

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

Case No. 1:23-cr-257-TSC

DONALD J. TRUMP,

Defendant.

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**DEFENDANT DONALD J. TRUMP'S MOTION FOR RECUSAL OF  
DISTRICT JUDGE PURSUANT TO 28 U.S.C. § 455(a)**

President Donald J. Trump, through undersigned counsel, respectfully moves to recuse and disqualify the Honorable Tanya S. Chutkan pursuant to 28 U.S.C. § 455(a).

Fairness and impartiality are the central tenets of our criminal justice system. Both a defendant and the public are entitled to a full hearing, on all relevant issues, by a Court that has not prejudged the guilt of the defendant, and whose neutrality cannot be reasonably questioned.

Judge Chutkan has, in connection with other cases, suggested that President Trump should be prosecuted and imprisoned. Such statements, made before this case began and without due process, are inherently disqualifying. Although Judge Chutkan may genuinely intend to give President Trump a fair trial—and may believe that she can do so—her public statements unavoidably taint these proceedings, regardless of outcome. The public will reasonably and understandably question whether Judge Chutkan arrived at all of her decisions in this matter impartially, or in fulfillment of her prior negative statements regarding President Trump. Under these circumstances, the law and the overwhelming public interest in the integrity of this historic proceeding require recusal.

## THE DISQUALIFYING STATEMENTS

In October 2022, before the Special Counsel's appointment or the filing of this case, Judge Chutkan stated:

This was nothing less than an attempt to violently overthrow the government, the legally, lawfully, peacefully elected government by individuals who were mad that their guy lost. I see the videotapes. I see the footage of the flags and the signs that people were carrying and the hats they were wearing and the garb. And the people who mobbed that Capitol were there in fealty, in loyalty, to one man -- not to the Constitution, of which most of the people who come before me seem woefully ignorant; not to the ideals of this country; and not to the principles of democracy. It's a blind loyalty *to one person who, by the way, remains free to this day.*

*United States v. Christine Priola* 1:22-cr-242, ECF #66 at 29:17–30:3 (sentencing transcript)

(emphasis added) (relevant portions attached as Ex. A).

The public meaning of this statement is inescapable—President Trump is free, but should not be. As an apparent prejudgment of guilt, these comments are disqualifying standing alone. However, this was not the first time Judge Chutkan expressed such an opinion. In December 2021, Judge Chutkan similarly suggested that, in her view, President Trump was responsible for the events of January 6, 2021, and should be prosecuted:

He went to the Capitol because, despite election results which were clear-cut, despite the fact that multiple court challenges all over the country had rejected every single one of the challenges to the election, Mr. Palmer didn't like the result. He didn't like the result, and he didn't want the transition of power to take place because his guy lost. And it is true, Mr. Palmer -- *you have made a very good point, one that has been made before -- that the people who exhorted you and encouraged you and rallied you to go and take action and to fight have not been charged.* That is not this court's position. I don't charge anybody. I don't negotiate plea offers. I don't make charging decisions. I sentence people who have pleaded guilty or have been convicted. The issue of who has or has not been charged is not before me. I don't have any influence on that. *I have my opinions*, but they are not relevant.

\*\*\*

So you have a point, that the people who may be the people who planned this and funded it and encouraged it haven't been charged, but that's not a reason for you to get a lower sentence.

*United States v. Palmer*, No. 1:21-cr-00328-TSC, ECF #33 at 21:6–22:13 (sentencing transcript) (emphasis added) (relevant portions attached as Ex. B).

In making these statements, Judge Chutkan agreed with portions of defendant Palmer’s sentencing memorandum, which similarly (and wrongly) placed blame on President Trump and complained that he had not been charged. No. 1:21-cr-00328-TSC, ECF #31 at 8–9 (Sentencing Memorandum) ([Palmer Defense Counsel]: “Those voices, including the voice of the then-president himself, had convinced persons such as Mr. Palmer that the election was fraudulent and that they must take action to stop the transition of the presidency. . . . While many of the people who participated in the Capitol riot will be going to prison, the architects of that horrific event will likely never be charged with any criminal offense.”).

Although Judge Chutkan correctly noted that she does not have any influence on charging decisions, her above comments stating “*you have made a very good point . . . that the people who exhorted you and encouraged you and rallied you to go and take action and to fight have not been charged*” and “*you have a point, that the people who may be the people who planned this and funded it and encouraged it haven’t been charged, but that’s not a reason for you to get a lower sentence*” reflect her apparent opinion that President Trump’s conduct: (1) occurred, and (2) supports charges (otherwise, she would not have characterized the point as “very good.”). Similarly, Judge Chutkan’s statement that “*I have my opinions*” suggests that in her view—formed almost two years before the initiation of this matter—President Trump should be charged.

Public statements of this sort create a perception of prejudgment incompatible with our justice system. In a case this widely watched, of such monumental significance, the public must have the utmost confidence that the Court will administer justice neutrally and dispassionately.

Judge Chutkan’s pre-case statements undermine that confidence and, therefore, require disqualification.

### APPLICABLE LAW

“Unbiased, impartial adjudicators are the cornerstone of any system of justice worthy of the label.” *In re Al-Nashiri*, 921 F.3d 224, 233–34 (D.C. Cir. 2019). Thus, “[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455; *see also* Code of Judicial Conduct, Canon 2A (“A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”).<sup>1</sup>

Under settled law, what matters “is not the reality of bias or prejudice but its appearance.” *Microsoft Corp. v. United States*, 530 U.S. 1301, 1302 (2000) (*statement of* Rehnquist, C.J.) (quoting *Liteky v. United States*, 510 U.S. 540, 548 (1994)). Therefore, “all that must be demonstrated to compel recusal . . . is a showing of an appearance of bias . . . sufficient to permit the average citizen reasonably to question a judge’s impartiality.” *In re Al-Nashiri*, 921 F.3d at 234. “This inquiry is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.” *Microsoft Corp.*, 530 U.S. at 1302 (citations omitted).

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<sup>1</sup> “Impartiality--and the appearance of impartiality--are the foundation of judicial decision-making, judicial morality, and the public’s trust in the rule of law.” Zygmunt A. Pines, *Mirror, Mirror, on the Wall-Biased Impartiality, Appearances, and the Need for Recusal Reform*, 125 Dickinson L. Rev. 69 (2020). These concerns should not be “relegated to the periphery of our administration of justice when its rightful place should be its nucleus.” *Id.* at 152; *see also Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980) (“[T]he protection of the integrity and dignity of the judicial process from any hint or appearance of bias is the palladium of our judicial system.” (citation omitted)).

In other words, “[i]t is of no consequence that the judge is not *actually* biased because § 455(a) ‘concerns not only fairness to individual litigants, but, equally important, it concerns the public’s confidence in the judiciary, which may be irreparably harmed if a case is allowed to proceed before a judge who *appears* to be tainted.’” *In re Kensington Int’l Ltd.*, 353 F.3d 211, 220 (3d Cir. 2003) (citations omitted) (emphasis in original); *Hall v. Small Bus. Admin.*, 695 F.2d 175, 178–79 (5th Cir. 1983) (“[T]his portion of the disqualification statute is to exact the appearance of impartiality . . . it focuses on what is revealed to the parties and the public, as opposed to the existence in fact of any bias or prejudice”); As the Fifth Circuit stated:

This overriding concern with appearances, which also pervades the Code of Judicial Conduct and the ABA Code of Professional Responsibility, stems from the recognized need for an unimpeachable judicial system in which the public has unwavering confidence. As this court has noted, “the protection of the integrity and dignity of the judicial process from any hint or appearance of bias is the palladium of our judicial system.” Any question of a judge’s impartiality threatens the purity of the judicial process and its institutions.

*Potashnick*, 609 F.2d at 1111 (quoting *United States v. Columbia Broadcasting System, Inc.*, 497 F.2d 107, 109 (5th Cir. 1974)).

“Such a stringent rule, to be sure, may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.” *In re Al-Nashiri*, 921 F.3d at 234 (citation and quotation marks omitted). However, “to perform its high function in the best way, the Supreme Court has emphasized, justice must satisfy the appearance of justice.” *Id.* (citation and quotation marks omitted).

Therefore, to “preserve both the reality and appearance of impartiality,” a judge should recuse herself when her impartiality “might” be reasonably questioned. *Id.*; *see also United States v. Microsoft Corp.*, 253 F.3d 34, 114–15 (D.C. Cir. 2001) (“The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible . . . Appearance may be all there is, but that is enough to invoke the Canons [of Judicial

Conduct] and § 455(a).” (quotation omitted)).<sup>2</sup> Indeed, Congress’s use of the word “might” in § 455(a) counsels a low threshold, requiring disqualification if *any* reasonable citizen could question a judge’s impartiality, even if some do not. Accordingly, “when a judge harbors any doubts concerning whether his disqualification is required [s]he should resolve the doubt in favor of disqualification.” *Parker v. Connors Steel Co.*, 855 F.2d 1510, 1524 (11th Cir. 1988) (citations omitted).<sup>3</sup>

### ARGUMENT

There is little doubt that reasonable members of the public “might,” in viewing Judge Chutkan’s statements, believe she has prejudged both the facts pertinent to this case and President Trump’s alleged culpability.

Judge Chutkan’s statement that “[i]t’s a blind loyalty to one person who, by the way, remains free to this day,” Ex. A at 29:17–30:3, straightforwardly (and of course incorrectly in the defense’s view) suggests that President Trump has culpability for the events of that day and should not be free. This would be a natural interpretation of her comments in any context, but is particularly poignant here, where Judge Chutkan directed her statements to a defendant she was about to sentence to an extended term of incarceration. Indeed, her comments suggest that she

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<sup>2</sup> The Due Process Clause mandates a similar requirement of judicial impartiality, and like Section 455(a), has been implemented by objective standards that do not require proof of actual bias. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883–84 (2009) (citations omitted).

<sup>3</sup> See also *Cheney v. U.S. District Court for D.C.*, 541 U.S. 913, 915 (2004) (*memorandum of* Scalia, J.) (“Let me respond, at the outset, to Sierra Club’s suggestion that I should ‘resolve any doubts in favor of recusal.’ That might be sound advice if I were sitting on a Court of Appeals.”); *Potashnick*, 609 F.2d at 1112 (“[T]he new statute requires a judge to exercise his discretion in favor of disqualification if he has any question about the propriety of his sitting in a particular case.”).

reached a conclusion, before this case, that President Trump is more deserving of a term of imprisonment than the defendant she was sentencing.

Likewise, most reasonable observers would understand Judge Chutkan's statements that "it is true, Mr. Palmer -- you have made a very good point, one that has been made before -- that the people who exhorted you and encouraged you and rallied you to go and take action and to fight have not been charged. . . . I don't have any influence on that. *I have my opinions*, but they are not relevant," Ex. B at 21:6–22:13, as both a pre-case determination of disputed facts (that President Trump "exhorted," "encouraged," or "rallied" others for unlawful action) and a suggestion that President Trump may and should be prosecuted based on those facts.<sup>4</sup>

"Courts have found an impermissible level of bias when a judge's remarks or actions reveal [s]he has prejudged the guilt of a defendant." *United States v. Nickl*, 427 F.3d 1286, 1298 (10th Cir. 2005). Judge Chutkan made her comments from the bench during court proceedings, which only amplifies the concern of prejudgment. President Trump was not a party to these cases and had no ability or "opportunity to object, perhaps even to persuade, and the Judge would have made a record for review on appeal." *Microsoft Corp.*, 253 F.3d at 115.

Moreover, because the statements were made on the record in support of the Court's sentences of incarceration, the public must reasonably understand them to be the product of considerable thought on the part of Judge Chutkan, reflective of her core views that are unlikely to change. And, as President Trump's supposed culpability was not an issue for Judge Chutkan to

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<sup>4</sup> The Indictment does not allege President Trump personally entered the Capitol on January 6, 2021, or incited violence, but it makes numerous allegations that he knowingly made false claims of election fraud to his supporters and somehow "exploited" the protests at the Capitol. While President Trump categorically denies these and many other allegations in the Indictment, Judge Chutkan's comments can be reasonably understood to mean she has already formed an opinion about President Trump's guilt and about many of the key, and disputed, allegations of this case.

decide in the *Palmer* or *Priola* sentencings, the public can reasonably understand that her views on President Trump derive from extrajudicial sources. See *Liteky v. United States*, 510 U.S. 540, 554–56 (1994).

Every judge must uphold her oath of office. That is, to “faithfully and impartially discharge and perform all duties incumbent upon me under the Constitution and law of the United States. So help me God.” 28 U.S.C. § 453. The foundation of that oath is a judicial branch designed by our founders to be entirely impartial and avoiding even the perception of prejudice. Our system guarantees that the government prove a defendant guilty, in front of a jury of his peers, as part of a trial without any suggestion of partiality on the part of the presiding judge. Only when all three prongs are present and beyond dispute does our system function as intended.

Both by its procedure and its content, this trial is a test of the very foundations upon which our government is built. There is an overwhelming public interest in ensuring the perceived fairness of these proceedings. In a highly charged political season, naturally all Americans, and in fact, the entire world, are observing these proceedings closely. Only if this trial is administered by a judge who appears entirely impartial could the public ever accept the outcome as justice.<sup>5</sup>

Section 455(a) commands a judge to recuse herself if her impartiality *might* reasonably be questioned. The standard is not particularly high, especially in a case, as here, where the Department of Justice answers to a President who is prosecuting his main, leading opponent in an

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<sup>5</sup> See Testimony of Norman L. Reimer, Executive Director, National Association of Criminal Defense Lawyers, *Hearings Before the House Comm. on the Judiciary*, 111<sup>th</sup> Cong. 1 2009, Serial No. 111-118 (“The people’s confidence in the system hinges on the perception by the guilty, by the innocent, by all who are touched by the criminal justice system and the larger community, that judges are not predisposed to decide a case one way or another.”); Lonnie T. Brown, *Criticizing Judges: A Lawyer’s Professional Responsibility*, 56 Ga. L. Rev. 161 (2021) (“[T]he very nature of a judge’s role requires avoidance of even the ‘appearance of impropriety.’ When judges fail to adhere to this standard, decisional accuracy is called into question, and the perception of fairness, so important to the judicial process, is diminished.”).



election that will take place in just over a year. Now is not the time for the American people to second-guess a judge's impartiality. Rather, the Court should ensure the public remains "unwavering[ly] confiden[t]" in its decisions and its commitment to the fair and impartial administration of justice. *Potashnick*, 609 F.2d at 1111. Therefore, President Trump requests Judge Chutkan recuse herself from further proceedings.

### CONCLUSION

For the foregoing reasons, Judge Chutkan should recuse herself from this case and direct the Clerk to randomly assign this matter to another District Judge.<sup>6</sup> Additionally, given the overriding public interest in ensuring the appearance of fairness in this proceeding, President Trump requests the Court consider this Motion on an expedited basis and, pending resolution, withhold rulings on any other pending motion.

Dated: September 11, 2023

Respectfully submitted,

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*Counsel for President Donald J. Trump*

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<sup>6</sup> President Trump reserves all rights to challenge venue in this District based on applicable law.

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

Case No. 1:23-cr-257-TSC

DONALD J. TRUMP,

Defendant.

\_\_\_\_\_ /

**DEFENDANT DONALD J. TRUMP'S MOTION FOR RECUSAL OF  
DISTRICT JUDGE PURSUANT TO 28 U.S.C. § 455(a)**

**Ex. A**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	
Plaintiff,	.	CR No. 22-0242 (TSC)
	.	
v.	.	
	.	
CHRISTINE PRIOLA,	.	Washington, D.C.
	.	Friday, October 28, 2022
Defendant.	.	10:06 a.m.
. . . . .	.	

TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE TANYA S. CHUTKAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	JOLE ZIMMERMAN, AUSA U.S. Attorney's Office 601 D Street NW Washington, DC 20530 (202) 252-7566
For Defendant:	CHARLES E LANGMACK II, ESQ Langmack Law 38106 Third Street Willoughby, OH 44094 (440) 497-5068
Court Reporter:	BRYAN A. WAYNE, RPR, CRR U.S. Courthouse, Room 4704-A 333 Constitution Avenue NW Washington, DC 20001 (202) 354-3186

Proceedings reported by stenotype shorthand.  
Transcript produced by computer-aided transcription.

# Excerpted Pages

1 and love one another despite our differences. I just -- I  
2 want to be a good example in the world of how to help families  
3 not be divided and coworkers and friends not be divided and  
4 our nation not be divided. I just really want to try to do  
5 that. And whatever sentence you give me, I hope it just  
6 brings justice and peace -- some peace to the people I have  
7 hurt. Thank you, Your Honor.

8 THE COURT: Thank you, Ms. Priola.

9 After calculating the sentencing guidelines and any  
10 applicable departures, and hearing the statements made by  
11 counsel and Ms. Priola, I have to now -- I have the difficult  
12 job, as I do in every case -- and it is a difficult one -- to  
13 consider the relevant factors set out by Congress in 18 U.S.C.  
14 § 3553(a), and ensure that I impose a sentence sufficient but  
15 not greater than necessary to comply with the purpose was  
16 sentencing.

17 The government has stated these purposes, and Mr. Langmack  
18 has mentioned them. I don't need to list them all again. But  
19 I've considered all the purposes of sentencing and the factors  
20 that I have to consider, and I'll discuss some of them now.  
21 Some of them weigh more heavily than others in this case, as  
22 they do in every case.

23 We are now well familiar with the events of January 6.  
24 We have had, by my last count, close to 900 prosecutions,  
25 all brought in this court. This is a small court. All the

1 judges are taking their fair share of these cases, myself  
2 included; and every case presents a different defendant and  
3 a different situation, and I know I and my other colleagues  
4 endeavor to treat each defendant as an individual and not as  
5 part of a mob. But we have to be mindful of what happened  
6 that day.

7 Every single time that I see videotape or hear recordings  
8 of what happened that day, I am struck anew with both the  
9 horror of what was going on that day and how close we came --  
10 how close we came to not fulfilling one of the basic functions  
11 of our democracy, which is a peaceful transfer of power, which  
12 we lecture other governments all over the world on and we're  
13 supposed to be an example of, and we were not that day.

14 And so while Mr. Langmack is correct in that your  
15 background didn't involve any criminal activity, the events  
16 of that day and the seriousness of those events cannot be  
17 understated. This was nothing less than an attempt to  
18 violently overthrow the government, the legally, lawfully,  
19 peacefully elected government by individuals who were mad  
20 that their guy lost.

21 I see the videotapes. I see the footage of the flags and  
22 the signs that people were carrying and the hats they were  
23 wearing and the garb. And the people who mobbed that Capitol  
24 were there in fealty, in loyalty, to one man -- not to the  
25 Constitution, of which most of the people who come before me

1        seem woefully ignorant; not to the ideals of this country;  
2        and not to the principles of democracy. It's a blind loyalty  
3        to one person who, by the way, remains free to this day.

4            There is no mob without the members of the mob, as I've  
5        said before. So Mr. Langmack made a point in his sentencing  
6        memorandum, that if we were to take your participation out  
7        of that group, that everything would have still happened;  
8        your actions did not materially contribute.

9            But they did, because you were there. And people act  
10       in ways that they would never act alone when they're with  
11       a group, or when they're with a mob, and when emotions are  
12       involved.

13            But in terms of the seriousness of the offense and the  
14       nature of the offense, it cannot be understated how serious  
15       this was and how horrifying it was to the country and the fact  
16       that the divisions that were already existing in this country  
17       were worsened, that this country is more divided than ever,  
18       and it was exacerbated by the actions of that day.

19            And you're one of the few defendants, Ms. Priola -- and  
20       maybe it's because I have talked about it at every single  
21       sentencing I've done -- to at least acknowledge the harm that  
22       was done to the people there.

23            I hear a lot about rioters calling themselves and their  
24       fellow protesters "patriots." Nothing could be further from  
25       the truth. The people who stormed the Capitol that day were

# **Excerpted Pages**



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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Bryan A. Wayne  
Bryan A. Wayne

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

Case No. 1:23-cr-257-TSC

DONALD J. TRUMP,

Defendant.

\_\_\_\_\_ /

**DEFENDANT DONALD J. TRUMP'S MOTION FOR RECUSAL OF  
DISTRICT JUDGE PURSUANT TO 28 U.S.C. § 455(a)**

**Ex. B**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	
Plaintiff,	.	CR No. 21-0328 (TSC)
	.	
v.	.	
	.	
ROBERT SCOTT PALMER,	.	Washington, D.C.
	.	Friday, December 17, 2021
Defendant.	.	12:36 p.m.
. . . . .	.	

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE TANYA S. CHUTKAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	ROBERT C. JUMAN, AUSA U.S. Attorney's Office 500 E. Broward Blvd. Ft. Lauderdale, FL 33132 (786) 514-9990
For the Defendant:	BJORN E. BRUNVAND, ESQ. Bjorn Brunvand, P.A. 615 Turner Street Clearwater, FL 33756 (727) 446-7505
Court Reporter:	BRYAN A. WAYNE, RPR, CRR U.S. Courthouse, Room 4704-A 333 Constitution Avenue NW Washington, DC 20001 (202) 354-3186

Proceedings reported by stenotype shorthand.  
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# Excerpted Pages

1 extinguisher, a piece of wood, and a pole -- should not  
2 qualify as weapons as they are not equivalent to knives or  
3 firearms. And with regard to the need to avoid sentencing  
4 disparities, Mr. Palmer notes that any sentence within the  
5 guidelines range would be higher than any other defendants  
6 as yet sentenced in connection with the Capitol riots.

7 Mr. Brunvand, have I adequately summarized your position  
8 in your motion for downward departure?

9 MR. BRUNVAND: You have, Your Honor.

10 THE COURT: I've reviewed the government's opposition.

11 Now I'm going to deny the motion for a downward departure.  
12 I find that despite the factors outlined in Mr. Palmer's  
13 motion, the two-level reduction and a downward variance is  
14 given -- the two-level reduction is given for acceptance  
15 of responsibility. I've already said why I am not giving  
16 the two-level reduction, and I find that the factors in  
17 Mr. Palmer's motion for a variance do not warrant a variance  
18 in this case.

19 Mr. Palmer, it is true, has -- and I'll go into this  
20 further when I consider the 3553(a) factors -- has endured  
21 a difficult childhood, but he overcame those difficulties,  
22 and it is to his credit. His early criminal history  
23 notwithstanding, he built a business. He has, by all  
24 accounts, been a good father, a good friend, a good neighbor.

25 Therefore, the difficulties that he experienced in his

1           upbringing weren't the cause of why he went to the Capitol.  
2           They may have been the cause of why he got those convictions  
3           as a younger person, but he seems to have overcome all of  
4           those problems, or at least to have dealt with them, and was  
5           living an otherwise productive life.

6           He went to the Capitol because, despite election results  
7           which were clear-cut, despite the fact that multiple court  
8           challenges all over the country had rejected every single one  
9           of the challenges to the election, Mr. Palmer didn't like the  
10          result. He didn't like the result, and he didn't want the  
11          transition of power to take place because his guy lost.

12          And it is true, Mr. Palmer -- you have made a very good  
13          point, one that has been made before -- that the people who  
14          exhorted you and encouraged you and rallied you to go and  
15          take action and to fight have not been charged.

16          That is not this court's position. I don't charge  
17          anybody. I don't negotiate plea offers. I don't make  
18          charging decisions. I sentence people who have pleaded  
19          guilty or have been convicted.

20          The issue of who has or has not been charged is not before  
21          me. I don't have any influence on that. I have my opinions,  
22          but they are not relevant. And you're correct in that no one  
23          who was encouraging everybody to take the Capitol has been  
24          charged as of yet, but I don't think that fact means that you  
25          should get a lower sentence.

1           The fact is that there are lots of people who agreed with  
2           you, who didn't like the results of the election, who perhaps  
3           thought the election was stolen in some way. They stayed  
4           home. You decided, of your own free will, to leave Florida  
5           and come to Washington and go to the rally.

6           That's your right. You're not being sentenced for your  
7           political views. When you left that rally and went to the  
8           Capitol and saw what was going on and engaged in combat with  
9           those law enforcement officers, that's what you're being  
10          punished for. So you have a point, that the people who may  
11          be the people who planned this and funded it and encouraged  
12          it haven't been charged, but that's not a reason for you to  
13          get a lower sentence.

14          With regard to your argument that there's a need to  
15          avoid sentencing disparity, I will address that issue when  
16          I go through the 3553(a) factors in detail. Which is now.

17          Section 3553(a) requires me to consider a variety of  
18          factors including the sentencing range that the guidelines  
19          prescribe, which I've just discussed, and the applicable penal  
20          statutes. The charge of Assaulting, Resisting, or Impeding  
21          Certain Officers Using a Dangerous Weapon, in violation of 18  
22          U.S.C. §§ 111(a) (1) and (b), is a Class C felony that carries  
23          a maximum term of 20 years of imprisonment.

24          The statute provides that Mr. Palmer is eligible for  
25          one to five years of probation. Under the guidelines,

# **Excerpted Pages**



\* \* \* \* \*

CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Bryan A. Wayne  
Bryan A. Wayne