case. I was fully
13 prepared to impose a short sentence -- and I can tell you, it
14 was fully warranted -- but I do need to weigh what would be
15 gained in terms of punishment and deterrence against what would
16 be lost -- the impact on your efforts to obtain and sustain
17 employment, to serve the public, to care for others. If we
18 weren't dealing with COVID right now, you might be a good
19 candidate for intermittent incarceration, weekends in jail.
20 But, COVID is a real risk, even with -- if I tried to sentence
21 you to a community correctional facility.

22 So I've decided that the lessons that need to be
23 taught can be taught in other ways. But, I want to tell you
24 that if you violate any of the conditions of your probation, I
25 will not hesitate to impose a sanction. There's not going to

1 be another conversation on this subject.

2 Therefore, in an exercise of my discretion, after
3 consideration of all the statutory factors, the sentence to be
4 imposed is as follows:

5 It's the judgment of the Court that you're hereby
6 sentenced to serve a 24-month term of probation. I understand
7 that you're now employed and, in lieu of a period of
8 incarceration, I find it appropriate to order you to pay a fine
9 in the amount of \$2,000, to be paid out on a schedule to be
10 determined by the probation office. You are required to pay a
11 \$10 special assessment. It's immediately due and payable to
12 the Clerk of the Court for the U.S. District Court of the
13 District of Columbia. If you change your address, within 30
14 days you have to let the clerk know where you reside until such
15 time as the financial obligation is paid in full.

16 Pursuant to your plea agreement, you're also ordered
17 to pay \$500 towards the more than \$1.5 million worth of damage
18 that the Capitol sustained that day. I will waive, with
19 respect to both the fine and the restitution, any interest and
20 penalties.

21 After this hearing -- I believe this is correct --
22 that the probation officer will provide you with instructions
23 about when and where to report. I will transfer your
24 supervision to the district in which you live, but I will
25 retain jurisdiction over this case. I will want to be the one

1 who is informed if you have any difficulties with the law or
2 with these conditions under my supervision.

3 While under supervision shall you not possess a
4 firearm or other dangerous weapon, you shall not use or possess
5 an illegal controlled substance, and you shall not commit
6 another federal, state, or local crime. You must also abide by
7 the conditions of supervision adopted by the U.S. probation
8 office, as well as the following special conditions:

9 First of all, you are to maintain employment. Second
10 of all, as a condition of your probation you must abide by a
11 curfew for the first 60 days of home detention. During the
12 daytime you may attend work, firefighting duties, your
13 daughters' activities, religious services, medical and
14 therapeutic appointments, and care for your grandmother. But
15 you will be restricted to your residence for the first 60 days,
16 to be monitored by the form of location monitoring designed by
17 the probation office in its discretion at -- in the evening,
18 and on the weekends in the evening, on a schedule to be
19 determined by the probation office once they have obtained the
20 verification of your employment and the hours when you have
21 these activities.

22 Second of all, you must pay the \$500 and the \$2,000
23 fine, it will be a condition of your probation, at a rate to be
24 determined by the U.S. probation office. You must provide that
25 office with any requested truthful financial information until

1 such time as the amount has been paid in full. And the
2 probation office may share that information with the U.S.
3 attorney's office.

4 You must participate in any drug testing, including
5 random drug testing, to determine if you've used a prohibited
6 substance, including marijuana. You must not attempt to
7 obstruct or tamper with the testing methods.

8 You must participate in and complete an alcohol or
9 substance abuse assessment at the direction of the U.S.
10 probation office and participate in any substance abuse
11 treatment that is indicated at the direction and under the
12 supervision of the probation office.

13 You must also participate in and complete a mental
14 health assessment at the direction of the probation office and
15 participate in any treatment that's indicated at the direction
16 of and under the supervision of the probation office, which may
17 include continuing with the treatment that you've already begun
18 with your current therapist. You must execute any releases in
19 order to enable the probation office to monitor compliance with
20 this condition.

21 Probation office shall release the presentence
22 investigation report to any treatment agencies, and they must
23 return it upon the defendant's completion or termination of
24 treatment.

25 Mr. Rusyn, you have a right to appeal the sentence

1 imposed by this Court if the period of imprisonment was longer
2 than the statutory maximum or the sentence departed upward from
3 the guidelines -- which are not applicable in this case. If
4 you choose to appeal, you must file any appeal within 14 days
5 after the Court enters judgment. And if you are unable to
6 afford the cost of appeal, you may request permission from the
7 Court to file an appeal without cost to you.

8 Mr. Romano, I believe that there's a motion that
9 needs to be made with respect to dismissing some of the counts.

10 MR. ROMANO: Yes. Thank you, Your Honor. The
11 government moves to dismiss the balance of the charges in this
12 case, which I believe are Counts 1, 2, and 3.

13 THE COURT: All right. Your motion will be granted.

14 Ms. Bergman, is there anything else I need to take up
15 on behalf of the defendant at this time?

16 MS. BERGMAN: No, Your Honor. Thank you.

17 THE COURT: All right. Mr. Rusyn, as I said, I have
18 a tremendous amount of respect for the things that you've done
19 right and the way you've lived your life in the community and
20 what you're doing for your grandmother. And I want you to keep
21 those ideals in mind as you move forward, and hopefully we
22 won't be discussing violations of conditions in the future and
23 you will continue to be a productive citizen.

24 It looks like the probation officer -- was there
25 anything you need to say? I was going to, I think, have the

1 two of you stay on so that you can give him instructions about
2 where and when to report. Is he supposed to contact you after
3 this proceeding?

4 THE PROBATION OFFICER: That works, Your Honor. I'll
5 speak to him for a moment, after.

6 THE COURT: Okay. All right. So I'm going to step
7 out then and the case will -- Court will stand down and we'll
8 close the public line and then the two of you can speak about
9 moving forward.

10 All right. Thank you very much.

11 MR. ROMANO: Your Honor?

12 THE COURT: Yes? I'm sorry, Mr. Romano?

13 THE DEFENDANT: Thank you, Your Honor.

14 MR. ROMANO: I'm sorry, there was one brief matter.
15 Is there an order from the Court on releasing the video
16 exhibits we submitted for sentencing? I know sometimes those
17 are ordered to be made public following usual proceedings.

18 THE COURT: If a motion was made to release them, I
19 would certainly grant them. I think that would be appropriate,
20 since it was part of what was shown to me to make my decision.

21 Does anybody have any objection to that?

22 MS. BERGMAN: No, Your Honor.

23 THE COURT: All right, then.

24 MR. ROMANO: And the government would certainly have
25 no objection to their release.

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THE COURT: All right. Then I would publish them the same way the others have been published, through the office of the U.S. Attorney's office.

MR. ROMANO: Thank you, Your Honor.

THE COURT: Thank you, everybody.

THE DEFENDANT: Thank you again, Your Honor.

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 25th day of January, 2022

Janice E. Dickman, CRR, CMR, CCR
Official Court Reporter
Room 6523
333 Constitution Avenue, N.W.
Washington, D.C. 20001