PROPOSED PRESIDENTIAL PARDONS TO BE ISSUED BY PRESIDENT DONALD TRUMP ADDRESSING BY CATEGORY SERIOUS LEGAL ERRORS AND CONSTITUTIONAL VIOLATIONS OF PROSECUTIONS OF JANUARY 6 DEMONSTRATORS

And Executive Orders Implementing Pardon Power By Demanding Reports from Agencies

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sentenced illegally in violation of the 1984 Sentencing Act with sentences vastly in excess of what Left-wing demonstrators were sentenced with . This Group Commutation by Category reduces all sentences from January 6, 2021, to the median sentence imposed upon Left-wing defendants for the same conduct. This includes consideration of where Left-wing protestors were not charged at all whereas pro-Trump protestors were charged and sentenced

TAB 4 Pardon by Category of All January 6, 2021, Demonstrators charged with 18 U.S.C. 1752.

All or nearly all of the estimated 1,600 people charged (and counting) relating to events of January 6, 2021, on Capitol Hill, were charged with 18 U.S.C. 1752 concerning presence or activities within a "restricted grounds" or "restricted building." However, among many problems with this statute, the statute requires that only the U.S. Secret Service can declare a restricted area. However, in relation to January 6, 2021, the Secret Service did not declare a restricted area. The U.S. Capitol Police declared a construction zone on September 3, 2020. Therefore, all charges and convictions under 18 U.S.C. 1752 – affecting nearly 1,600 defendants and growing – are invalid and must be thrown out by pardon. Note that the President's determination is final and independent and not dependent on the view of any court.

TAB 5 Pardon by Category of All January 6, 2021, Demonstrators Charged in Vindictive Prosecution

Issuing a Pardon on all Counts where prosecutors added serious felony charges only because January 6 Defendants declined to take a plea deal. This is punishment for exercising the right to trial under the U.S. Constitution.

TAB 6 Pardon by Category of All Charges under 18 U.S.C. 1512(c) Overturned by the U.S. Supreme Court in *United States v. Fischer*

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The U.S. Constitution under due process requires the prosecution to disclose potentially exculpatory evidence to defendants. This Constitutional right was recognized in Brady v. Maryland and in later precedents. Prosecutors massively violated Brady and deprived January 6 Defendants of fair trials. Group pardon is proposed of every case in which the prosecution violated Brady.

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Issuing a pardon on all cases in which a Defendant requested more time to review the prosecutors' flood of irrelevant information, locate witnesses, and prepare for trial but was denied. This violates due process by declining a meaningful

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TAB 11 Pardon by Category of All Charges Proven by Fabricated Evidence Rule 106

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and misrepresent the evidence is obstruction of justice by prosecutors. The violation of due process is the reason Rule 106 of The Federal Rules of Evidence prohibits this practice.

TAB 12 Pardon by Category of Legally Defective Prosecutions Under 18 U.S.C. 111(a)

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TAB 13 Pardon by Category of All Charges of Seditious Conspiracy

Issuing a pardon on all counts of seditious conspiracy under 18 U.S.C. 2384. After examining the facts alleged and attempted to be proven of the handful of seditious conspiracy charges it is clear that there is no possible factual basis or grounding for such a charge and that the charged defendants actively advocated for efforts to keep the peace and uphold the law. The very few of 40,000 Oath Keepers nationally who got involved promoted the use of the [Anti] Insurrection Act of 1807 to keep the peace and uphold the law, which is the anti-thesis of seditious conspiracy

TAB 14 Pardon by Category of Legally Defective Prosecutions Due to Spoilation of Evidence

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TAB 15 Pardon by Category of All January 6, 2021, Demonstrators Convicted of the Actions of Other people (Collective Punishment)

In all January 6, 2021, prosecutions – numbering 1,600 and counting – the Federal prosecutors of the U.S. Department of Justice have prosecuted crowds in general, not the individual defendants placed on trial. This is unconstitutional and a clear and present danger to the U.S. Constitution. Individuals can only be punished for their own actions. The January 6 prosecutions represent a severe and radical change to U.S. law of collectivist punishment. Prosecutors put on evidence of what other people did with no connection to the Defendant before the Court and convicted individuals based on the actions and alleged statements of crowds, not for their individual behavior.

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TAB 23 Executive Order ordering report on all Public Judicial Statements Showing Bias or Prejudgment that January 6 Defendants are guilty before trial, thus contaminating the jury pool of the District of Columbia

TAB 24 Executive Order ordering report on Legally Defective Mis-use of 18 U.S.C. 111(a)

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TAB 1

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Memorandum by Executive Order Explaining President Donald Trump's Chosen Uses of the Pardon Power

I. PRESIDENT'S UNCONDITIONAL PARDON POWER

Pursuant to Article II, Section 2, Clause 1 every sitting President "shall have Power to Grant Reprieves and Pardons for Offenses against the United States."

This is understood to include in other terminology the power to grant commutations, that is to order a reduction in the sentence imposed and/or order that a sentence be concluded to the extent it has been served. This is understood to include "clemency" meaning a pardon or commutation based on hardship or equitable principles.

A Pardon has often been used where a convicted person has during a long time since incarceration ended reformed and has been a contributing member of society.

However, in the constitutional debates and political philosophy that forged the U.S. Constitution, the primary purpose of the Pardon power was as a check and balance against the excesses, abuses, and misconduct of some government actors so recently in their living memories exhibited in the legislature of the United Kingdom and machinations by the British Crown and functionaries. Defective or abuses prosecutions, over-charging, over-sentencing, discriminatory treatment, political harassment, attempts to alter the political landscape through false or exaggerated legal charges were fresh on the minds of the writers of the U.S. Constitution. The Constitutional Pardon power was motivated to clip the wings of over-reaching officials, and defective legal proceedings, not as a certificate to be framed on the wall for elderly former convicts to look at during their final years.

Historically, it has been demonstrated that a President can issue blanket pardons to classes of persons such as happened after the Civil War ordered by President Andrew Johnson on or about December 25, 1868. Moreover, this and related actions demonstrate that a President may distinguish between pardoning certain levels or classes while not pardoning others in the same events, incidents, or group of incidents. For example, soldiers following orders can be categorized separately from their officers with the power of discretionary decision-making.

Historically, it has been made clear that a President can pre-emptively pardon an accused person or group of persons prior to their conviction (if any). One of the goals of the Pardon Power being to avoid excesses and abuses, an accused person is not required to be subjected to prosecution only to have the ordeal, legal expense, etc., ending in a pardon. I find that the attitude evident in a recently altered, now abusive legal system that "the process is the punishment" is a violation of due process and civil and constitutional rights.

Despite widespread academic debate, the concept of "accepting" or "rejecting" a pardon is incompatible with and antagonistic to the entire concept of the constitutional Pardon Power. I find and declare as President that a pardon (or its sub-species variations) is effective when signed by the President and no consequences can be added to the recipient from any act or failure to act. I conclude that imposing conditions on the recipient of a Pardon cannot be reconciled with the Constitution and its history. I find that the decision to issue a Pardon is the decision of the President alone and may not be placed upon the Recipient.

In particular, the myth that a person "accepting" a pardon is an admission of guilt is untenable. I am issuing many pardons not based on whether a person is guilty or innocent, but because often the process was so flawed that we cannot know properly if the person was guilty or innocent. A Pardon may not be interpreted as a finding of the recipient's guilt but of a

departure by the DOJ and the Courts of constitutional norms.

II. A DECENT RESPECT FOR THE OPINIONS OF MANKIND

I intend to issue a number of Pardons and/or Commutations of sentences including because the nation has witnessed the discriminatory and unequal application of the law, the severe, widespread, and rampant mis-use of our legal system, U.S. Department of Justice, and courts to advance partisan political goals and to unlawfully influence the public discussion of the free citizens of the United States of America guaranteed to them under the First Amendment to the U.S. Constitution. The double standards and unequal application of our legal system has become a clear and present danger to the survival of the American Experiment of a representative Republic answerable to its citizens. Fortunately, the U.S. Constitution has provided one of many checks and balances against abuses in the hands of the President of the United States in the form of the Pardon power.

However, given the number of individualized and class-wide or group pardons I anticipate issuing it is expedient and useful for me to set forth in this Memorandum my explanations (which I am not required to provide under the Pardon power), the reasons, legal authority, and intent of my orders once instead of duplicating these details each time.

Our Declaration of Independence is a landmark document for the very purpose that " a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation." Here, some of these issues are complicated in many Pardons. Many times the issues are not immediately obvious, except where there is a massive double standard between Left-wing arsonists, police batteries, looters, and violent street gangs who are not prosecuted as opposed to patriotic Americans who are prosecuted for exercising their First Amendment rights.

Therefore, although I have the right and the power to issue a Pardon with no explanation, I choose to advance the public discussion by presenting this document including my analysis and explanation.

III. PRESIDENTIAL DUTY TO TAKE CARE THE LAWS BE FAITHFULLY EXECUTED

Article II, Section 3 of the U.S. Constitution specifies some of the President's many duties: *[Emphasis added.]*

> *"He shall from time to time give to the Congress Information on the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers;* he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States."

The Constitution does not include an Attorney General, Department of Justice, prosecutors, or Federal Bureau of Investigation. Only the Chief Executive, the President. It has been correctly noted that no government, scarcely even a small town, could be run by a single person alone and that as a practical matter a President fulfills this duty by and through many institutions and officials at varying levels, including an Attorney General and the estimated 115,000 employees of the U.S. Department of Justice's more than 40 different sub-agencies from the Federal Bureau of Investigation to the U.S. Marshals to the Bureau of Prisons.

Obviously, where a President hires assistants to help the President carry out his duties, any and all government employees must comply with the Bill of Rights and other Constitutional rights for the protection of U.S. citizens and people present in the United States of America, including the limitations the Constitution imposes to restrain the U.S. Government and limit its authority.

Nevertheless, under the clear wording of the U.S. Constitution and its historical traditions it is the President's duty to take care that the law is faithfully executed. Unelected, unaccountable, and often publicly unidentified officials cannot turn a representative Republic on its head.

IV. APPLICATION TO THE PARDON ATTORNEY TO RECEIVE PARDONS OR COMMUTATIONS

I will be issuing several categorical pardons and/or commutations reducing sentences based upon identifiable misconduct of prosecutors and/or violations of due process or constitutional rights by prosecutors and judges. There is historical example of issuing pardons to groups of persons based upon categories of the persons or concerning the circumstances and details of events. However, as a practical matter, there is benefit to identifying exactly who qualifies for and shall receive the pardons or commutations that I declare.

As a result, a person or their attorney or legal representative or holder of a power of attorney may present an application to the Office of the Pardon Attorney, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington DC 20530. USPardon.Attorney@usdoj.gov.

Nothing in this Memorandum or in any of the Pardons or Commutations that I may issue are intended to deprive the Office of the Pardon Attorney or any application for a pardon or commutation of the ability to use or complete the existing procedures.

When it comes to categorical or group pardons or commutations, I will have already determined in these that pardons or commuted sentences are warranted based on circumstances that apply to more than one person but apply to a group or category of persons for the specific, detailed reasons I will identify. Therefore, I authorize and encourage an abbreviated, simplified process. That does not call into question the validity of any pardon or commutation that

followed the more traditional, more extensive process.

I direct that the Pardon Attorney and staff review simplified applications for those seeking pardons or commutations of sentences, which applications may be (but are not required to be) limited only to stating, explaining, and documenting that the reasons I state for granting a pardon or commutation do in fact apply to the applicant.

V. SUBMISSION OF LENGTHY DOCUMENTS AND INFORMATION

Because the DOJ, including the Pardon Attorney's office, generally does not have to pay for court reporter transcripts, and transcripts are a significant cost to defendants, the applicant need only provide the page references to the transcript(s) that need to be considered. However, the submission should draw attention to the pages that are important, including a wide margin of surrounding material before and after helpful to understanding the relevant portions. If the Pardon Attorney's office can verify the authenticity of other documents, links to documents or news reporting may be acceptable. The Pardon Attorney's office and all relevant portions of the DOJ including the Bureau of Prisons must consider the limitations of administrative work on inmates who are incarcerated. I find that seeking a pardon, whether successful or not, but plausible, is a legitimate defense effort that may justify assignment of a public defender or court-appointed attorney at taxpayer expense.

The Pardon Attorney may of course inquire further to get more information, clarification, and context if deemed important to understand the application, and/or may review the court record including seeking confidential review of any sealed court documents, and/or may invite information from the prosecuting office with notice to the applicant if helpful to understanding the information provided and the context of events. My pardon and commutation which I decide on the basis of particular facts and circumstances shall become effective and final as to an

individual where the investigation of the Pardon Attorney finds that those facts and circumstances apply to an applicant.

The Pardon Attorney and/or the applicant may request a signed order by the President specifically naming the applicant directly. I direct that under the Constitution the Pardon Attorney works exclusively and directly for the President and the President's power may not be limited by any other official.

VI. REGULAR DUTIES OF THE PARDON ATTORNEY

Notwithstanding the foregoing, I direct the Pardon Attorney to fully consider in a non-discriminatory manner in good faith all applications for Presidential Pardons directed to that office according to his or her normal duties. Where resources or manpower fall short, I direct the Pardon Attorney to let his or needs be known so that the work can be done. I direct the Pardon Attorney not to arbitrarily disregard any application except as specified under previously existing law where an applicant fails on request to provide needed information, abandons the application, or the like.

VII. INDIVIDUAL COUNTS CONSIDERED SEPARATELY

In modern times certainly prosecutions rarely if ever involve a single allegation or "count." Prosecutors tend to bring charges or persuade grand juries to issue a barrage of counts which sometimes are unrelated. Similarly, prosecutors of cases relating to events surrounding January 6, 2021, tend to combine prosecutions of several defendants whose relevance to each other is sometimes a mystery.

I find as President that a President may consider each Count of a criminal prosecution separately and individually in the use of his or her Pardon power, in terms of pardoning or commuting some counts but not others, treating different counts differently, or understanding the

overall situation in a case. I find that a President may pardon one Count and not another, pardon one Count but commute the sentence of another Count, or any combination one may confront.

However, in some situations I explicitly state that an entire case is harmed by violations and none of the counts can be salvaged separately and my explanation there governs.

VIII. PARDONS INCLUDE ATTEMPT, AIDING AND ABETTING, AND CONSPIRACY BASED UPON THE PARDONED CHARGE, COMMUTATION OF SENTENCING

Every one of my pardons of a statutory or common law offense includes a pardon of any charge of "attempt" of said crime, a pardon of conspiracy to the extent based on the pardoned offense (i.*e.,* a conspiracy would have to stand on other grounds), or aiding and abetting such as under 18 U.S.C. § 2. Unfortunately, I find that § 2 is broad with many parts. I find that "aids" and "abets" in § 2 are unconstitutionally void for vagueness unless pinned down "as applied." I find that "counsels" in § 2 is always unconstitutional (and probably "induces" also depending on what that means in a given case) under ***Brandenburg v. Ohio*** as including mere opinion or free speech that cannot be punished.

For example, saying "Someone should just shoot down that Chinese spy balloon once and for all" is entirely different from saying "I will pay you $20,000 if you will shoot down that Chinese spy balloon." "Counsels" and "induces" in § 2 are too vague. I do not intend to necessarily pardon soliciting or hiring someone else to commit a crime. If an applicant can demonstrate to the Pardon Attorney that the legal defects in the legal proceedings or trial that I identify as the reason(s) for a pardon apply, such as we don't actually know if a defendant really did solicit someone to commit a crime, the Pardon Attorney could recommend a pardon for that. But applying my pardon to soliciting or procuring another to commit a crime covers too many possible scenarios to reach a general conclusion as a category at this time.

IX. COMPANION COMMUTATION OF SENTENCING

In light of academic debate and legal commentary about the effect of a pardon, I also issue together with every pardon a total commutation of all sentence(s) imposed. Not only is the alleged violation of law pardoned but where a pardon applies and/or is issued also the sentence is commuted to zero time and no other conditions, fines, restitution, probation, or any punishment.

X. EFFECT ON PLEA DEALS

While it is obvious that a Pardon can erase the liability for a conviction after a person is convicted, the Pardons or related actions ordered by these documents include pardoning or commuting, etc., any conviction of a crime to which a person pled guilty. A guilty plea is necessarily a decision made under duress, a result of threats and intimidation, and a calculated gamble of the risk of worse consequences. Any Pardon under this document includes any conviction that resulted from a plea deal.

XI. DEADLINES FOR APPLICATION – VESTED RIGHTS

Because one of the reasons for the Pardon power in my view is to curb the harsh, sharp corners of the legal system it would be inconsistent to impose harsh deadlines for an applicant to claim a pardon granted. Some of the criminal defense deadlines – such as only 14 days after trial to file a motion to strike a conviction – are both irrational and excessively unfair. To balance such issues on similar deadlines would be inconsistent. The Pardon Attorney may determine, after sufficient warning and inquiry, that an application opened has been abandoned. But I do not impose any deadline for an application to be submitted and completed, particularly where some potential recipients and attorneys express their concern that they wish to pursue appeals first, in full measure. I order that those who qualify for the pardons I am announcing have vested rights even after my term of office ends if and when they establish the particular factual

circumstances that show they fit within the terms of the pardon(s). However, it is recommended that potential applicants complete their application process prior to January 1, 2029, for action to occur that cannot be reversed.

XII. EFFECT ON PENDING APPEALS

In light of academic debate and legal commentary about the effect of a pardon, I specify that while every decision to issue a pardon which is substantiated and shown to be applicable to a recipient according to its terms shall be final, my pardon of an individual shall take effect only upon the conclusion of all pending appeals. Some commentators posit that a successful appeal provides superior legal benefits and protection compared to a pardon.

XIII. PARDON NOT LIMITED TO COURT RULES

I observe that many legal defects in criminal prosecutions relating to events on or about or leading up to January 6, 2021, have been improperly disregarded and pushed aside by judges whose decisions cannot be supported. Abusing arguments of relevance, improperly shifting the burden to unconvicted defendants to prove their innocence, and the like, clear and egregious legal defects have been swept under the rug. A President, however, is not subject to or limited by a judge's dubious refusal to uphold defendant's constitutional and civil legal rights.

Because the pardon power is different and is intended to curb the excesses of the legal, governmental, and political systems, my pardons here are not limited to where a defendant or his counsel effectively objected or preserved the issue for appeal. My pardons are not limited to whether a defendant had effective legal representation. My pardons consider that attorneys may have to make difficult choices which issues to push or emphasize and whether to risk angering the judge with too many objections. Therefore, court rules cannot excuse a violation of rights.

Furthermore, in the use of the pardon power, a President need not and probably should never consider the analysis typical of court precedents as to whether there was enough evidence from which a jury could convict. I am informed that appellate courts spend much of their time trying to find ways not to decide a case by claiming "harmless error." However, I find no such concept or limitation in the exercise of a President's pardon power. Appeals courts' approach "Would the defendant have been convicted anyway?" seems to be based mostly on a cautious principle of deciding nothing more than is necessary. That is also highly speculative. I believe a President's attention, however, should be in part on stopping abuses by prosecutors and courts and our legal system once and for all, and to try to prevent their re-occurrence. Therefore, my pardons are not related to or limited to the appeals' courts tendency to decide as little as possible.

Where the issue is abuse of the legal system and curtailment or violations of constitutional, civil, and legal rights, no amount of improper evidence should be tolerated and the practices must be stopped. For the purposes of a pardon, a conviction is not salvaged by the presence of enough lawful evidence to convict. This is made worse by the fact that we do not know what will influence a jury in its verdict and the jury's deliberations are confidential. So we cannot know if the jury's verdict was caused in part by improper, unlawful evidence.

Lomelo v. U.S., 891 F.2d 1512, 1519 (11th Cir. 1990), citing *Chiarella v. United States*, 445 U.S. 222, 237 n. 21, 100 S.Ct. 1108, 1119 n. 21, 63 L.Ed.2d 348 (1980), finds that if a jury is instructed on alternate theories of punishment, a conviction cannot stand when one of the theories is an improper basis for punishment. *See also Zant v. Stephens*, 462 U.S. 862, 881, 103 S.Ct. 2733 2745, 77 L.Ed.2d 235 (1983). The inclusion of a valid criminal charge combined with an invalid charge, valid evidence with invalid evidence, the violation of constitutional, legal, or civil rights which might or might not have been considered by the jury invalidates the

entire case. How much *e.coli* poisoning in the stew renders the entire stew inedible? Generally speaking, one cannot simply remove the contamination as if it had never been there.

XIV. DISPUTES OF FACTS OR COURT PROCEEDINGS

I leave it to the discretion of the Pardon Attorney to consider receiving, analyzing, reviewing, and considering contrary information on any disputed issue of fact or the completeness or accuracy of a court proceeding or the like. Nothing herein is intended to limit the Pardon Attorney from determining in fairness, good faith, and accuracy what the facts actually are in a particular defendant's case and what happened in each defendant's case. However, my decision and analysis of when a Pardon or Commutation should issue upon specific facts are not subject to any discretion. Furthermore, where an applicant has provided sufficient information to demonstrate that he or she comes within the terms of one or more of my categorical pardons, that right is vested and the Pardon Attorney's time spent investigating will not affect the applicant's vested rights if the determination of the facts show that the applicant did or does in fact qualify for the categorical pardon(s).

TAB 2

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning all Defendants Convicted of Events of January 6, 2021 After Certain Denials of Motions to Transfer Venue

I. PARDON FOR IMPROPER REFUSALS TO TRANSFER VENUE

The U.S. Court of Appeals for the District of Columbia's precedents on change of venue such as *United States. v. Haldeman, et. al.*, 559 F.2d 331, 181 U.S.App.D.C. 254, 1 Fed.R.Evid.Serv. 1203 (1976), *rehearing denied* at Record Nos. 75-1381 and 75-1384 *(Dec. 8, 1976), cert denied (though not targeted to only this issue),* 97 S.Ct. 2641 (1977) are

(1) being misread to mean at times the opposite of what those precedents actually say,

(2) based upon outdated science which has now been proven (often by U.S. Government sponsored research) to be misguided (it is psychologically impossible for people to set aside their biases when told by the trial judge to focus only on evidence or to answer honestly if they do hold a bias), and

(3) misapplied in fact such as depending upon a "rigorous" and "effective" jury selection process (voir dire) (which almost never in fact occurs in reality in the courtrooms but judges feel pressured to cut corners with dozens of potential jurors waiting out in the hallway or in another room watching the clock),

However, apparently never in the history of U.S. courts has adverse pre-trial publicity been caused by the judge presiding over the case.

Haldeman and precedents misinterpreting it wrangle over pre-trial publicity, but never when caused by the presiding judge himself or herself. A jury pool can be contaminated by pre-trial adverse publicity but this is usually through massive news coverage.

But when a Judge proclaims Defendants to be already known to be guilty before trial, their comments will be taken as authoritative finality. Worse, when the Judge presiding over the Defendant's criminal trial is the one who previously proclaimed publicly that all January 6 Defendants are guilty, pre-judging the evidence and the outcome of the trial, the U.S. Constitution is violated, not merely judicial ethical guidelines.

Against these problems, transferring venue is usually easy. A ferocious resistance to transferring venue can only raise suspicions and disrespect among the general public. The Biden / Garland DOJ is already calling in prosecutors from all around the country detailed from other States to the District of Columbia. Why couldn't those prosecutors stay home and prosecute cases in their own judicial districts? Most of the evidence is video showing the crowd in general. Rather than making 50 to 200 potential jurors wait for one or more days to be interviewed, when there are serious doubts about the impartiality of a venue, merely starting fresh in another judicial district seems greatly superior and less burdensome.

For these and other reasons, including those explained below, I hereby issue a categorical pardon to any and all defendants pending trial or convicted (including by plea deal) of crimes related to events occurring on or about January 5-7, 2021, occurring within the District of Columbia, in which:

A. One or more Judges of the U.S. District Court for the District of Columbia publicly proclaimed all or most participants in January 6, 2021, to be guilty.

B. Such comments were published and/or available to the jury pool ***before*** the start of

the trial (including jury selection) of the Defendant applying for a pardon.

C. Such comments were published in the news media or otherwise spread with the effect of potentially reaching and/or potentially influencing the jury pool of residents of the District of Columbia, regardless of the intent. (I find that the risk of contamination of the criminal trial vastly outweighs the convenience of the courts or the prosecutors or any margin of error. I find that the courts' approach of allowing constitutional and civil violations of Defendants' rights unless especially egregious is unacceptable and incompatible with a functioning justice system. Therefore, declarations by Judges of Defendants guilt in advance of trial are unacceptable if only "potentially" reaching the jury pool or only "potentially" influencing the jury pool. Avoiding the risk of depriving citizens of their rights must be taken very seriously.)

D. Such comments publicly cast January 6 Defendants as being already known to be guilty of some or all aspects of the charges against them, including where crucial elements of the crime require proving intent or goals. (See further explanation below.)

E. Such comments were made in an official capacity thus presenting the imprimatur to the lay person jury pool of Washington, D.C. to be authoritative.

F. Such comments were made in an official capacity thus presenting the impression that the Judge had already formally determined guilt based on actual, admissible evidence fully reviewed by the Judge.

G. Such comments were not clearly limited to just one Defendant in the case before the Court at that time, but could be interpreted as applying to most or all people who were on Capitol Hill on January 6, 2021, or even anywhere in Washington, D.C.

II. PROSECUTION VIOLATED CONSTITUTIONAL RIGHTS OF DEFENDANTS BY WITHHOLDING INFORMATION ABOUT THE NON-EXISTENCE OF ANY CONSPIRACY OR PLANNING

Only 12 days after January 6, 2021, before any evidence had been introduced in any trial, the Chief Judge of the U.S. District Court for the District of Columbia publicly announced:

> The chief judge of the federal court in Washington scorched Capitol riot suspects during a hearing on Thursday, calling their actions an assault on American democracy and ruling that a man who had bragged about putting his feet on a desk in House Speaker Nancy Pelosi's office should stay in jail as he awaits trial.
>
> "This was not a peaceful protest. Hundreds of people came to Washington, DC, to disrupt the peaceful transfer of power," Chief Judge Beryl Howell of the DC District Court said in the hour long hearing for Capitol riot defendant Richard Barnett on Thursday.
>
> Howell's remarks are some of the first from a federal district judge over the more than 150 criminal cases that resulted from the siege.
>
> * * *
>
> Howell made clear she believes the crowd was trying to thwart the federal legislative branch from carrying out its duties.
>
> * * *

Katelyn Polantz, "**Chief federal judge in DC scorches Capitol riot suspects and keeps man who was in Pelosi's office in jail**," CNN, January 28, 2021, https://www.cnn.com/2021/01/28/politics/capitol-beryl-howell-richard-barnett-pelosi/index.html

However, all of those statements are questions of fact to be decided by the jury. On January 28, 2021, the Chief Judge declared all Defendants guilty of factual questions which must be decided by admissible evidence in court which is judged by the jury, not the judge.

No evidence had been presented in any trial as of January 28, 2021. There was no evidence upon which a judge could conclude any of these sweeping generalizations about "all" January 6 Defendants and announce them to the District of Columbia jury pool.

> Howell then made clear that she considered all participants in the Jan. 6 Capitol breach — which the Justice Department now estimates at 2,000 to 2,500 people — enablers of an assault against the republic.
>
> "The damage to the reputation of our democracy, which is usually held up around the world … that reputation suffered because of Jan. 6," Howell said, noting that the mob chased lawmakers and Vice President Mike Pence into hiding, and sent staffers ducking under their desks for cover.
>
> "The rioters attacking the Capitol on Jan. 6 were not mere trespassers engaging in protected First Amendment conduct or protests," Howell added. "They were not merely disorderly, as countless videos show the mob that attacked the Capitol was violent. Everyone participating in the mob contributed to that violence."
>
> Howell's harsh words for the Justice Department came as she sentenced Jack Griffith of Tennessee to three years probation for breaching the Capitol for about 10 minutes on Jan. 6 amid the broader attack. Prosecutors had asked for a three-month jail term for Griffith, who faced a maximum of six months on the charge he pleaded guilty to, of "parading" or demonstrating inside the Capitol.
>
> * * * She has taken a leading role in pressing prosecutors to consider the broader threat to democracy that the riot presented when considering charges and punishment for participants. And her words, as the chief of the District Court blocks from the Capitol, often carry more weight than those of her colleagues. She has consistently expressed alarm and skepticism about prosecutors' ginger language and approach to some of the initial cases before her court — and she attributed public "confusion" about the seriousness of the Capitol attack to the government's approach.
>
> "After all that scorching rhetoric ... the government goes on to describe the rioters who got through the police lines and got into the building as 'those who trespassed,'" Howell said. "This was no mere trespass."

Kyle Cheney and Josh Gerstein, "'**Almost schizophrenic': Judge rips DOJ approach to Jan. 6 prosecutions: Chief District Court Judge Beryl Howell criticized "petty offense" plea deals for defendants who she said tarnished America's reputation in the world**," POLITICO, October 28, 2021, https://www.politico.com/news/2021/10/28/almost-schizophrenic-judge-rips-doj-approach-to-jan-6-prosecutions-517442

Again, all of those statements are questions of fact to be decided by the jury. This was on October 28, 2021, but the Chief Judge again declared all Defendants guilty of factual questions

which must be decided by admissible evidence in court which is judged by the jury. Furthermore, Judge Howell publicly explained that she watched the demonstrations on Capitol Hill out her chambers window. And there is nothing wrong with that, except that a witness or potential witness cannot preside over a criminal trial of what they witnessed. Howell was a witness and could not also serve as a Judge presiding over criminal trials.

The current Chief Judge of the District Court, James E. Boasberg, continued these public declarations of condemning and finding guilty *"ALL"* January 6, 2021, defendants.

> "***All of the people charged with offense***s related to the Jan. 6 insurrection are serious. You attempted, along with others, to undermine one of our government's bedrock acts: the peaceful transfer of power," Boasberg said. "There are few actions as serious as the ones this group took on this day."

Samantha Hawkins, "Ohio-based insurrection buds handed 45-day sentences," Court House News, September 29, 2021, *(emphasis added),* https://www.courthousenews.com/ohio-based-insurrection-buds-handed-45-day-sentences/.

Therefore, again, the successor Chief Judge sweepingly declared all January 6 Defendants guilty in advance of trial. The remarks could have been more circumspect. But they were not. They were categorical statements of universal guilt of all Defendants.

The problem is this: When a judge comments during sentencing, as Judge Boasberg did on September 29, 2021, the case is over. Not so here. As many as a thousand other Defendants were awaiting trial or resolution of their cases as of September 29, 2021. As Chief Judge, Boasberg knew that there was a long line of other Defendants whom his comments applied to whose trials had not yet begun and that those comments would affect future trials. In fact, arguably that was the intent because Howell scolded the DOJ for being too lenient in order to publicly pressure prosecutors to be more harsh. Commenting on other cases, not just of the

Defendant in front of the court at the time, was likely intended to publicize her dissatisfaction and views.

One might be excessively charitable and suggest that the Chief Judge (first Howell and later Boasberg) of the very important U.S. District Court for the District of Columbia didn't realize they were speaking about the roughly 1,000 cases still waiting in line after the case he was hearing on September 29, 2021. But regardless of intent, possible good faith, or inadvertent mistake, the constitutional and legal rights of those Defendants were in fact compromised. A pardon is the only solution.

Again, almost never do we have now approaching 1,600 Defendants charged in different cases which are really all the same case. The practice of judges making harsh statements during sentencing, whether dubious or not, involves a one-off case where the matter is entirely concluded at the end of that sentencing hearing. There is normally nothing happening afterwards which would be affected. But this is not that.

III. APPLYING COURT RULES IS UNJUST AND INEFFECTIVE

These problems and injustices in court proceedings cannot be cured by the courts or the rules being applied by the courts, not only in D.C., at least in the way that the courts have misinterpreted these rules on venue.

We might note that when Ashli Babbitt's family with the help of Judicial Watch filed a wrongful death lawsuit in California, the Joe Biden / Merrick Garland U.S. Department of Justice fought ferociously to transfer venue to the District of Columbia. So changing venue is perfectly fine to the DOJ if it is to their advantage. It is unavailable when it would provide a fair trial to criminal defendants standing trial. The forum in which the case is originally filed obviously is not decisive because the Ashli Babbit lawsuit was unacceptable to them in Babbitt's

home state of California. The deciding factor appears to be gaining unfair advantage to the U.S. Government at the expense of individual U.S. citizens.

Worse, however, the courts misinterpreting and misapplying *Haldeman's* venue principles have applied inappropriate, unjust, and illogical analyses:

A. Proving the Impossible:

Applying the legally dubious but commonplace idea of "harmless error" – which is not found in the U.S. Constitution – the U.S. Court of Appeals for the District of Columbia has placed the burden on Defendants to prove an alternate reality of what might have happened if their case had been tried in another venue.

In *United States v. Darrell Neely,* the Court of Appeals dismissed the appeal of a motion to transfer venue for, among other reasons, claiming that the Defendant failed to prove what would have happened if the trial had been held in a different State. This leaves the problems of biased jury pools incapable of being corrected by the courts. Only a pardon, with the strong message that these practices have to change, can help.

We are constantly told in different contexts that the courts and judges are to avoid even the "appearance of bias" or the "appearance of impropriety" (meaning the rules and laws were not followed in the case). And yet the public also can see that this requirement is never actually followed by the courts. These empty words tell us that the appearance of the court system to the public is very important. And yet the courts then ignore those goals in practice and bring discredit to our system in the eyes of the public.

B. Harmless Error:

"Harmless error" means that yes the Government violated the rights of the Defendant, but the Court is going to speculate and imagine a counter-factual scenario and

re-run the trial in its imagination. Even though jury deliberations are conducted in private and remain confidential, and we will never know what influenced the jury, the court will engage in an imaginary trial and conjecture whether the outcome might have been different. If the unreal scenario makes the judge think the result would not have been different, then the wrong committed by the Government will be ignored.

Worse, this is conducted with a thumb on the scale. Although a criminally accused person is presumed innocent until proven guilty beyond a reasonable doubt, on appeal the Defendant is assigned the burden of proving that the result would have been different in a different venue in a different State.

This is of course completely impossible. As one January 6 defense attorney explained, the defense strategy would have been different before a fair and unbiased jury compared with a hostile jury. The entire trial would have been conducted differently.

As long as courts readily excuse the denial of Defendants' rights, we cannot look to those courts for the solution. The error or deprivation was committed by the Government, yet the burden is placed upon the Defendant whose rights were abridged.

C. Other Loopholes for Dodging Appeals:

There are many other excuses routinely used in courts to recognize that a Defendant was wronged, but not to correct the wrong. A Defendant is then hostage to whether his trial attorney objected to the wrong, or objected often enough, or objected forcefully enough, or objected clearly or not, or is thought to have waived the objection by not repeating it again and again at the risk of annoying the judge. Appeals courts may ignore an issue because they feel the trial attorney did not press the trial judge for a decision one way or the other. The trial attorney may have faced difficult choices about

highlighting other issues which the attorney believes will be more forceful, having more beneficial consequences, and the like. The trial attorney may have to choose which points to focus on and how far to risk angering a judge. Therefore, hoping that the courts will self-correct has not shown reason for optimism. Human nature often requires a more noticeable response before changes of bad habits might materialize.

IV. MY MEMORANDUM OF GENERAL INSTRUCTIONS INCORPORATED BY REFERENCE HEREIN

Attention is directed to my General Memorandum setting forth directions, details, and conditions applying to all of my pardons issued at this time. For example, as specified there my pardon includes a pardon of any charge of attempt, aiding and abetting, conspiracy to the extent founded on the pardoned charge rather than on some other grounds, and commutation of any sentence associated with the pardoned charge.

TAB 3

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Commuting Sentences under Pardon Power of Charges Relating to Events Around January 5-7, 2021

I. CONSTITUTIONAL DUTY TO ENSURE EQUALITY AND NON-DISCRIMINATION IN FEDERAL CRIMINAL SENTENCING

As one of the purposes of the Act, the 1984 Sentencing Reform Act, 18 U.S. Code § 3553, requires that:

> **(a)FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE.—**The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—
>
> * * *
>
> **(6)** the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
>
> * * *

In order to implement the 1984 Sentencing Reform Act, the U.S. Sentencing Commission issued the U.S. Sentencing Guidelines, a massive manual of procedures and rules.

It has come to my attention that the U.S. Department of Justice is violating constitutional due process and constitutional rights as well as the 1984 Sentencing Reform Act and the U.S. Sentencing Guidelines by drastically inconsistent prosecution decisions and sentencing decisions in violation of the Guidelines.

The judges of the U.S. District Court for the District of Columbia and Federal prosecutors have openly and explicitly violated the 1984 Sentencing Act by seeking to match sentences only to other January 6 related defendants. They have repeatedly stated that their effort is to match

January 6 sentences only to other January 6 sentences. That is not the law. The law requires minimizing disparities among *anyone* who has been found guilty of the same violation of the law regardless of its nature or context. The District Court explicitly violated this law by trying to make sentences only of January 6 defendants similar, but greatly dissimilar to all others found guilty of the same crime.

II. ORDERS OF COMMUTATION

I hereby order under the Pardon power that all criminal sentences related in any way to events leading up to or occurring on or about January 5-7, 2021, on or near Capitol Hill (within a mile of the U.S. Capitol Building) shall be and hereby are commuted to equal the same basic sentence for a violation of the same crime from any judicial district anywhere in the United States decided since January 1, 2009, subject to the following clarifications and exceptions:

A. The U.S. Sentencing Guidelines and the U.S. Sentencing Reform Act of 1984 consider the individualized criminal history of a defendant as points adding up to the sentence. My Orders of Commutation do not adjust the sentencing decision concerning an individual's personal criminal history. Recalculation of criminal history of course must be done correctly according to the law including excluding criminal history barred by time or category. Conduct for which a person was charged but not convicted may not be counted within his criminal history, no matter what some precedents may say, because punishing someone for what they have not been convicted of is a violation of the U.S. Constitutional right of due process. The burden of establishing any past criminal history can never be on the defendant.

B. Sentencing decisions can include significant adjustments for cooperation with the Government of various types, which would normally be individualized. My Orders of Commutation therefore apply to sentencing points and decisions other than such individualized factors.

C. In light of the severe public concern about double standards in prosecutions as well as sentencing, clearly identifiable persons who are actually shown in reliable evidence to have committed the same crime but were not prosecuted through to a verdict or plea agreement shall be counted in the analysis as a sentence of zero and totaled in the average of sentencing nationwide.

D. I further issue a commutation of sentencing, ordering that during any recalculating or resetting sentencing no increase in sentencing, addition of any new enhancements, upward variances, upward adjustments or the like may be imposed, but any such asserted increase is here by commuted. (A supervisory review of such attempts by prosecutors is appropriate.)

III. ORDER TO U.S. DEPARTMENT OF JUSTICE TO REPORT ON SENTENCING

To implement this, as head of the Executive Branch and supervisor of the U.S. Department of Justice, I hereby order the U.S. Department of Justice to analyze, compile, and report sentencing for every criminal charge related in any way to events leading up to or occurring on or about January 5-7, 2021, on or near Capitol Hill which sentencing occurred since January 1, 2009, including (1) the judicial district imposing the sentence, (2) the date the

sentence was imposed, (3) the sentence imposed for the count convicted including if applicable separating out the judge's "grouping" or "stacking" of convicted charges during sentencing, (4) any special verdict by which the jury identified its finding more specifically than just guilty or not guilty, (5) the range of sentences imposed, (6) the average of sentences imposed, (7) any violation of these statutes by known, identifiable people which the DOJ chose not to prosecute, and (8) any modification of the sentence on appeal,

The DOJ is to include reports on the following past sentencing charges:

A. 18 U.S.C. 111(a), subdivided into

   a. convictions only of a defendant who "assaults" an officer

   b. convictions only for a defendant who "resists" an officer

   c. convictions only of a defendant who "opposes" an officer

   d. convictions only of a defendant who "impedes" an officer

   e. convictions only of a defendant who "intimidates" an officer

   f. convictions only of a defendant who "interferes with" an officer

B. 18 U.S.C. 231(a)(3), subdivided into

   a. convictions only of a defendant who "obstructed" an officer

   b. convictions only of a defendant who "impeded" an officer

   c. convictions only of a defendant who "interfered with" an officer

   d. convictions only of a defendant who also "obstructed" commerce *[which despite the statute's defects would have to be interstate commerce]* or

   e. convictions only of a defendant who obstructed the or performance of any federally protected function.

f. convictions only of a defendant who also "delayed" commerce [which despite the statute's defects would have to be interstate commerce].

g. convictions only of a defendant who "adversely affects" commerce [which despite the statute's defects would have to be interstate commerce] or the conduct or performance of any federally protected function.

C. 18 U.S.C. 1361

a. subdivided to misdemeanor convictions for only those who damaged property up to $999 in value

b. subdivided to felony convictions for only those who damaged property of $1,000 or more in value

D. 18 U.S.C. 1752(a)(1)

E. 18 U.S.C. 1752(a)(2)

F. 18 U.S.C. 1752(a)(4)

While I recognize that this sounds like a lot of work, I also find that the DOJ would be unable to comply with the 1984 Sentencing Reform Act and/or the U.S. Sentencing Guidelines if it were not already maintaining this information over time.

If the DOJ is unable to carry out those requirements, I direct the Attorney General to report to me why and what is needed to carry out the law.

IV. COMMUTATION OF SENTENCES TO NOR MORE THAN THE AVERAGE SENTENCE FOR THE SAME CRIMINAL VIOLATION

My Orders of Commutation commute the sentences of any and all persons convicted for

any of these criminal violations related to, leading up to, or occurring on or about January 5-7, 2021, on Capitol Hill. The sentence for each such defendant is hereby commuted to the average of all defendants convicted of a violation of the same crime since January 1, 2009, as defined in § III above. Again, an identifiable defendant who was not prosecuted through to a verdict shall be included in the calculation of the median at a value of zero as a sentence, such zero value included in the average sentencing.

V. FINDING: NO GROUNDS TO DISTINGUISH JANUARY 5-7, 2021 EVENTS FROM OTHER VIOLATIONS OF THE SAME STATUTORY CRIMES

I reject the attempt of prosecutors and judges to place events relating to the demonstrations or events of January 5-7, 2021, in a unique category. I find that any claim to such a distinction is counter-factual and unpersuasive.

Given the massive acts of violence, arson, looting, property destruction, assault and battery and brawling with police, including injuries and deaths, committed by Leftist political demonstrators and street gangs especially from 2012 through the attack on the White House in May and June of 2020, I find that no characterization of the events on January 6, 2021, can justify unequal treatment, arrest, prosecution, or sentencing between the extremist Left-wing violence of ANTIFA and the misnamed Black Lives Matter versus the mostly peaceful demonstrators on Capitol Hill on or about January 5-7, 2021.

I find that the 1984 Sentencing Reform Act applies on these facts and sentencing must be the same in both cases. Hyperbole surrounding events of January 6, 2021, cannot distinguish events of May to June 2020, in which Leftist street gangs attacked the White House and paralyzed official proceedings at the White House, Old Executive Office Building, and New Executive Office Building surrounding Lafayette Square, with the overt, express intent of

attacking me as President of the United States and putting my wife and family and White House leadership team at risk. [1] These are relevant to rebut the unfounded opinions that events of January 5-7, 2021, are fundamentally different for sentencing purposes. That attempt fails.

Hyperbole about January 6, 2021, cannot rise to the level of the world's capitols seeing Leftists assaulting the White House and command center of the U.S. military.[2] More damage was done around the White House and more law enforcement officers were injured[3] than on January 6, 2021. Yet[4] leaders of the military and the Department of Justice gave most assailants only slaps on the wrist and then awarded them millions of dollars in subsequent lawsuits.[5]

When demonstrators took over the Hart U.S. Senate Office building to prevent Brett Kavanaugh from becoming a U.S. Supreme Court Justice, they were released within a few hours on a $35 to $50 bond[6] that ended up being the final and total punishment.

I therefore find that there is no grounds to distinguish events of January 5-7, 2021, from tens of thousands of cases of Left-wing violence under the 1984 Sentencing Reform Act.

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1 *2020 Marissa J. Lang , Antonio Olivo , Rachel Chason and John Woodrow Cox, "**Night of destruction across D.C. after protesters clash with police outside White House,"** The Washington Post, June 1, 2020, **https://www.washingtonpost.com/local/dc-braces-for-third-day-of-protests-and-clashes-over-death-of-george-floyd/2020/05/31/589471a4-a33b-11ea-b473-04905b1af82b_story.html***

2 Marina Pitofsky, "**Protesters knock down White House security barricades as tensions mount over Floyd's death**," The Hill, May 30, 2020, https://thehill.com/homenews/news/500299-protestors-knock-down-white-house-securitys-barricade-as-tensions-mount-over/

3 "VERIFY: **Yes, at least 150 local and federal officers were injured during the first week of protests in DC**," WUSA9, June 11, 2020, https://www.wusa9.com/article/news/verify/150-local-federal-officers-injured-during-dc-protests-verify/65-8fdaf04e-df2e-47d0-abd6-a47017a699f8

4 Shawn McCreesh, "**Protests Near White House Spiral Out of Control Again:** Washington's mayor imposed a curfew and activated the National Guard, but the demonstrations over the killing of George Floyd turned into a repeat of the previous night," New York Times, May 31, 2020, ("Hundreds of people surged in front of the White House for a third straight night on Sunday."), https://www.nytimes.com/2020/05/31/us/politics/washington-dc-george-floyd-protests.html

5 *See*: Aila Slisco, "**Government Settles Civil Cases With Protesters Injured at Lafayette Square**," NEWSWEEK, April 13, 2022, accessible at: https://www.newsweek.com/government-settles-civil-cases-protesters-injured-lafayette-square-1697820

6 Ashraf Khalil, "Protesters continue to interrupt Kavanaugh hearings," Associated Press, 09/06/2018, accessible at: https://apnews.com/article/3f4ddaec0ee946fe817329b065af3408; accessed Nov 6, 2021; *emphasis added.*

TAB 4

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning Defendants of Defective 18 U.S.C. 1752 Prosecutions of Charges Relating to Events Around January 5-7, 2021

I. PARDON OF ANY AND ALL CONVICTIONS OR PENDING CHARGES OF VIOLATING 18 U.S.C. § 1752 ON CAPITOL HILL

I hereby issue a Pardon, to be claimed by application to the Pardon Attorney setting forth existence of the predicate facts and the procedures outlined in my Memorandum of general instructions of this date. I pardon any and all defendants charged with violating 18 U.S.C. § 1752 by acts occurring on or about January 5, 6, or 7, 2021, on Capitol Hill – meaning within 1 mile of the U.S. Capitol Building.

18 U.S.C. § 1752 contains a statutory definition in section (c).

A person violates 18 U.S.C. § 1752 by entering or remaining or committing certain poorly-defined actions within a restricted grounds or restricted building. As is often the case Congress intended good purposes and results by enacting 18 U.S.C. § 1752 but failed to achieve its goals through poor drafting of the statute.

Only the U.S. Secret Service has authority to declare a "restricted area" (building or grounds) under 18 U.S.C. § 1752. An alternative reading would lead to an absurd or illogical result that absolutely anyone could declare a restricted area. But that can't be right. Could an Ambassador declare a restricted area around the United Nations building in New York to interfere with a speech by England's King Charles? Could a high school student who overslept on a field trip to the Capitol declare a restricted area to have an excuse for being late?

18 U.S.C. § 1752 has a statutory definition including defining what constitutes a "restricted building" or "restricted grounds." When a statute includes a definition, it must be followed. *Tanzin v. Tanvir*, 141 S. Ct. 486, 490, 208 L.Ed.2d 295 (2020) (quoting *Digit. Realty Tr., Inc. v. Somers*, 138 S. Ct. 767, 776, 200 L.Ed.2d 15 (2018)). Therefore, "restricted" does not mean the ordinary concept of any and all limitation, but it has a specialized meaning. It does not mean "closed" or "limited." The restriction must be limited to the purposes of § 1752 to protect a Secret Service protectee. But only the Secret Service could know what restrictions would assist them. For example, the Architect of the Capitol could rope off part of the Capitol Grounds for an event presenting the Congressional Medal of Honor to military heroes, but crossing those ropes could not establish a violation of 18 U.S.C. § 1752 which relates to the Secret Service protecting an official protectee.

The U.S. Court of Appeals for the District of Columbia decided *United States v. Couy Griffin*, Record No. 22-2042, on October 22, 2024, argued December 4, 2023. *Griffin* analyzed in detail that § 1752 comes from the authority given to the U.S. Secret Service and emphasizes how and why the U.S. Secret Service was given the power under the Congressional statute.

"[T]he Court is also guided to interpret statutes so as to avoid "an absurd result." *United States v. Providence Journal Co.*, 485 U.S. 693, 708, 710 (1988) (Stevens, J., dissenting). In 1850 Chief Justice Taney described the process: "**In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."** *United States v. Boisdoré's Heirs*, 49 U.S. (8 How.) 113, 122 (1850). *Accord, United States v. Wilson*, 112 S. Ct. 1351, 1354 (1992); *Holmes v. Securities Investor Protection Corp.*, 112 S. Ct. 1311, 1316- 17 (1992); *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 510-11 (1989); *Brotherhood of Locomotive Engineers v. Atchison, T. & S.F.R.R.*,

516 U.S. 152, 157 (1996).

"Statutory construction ... is a holistic endeavor." *United Savings Ass'n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 371 (1988); *United States v. Providence Journal Co.*, 485 U.S. 693, 708, 710 (1988) (Stevens, J., dissenting).

Therefore, only the Secret Service can declare a § 1752 restricted area. The alternative would be a prohibited "absurd result" that anyone could declare a restricted area, from a boy scout troop in Oklahoma to Mrs. Grundy's English class in Vermont. A food vendor near the Capitol could declare a restricted area to gain an advantage over competing food trucks. A beach-side hotel in Dewey Beach, Delaware, could declare Rehoboth Beach, Delaware, where a President is sunbathing, to be a restricted area so as to divert all the tourists to Dewey Beach.

However, on January 6, 2021, the U.S. Secret Service did not declare a restricted building or ground under § 1752. A construction zone was declared by the U.S. Capitol Police Board on September 3, 2020, to run through February 28, 2021. A construction area does not meet the statutory definition under § 1752(c). A construction zone is for construction.

Therefore, no § 1752 restricted area came into existence under the statutory definition of § 1752. No one on January 6, 2021, can be guilty of violating 18 U.S.C. § 1752 on or about Capitol Hill. It may be that there were good intentions weakened by long-running bad habits.

Instead, the U.S. Capitol Police Board on September 3, 2020, announced a construction zone around the Capitol beginning on September 7, 2020, and extending through February 28, 2021, for work setting up scaffolding for the inauguration. See "**Access to West Front of U.S. Capitol Restricted for Inauguration Platform Construction Inaugural Platform Construction**," U.S. Capitol Police Board, September 3, 2020, Press Release, "Restrictions in Effect September 7, 2020 through February 28, 2021," https://www.uscp.gov/media-

center/press-releases/access-west-front-us-capitol-restricted-inauguration-platform

The Secret Service could have declared a restricted area. They actually should have. (But the size and shape would likely have been different, based on the expertise and needs of the Secret Service skilled in their work. The Vice President frequently attends the U.S. Senate so the Secret Service would determine what their duties require. The Secret Service had the authority. But in relation to January 5-7, 2021, they did not. The U.S. Capitol Police does not have the expertise to determine what location, size and shape, if any, of a restricted area the Secret Service needs. The Secret Service must and should actively direct that process.

Furthermore, in December 2020, the U.S. Capitol Police issued six (6) permits for demonstrations on the U.S. Capitol Grounds to be set up and held on January 6, 2021. The plans would have needed to have been reconciled with these official actions of the U.S.C.P.

I therefore hereby issue without further proceedings or consideration a pardon to any person charged, convicted, pending trial, or having pled guilty to any violation of 18 U.S.C. § 1752 within the District of Columbia for any event or action in the time period on or about January 5-7, 2021, including any charge of attempt, aiding and abetting, or conspiracy.

I further hereby issue a commutation of sentencing for any person receiving such a pardon for one or more counts out of a criminal prosecution also including other counts, ordering that when recalculating or resetting sentencing for the remaining counts no increase in sentencing, addition of any new enhancements, upward variances, upward adjustments or the like may be imposed, but any such asserted increase is commuted.

TAB 5

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning Defendants Victims of Coercive Tactics

I. PARDON FOR COERCIVE TACTICS AND VINDICTIVE PROSECUTION BY ADDING CRIMINAL COUNTS

A criminal defendant has a right under the U.S. Constitution to trial by jury and therefore a right not to be coerced by threats or intimidation or adding more serious counts to accept a plea deal. While it is traditional for police or prosecutors to suggest and/or offer a plea deal and to argue perhaps passionately why a defendant should accept it, that is different from coercion. The right to trial by jury cannot be damaged, undermined, or attacked by the now-routine process of punishing Federal criminal defendants for seeking a trial instead of taking a plea deal.

I hereby issue a pardon -- which may be claimed under the simplified application procedure specified in my companion Memorandum -- to any and all defendants convicted since January 6, 2009, with regard to affected counts of a criminal prosecution where prosecutors vindictively added additional counts to punish a defendant for not agreeing to a previously-proposed plea deal.

For the purposes of this Pardon, a vindictive prosecution includes the criteria that adding one or more counts to the criminal prosecution is not based on the discovery of any new information which is material or which justifies the new criminal count. It is a regular occurrence that, as law enforcement continues to investigate, more information might be discovered which could lead to and justify additional criminal counts. I am aware that law

enforcement may sometimes charge a person with one count or a small number of counts to hold a dangerous person in custody during further investigation. However, I find that adding criminal counts without any newly-discovered factual basis is inconsistent with the U.S. Constitution.

That is, if the factual pattern did not justify the additional count or counts originally I find that it is an abuse to pretend that the same factual pattern now justifies adding counts of criminal allegations where the only intervening event of any real substance (not merely a pretextual gesture) is the defendant's refusal to accept a plea deal.

To qualify for this categorical pardon, an applicant must document to the Pardon Attorney that the prosecution proposed a plea deal (perhaps as a counter-proposal), pressured the defendant to accept it, the defendant refused and invoked his or her right to trial by jury, and setting aside transparent pretexts no change in the facts supporting prosecution justifies adding the new criminal count or counts. This is not an invitation for prosecutors to falsify empty gestures as excuses.

The applicant may rely upon circumstantial evidence in the same way and to the same extent (including standards and rules) that the relevant office of Federal prosecutors would use in prosecuting criminal defendants.

II. MY MEMORANDUM OF GENERAL INSTRUCTIONS INCORPORATED BY REFERENCE HEREIN

Attention is directed to my General Memorandum setting forth directions, details, and conditions applying to all of my pardons issued at this time. For example, as specified there my pardon includes a pardon of any charge of attempt, aiding and abetting, conspiracy to the extent founded on the pardoned charge rather than on some other grounds, and commutation of any sentence associated with the pardoned charge.

TAB 6

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning Defendants for 18 U.S.C. § 1512 Convictions Rejected by the U.S. Supreme Court

I. CHARGES UNDER 18 U.S.C. § 1512(c)(2) REJECTED BY U.S. SUPREME COURT

The U.S. Supreme Court determined and ordered in *United States v. Fischer*, 603 U.S. _____ (June 28, 2024) (Record No. 23-5572) that the U.S. Department of Justice had been mis-using and/or mis-applying 18 U.S.C. § 1512(c)(2) to apply to conduct, facts, and/or circumstances to which the statute does not apply, specifically in prosecuting mostly peaceful protestors in or around Capitol Hill on or about January 5-7, 2021, including a large number of unfortunately unwise "looky loos" who wandered for a few minutes into the U.S. Capitol.

* * *

> **To prove a violation of Section § 1512(c)(2), the Government must establish that the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects, or as we earlier explained, other things used in the proceeding, or attempted to do so. See *supra*, at 9. The judgment of the D. C. Circuit is therefore vacated, and the case is remanded for further proceedings consistent with this opinion. On remand, the D. C. Circuit may assess the sufficiency of Count Three of Fischer's indictment in light of our interpretation of Section § 1512(c)(2).**
>
> ***It is so ordered.***

United States v. Fischer, 603 U.S. _____ (June 28, 2024) (Record No. 23-5572).

Therefore, physical disruption of a proceeding – as happened with the Senate confirmation hearings of Brett Kavanaugh and in the May-June 2020 riots attacking the White

House – cannot be a violation of the statute. The U.S. Supreme Court has rejected the idea that disrupting an event violates this particular statute.

In response, however, some prosecutors and courts have dug in their heels and tried even harder to continue pursuing their version of 1512(c) (1) and (2) in defiance of the Supreme Court, arguing that we really have solid evidence (I am told they do not) of plans to physically disrupt the official proceeding of counting the Electoral College votes and they really, strongly mean it, which the Supreme Court heard and rejected, or by trying to show evidence impairment under the original interpretation (before January 6) of 18 U.S.C. § 1512(c) (1) and (2).

This categorical Pardon is not intended to impair any conviction which was proper under the original, traditional application of 18 U.S.C. § 1512(c)(2) before the statute was creatively re-interpreted after January 6, 2021, to attack Conservatives (but not Leftists) in a partisan agenda. Nor is this categorical Pardon intended to exclude any conviction which shares the same defects as prosecutions related to January 6, 2021, if an applicant wishes to try to show similar defects.

However, on the facts of events leading up to and on or about January 6, 2021, none of the particular prosecutions in that group can be valid. This Pardon focuses on events relating to January 6, 2021, because (1) that's what the U.S. Supreme Court was deciding in *Fischer*, (2) the statute was re-imagined by the DOJ specifically for persecuting mostly peaceful conservative protestors on January 6, 2021 (but not Leftists from 2014 through 2020), (3) the facts of what happened on January 6, 2021, and leading up to it cannot survive the *Fischer* analysis, and (4) the Merrick Garland Department of Justice used 18 U.S.C. § 1512(c)(2) to violate the civil and constitutional rights of protestors by threatening 20 year prison terms as a club to extract plea deals that Defendants would probably not have entered into without that threat.

This Pardon of course has nothing to do with the completely different topic of the very

few individual defendants who battled with police. This Pardon deals with 18 U.S.C. § 1512(c)(2). There are have been hundreds of charges leveled under 18 U.S.C. 111(a) and 18 U.S.C. 231(a)(3) and I clarify that those charges are a completely different topic from this Pardon. I am aware of allegations of a few people who violently brawled with law enforcement officers although I am also aware that when video is shown in complete context some – though not all – of those people were often peaceful until attacked unprovoked.

My Administration supports the function and safety of law enforcement officers and I am not endorsing or suggesting that it is acceptable for anyone to disrespect the duties of law enforcement officers or to cause them harm – except that apparently the DOJ thinks that tens of thousands of Left-wing rioters from 2014 through 2020 are always free to assault police simply because those rioters are Left-wing and the DOJ likes their message. I disagree with that.

In addition, I also find as the Chief Executive that it is an offense to the American people and to common sense and to the U.S. Constitution for the DOJ to claim that unarmed people who spent between 2 and 30 minutes looking around inside the U.S. Capitol were planning to obstruct an official proceeding or overthrow the government. I find that the U.S. Government owes it to the American people to avoid preposterous claims. If someone were actually seeking to obstruct an official proceeding they would not come armed only with cameras and flags and leave after only a few minutes. I am not aware of any insurrection or coup in history that ever unfolded in, say, 10 minutes and without any weapons. Even the use of walkie-talkies is a common convenience for people staying in contact at large events and cannot suggest anything sinister.

II. STUBBORN DEFIANCE OF THE U.S. SUPREME COURT BY MERRICK GARLAND DEPARTMENT OF JUSTICE

While most prosecutors have responded to *Fischer* by dropping charges of violations of 18 U.S.C. § 1512(c)(2), a surprising minority have insisted upon openly defying and

disrespecting the U.S. Supreme Court and refuse to dismiss convictions or drop pending charges.

Furthermore, some prosecutors have issued superseding indictments under 18 U.S.C. §§ 1512(c), (c)(1), and/or (c)(2) attempting to allege "that the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects, or as we earlier explained, other things used in the proceeding, or attempted to do so" (the Court's quote).

The U.S. Supreme Court must typically consider the effect of its decisions on cases broader than the case in front of it at that time. The Supreme Court explicitly left open the possibility that a prosecutor might be able to allege and prove traditional, well-established concepts of 18 U.S.C. § 1512(c) before the Garland DOJ re-imagined the statute.

However, there is no set of facts that can be alleged or proven concerning the events on or about January 5-7, 2021, or leading up or relating to those events which can satisfy the Supreme Court's standard in *Fischer* – being the original meaning of the statute before it was twisted to persecute conservatives.

Under the Electoral Count Act, six (6) original sets of the Electoral College documents are spread among officials throughout the country. It is impossible to impair the availability of evidence or documents or alter them. The Electoral Count Act has a different and unique plan to ensure the integrity of documents from the Electoral College. The plan of creating six duplicate sets of originals distributed to different officials is a plan "textually committed" by the Electoral Count Act to the Electoral College. Therefore, this system specifically targeted to the Electoral College pre-empts any vague, unclear, penumbra from 18 U.S.C. § 1512(c) which does not relate in any way to the Electoral College or the counting of votes by the Joint Session of Congress. A specific statute pre-empts a generic statute in legal interpretation. A statute having nothing to do with the Electoral College (18 U.S.C. § 1512(c)) cannot take the place of a statute specifically

addressed to the Electoral College (the Electoral Count Act at 3 U.S.C. §§ 1 through 21).

So there are no facts or circumstances relating to the events of January 6, 2021, or leading up to them which qualify under the Supreme Court's standard in *Fischer.* At no time on or relating to January 6, 2021, was there any impairment or risk of impairment of any documents relating to the results of the Electoral College, nor would it be possible for there to be.

III. PARDON FOR INVALID CHARGES UNDER 18 U.S.C. § 1512(c)(2)

I hereby issue a categorical pardon to any and all defendants charged, pending trial, or convicted (including by plea deal) of violating 18 U.S.C. §§ 1512(c), (c)(1) and/or (c)(2) in relation to, on, or leading up to events in Washington, D.C. on or about January 5-7, 2021.

No application is required, except perhaps to register documentation that a person was so charged, whereupon the Pardon Attorney shall see to it that the affected defendant receives documentation of having been pardoned.

Specifically, this also includes any charge under 18 U.S.C. § 1512(c)(2) which involves or relies upon in whole or in part on any conspiracy, plan, act or omission of the defendant unfolding between the declaration of a Public Health Emergency by the Presidential Administration of President Donald Trump on or about January 31, 2020 (when concerns began about how the 2020 election could be affected) through January 31, 2021. This also includes any such act or omission which the prosecution relied upon or relies upon pending trial as evidence of a violation of 18 U.S.C. § 1512(c) (1) and/or (2), considering that if evidence were irrelevant in prosecutor(s)' case in chief it would not be proper to introduce irrelevant evidence.

Furthermore, I hereby issue a categorical pardon to any and all defendants charged, pending trial, or convicted (including by plea deal) of violating 18 U.S.C. § 1512(c)(2) under a superseding indictment after *Fischer* as an attempt to evade the decision of the U.S. Supreme

Court. Where a prosecutor or prosecutors did not have enough evidence to charge January 6 related defendants with the traditional evidence-impairment application of 18 U.S.C. § 1512(c)(2) when initiating a criminal prosecution, before the statute was re-imagined for prosecuting January 6 demonstrators, a post-*Fischer* alteration of the indictment or charges to try to make the charges fit is transparently pretextual and not credible. If the prosecutor(s) had evidentiary grounds to charge the original *pre*-January 6 understanding of 18 U.S.C. § 1512(c)(2) they would have done so rather than gambling on a novel, untested re-interpretation.

I find that there is no factual basis nor any hint or possibility of any facts relating to events of January 6, 2021, that could satisfy the *Fischer* standard that "the Government must establish that the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects, or as we earlier explained, other things used in the proceeding, or attempted to do so." Therefore, the attempt to evade *Fischer* by yet more unjustified creativity in the law rather than honest faithfulness to the law is an even worse abuse than what *Fischer* rejected. I therefore extend and reassert my pardon to any of these attempts to defy and evade the ruling of *Fischer* in this particular scenario where no factual grounds exist.

IV. MY MEMORANDUM OF GENERAL INSTRUCTIONS INCORPORATED BY REFERENCE HEREIN

Attention is directed to my General Memorandum setting forth directions, details, and conditions applying to all of my pardons issued at this time. For example, as specified there my pardon includes a pardon of any charge of attempt, aiding and abetting, conspiracy to the extent founded on the pardoned charge rather than on some other grounds, and commutation of any sentence associated with the pardoned charge.

TAB 7

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning Defendants of Defective Prosecutions for Denial of Due Process By Defective Indictments and Refusal of Disclosures

I. PARDON FOR DEFECTIVE INDICTMENTS LACKING FACTUAL ALLEGATIONS

I hereby issue a pardon by category -- which may be claimed under the simplified application procedure specified in my companion Memorandum -- to any and all defendants deprived of full and fair notice of the charges against them by any operative indictment which does not fully specify exactly what a defendant is accused of in factual detail.

To claim this categorical pardon an applicant must (1) first review my general Memorandum including the Pardon Attorney's contact information, (2) show to the Pardon Attorney's office that the applicant was indicted by grand jury or otherwise charged, (3) explain how the indictment violates the legal requirements outlined below, (4) but also explain how the lack of factual information could lead to two or more alternative meanings, applications, interpretations, etc. in a prosecution. I do not intend to hinder extremely simple criminal charges where only one, simple obvious charge is brought in very few words but nevertheless in complete clarity. However, where a jury might be (since we will never know the confidential deliberations in the jury room) induced into adopting two or more alternative interpretations of what the alleged crime actually was, including with respect to vague or vernacular, imprecise, poorly-defined language, the applicant should explain the risk to the jury's deliberation. A charge which is "obvious" only to a biased reader is not sufficient. A charge which depends

upon unstated assumptions from outside the "four corners" of the indictment is not sufficient. A charge which is vague about who exactly committed the crime is not sufficient. Boilerplate allegations that someone in a crowd did something but we don't know who (or we will figure that out later sometime) or someone in a crowd yelled something which the defendant may have strongly disagreed with and rejected – these invite a lawless jury verdict of guilt by association.

I find that the modern practice of merely hinting at some unidentified portion of an ambiguous, omnibus statute allegedly violated sometime during a calendar year somewhere within a large geographical area violates the U.S. Constitution's Sixth Amendment and due process clauses. I find that an indictment which could result in conviction under varying alternative scenarios but fails to specify *which one* a defendant is actually charged violates due process. For example, 18 U.S.C. § 111 punishes one who either (1) "assaults," *OR* (2) "resists," *OR* (3) "opposes," *OR* (4) "impedes," *OR* (5) "intimidates," *OR* (6) "interferes with" law enforcement. Yet apparently none of the hundreds of indictments relating to events of January 6, 2021, charging 18 U.S.C. § 111 specify *which* of these six (6) scenarios a defendant is charged with committing.

While undeniably some police officers were assaulted on January 6, 2021, as shown in videos and medical examinations, some alleged victims have testified under penalty of perjury that those don't think they were assaulted, some don't remember the defendant, and some don't remember ever being touched. Some never reported in any forum being assaulted. I do not accept any violence against police, but neither do I accept made up charges where the facts do not support the charges. We must find the truth. The fact that some demonstrators on Capitol Hill on January 6, 2021, violently assaulted law enforcement officers cannot allow us in a constitutional system to punish others who did not.

For example, as was essentially undisputed, a January 6 protestor Richard Barnett asked two different police officers – loudly in the roar of the crowd to be sure – if he could go back and retrieve his flag. When the police declined, Barnett obeyed the police. But Barnett was charged with "interfering with" police because they complained they decided they "had to" watch him.

The D.C. Circuit has ruled on the necessity of factual allegations. *United States v. Nance*, 533 F.2d 699, 701-703 (D.C. Cir. 1976) (reversing where the indictment failed to make necessary factual allegations). The Supreme Court also explained:

> "It is an elementary principle of criminal pleading, that where the definition of an offence, whether it be at common law or by statute, `includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition; but it must state the species, — it must descend to particulars.'"

Id.; *Accord, Russell v. United States*, 369 U.S. 749, 763-711 (1962). Special notice should be paid to the descriptor "generic" as being inadequate. Allegations that are generic and not specific to a particular Defendant are not sufficient. The indictment "must descend to particulars." Yet in most of nearly 1,600 charges relating to events of January 6, 2021, this requirement has been systematically violated, over defendants' objections. The factual allegations concern what other people did, what a crowd did, not what the accused defendant on trial did.

A criminal complaint may be dismissed as constitutionally insufficient when it does not join the elements with factual allegations. *United States v. Hillie*, 227 F. Supp. 3d 57 (D.D.C. Jan. 5, 2017).

> "[The second object of an indictment is] to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction. For this, facts are to be stated, not conclusions of law alone." *United States v. Cruikshank*, 92 U.S. 542, 558 (1875).

The Supreme Court made it clear that allegations that are generic and not specific to a specific defendant are not sufficient. The Fifth and Sixth Amendments and Rule 7(c)(1) generally require that the elements be combined with allegations of fact that establish the offense when assumed true. *Hamling*, 418 U.S. at 117-118; Fed. R. Crim. Proc. 7(c)(1) ("The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged...") (emphasis added). That requires facts not merely reference to a statute.

In *Hunter v. District of Columbia* , 47 App. D.C. 406 (D.C. Cir. 1918), the Court said:

> [i]t is elementary that an information or indictment must set out the facts constituting the offense, with sufficient clearness to apprise the defendant of the charge he is expected to meet, and to inform the court of their sufficiency to sustain the conviction. ... In other words, when the accused is led to the bar of justice, the information or indictment must contain the elements of the offense with which he is charged, with sufficient clearness to fully advise him of the *exact* crime which he is alleged to have committed.

Id. at 409, 410 (emphasis added) (internal quotation marks and citation omitted).

What is the harm? If a trial is conducted without guardrails as to exactly what the prosecution is accusing the defendant of doing, then the evidence, argument, and flow of the trial will invite the jury in confidential deliberations to find guilt on something that the defendant wasn't actually charged with.

Before trial, a defendant in a criminal case may move to dismiss the charging document for failure to state an offense. Fed. R. Crim. P. 12(b)(3)(B)(v). *See United States v. Akinyoyenu*, 199 F. Supp. 3d 106, 109 (D.D.C. 2016)*(Citations omitted).* The operative question is whether the allegations in the indictment, if proven, permit a jury to conclude that the defendant committed the criminal offense as charged. *Ankinyoyenu* at 9-10. *See United States v. Sanford,*

Ltd., 859 F. Supp. 2d 102, 107 (D.D.C.2012); *United States v. Bowdoin*, 770 F. Supp. 2d 142, 146 (D.D.C.2011). Moreover, in analyzing this, "a district court is limited to reviewing the face of the charging document and, more specifically, the language used to charge the crimes." *United States v. Sharpe*, 438 F.3d 1257, 1263 (11th Cir. 2006)(emphasis original).

A valid information must set out "the elements of the offense intended to be charged and sufficiently apprise the defendant of what he must be prepared to meet." *United States v. Pickett*, 353 F.3d 62,67 (D.C. Cir. 2004). The government must state the essential elements of the crime ***and allegations of "overt acts [constituting the offense] with sufficient specificity***." *United States v. Childress*, 58 F.3d 693, 720 (D.C. Cir. 1995) *(emphasis added).*

A criminal complaint is meant to give Sixth Amendment notice of the nature and circumstances of the alleged crime so the accused may meet the charge and defend himself. *United States v. Hitt*, 249 F.3d 1010, 1016 (D.C. Cir. 2001); *Hamling v. United States*, 418 U.S. 87, 117 (1974). Second, a valid indictment fulfills the Fifth Amendment's edicts that citizens are not placed in jeopardy twice for the same offense. *Stirone v. United States*, 361 U.S. 212, 218 (1960); *United States v. Martinez,* 764 F.Supp.2d 166, 170 (D.D.C.2011) (quotations and citations omitted). Allegations must be sufficiently clear, complete, thorough, non-generic, and specific to the particular Defendant to identify if the Defendant were later charged with the same offense that double jeopardy applies to bar a second prosecution of the same offense.

II. VARIATIONS FROM GRAND JURY INDICTMENT

Furthermore, indictments lacking in factual allegations also violate the role of the grand jury, for the criminal prosecution can only be carried out by changing and adding to the findings of the grand jury. "[A]fter an indictment has been returned its charges may not be broadened through amendment except by the grand jury itself." *United States v. Stone*, 2012 U.S. Dist.

LEXIS 41434, *20 (citing *Stirone v. United States*, 361 U.S. 212, 215-16, 80 S. Ct. 270, 4 L. Ed. 2d 252 (1960)). "This is because defendants are entitled to have fair notice of the criminal charges against them so that they can prepare a defense." *Id.* (citing *United States v. Combs*, 369 F.3d 925, 935 (6th Cir. 2004)). The Second Circuit examined "whether, in violation of the Fifth Amendment, the defendants were tried on charges upon which a grand jury had not passed. See *Stirone v. United States*, 361 U.S. 212, 217, 80 S.Ct. 270, 273, 4 L.Ed.2d 252 (1960)." *U.S. v. Wydermyer*, 51 F.3d 319 (2nd Cir. 1995)

Modern, bare-bones indictments amend the grand jury's findings and are not permitted.

III. NO EXCUSE FOR CARELESS INDICTMENTS "ON THE FLY"

Either prosecutors have facts in front of them, which can be established within the Rules of Evidence by so-called "competent" (knowledgeable) witnesses or they do not. Since the prosecution controls when to bring a criminal case, and the defendant has no control but to respond within strict deadlines, no prosecutor should bring a case until he or she knows that there actually is a case to bring. The facts must be known first, not on the fly. No prosecutor may bring a case and merely hope that evidence will somehow be found during the prosecution.

When the Government engages in a criminal prosecution it is not a normal litigant. I find that the widespread tolerance of "trial by ambush" to be an intolerable abuse of constitutional rights. To the extent that an indictment is not precisely identified in factual terms and in detail it allows a jury to decide on passion not on the merits. Whether or not the jury reads the indictment, if the presentation at trial and the jury instructions based on the indictment suggest multiple interpretations alternative to each other the result is lawlessness.

If there are multiple ways in which a defendant may have broken the law, the grand jury can bring multiple counts setting forth each asserted violation and do so properly. However, this

cannot become an excuse for throwing something up against a wall and hoping something sticks. Prosecutors must be convinced before starting a criminal prosecution that they already have factual proof to convict the defendant presumed innocent beyond a reasonable doubt.

IV. PARDON FOR VIOLATIONS OF *BRADY V. MARYLAND* DISCLOSURES

It appears that – by its own admission – the U.S. Attorney's Office for the District of Columbia has systematically violated the civil and constitutional rights of defendants and their constitutional due process obligations expressed under *Brady v. Maryland*, 373 U.S. 83 (1963).

Brady is not merely a U.S. Supreme Court precedent. It is a finding that disclosure is mandatory under the due process clauses of the U.S. Constitution. The authority is the U.S. Constitution itself. Therefore, according to the procedure outlined in my companion Memorandum I issue a pardon for any and all persons convicted since January 1, 2009, through today whose *Brady* rights were violated.

The offense against constitutional rights is the prosecution withholding information. Therefore in no way can the burden be placed upon the Defendant. Any reasonable indication that the Government withheld potentially exculpatory information establishes a violation. Putting the burden on the defendant is inappropriate. In most cases January 6 defendants explicitly asked for disclosures and the prosecutors clearly responded in writing rejecting their responsibility to comply with the constitutional mandate of *Brady.* Similar to the laws of spoliation of evidence, the response is a sanction, a punishment, to deter such behavior, not a curative remedy. Therefore, it must be presumed that if disclosures were withheld they would have aided the defendant and undermined the prosecution. Where it is obvious from the circumstances that information or documents must have existed but were not disclosed, a violation may be presumed.

For example, it is undeniable that there was a reason why the U.S. Capitol Police recessed the Joint Session of Congress on January 6, 2021, and therefore there was a decision-making process. However, the USCP has stubbornly refused to release contemporaneous communications and notes of the decision to recess. It is self-evident that those records do exist and that the USCP is refusing to release them because they would negate the public narrative. Even if there are no records of any decision, this would undermine the prosecution allegations.

Similarly defense counsel have asked for the identity of various people who are potential witnesses, who were near their clients at important moments. Those people are seen with face uncovered and voices heard on recordings. Such circumstantial evidence is sufficient to find that the Government violated its obligations under *Brady v. Maryland,* 373 U.S. 83 (1963).

There are reports that 2 years after trials are over, the FBI is still delivering *Brady* disclosures that were not provided prior to the trials. As information continues to come out, even the withholding of information behind the veil of the FBI and prosecutors might be established by an applicant sufficient to claim this pardon for violation of *Brady* requirements.

V. PARDON FOR VIOLATIONS OF INFORMATION FROM WHOLE OF GOVERNMENT AS RELEVANT

Brady v. Maryland and later precedents are clear that to comply with due process, the prosecution must disclose to defendants any potentially exculpatory information, documents, or records held anywhere in the "whole of government" except for agencies, departments, or offices with no reasonable relationship to the events at issue. The DOJ prosecutors have repeatedly argued to the courts *in writing* in relation to events of January 6, 2021, that they do not need to consider any information unless it is more or less on the prosecutor's desk so to speak.

Therefore, in writing, in court filings, before a judge, prosecutors refused to provide to defendants potentially exculpatory information held by the U.S. Capitol Police or the U.S.

Congress. But those two agencies are the primary parties involved in the case.

I therefore pardon any convicted person in any case related to the events on or near Capitol Hill (within 1 mile of the U.S. Capitol building) on or about or leading up to January 5-7, 2021, to whom the U.S. Capitol Police and/or U.S. Congress including its committees did not produce potentially exculpatory information or evidence, and do so months before trial.

An applicant for this pardon may provide the Pardon Attorney, the U.S. District Attorney for the District of Columbia's court filings – from any case – in which the USAO admits in writing that it is not providing or considering any *Brady* information outside of the USAO's own records. The USAO is in effect the lawyers for the U.S. Capitol Police and the U.S. Congress. If their "client" does not cooperate with the prosecution, the case must be dismissed. Prosecutors are required under many precedents to actively reach out to any agency or department which were involved in any way and find out if they have any information about the case. The case should never have been brought if the prosecutors did not complete a thorough investigation.

VI. PARDON FOR VIOLATIONS OF *BRADY V. MARYLAND* WITHHOLDING INDIRECT EXCULPATORY EVIDENCE.

Brady v. Maryland and later precedents are clear that to comply with due process, the prosecution must disclose to defendants any potentially exculpatory information, documents, or records. However, the prosecution has repeatedly argued in writing in court filings in relation to events of January 6, 2021, that evidence is not "potentially exculpatory" and therefore does not need to be disclosed because the evidence is not absolute proof of innocence. In fact, any evidence which might lead to identification or location of witnesses, or analysis of the best witnesses to call, or might lead to other information is potentially exculpatory.

I therefore pardon any convicted person in any case related to the events on or near Capitol Hill (within 1 mile of the U.S. Capitol building) on or about or leading up to January 5-7,

2021, to whom the U.S. Capitol Police and/or U.S. Congress including its committees did not produce potentially exculpatory information or evidence that may lead to other evidence such as witnesses, facts and circumstances and other information or evidence, months before trial.

The right to call witnesses in one's defense under the Sixth Amendment becomes meaningless if the Government withholds the identity of witnesses known to them or known with reasonable investigation the Government would otherwise perform.

VII. PARDON FOR SUBSTITUTING PROSECUTOR(S)' OR JUDGE'S OPINIONS OF THE DEFENDANT'S DEFENSE THEORY.

The Sixth Amendment and due process clauses of the U.S. Constitution require that a defendant has a right to decide upon and present his or her own theory in defense. Neither the judge nor the prosecutor may decide what the defendant's defense can be or will be.

I therefore pardon any convicted person in any case related to the events on or near Capitol Hill (within 1 mile of the U.S. Capitol building) on or about or leading up to January 5-7, 2021, in which the judge denied any motion or witness called or evidence submitted to be accepted into the trial. This includes a judge cutting off the number of witnesses a defendant may call, a dramatic imbalance in the time allotted for the prosecution versus the defendant, and limitations on the time allowed to argue (explain) the evidence to the jury. It is a constitutional right for a defendant to put on a defense, not an inconvenience to a judge's schedule. It is not for the judge to predict whether it is a good or persuasive defense.

VIII. PARDON FOR VIOLATIONS OF *BRADY V. MARYLAND* PROVIDING EXCULPATORY EVIDENCE TOO LATE TO BE USED

The prosecution largely controls when to bring a case to trial. That is, it is wrong to bring a case to trial before the Government is ready, including before the Government has provided disclosure to the defendant.

I therefore pardon any convicted person in any case related to the events on or near Capitol Hill (within 1 mile of the U.S. Capitol building) on or about or leading up to January 5-7, 2021, in which the Government disclosed potentially exculpatory information too late in relation to the start of the trial for defense counsel to make effective use of it.

An application informing the Pardon Attorney of pre-trial deadlines for disclosing witnesses to the court, filing exhibits, etc., would be helpful to establishing when disclosures were provided too late to be used. The Pardon Attorney shall presume that legal ethics requires a defendant's attorney to look at every page disclosed and shall count as bad faith and non-compliance by the Government efforts to bury a defendant in a mountain of irrelevant information, thereby hiding the important information. The Pardon Attorney shall estimate a reasonable time for the defense attorney to digest the information provided, analyze it, and locate potential witnesses along with the time needed to subpoena, locate, and serve such witnesses. The Pardon Attorney is authorized to and is directed to estimate a reasonable time before trial that a normally-busy criminal defense attorney handling other cases simultaneously would need to prepare for the trial given its complexity. My pardon will be effective upon application of those factual determinations.

These pardon include charges of attempt, aiding and abetting, and/or conspiracy related to the charges pardoned.

TAB 8

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Executive Order Implementing Pardon Power And Pardoning Defendants Unprepared for Trial

I. MIS-USE OF THE SPEEDY TRIAL RIGHT

I hereby issue a pardon -- which may be claimed under the simplified application procedure specified in my companion Memorandum -- to any and all defendants who requested more time to be prepared for a fair trial but were denied that request for more preparation time.

In doing so I explicitly reject any idea that the "Speedy Trial" provision of the Bill of Rights provides any rights or imperatives upon the Government to rush a case to trial. The right to a Speedy Trial appears in the Bill of Rights which is a series of restraints upon the Government in favor of liberty and rights of individuals. There is no rational basis for claiming that this creates any rights – much less any obligation – on the government to rush a case to trial at break-neck speed before the parties are ready to hold a fair trial. In finding this, I explicitly reject as wrong and flawed judicial precedents endorsing any right to trample on the constitutional rights of defendants to serve some ill-defined and mythical right to rush cases to trial which are not ready for trial.

Specifically, the historical concerns underlying the right to a speedy trial are very clear, extremely well documented, established in fact, notorious and well-known, and of great concern to the founders of our U.S. Constitution. The abuses in the English legal system were of unpopular persons or political opponents being arrested and then languishing in jail for years without a trial being scheduled. Given this very clear historical and legal example, it is not

possible to argue that the Sixth Amendment right to a speedy trial gives the Government any rights nor does it require that the Government deprive the due process rights of defendants.

The Sixth Amendment explicitly says *(emphasis added)*:

> In all criminal prosecutions, ***the accused shall enjoy the right*** to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The U.S. Constitution invests this right exclusively and clearly in "the accused" – not the U.S. Government. There is nothing in the Sixth Amendment capable of being twisted into any right to try a defendant sooner than the defendant is ready to present his or defense and no hint of any duty of any court to bulldoze the defendant's constitutional rights in a rush to judgment. I consider and find that in almost all cases the timing of initiating a criminal prosecution rests entirely with the Government, giving a massively lop-sided disparity between the prosecution and defendant, leading to a lack of due process. Once prosecutors initiate a case, including often by convening at the prosecutor's initiative a grand jury, the defendant has no choice but to respond within set time limits. This creates a tremendous iniquity. I recall and find that the goal of a case and trial is to find out the truth including the existence of any defenses or mitigating circumstances or doubts about facts, the ability of witnesses to know what they recall (even if well meaning), the discovery and calling of other witnesses, etc. Therefore, the imbalance directly harms the ability of the legal system to reach the truth and to determine – as an eventual result not as a foregone, predetermined conclusion – whether a defendant is guilty beyond a reasonable doubt or not. I find that this is not a tangential side issue or an insignificant one.

Furthermore, I recall and find that the Government with its massive resources is often

uniquely in possession of information that it intends to use, including perhaps to warp, twist, or misrepresent, against the defendant. The ability of a defendant to process this information in plenty of time to make effective use of it I find to be an essential ingredient of the Sixth Amendment right to confront (or essentially to challenge or contradict) one's accusers and of due process. In the prosecutions relating to events of January 6, 2021, the Department of Justice dumped as much as 9 terabytes of information or more upon defendants which defense attorneys have complained (1) was almost entirely irrelevant but they were forced to review it all to make sure whether it was important or simply intended to choke the process, and (2) did not include the required disclosure information that defense attorneys actually made demand for.

It is also incompatible with complaints by the Federal judiciary to being over-worked with a heavy workload. Cases that are not ready to go to trial will not infrequently be more chaotic, confusing, and disorganized. The itch to push cases to trial contradicts protests about judicial workloads. There is no benefit to the workload burden of judges to rush cases to trial for no valid reasons.

But, it is often argued, the public has an interest in seeing that justice is done. But convicting an innocent person serves no public interest, is not justice being done, and engenders disrespect and disgust with the legal system. It is far more important that a guilty person be convicted without lingering doubts than the time at which the trial is held. No rapid trial can equal the defects of a dubious trial. Whatever benefits may be claimed from the public seeing a person, possibly innocent, convicted are erased by doubts about the legal process.

In many cases such as January 6, 2021, related cases, many defendants locked up awaiting trial found it nearly impossible to contact and consult with their attorneys. That is, the Department of Justice's Bureau of Prisons was actively interfering with the ability of defendants

to prepare for trial in many cases. Claims that attorneys can set up legal visits or calls turned out to be illusory when requests were not actually being honored. The result has often been that defendants are not prepared, defense attorneys are not prepared, defendants are not prepared, and the presentation at trial is diminished. Defendants have complained about an inability to call out to their attorneys and an inability of attorneys – despite procedures existing – to set up attorney visits or calls. Presiding judges have responded that they have no authority over the jails except when the judge desires to order the jail to do or not do something.

It is reported by defense counsel that more than two (2) years after major cases like the Oath Keepers and Proud Boys trials were completed the FBI is still processing information and still providing disclosures to defense counsel – two years after the case is over.

Again, it cannot be overlooked that the Government chooses when to initiate a case. The Government can avoid these problems merely by not prosecuting someone until they are ready to do so properly. Whereas a defendant must respond within the court deadlines, the Government has the broad discretion to delay or time the initiation of a prosecution to a time convenient to prosecutors. This further argues against any interpretation that a speedy trial is equal in both directions.

Furthermore, where defects and problems with the facilities of the Bureau of Prisons have interfered with the ability of defendants to meet with their attorneys face to face with documents to be reviewed and laptops to view videos, the Government may not visit its failures and mistakes upon defendants so as to trample their constitutional rights.

II. APPLICATION FOR PARDON FOR MIS-USE OF THE SPEEDY TRIAL RIGHT

To apply to the Pardon Attorney for a pardon under this category, an application must

show (a) that the defendant, his attorney(s), or agent(s) requested a delay (continuance) (whether once or more than once), (b) which the court denied, (c) in which the defendant identified specific reasons why a continuance was desirable for a fair trial, (d) the defendant supported or justified the request for a continuance with facts and/or circumstances (no matter how presented), (e) that were not proven untrue in response, and (f) which request was not contrived after the issuance of this categorical pardon.

I find that it is not relevant whether one or more continuances were already granted because the assumption that there is any need or benefit to racing a case to trial is a false assumption inconsistent with the history of Constitution.

TAB 9

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Executive Order Implementing Pardon Power And Pardoning Defendants from Defective Prosecutions Including Attorney-Client Privileged Communications or Attorney Work Product Privileged Information as Improper Evidence.

I. PARDON FOR USE OF PRIVILEGED EVIDENCE AS EVIDENCE IN CONVICTING DEFENDANTS

I hereby pardon any and all defendants who have been convicted where attorney-client communications, attorney work product privileged information or the testimony of any attorney against his or her own client.

The so-called "crime-fraud exception" has been used as an abuse by judges and prosecutors to force attorneys to provide information and testify against their own clients.

I find that this practice is unlawful. Prosecutors may not violate the privilege in order to find out if there was any reason to violate the privilege in the first place. The "crime fraud" exception is not a license for a fishing expedition.

I find that the "crime fraud exception" does not apply to a past crime or a past fraud. The purpose of attorneys is to assist defendants with legal liability, civil or criminal. Any alleged criminal activity which has already occurred cannot establish the "crime-fraud exception." Any alleged fraudulent activity which has already occurred cannot establish the "crime-fraud exception."

I find that to assert the "crime-fraud exception" to breach attorney privileges requires

proving from independent and separate evidence (probably beyond a reasonable doubt if the context is a criminal prosecution) that the attorney has actual knowledge that the attorney's client is planning to commit a future crime using the attorney's assistance, advice, or facilitation. The same applies to a future fraud. The exception only applies to the planned commission of a future crime or fraud. The existence of a planned future crime or fraud must be proven *before* attorney privileges are breached. No Federal prosecutor and no court may breach the privilege to rummage around looking for some reason to breach the privilege.

Furthermore, I find that the future crime or fraud must directly involve the attorney's participation, advice, facilitation, or assistance to commit the future crime or fraud. The nexus with the attorney and a future crime or fraud must be extremely narrow and tight. Allegations that a client may commit a future crime or fraud cannot establish the "crime-fraud exception." The exception only applies to the attorney's direct participation in a future crime or fraud. For example, evidence that a person may commit some future crime or fraud cannot establish the exception. Only evidence that a person is going to use the attorney's assistance to commit a future crime or fraud can trigger the exception.

The attorney privileges belong to the client, not to the attorney. Therefore, prosecutors and judges moving against the attorney is unlawful. The privileges may only be potentially breached by proving an on-going, future crime or future fraud with due process for the attorney's client, not by motions against the attorney.

II. APPLICATION PROCESS FOR REQUESTING INCLUSION IN THIS CATEGORICAL PARDON

In order to apply for issuance of a pardon under this category, a defendant would need to deliver to the Pardon Attorney the following.

First, an applicant should carefully review my companion memorandum giving general details as well as the contact information and address for the Pardon Attorney's office.

(1) Demonstrate that the applicant was charged and either prosecuted at trial or threatened for a plea deal with the tainted evidence.

(2) Demonstrate that the prosecutors presented at trial or pressured the defendant in plea negotiations with attorney-client privileged or attorney work product privileged testimony, communications, or information upon an improper assertion of the "crime fraud" exception as defined above.

(3) I find that the use of any such evidence for any of the counts in a criminal prosecution renders the entire prosecution unsalvageable and entirely contaminated. We must also remember that prosecutors' abusive tendency to combine many, sometimes dozens, of unrelated counts in the same case is their choice. The fact that tainted evidence may influence the jury on any of the counts mingled into the same case is entirely a result of the prosecutors' election. However, evidence which inflames the jury cannot be withdrawn from the stew. The bell cannot be un-rung.

(4) Again, if I could order a new trial, I probably would in most cases. But since that is not within the pardon power, I am forced to choose between a pardon or allowing the twisting of our legal system to continue.

TAB 10

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning Defendants from Prosecution for Their Exercise of First Amendment Protected Speech and Activity

I. PARDON FOR UNCONSTITUTIONAL CRIMINALIZATION OF RIGHTS UNDER THE FIRST AMENDMENT TO THE U.S. CONSTITUTION

I hereby issue a categorical pardon to any and all defendants charged, pending trial, or convicted (including by plea deal) on the basis in whole or in part of statements, expressions, or actions protected by the First Amendment to the U.S. Constitution, in relation to, on, or leading up to events in Washington, D.C. on or about January 5-7, 2021, including the counting of Electoral College votes by the Vice President before a Joint Session of Congress.

II. EXPLANATION IN THE HOPE OF STOPPING SEVERE DETERIORIATION OF OUR CONSTITUTIONAL REPUBLIC

No President has any responsibility under the Pardon power to explain his or her reasons or the basis or grounds for issuing a pardon. However, it is beneficial that I do so.

A President's use of the pardon power historically is not limited to any factual or legal error in the court system but includes a President's determination that the system as it is being applied, perhaps where mistakes have crept into court precedents and endorsed by precedents yet remain unconstitutional, unsound, or illogical, is abusive or improper. A President's use of the pardon power is not limited to my explanation for the public good of my reasons, although my analysis may be of some informative value to the Pardon Attorney in implementing my order.

As I interpret our nation's constitutional history, one of the primary reasons for the Presidential power of a pardon or commutation of sentence (clemency) is not so much to recognize a reformed and rehabilitated life (although this has been a common and traditional use of the power) but to cure and curb excesses and unjust results in the legal system, including poorly-written Congressional statutes, irrational interpretations by courts, prejudice and bias against certain persons or groups, or the like. I believe the latter purpose and effect is by far more important. I believe that exposing and highlighting problems to public scrutiny and encouraging reform is one important reason why a President may decide to issue a pardon. The goal that excesses and abuses not be repeated is as important as the effect on an individual person or group of persons being pardoned.

Free speech; freedom of expression; the right to criticize and question the government, government officials, and the effectiveness of government, the right of political association and political activism, and to individually or collectively petition the government for redress of grievances are at the beating heart of America and in the national D.N.A. of the United States of America.

America was founded and exists on the "Counter Speech Doctrine." Justice Louis D. Brandeis established it in his classic concurring opinion in *Whitney v. California* (1927), when he wrote:

> "If there be time to expose through discussion, the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

It is anti-American and an affront to human rights to censor opinions or criticisms rather than to answer them with robust, reasoned, and effective debate. Justice Anthony Kennedy cited Justice Brandeis' famous principle in his plurality opinion in United States v. Alvarez (2012) and

his dissenting opinion in *Williams-Yulee v. Florida Bar* (2015). In *Alvarez*, the Court struck down the constitutionality of the Stolen Valor Act, a law that broadly prohibited virtually any false speech about military honors.

> "The remedy for speech that is false is speech that is true."

Kennedy wrote.

> "This is the ordinary course in a free society. The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straight-out lie, the simple truth."

Id.

> Under the First Amendment, there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas").

Gertz v. Robert Welch, Inc., 418 U. S. 323, 418 U. S. 339-340 (1974) (concurring opinion / dissent).

III. *BRANDENBURG V. OHIO* CLARIFIES THAT IT IS UNCONSTITUTIONAL TO CRIMINALLY PROSECUTE A PERSON FOR THE EXERCISE OF FIRST AMENDMENT RIGHTS

It is unconstitutional to punish a person for his or her expressions of free speech guaranteed as rights under the First Amendment, except within the narrow and strict test *Brandenburg v. Ohio*, 395 U.S. 444, 448 (1969).

> [T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. * * * A statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments."

See also NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982) and *Hustler Magazine v. Falwell,* 485 U.S. 46 (1988) *(*"The fact that society may find speech offensive is not a

sufficient reason for suppressing it" – Chief Justice William Rehnquist"), under 18 U.S.C. 241.

> If the line drawn by the decree between the permitted and prohibited activities of the NAACP, its members and lawyers is an ambiguous one, we will not presume that the statute curtails constitutionally protected activity as little as possible. For standards of permissible statutory vagueness are strict in the area of free expression. See *Smith* v. *California*, 361 U.S. 147, 151; *Winters* v. *New York*, 333 U.S. 507, 509-510, 517-518; *Herndon* v. *Lowry*, 301 U.S. 242; *Stromberg* v. *California*, 283 U.S. 359; *United States* v. *C.I.O.*, 335 U.S. 106, 142 (Rutledge, J., concurring). *N.A.A.C.P.* at 432.

N.A.A.C.P. v. Button, 371 U.S. 415, 83 S. Ct. 328 (1963).

NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982) explains (emphasis added):

> The boycott of white merchants in Claiborne County, Miss., that gave rise to this litigation had such a character; ***it included elements of criminality and elements of majesty.***
>
> * * *

The Mississippi Supreme Court quoted from the trial court:

> In carrying out the agreement and design, certain of the defendants, acting for all others, engaged in acts of physical force and violence against the persons and property of certain customers and prospective customers. Intimidation, threats, social ostracism, vilification, and traduction were some of the devices used by the defendants to achieve the desired results.
>
> * * *

This U.S. Supreme Court decided that:

> * * * As we so recently acknowledged in Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley, 454 U. S. 290, 454 U. S. 294,
>
> > "the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process."

The Supreme Court concluded:

> The right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected.

IV. PARDON POWER PRESENTS LIMITED OPTIONS FOR SOLUTIONS

Should a President effect a complete pardon of a defendant accused, tried, convicted, and/or sentenced only in part on the basis of expressions of free speech or evidence of another crime which are protected expressions of free speech?

Complicating this decision, a President has no power to order a new trial with only constitutional evidence to be included, re-doing the trial by excluding objectionable evidence or arguments. A President has no power to amend the charges to precisely and painstakingly address only non-First Amendment actions or statements. A President has no power to order jury instructions which might limit the damage before a jury. A President has no power to force an appeals court to take up an appeal, nor can a President "poll" a jury to find out what they might have impermissibly considered in a verdict.

Therefore, generally, a President faces a "light switch" choice: To pardon or not to pardon. Potentially, the power to commute sentences might be used to moderate or balance the excesses or a criminal prosecution. This would of course require re-examining the entire case of each defendant individually from pre-trial motions to the violations of disclosure requirements by the U.S. Department of Justice, to the arguments and representations made at trial.

However, the very purpose of prosecutors falsely and deceptively including defendants' political opinions and expressions of political beliefs in the trial is transparently to inflame the jury in the District of Columbia which (1) is claimed to be the victim of the crime the jury is sitting in judgment of, (2) has chosen by over 90% in election after election to politically support one partisan political party over another, and (3) is exceedingly dependent upon for employment

and sensitive to one particular partisan political party and its narrative so that the jury will reach a lawless verdict disconnected to facts and/or the law.

Just as it is not possible to remove salt from a cup of coffee once it has been accidentally dumped into the coffee, but the entire cup is ruined, so as the courts traditionally say it is not possible to "unring the bell" once the jury has heard improper arguments or unreliable "evidence." Once political beliefs and statements protected by the First Amendment have been improperly introduced into a criminal trial, the entire stew has been contaminated. Indeed, that was the whole point of the abuse. Punishing a defendant for political beliefs the jury does not like cannot be later separated out of the process.

Furthermore, because jury deliberations and decisions are confidential, no one will ever know what compromises the jury came to or why, whether lay persons were confused by the subtleties of constitutional law, or what evidence or arguments influenced the jury's decision-making, unless members of the jury voluntarily choose to talk to the media or others, and then we have only their summary recollection perhaps lacking in precision to rely upon.

I therefore find that criminal prosecutions which rely only in part upon improper reference to or use of a defendant's political beliefs cannot be salvaged. If I had the power to order a re-trial with only legitimate evidence and arguments included, I would do so in most or all cases. But that is not an option available under the Pardon power.

V. IRRELEVANT DEFLECTIONS CONFIRM THIS ANALYSIS

The First Amendment does not protect criminal activity. However, that is irrelevant deflections. Exercising one's First Amendment rights is simply not criminal activity. There is no need to transform what is not criminal into what is already not criminal.

In most prosecutions concerning January 6, 2021, prosecutors have made the defendants'

political beliefs the primary issue of each criminal trial. Almost every trial or every trial follows the pattern of prosecutors wanting to put on the "context" of events, over objections, in which the prosecutors have FBI agents with no personal knowledge ("case agents") tell the jury what the crowd was privately thinking and what the crowd privately intended. These witnesses are not susceptible to cross-examination, in violation of the Sixth Amendment, because they are testifying only generally and they do not have first-hand, personal knowledge. Videos are shown of the crowd, that do not show the defendant. Statements yelled by someone (unknown) in the crowd – not the defendant are testified to. None of this has anything to do with the actual defendants at trial in the case. But judges allow a third to a half of the trial to be about such "context."

Ultimately, the January 6 defendants are convicted of believing the wrong things and disagreeing with what the jury has been told to believe over many years.

VI. PARDON FOR CONVICTION REACHED ON POLITICAL BELIEFS

I hereby issue a categorical pardon -- which may be claimed under the simplified application procedure specified in my companion Memorandum -- to any and all defendants charged, pending trial, or convicted (including by plea deal) in relation to, on, or leading up to events in Washington, D.C. on or about January 5-7, 2021, including the counting of Electoral College votes by the Vice President before a Joint Session of Congress, on the basis in whole or in part of any statements, expressions, or actions --

A. That the defendant believed the 2020 election was inaccurate.

B. That the defendant believed that Joe Biden was not lawfully elected President.

C. That the defendant wanted Congress to consider objections to the Electoral

College returns of certain States or battleground States generally.

D. That the defendant wanted the Vice President Mike Pence to follow President Trump's recommendations and/or demands.

E. That censorship of important facts manipulated the 2020 election.

F. That the defendant "celebrated" the actions of other people or the crowd on January 6, 2021.

G. That the defendant was happy that demonstrators showed up in Washington, D.C. on or about January 5-7, 2021.

H. That the defendant talked about what "we" did with no identification of whether "we" meant "our side" or included "me" specifically. That is, it is unclear if the defendant was saying "we" as including "me" or "we" as meaning "people who support Trump as we do." Obviously, if a defendant proclaimed "I robbed the liquor store on H Street last Tuesday night at 10 PM" this would be classified as an admission. The distinction would be a statement that admits to having committed a crime (although subject to the *corpus delecti* requirement of independent proof) as opposed to a statement that expresses a political point of view that is likely to inflame the jury.

I. That the defendant described what was happening on Capitol Hill on January 6, 2021, including to followers over social media or the internet generally.

J. That the defendant hyped what he or she was seeing on Capitol Hill on January 6, 2021, including to attract followers over social media or the internet generally. This has been a typical practice of mainstream news for many decades and is currently referred to as "click bait." Hyperbole or

exaggeration for commercial purposes, whether distasteful or disreputable or not, is not an admission that a person personally did something themselves.

K. That the defendant protested or demonstrated the way the Congress was conducting the Joint Session of Congress to count Electoral College votes.

L. That the defendant by his or her actions was petitioning the government for the redress of grievances, whether or not involving words.

M. That the defendant would prefer a particular outcome of governmental decision-making.

N. That the defendant is criticizing the government, government officials, or the effectiveness of government actions.

O. That the defendant exhorted law enforcement officers to enforce the law faithfully and accurately.

P. That Members of Congress follow the law and the U.S. Constitution faithfully and accurately.

Q. That the defendant said something that was (allegedly) wrong.

R. That the defendant believed something that was (allegedly) wrong.

S. That the defendant was told by someone (including perhaps by someone the defendant would be unlikely to believe) that something was untrue.

T. That the news media made a decision about the 2020 election, even though the news media has no official role in our nation's elections.

U. That the defendant knew what the news media had said about the election.

V. That the defendant was told by someone who would have no way of knowing that something was untrue. An example would include, Attorney General Bill

Barr ordering the Department of Justice not to investigate the 2020 election because the DOJ does not regulate elections, and then claiming that the DOJ did not find any "widespread" fraud – having not looked – in the 2020 election, just fraud that wasn't widespread. Examples would include other politicians or advisers whose functions and expertise do not include evaluating the integrity of elections disagreeing with the defendant's political beliefs or beliefs about the effectiveness and competence of the government.

VII. LIMIT OF THIS CATEGORICAL PARDON TO EVENTS RELATING TO EVENTS OF JANUARY 6, 2021

Naturally these principles underlying this categorical pardon are not limited only to the events relating to or leading up to demonstrations on or near Capitol Hill on or about January 5-7, 2021. There may be individual or small groups with similar concerns in their prosecutions. The limitation of this Pardon to January 6 Defendants is pragmatic and does not necessarily exclude possible consideration of these principles with regard to other individuals or groups.

However, criminal prosecutions and political and media hysteria about January 6, 2021, has been pursued in a unique alternate universe where normal legal rules have been set aside. Rarely – except in the great civil rights protest upheavals in the last century and protests over the Vietnam War – have government officials ever made political beliefs and expressions of political views the subject of criminal prosecutions, whether in whole or in part. Therefore, addressing the abuses of constitutional rights relating to January 6 defendants requires special attention because the abuses have been unusual. Moreover, it is possible to define the circumstances on this topic relatively precisely and meaningfully.

VIII. MY MEMORANDUM OF GENERAL INSTRUCTIONS INCORPORATED BY REFERENCE HEREIN

Attention is directed to my General Memorandum setting forth directions, details, and conditions applying to all of my pardons issued at this time. For example, as specified there my pardon includes a pardon of any charge of attempt, aiding and abetting, conspiracy to the extent founded on the pardoned charge rather than on some other grounds, and commutation of any sentence associated with the pardoned charge.

TAB 11

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning Defendants from Defective Prosecutions for Denial of Due Process By Falsified or Fabricated Evidence

I. FALSIFICATION OF EVIDENCE BY PROSECUTORS AGAINST JANUARY 6 DEFENDANTS

Supporting the U.S. Constitution's due process clauses, Rule 106 of the Federal Rules of Evidence. Remainder of or Related Statements, requires that *(Emphasis added)*:

> If a party introduces all or part of a statement, an adverse party may require the introduction, *at that time*, of any other part — or any other statement — that in fairness ought to be considered at the same time. The adverse party may do so over a hearsay objection.

However, I am informed that when defense counsel for January 6 related defendants object to evidence that violates Rule 106, Federal Judges refuse to uphold Rule 106 and the obvious necessities of due process, which require a complete presentation of all the recording or document "***at that time***"not a rebuttal later.

Defendants rarely have resources to match the organization and presentation of video clips or other evidence of the FBI and U.S. Government leading to fundamental unfairness. The initial misleading presentation also carries the imprimatur of official credibility when initially presented, though showing a false picture in reality. And showing misleading clips or segments of text messages, email messages, etc., to a jury allows a false and misleading impression to harden like concrete long before the prosecution rests and the defense begins to respond.

Also, I am informed that concerning January 6 prosecutions that the Federal judges

residing in the District of Columbia provide expansive time (days) for prosecutors but then limit the amount of time that defendants are allowed to prove their innocence. I find the unequal time allotted to be a violation of the Sixth Amendment to the U.S. Constitution and of due process. The Government's burden of proving guilt beyond a reasonable doubt becomes an illusion if judges limit the amount of time a defendant can use to respond to the prosecution.

I am informed that – over the objections of defense counsel -- trials of defendants involved in events of January 6, 2021, prosecutors depend heavily upon presenting heavily-edited "montages" of video recordings (body-worn camera video, building security video, crowd sources or 'civilian video' taken by the thousands of smart phone cameras seized from private individuals, etc.) which show events that do not involve the defendant and do not show the defendant in the video. Recordings are heavily edited or incompletely presented to show only certain angles and views which change the meaning and impression of events, often excluding certain cameras in the evidence.

Most of all video recordings shown to D.C. juries when it comes to January 6 are heavily edited to exclude what happened immediately before and/or immediately after the clip shown.

For example, in hundreds of prosecutions U.S. Capitol Police and D.C. Metropolitan Police Department officers testified to things like they were "gassed." But when A.J. Fischer released his documentary "J6: A True Timeline" at https://open.ink/collections/j6 simply showing the entire video record unedited and uninterrupted, it becomes clear that USCP officers fired tear gas for unexplained reasons into the wind, and the wind blew massive clouds of tear gas back on to the officers. The audio part of the video recordings includes officers describing what is happening – that the gas they just fired is blowing back upon themselves.

And yet hundreds of times officers testified under oath in court and in Congress that on

January 6 they were "gassed" without truthfully conceded that the officers had gassed themselves and were not gassed by the Defendant on trial or by other demonstrators.

Prosecutors also heavily depended upon text message "threads" or rolling conversations often among dozens or even hundreds of participants or the same type of communication by electronic mail (email) or software designed for such rolling chats.

So heavily and deceptively edited and rearranged were these segments of the conversations as to constitute fabrication of evidence that had never existed. Segments were presented to suggest the opposite of what was actually said. Statements by other people were presented as if the defendant said them or adopted or endorsed those statements.

In one case, in the Oath Keepers' trial, the prosecution presented an audio telephone conference call run through software ZELLO to prove that defendants were actively coordinating an attack on the Capitol and attacking officers and the Capitol. Hundreds of interested persons were watching events on TV from all over the nation and commenting on their opinions of what they were seeing on TV. Near the end of the recording, one person explains that if he went to Capitol Hill that day it would be a 12 hour trip one-way. A criminal defense attorney for Kelly Meggs repeatedly warned prosecutors and Judge Amit Mehta that the telephone call was not what prosecutors were presenting it to be.

In many trash-talking and rambling text and email and chat conversations, January 6 defendants clearly discuss preparations to defend themselves and others against the long-running reign of terror by Left-wing rioters, arsonists, street thugs, etc., such as ANTIFA. Yet the unmistakable context of being prepared to defend themselves was rearranged to create a false version of the conversation and to make them falsely appear to say the opposite of what was actually said. Prosecutors led juries to believe that Defendants planned to initiate violence when

a fair reading shows preparations to defend against being attacked by Leftwing street thugs.

II. PARDON FOR USE OF MISLEADING OR FABRICATED EVIDENCE BY PROSECUTORS WHEN CONVICTING DEFENDANTS

I find that this violates the U.S. Constitution and therefore I issue a categorical pardons, including on all charges because the damage is done to an entire trial, upon application under simplified procedures to the Pardon Attorney and demonstration that this problem existed in an applicant's individual case.

Unfortunately, there does not seem to be a responsible and factually clear way to address this problem that has been widely reported without at least a limited review of the proceedings, evidence, and arguments in each individual case in which the applicant believes this happened to him or her. I am aware of the reports of widespread violations of civil and constitutional rights in the prosecution of January 6 defendants, but I believe more than such reports is necessary to factually establish my decision for a pardon.

Therefore, without limiting in any way the right to use the usual route for applying for a pardon, I direct that the Pardon Attorney receive simplified and narrow applications (as the applicant may desire) demonstrating that these violations occurred in a prosecution against him or her, review these, and determine if the facts of the case meet my standards explained here for a pardon on these narrow grounds.

Nothing in this action or document is intended to limit or discourage any defendant wrongly convicted on similar grounds from making his or her own application for a pardon.

III. PARDON POWER PRESENTS LIMITED OPTIONS FOR SOLUTIONS

Should a President effect a complete pardon of a defendant accused, tried, convicted, and/or sentenced only in part on inadmissible evidence?

Just as it is not possible to remove salt from a cup of coffee once it has been accidentally dumped into the coffee, but the entire cup is ruined, once misleading evidence has been improperly introduced into a criminal trial, the entire stew has been contaminated.

Furthermore, because jury deliberations and decisions are confidential, no one will ever know what compromises the jury came to or why.

I therefore find that criminal prosecutions which rely only in part upon improper reference cannot be salvaged. If I had the power to order a re-trial I would do so in many cases. But that is not an option available under the Pardon power.

Therefore, as one of several consequences, I find that my pardon is not dependent upon an applicant demonstrating that the misrepresentations were significant or likely to have changed the outcome of the criminal trial. It is not possible to know how improper evidence influenced one or more jurors. It is not possible to reverse the effects of the evidence. Asking that a defendant prove what was in the mind of jurors in confidential deliberations in the jury room is an impossible and unfair standard. Proving that one particular piece of evidence if presented more truthfully would have changed the outcome is an impossible standard.

IV. APPLICATION PROCESS FOR REQUESTING INCLUSION IN THIS CATEGORICAL PARDON

In order to apply for issuance of a pardon under this category, a defendant would need to deliver to the Pardon Attorney the following.

First, an applicant should carefully review my companion memorandum giving general details as well as the contact information and address for the Pardon Attorney's office.

(1) Demonstrate that the applicant was charged and either prosecuted at trial or threatened for a plea deal with the tainted evidence.

(2) Demonstrate that the prosecutors presented at trial or pressured the defendant in plea negotiations with edited, altered, or rearranged versions compared with the complete originals of --

a. video recordings or

b. audio recordings including phone conversations or conference calls, or

c. conversations, threads, chains, or chats in text messages, or

d. conversations, threads, chains, or chats in email messages, or

e. conversations, threads, chains, or chats in video conferences, or

f. conversations, threads, chains, or chats in messaging software or apps, or

- including edited by excluding part of the same sequence of events before what was shown and/or after what was shown which missing portions are material to understanding what was shown, and/or
- including by changing the order of statements of scenes, and/or
- including by ascribing statements to a defendant actually or possibly spoken by someone else, and/or
- including by presenting other people's statements, actions, or opinions as if the defendant necessarily agrees with them, and/or
- provably false testimony by a government witness, while
- recalling in all of these items that the prosecution must prove a defendant guilty beyond a reasonable doubt, not guess.

(3) Demonstrating that the alterations to the original could have caused a jury to believe something false to be true, different from what is shown in the unedited or unaltered

original. An applicant should identify the alternative possible meanings, interpretations, or conclusions which a jury could reach because of the alterations.

(4) It is unreasonable and inconsistent with Constitutional rights to demand that a Defendant prove that a jury actually misunderstood the truth due to the altered evidence. Jury deliberations are confidential and it is impossible to analyze why the jury decided as it did or what would have changed the jury's decision. A mere risk of abridging constitutional rights is unacceptable where the Government's own actions created the risk of prejudice.

(5) Nevertheless, for the purposes of this pardon the applicant should identify alternative possible interpretations that could have arisen in the jury's confidential deliberations. If the risk of such confusion by the jury seems insignificant or highly improbable, the Pardon Attorney may refer the question directly to me for decision, highlighting the Pardon Attorney's concern.

(6) But if the prosecution's alteration or rearrangement of original evidence presented any real risk of the jury having the wrong understanding of the evidence as compared with the unaltered original, constitutional due process must take precedence and I would have to pardon such a defendant. Again, I view the primary purpose of the pardon power as correcting and ending over-reach by prosecutors in criminal cases.

TAB 12

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning Defendants of Ambiguous Claims of Assault

I. PARDON FOR MISREPRESENTATIONS OF "FORCIBLY" "ASSAULTING" UNDER 18 U.S.C. § 111 .

I hereby issue a pardon -- which may be claimed under the simplified application procedure specified in my companion Memorandum -- to any and all defendants charged, pending trial, or convicted (including by plea deal) in relation to, on, or leading up to events in Washington, D.C. on or about January 5-7, 2021, including the counting of Electoral College votes by the Vice President before a Joint Session of Congress, on the basis of an inaccurate misrepresentation of 18 U.S.C. § 111 or ambiguity in the charges, as explained and defined below:

II. 18 U.S.C. § 111 IS CONDITIONED ON THE QUALIFIER "FORCIBLY"

There are video recordings and evidence of a small but unacceptable number of demonstrators on or around Capitol Hill on January 6, 2021 – remembering that the U.S. Capitol Police has estimated the size of the crowd (just on Capitol Hill alone) as high as 10,000 people – battling or brawling with police. In some cases it is disputed who initiated these brawls and why, which is a more complicated topic beyond the scope of this document or action. Video evidence is undeniable in the documentary "January 6 Timeline" that the U.S. Capitol Police at a time of relative calm and static lines fired massive amounts of tear gas for no reason into the

wind, causing the tear gas to blow back in the wind upon the officers. I assume that this represents a failure of Congressional leadership to provide proper training and equipment. The documentary published by A.J. Fischer includes the officers speaking on camera describing how they have gassed themselves and the gas the officers fired is drifting back onto the same officers.

However, I am also informed that there are people charged with 18 U.S.C. § 111 (a) in defective ways. Those must be considered differently and must not be lumped in with anyone who legitimately violated the statute.

The actual statute of 18 U.S. Code § 111, prohibits *(formatted for emphasis):*

> (a)In General.—Whoever—
> (1) ***forcibly***
>
> A. assaults, *[OR]*
> B. resists, *[OR]*
> C. opposes, *[OR]*
> D. impedes, *[OR]*
> E. intimidates, *[OR]*
> F. interferes with
>
> any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

However, I am informed that prosecutors and judges handling cases of January 6 defendants related to the events on January 6, 2021, have ignored the term "forcibly" from the statute, in many cases.

As a result, I am informed that prosecutors and judges handling cases of January 6 defendants related to the events on January 6, 2021, have applied ambiguous meanings of the word "assault," including old common law concepts of "assault and battery." Battery was an unconsented physical touching, but perhaps as trivial as accidentally brushing into someone in a crowded subway train or sports event. It did not imply any harm done or intended.

Congress enacted 18 U.S.C. § 111, apparently wanting to leave such concepts in the past by adding the qualifier "forcibly."

Once again, it is undeniable from video recordings and other evidence that some of the people present on Capitol Hill on January 6, 2021, physically and even violently brawled with, battled, and/or attacked police officers. It is also undeniable that we must punish those who did do so in proportion to their violent acts, yet not punish those who did not do such things. The necessity of punishing those who are guilty of violence is equal to not punishing those who are innocent. Indiscriminate treatment does not achieve justice.

However, in relation to January 6, 2021, some juries convicted under 18 U.S.C. § 111 even when a police officer (a) testified that he did not believe he had been assaulted, and/or (b) was not aware of having been touched, and/or (c) did not report to his department or investigators that he had been assaulted and/or (d) did not remember the Defendant.

The Government argued in a pleading in the appeal of Kenneth Joseph Thomas in the Government's Opposition brief at Pg. 53 "Section 111(a) Does Not Require Proof of Violent Force."

In *Johnson v. United States*, 559 U.S. 133 (2010), the Supreme Court clarified that the force necessary to sustain the felony violent crimes in the U.S. Code must be substantial force. "As we have discussed, however, the term "physical force" itself normally connotes force strong enough to constitute "power." *Id.* "A crime that can be committed through mere recklessness does not have as an element the "use of physical force" because that phrase "has a well-understood meaning applying only to intentional acts designed to cause harm." *Id.*

"There is no dispute that 'simple assault' is a crime 'committed by either a *willful attempt to inflict injury* upon the person of another, or by a threat to inflict injury upon the person' . .

.which, when coupled with an apparent present ability, causes a reasonable apprehension of immediate bodily harm." *U.S. v. Chestaro*, 197 F.3d 605 (2d Cir. 1999) *(emphasis added)* (citing *United States v. Johnson*, 637 F.2d 1224, 1242 n. 26 (9th Cir. 1980)).

In actual January 6 related prosecutions, I am informed, defendants were convicted (as shown in the court records) under 18 U.S.C. §111 for (1) gently touching the riot shield of a police officer, (2) helping oneself standing up off the ground by pulling oneself up by a riot shield, (3) running a hand gently along a line of riot shields apparently as a signal amidst the noise asking both sides to stay a distance apart, (4) touching a baton which a police officer was beating the defendant with to block the blows, and (5) holding up two crutches in an "X" formation like Europeans cross their arms to signal "do not enter" to warn officers that Roseanne Boyland was dying at the demonstrator's feet. I do not mean to endorse most of these actions, but Congress conditioned the statement on the term "forcibly."

III. PARDON FOR UNCONSTITUTIONAL AMBIGUITY

I hereby issue a pardon to any and all defendants charged, pending trial, or convicted (including by plea deal) under 18 U.S.C. § 111 in relation to, on, or leading up to events in Washington, D.C. on or about January 5-7, 2021, where

A. the jury instructions given to the jury did not clarify to the jury the requirements that an assault only qualifies if it is done "forcibly."

B. closing arguments offered the jury offered confusion that the jury could convict the defendant of a violation of 18 U.S.C. § 111 without finding beyond a reasonable doubt that the violation was done "forcibly."

C. the jury instructions given to the jury did not clarify to the jury the requirements that touching an officer's body accidentally or even negligently

such as in the jostling of a crowd does not qualify as "forcibly."

D. the jury instructions given to the jury did not make clear to the jury the requirements that brushing or lightly touching an officer's clothing, hand-held equipment, riot shield, etc. but not his body, does not qualify as an assault under 18 U.S.C. § 111. Nor does it qualify as interfering if it did not actually disrupt, in fact, the officer's performance of his duties.

E. the jury instructions did not make clear the requirements that no "extension" of a person's body concept (from old common law) is consistent with the requirement of acting "forcibly." While I do not impose a requirement that the defendant must have contacted the victim's body, the action must be "forcibly." It is improbable that any scenario which qualifies as "forcibly" is not direct physical, harmful contact by the defendant against the victim's actual, physical body. An intent to cause physical bodily harm may be "forcibly" even if actual injury did not result. But it is still difficult to imagine touching a victim's clothing, equipment, riot shield, etc. being "forcibly."

F. the closing arguments offered the jury created confusion that the jury could convict the defendant of a violation of 18 U.S.C. § 11 1 without finding beyond a reasonable doubt that the defendant directly contacted the victim's body harmfully so as to act "forcibly," including as explained in (E) above.

G. A belief that the defendant intended to cause physical bodily harm was based purely on sheer speculation and imagination.

H. the belief that the defendant intended to cause physical bodily harm is not the only possible explanation of the defendant's actions. For example, the

prosecution in *United States v. Kenneth Joseph Thomas* claimed to the jury that a photograph of Thomas raising his knee and boot was an attempt to kick a police officer, until the criminal defense attorneys showed "the rest of the story" of video where Thomas was falling backwards and raised his foot to try to steady himself and avoid falling. Where the Defendant's actions can be explained by two or more alternative scenarios, a jury would be obligated to find that the standard of guilty beyond a reasonable doubt has not been met.

IV. MY MEMORANDUM OF GENERAL INSTRUCTIONS INCORPORATED BY REFERENCE HEREIN

Attention is directed to my General Memorandum setting forth directions, details, and conditions applying to all of my pardons issued at this time. For example, as specified there my pardon includes a pardon of any charge of attempt, aiding and abetting, conspiracy to the extent founded on the pardoned charge rather than on some other grounds, and commutation of any sentence associated with the pardoned charge.

TAB 13

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning Defendants Convicted of Seditious Conspiracy

I. PARDON FOR INVALID CHARGES UNDER 18 U.S.C. 2384

I hereby issue a categorical pardon to any and all defendants charged, pending trial, or convicted (including by plea deal) in relation to, on, or leading up to events in Washington, D.C. on or about January 5-7, 2021, including the counting of Electoral College votes by the Vice President before a Joint Session of Congress, on the basis in whole or in part of any conspiracy, statements, expressions, or actions pursuant to 18 U.S.C. 2384, including as to any charge of attempt or aiding and abetting. I commute any sentence arising from any pardoned charge.

No application is required, except perhaps to register documentation that a person was so charged, whereupon the Pardon Attorney shall see to it that the affected defendant receives documentation of having been pardoned.

Specifically, this also includes any charge relying upon in whole or in part any act or omission of the defendant occurring between the declaration of a Public Health Emergency by the Presidential Administration of President Donald Trump on or about January 31, 2020 (when questions about plans for the 2020 election first began), through January 31, 2021.

II. THE FACTS MAKE SEDITIOUS CONSPIRACY IMPOSSIBLE

18 U.S.C. 2384 provides:

> If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy

> war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

I find that factually no one charged with 18 U.S.C. § 2384 relating to the events of January 6, 2021, comes within the terms of the statute. The attempt to force a round peg into a square hole simply fails. I find that given the massive, persistent, consistent, and routine Left-wing violence by rioters, arsonists, looters, brawlers, and other street gangs from 2014 (really 1999) through mid-2020, costing billions of dollars of damage and thousands of bodily injuries – even after considering the DOJ's unconvincing attempts to suggest otherwise at trial – the defendants charged with 18 U.S.C. § 2384 were undeniably prepared to engage in self-defense of themselves and others. They said as much. That is exactly what they did. That is exactly what they prepared to do. I find that to argue otherwise is lacking in candor and good faith. (However, this Pardon is limited to charges under 18 U.S.C. § 2384 and different charges and counts are considered separately and independently. I am not addressing whether any person got drawn into brawling with police under a different statutory charge. My analysis in this pardon is focused on 18 U.S.C. § 2384 not on other statutes or laws.)

Regional cultural differences between the urban and urbane District of Columbia and other parts of the country over attitudes toward guns for self-defense are not a valid basis for convicting a person on the mere guess that they might have been planning to initiate violence when their words and actions emphasized their reaction to widespread Left-wing riots.

I find that as a factual matter that no Defendant relating in any way to 18 U.S.C. 2384 is guilty of violating this statute. I find that the inquiry is contaminated by partisan agendas and wholly devoid of any legitimacy, honesty, good faith, due process, enforcement of Fourteenth

Amendment rights, or adherence to any traditional norms of criminal law in this country.

I find that demonstrators who entered the U.S. Capitol on January 6, 2021, mostly stayed only a short time roughly between about 2 minutes to 30 minutes, and mostly left of their own accord. This is wholly incompatible with any plan to overthrow the government or Congress.

The statute was used apparently against only two groups of defendants: About a dozen of the nation's 40,000 members of the Oath Keepers (most of whom played no role in any events on January 6, 2021) were tried for seditious conspiracy and about 5 members of the Proud Boys, similarly constituting a tiny fraction of the thousands of mostly non-political members of the Proud Boys "drinking club" that overwhelmingly specializes in watching sports games on television in "men's nights out."

I never had any communication with anyone identified to me as a member of the Proud Boys or Oath Keepers. However, reviewing later the public statements and "open letters" published by the Oath Keepers, I find as a fact that the Oath Keepers clearly, unmistakably, publicly, and undeniably called upon me as President to invoke the confusingly named [Anti] Insurrection Act of 1807 explicitly to keep the peace and prevent the kind or riots, arson, looting, and assaults our nation had endured from 2014 through the assaults on the White House in the Summer of 2020.

I find that the [Anti] Insurrection Act is the exact negation of a Seditious Conspiracy. I find that no one can support using the poorly-named [Anti] Insurrection Act which is the cure for a Seditious Conspiracy while engaging in, planning, or attempting a Seditious Conspiracy. The two are polar opposites.

Advocacy by the Oath Keepers leadership for the President to protect the nation and the White House against riots by ANTIFA and other groups of street thugs by invoking the [Anti]

Insurrection Act prove that there was no seditious conspiracy. The two are polar opposites.

The Insurrection Act does not authorize any change to substantive law. Reminding us once again of the ignorance of experts, the Insurrection Law authorizes a President to add to the available manpower to enforce existing substantive law. It is about enforcing the law as it already exists. But having sufficient manpower to uphold the law was of particular concern – clearly and openly declared – to a few of the 40,000 Oath Keepers that disloyal officials might refuse to uphold the law and allow Left-wing rioters to over-run and take control of the White House without effective opposition.

When leftist rioters set a church on fire and attacked my residence and office and government officials apologized for speaking out against it, General Mark Milley public apologized for standing with the Commander in Chief outside the White House to show the world and our friends and enemies around the world that the White House was not overwhelmed. Gen. Milley's groveling and pandering that he was sorry to oppose the May to June 2020 insurrection, riots, and attacks on the White House left considerable doubt that the institutions would defend the Executive Office of the President against any further Left-wing riots.

Stewart Rhodes and a few other Oath Keepers publicly called for plans to make sure that someone would actually defend the White House. The publications on their website urged the President to deputize experienced military veterans and former police officers as a posse answering to the President if further Left-wing violence threatened the White House or other Federal facilities, office buildings, or institutions.

It is indisputable, on the standard of proof beyond a reasonable doubt, that for that purpose and only for that purpose about a dozen members of the Oath Keepers brought weapons and left them in Northern Virginia and did not use any of them.

In my analysis I am not suggesting that their solution was my preference or the best solution but only that their recommendation is incompatible with a Seditious Conspiracy. I am not implying that I would have adopted their proposals, if they had come to my attention then. I do find that one cannot plan a seditious conspiracy while strongly working to prevent one.

I find that two different groups of Oath Keepers offered to help officers of the U.S. Capitol Police, including the New Yorkers who famously assisted Lt. Tarik Johnson of the U.S. Capitol Police. I find that this also is incompatible with any Seditious Conspiracy.

I find that the FBI Interview Form 302 of USCP officer Harry Dunn shows that (1) Officer Dunn starts out the FBI interview by bristling at any suggestion that he "needed" help from anyone, after suggestions that he was rattled which understandably he firmly disputed, (2) Officer Dunn confuses the issue, but then (3) Officer Dunn admits that the Oath Keepers inside the U.S. Capitol offered to help Dunn and his partner against angry members of the mob that day. He admits – while understandably mainly defending his own conduct – that the Oath Keepers turned and faced the mob with their backs to the USCP officers to protect the USCP from demonstrators. Dunn admits that the Oath Keepers offered help, Dunn did half-heartedly accept thinking he did not need any help, and that the Oath Keepers did in fact help keep the peace, standing against a particularly angry and ugly group of demonstrators.

Again, I find that this is incompatible with a Seditious Conspiracy. One engaged in a coup does not stop and provide assistance to the (to resort to the literary analogy) the Congress' "palace guard" so to speak. One storming the castle does not turn around and assist the guards.

The Oath Keepers sided with the Capitol Police against members of the crowd who spun out of control. The FBI Form 302 is attached. Under my authority as President I officially publicize this document, which has already been redacted to the standards requested by

prosecutor Kathryn Rakoczy.

For all these reasons, I find it impossible to find any Seditious Conspiracy within the facts of January 6, 2021. I find that examples attempted to suggest otherwise are marred by the unwillingness of the Federal Bureau of Investigation to investigate them. For example, someone in the early morning dawn while it was still dark pulled some lumber out of a car trunk and erected a flimsy symbolic guillitone, adorned with a sign "This is art." Yet despite it being on the edge of the Capitol lawn near the street all day long, and with photographs of the car license plate, the FBI claims not to know who it was. The FBI, Secret Service, and Metropolitan Police Department similarly do not know or do not want to know who planted a pipe bomb next to the Republican National Committee headquarters and the Democratic National Committee headquarters where Vice President Elect Kamala Harris was located. Thus, it is difficult to credit any of those claims for factual analysis when the FBI says they know nothing about them.

III. MY MEMORANDUM OF GENERAL INSTRUCTIONS INCORPORATED BY REFERENCE HEREIN

Attention is directed to my General Memorandum setting forth directions, details, and conditions applying to all of my pardons issued at this time. For example, as specified there my pardon includes a pardon of any charge of attempt, aiding and abetting, conspiracy to the extent founded on the pardoned charge rather than on some other grounds, and commutation of any sentence associated with the pardoned charge.

UNCLASSIFIED//FOUO

FEDERAL BUREAU OF INVESTIGATION

Date of entry 06/15/2021

On 05/18/2021 SA [redacted] and SA [redacted] interviewed US Capitol Police (USCP) Officer Harry Dunn, and FBI-trained crisis negotiator, phone number [redacted]. After being advised of the identity of the interviewing agents and the nature of the interview, Dunn advised of the following:

Dunn was shown an email (attached) which contained an account of an interaction with a USCP officer, which Dunn confirmed was him. After reading the email account, Dunn advised that during the Capitol incursion his finger was never on the trigger of his weapon, and the men in military attire did not attempt to de-escalate the situation. Dunn advised agents he did not know what a "broken arrow" situation was or meant and did not hear that phrase from anyone that day. Dunn advised at the time he was not angry or scared but he was distressed inside. Dunn advised he did not need to be "de-escalated" and that he was pleading with protestors to leave the Capitol.

Dunn advised during the incursion his rifle was flush with his chest and in "condition 1" which means there was a round in the chamber, but the weapon was still on safe. Dunn advised the only time in which he would ever have his finger on the trigger of a weapon was if he was aiming that weapon at a threat.

Dunn advised of two interactions with men in military attire, whom he later learned were called "Oath Keepers". Dunn noted the Oath Keepers had similar gear to what the ATF was wearing that day.

The first interaction occurred in the area of the Capitol known as the Crypt. Also present for the first interaction was Dunn's partner USCP Officer [redacted], who heard a call that shots were fired. Dunn was unsure of what the "shots fired" call actually meant, insomuch as he was

Investigation on 05/18/2021 at Washington, District Of Columbia, United States (In Person)

File # 176-JK-3410025 Date drafted 06/08/2021

by [redacted]

unsure who fired the shots or if anyone had been shot. Dunn advised the Crypt was full of protestors and that Dunn was guarding a set of stairs which lead to the lower west terrace where other officers were being decontaminated. While Dunn was guarding the stairs, some Oath Keepers wandered over to him. Dunn informed all protestors they needed to leave and told the Oath Keepers that the protestors were fighting officers. The Oath Keepers advised Dunn they would help keep the protestors from the lower west terrace area. Dunn advised he allowed them to stand in front of him to help keep the protestors from getting down the stairs. Dunn left this area when he was relieved by USCP riot officers.

The second interaction occurred upstairs near the lobby of the Speaker's Office. Dunn advised he was verbally assaulted by a Hispanic female in a pink t-shirt, who appeared to be lumped in with the Oath Keepers. At this time, there were no attempts to de-escalate the situation and no attempts to protect officers. Dunn advised he was guarding a stairwell near the Speaker's Office and was trying to calm down the Oath Keepers in the area.

Dunn advised agents he was unsure how long he was in each area of the Capitol.

Dunn remembered a "really tall guy" during the interaction near the Speaker's Office. Dunn was shown an internet photo of Kelly Meggs, and confirmed he was the really tall guy.

Dunn was amenable to recontact in this matter.

TAB 14

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Executive Order Implementing Pardon Power And Pardoning Defendants from Prosecution Under Spoilation of Evidence

I. PARDON FROM CONVICTIONS MARRED BY SPOILATION OF EVIDENCE

I hereby issue a categorical pardon to any and all defendants charged, pending trial, or convicted (including by plea deal) in which the Government destroyed or claims to have "lost" evidence that might have raised a defense to some or all elements or aspects of the charged crime(s).

It is important to analyze this in light of: (1) Due process in criminal prosecution requires that a defendant is presumed innocent for all purposes at all times during a criminal prosecution in any phase of the prosecution unless proven guilty by admissible and competent evidence beyond a reasonable doubt. (2) Therefore, I find typical court analyses to be unacceptable. The way some courts have approached this and other violations by prosecutors within criminal prosecutions necessarily (if *sub voce* and implied) is that the defendant is presumed to be guilty and has to prove that the violation of his or her rights might have vindicated him or her. That has it backwards. Prosecutors and courts must presume innocence. If there were defects in the presentation of evidence the prosecution has failed to overcome the presumption of innocence, even if they fooled a jury. (3) The consequences of "spoilation of evidence" (a legal term of art) is a sanction or punishment. It is intended to deter the destruction of evidence which is often hard to detect with harsh penalties. It is intended to not be limited to

correcting a mistake but to impose sanctions severe enough to act as a deterrent. (4) The prosecution and the Government writ large have a constitutional duty under due process to disclose all potentially exculpatory information to defendants under *Brady v. Maryland*, 373 U.S. 83 (1963). The Government is not just any litigant. The Government is bound by the U.S. Constitution and it serves the higher goal of actually doing justice to the maximum extent possible, not simply to win for winning's sake. When the Government destroys evidence, it violates the U.S. Constitution to a more serious extent than if any other litigant does so. (5) The U.S. Department of Justice has charged defendants charged with events relating to or leading up to January 6, 2021, with allegedly destroying evidence even where the DOJ has no evidence of this (simply that the DOJ suspects that messages were on one person's smart phone but the FBI can't find it on the defendant's smart phone, thus guessing that it was knowingly and intentionally erased). However, no legal system can survive which only enforces the rules against one side but not the other. The prosecution must live up to the same standards it imposes upon accused defendants. In fact, I am informed that the U.S. Supreme Court has ruled that where a government agency defines requirements that becomes part of the measure of due process that is constitutionally required.

II. EXPLANATION IN THE HOPE OF STOPPING SEVERE DETERIORIATION OF OUR CONSTITUTIONAL REPUBLIC

No President has any responsibility under the Pardon power to explain his or her reasons or the basis or grounds for issuing a pardon. However, it is beneficial that I do so.

A President's use of the pardon power historically is not limited to any factual or legal error in the court system but includes a President's determination that the system as it is being applied, perhaps where mistakes have crept into court precedents and endorsed by precedents yet

remain unconstitutional, unsound, or illogical, is abusive or improper. A President's use of the pardon power is not limited to my explanation for the public good of my reasons, although my analysis may be of some informative value to the Pardon Attorney in implementing my order.

As I interpret our nation's constitutional history, one of the primary reasons for the Presidential power of a pardon or commutation of sentence (clemency) is not so much to recognize a reformed and rehabilitated life (although this has been a common and traditional use of the power) but to cure and curb excesses and unjust results in the legal system, including poorly-written Congressional statutes, irrational interpretations by courts, prejudice and bias against certain persons or groups, or the like. I believe the latter purpose and effect is by far more important. I believe that exposing and highlighting problems to public scrutiny and encouraging reform is one important reason why a President may decide to issue a pardon. The goal that excesses and abuses not be repeated is as important as the effect on an individual person or group of persons being pardoned.

Although I am not required to explain, I feel that it is beneficial to improvement and reform of our political, government, and legal system that the reasons for my issuance of a pardon be available for officials, decision-makers, and the public to understand and consider.

III. GOVERNMENT GUILTY OF SPOILATION REGARDING JANUARY 6 PROSECUTIONS

The Chairman of the Subcommittee on Oversight for the Committee on House Administration, Barry Loudermilk, revealed on or about August 8, 2023:

> The House select committee that investigated the Capitol riot on January 6, 2021 failed to adequately preserve documents, data and video depositions – including communications it had with the Biden White House that are still missing – according to the Republican lawmaker overseeing the GOP investigation into the committee's work.

The now-disbanded "J6" committee, which was run by Democrats and included only two GOP members, has also failed to provide any evidence that it looked into Capitol Hill security failures on the day of the riot, Rep. Barry Loudermilk, R-Ga., chairman of the Subcommittee on Oversight for the Committee on House Administration, told Fox News Digital.

Loudermilk said his staff has had difficulty gathering all the information it needs to investigate Rep. Bennie Thompson's handling of the J6 investigation.

"Part of our task as this oversight subcommittee is to actually address the security failures, look into how did it happen… how were these folks able to get into the Capitol," Loudermilk said. He said the documents they obtained came over in boxes and was completely unorganized.

"Nothing was indexed. There was no table of contents index. Usually when you conduct this level of investigation, you use a database system and everything is digitized, indexed. We got nothing like that. We just got raw data," he said. "So it took us a long time going through it and one thing I started realizing is we don't have anything much at all from the Blue Team."

* * *

What we also realized we didn't have was the videos of all the depositions," Loudermilk added.

Loudermilk said he has been contacted by a defense attorney that needed access to key information in one of the video depositions, and the committee realized it did not have the videos he was seeking
.

Fox News Digital obtained correspondence letters between Loudermilk and Thompson's offices in which the two disagreed on whether the J6 committee preserved what it was required to under House rules.

Loudermilk says Thompson's committee was required by law and House rules to preserve and turn over all data related to their investigation at the end of the congressional term in December, and Loudermilk said as much to Thompson in a letter on June 26.

Andrew Mark Miller,"**J6 Committee failed to preserve records, has no data on Capitol Hill security failures, GOP charges: The J6 Select Committee disbanded in December 2022 and was required to preserve documents from its investigation**," Fox News, August 8, 2023,

https://www.foxnews.com/politics/j6-committee-failed-to-preserve-records-has-no-data-on-capitol-hill-security-failures-gop-charges

Recall that the first arrests relating to events of January 6, 2021, were on January 6 and on January 7. By the time the U.S. House of Representatives voted on June 30, 2021, to establish the Select Committee, prosecutions for the same events were already underway. And these were widely-publicized. The purpose of the Select Committee was to investigate, so they would necessarily have to know that prosecutions were on-going.

Therefore, the Select Committee knew that the information it was collecting was material to on-going criminal prosecutions – and material by design. The DoJ has indicted and prosecuted persons for destroying evidence with awareness that a Grand Jury might be considering a matter. The Select Committee is guilty of destruction of evidence by the standards that the DOJ applies against others, including an over-use of circumstantial evidence.

The deletion, loss, or mishandling of this information occurred with full-awareness that the Select Committee was collecting information in a parallel criminal investigation.

The Select Committee by its Chairman Bennie Thompson decided and publicly announced that it would be releasing the information publicly.

> The Jan. 6 select committee has formalized a path to share witness transcripts and evidence with the Justice Department, its chair Rep. Bennie Thompson (D-Miss.) told POLITICO Thursday.
>
> "We've put a template together for sharing information, sharing it with Justice. My understanding is, there's general agreement on it," Thompson said.
>
> Agreement on evidence-sharing would mark a significant milestone as the DOJ inquiry into efforts by Donald Trump and others to overturn the 2020 election enters a more public-facing phase. Federal investigators have sought to access the congressional committee's 1,000-plus witness interview transcripts since April, but the select

> panel has resisted as its probe continued to generate extraordinary new evidence and witness testimony.
>
> Now, though, as DOJ delves even more deeply into the former president's inner circle and the select committee's most significant round of public hearings has concluded, there appears to be greater urgency for prosecutors to obtain evidence the select committee has gathered.
>
> * * *
>
> Thompson had previously floated the prospect of sharing evidence with DOJ "in camera" — which would require department investigators to visit the select committee offices and review transcripts without keeping them.
>
> But Thompson said Thursday that the new template is unlikely to include in-camera review because it created unworkable complexities. Instead, he said, DOJ would have to provide details about the information it's interested in and the select committee will supply it.
>
> He also expressed an awareness of some tricky calculus for DOJ once it begins obtaining select committee materials. ***Prosecutors are obligated by law to share evidence with Defendants that may bear on their cases, a process known as discovery.***
>
> ***"There's a concern — and I'm not a lawyer — if you give them something and there's something in there that impacts a case they're looking at, they have to let the other side know," Thompson noted.***

Kyle Cheney," Jan. 6 committee has a formal path to share investigative material with DOJ, its chair says, Politico Magazine, July 28, 2022, *(emphases added),* https://www.politico.com/news/2022/07/28/doj-jan-6-panel-evidence-sharing-00048457

In like fashion, several months after Donald Trump left office and Joe Biden was sworn in as President, the Secret Service destroyed text messages and other communications from events on or about January 6, 2021, while Joe Biden was President:

> The US Secret Service erased text messages from January 5 and 6, 2021, shortly after they were requested by oversight officials investigating the

> agency's response to the US Capitol riot, according to a letter given to the House select committee investigating the insurrection and first obtained by CNN.
>
> The letter, which was originally sent to the House and Senate Homeland Security Committees by the Department of Homeland Security Inspector General, says the messages were erased from the system as part of a device-replacement program after the watchdog asked the agency for records related to its electronic communications.
>
> "First, the Department notified us that many US Secret Service text messages from January 5 and 6, 2021, were erased as part of a device-replacement program. The USSS erased those text messages after OIG requested records of electronic communications from the USSS, as part of our evaluation of events at the Capitol on January 6," the letter from DHS IG Joseph Cuffari stated.

Jamie Gangel, Zachary Cohen and Ryan Nobles, "**Secret Service erased text messages from January 5 and 6, 2021 – after oversight officials asked for them, watchdog says**," CNN, July 15, 2022, https://www.cnn.com/2022/07/14/politics/secret-service-text-messages-erased/index.html

The explanation that while upgrading equipment, the Secret Service with the aid of the fabled White House Communications Agency and the computer sleuths at the Department of Homeland Security charged with defending the country against computer hacking and computer espionage failed to keep copies of the information on phones and personal devices during the upgrade defies belief. Of all the impossible tales we are asked to believe this may be the least credible. Amateurs know to create back-up copies of data before changing hardware.

IV. THIS PARDON IS NOT CONSTRAINED BY COURT RULES

Failing to recognize that spoilation of evidence calls for a punitive sanction to deter such abuses in the future, and is not merely a curative attempting to restore the *status quo ante*, courts have erroneously applied concepts such as "harmless error" or that the defendant must prove that the now-missing evidence would have been relevant to the defendant's defense and would have

been helpful to the defendant. This is not the law. Nor does it limit my responsibility or authority in using the pardon power to correct and deter injustices.

Quite obviously, it is an impossibility for a defendant to meet these challenges because the Government destroyed the evidence. We cannot now evaluate whether the missing evidence would have exonerated the defendant. That is why the law traditionally treats this with a punitive sanction, regardless of whether the defendant can prove relevance or impact.

It is presumed that the missing evidence would have helped the defendant (or opposing party in civil litigation) because otherwise the Government would have preserved the evidence and used it against the defendant. But this is a presumption as a sanction, not a requirement that the defendant prove it.

Furthermore, the law presumes this even in the absence of any proof of bad faith. The damage is done and more care is required in the future. So a standard of "empty head yet pure heart" does not undermine the sanctions for spoilation of evidence.

Furthermore, as President, I cannot overlook the misconduct of Federal employees under my supervision. Not only is the harm to defendants considerable but the misconduct involved is also highly significant. I must in good faith act accordingly. Prosecutions are not personal games by prosecutions racking up "kills" but a search for the truth under the law.

V. PARDON POWER PRESENTS LIMITED OPTIONS FOR SOLUTIONS

Should a President effect a complete pardon of a defendant accused, tried, convicted, and/or sentenced where the Government's spoilation of evidence may have effected only some of the counts in the prosecution or only some elements of the crimes charges?

Complicating this decision, a President has no power to order a new trial with only

constitutional evidence to be included, re-doing the trial by excluding objectionable evidence or arguments. A President has no power to amend the charges to precisely and painstakingly address only non-First Amendment actions or statements. A President has no power to order jury instructions which might limit the damage before a jury. A President has no power to force an appeals court to take up an appeal, nor can a President "poll" a jury to find out what they might have impermissibly considered in a verdict.

Therefore, generally, a President faces a "light switch" choice: To pardon or not to pardon. Just as it is not possible to remove salt from a cup of coffee once it has been accidentally dumped into the coffee, but the entire cup is ruined, so as the courts traditionally say it is not possible to "unring the bell" after any part of the evidence heard by the jury is affected. The jury's understanding of the facts and the case is necessarily compromised.

VI. APPLICATION FOR CATEGORICAL PARDON IN INDIVIDUAL CASE

To apply for this categorical pardon, an applicant is first encouraged to read my general memorandum explaining my pardons including contact information for the Pardon Attorney at the U.S. Department of Justice.

While I direct that an applicant does not need to show what the destroyed or misplaced evidence would have proven, especially since denying availability of the evidence is the point of destroying or "losing" it, the applicant does need to demonstrate factually that the Government had in its possession, custody, or control and then destroyed or negligently misplaced (mostly suspiciously) evidence, information, documents, or records, from its investigation generally into the subject matter of the prosecution. The applicant may resort to whatever standards of circumstantial evidence that the prosecution stoops to in prosecuting the applicant for this

purpose.

As an example of a sufficient showing, the U.S. Capitol Police recommended the recess and evacuation of the Joint Session of Congress on January 6, 2021, which started at 2:13 PM EST (according to then House Parliamentarian Thomas Wickham) with Speaker Nancy Pelosi handing the gavel to Rep. McGovern and leaving the chamber. This means that the USCP headquarters must have reached the decision to recommend a recess much earlier than 2:13 PM and must have been deliberating over that decision for as much as one more hours before arriving at that decision. However, many demonstrators arrived on Capitol Hill much later, after the decision had already been made. Defendants who arrived at around 3:00 PM to 4:00 PM but were charged with disrupting events at around 2:00 PM or earlier were prosecuted.

Furthermore, circumstantial evidence shows that the reason the USCP recommended a recess was the discovery of pipe bombs, and the possibility of more, at the RNC and DNC headquarters. If the documents blamed the demonstrators, we would be reading them displayed on CNN. The cover-up indicates that the content of those documents would prove that the demonstrators were not the cause of the Joint Session of Congress recessing.

Yet the USCP refuses to release the documents, emails, text messages, memos, radio communications of the leadership in headquarters evaluating and deciding whether or not to tell the Speaker and President of the Senate to recess. Furthermore, in court pleadings, the DOJ responds that this information ***might*** be found in summaries in after-action reports. In other words, the DOJ is being evasive even after the fact.

TAB 15

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning Defendants of Prosecutions of Collectivist Guilt, Guilt for Actions or Other People, or Guilt of Crowds

I. PARDON FOR COLLECTIVE PUNISHMENT

Without limiting other reasons I may find for a Pardon that could apply to the same individuals on other grounds, I hereby order under the Pardon power that all criminal convictions entered in any judicial district in the nation at any time since January 6, 2009, based upon the actions of a crowd or the guilt of others shall be and hereby are pardoned as further detailed below. An applicant to obtain such a pardon may follow the abbreviated procedure spelled out in my corresponding Memorandum giving general instructions although any form or procedure acceptable to the Pardon Attorney is not invalidated. If these fundamental abuses of the rule of law and American values do not stop I anticipate issuing further pardons.

Even if a "mob" nearby a defendant was engaged in violent and destructive behavior, that defendant cannot be prosecuted merely for associating with them. See *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107 (D.C. Cir. 1977); *Dellums v. Powell*, 566 F.2d 167 (D.C. Cir. 1977). This prohibition includes attempting to transfer evidence of intent from one person who manifests it to someone else who did not. Merely hearing someone express their intent cannot be used to assume that the listener agreed with the statement. The defendant who did not actually say those things might be thinking what a stupid comment that was, not agreeing at all.

"It is well-established that the determination of probable cause must be an individualized

matter." *Carr v. District of Columbia*, 565 F. Supp. 2d 94, 99 (D.C. Cir. 2009). See also *Barham v. Ramsey*, 434 F.3d 565, 573 (D.C. Cir. 2006). "Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another ...." *Ybarra v. Illinois*, 444 U.S. 85, 91, 100 (1979). "To demonstrate that plaintiffs' arrests were valid, therefore, the District must show that it had probable cause to arrest each individual . . ." *Carr*, 565 F. Supp. 2d at 99.

II. PARDON FOR CONVICTION ON EVIDENCE OF WHAT A CROWD DID OR JOINING A CROWD

The United States of America has entered into international agreements that "collective punishment" in a time of war as an intentional policy (not undesired collateral damage) can be a war crime. Lara Kajs, "**Collective Punishment is a War Crime**," The Genocide Report, January 15, 2024, accessible at: https://www.thegenocidereport.org/dispatches/collective-punishment-is-a-war-crime

It is inconsistent with the international policy of this nation and anti-American to convict anyone for the actions of a crowd. Most prosecutions concerning events of January 5-7, 2021, have been explicitly an appeal to juries to convict defendants for the actions of a crowd. Federal Judges have actually endorsed this idea, inventing a collectivist "raindrops theory" of group guilt. *U.S. v. Jesus D. Rivera*, U.S. Dist. Court for the District of Columbia, Case 1:21-cr-00060.

U.S. law does not impose any duty upon someone witnessing a crime (particularly on seeing that police are already on the scene), seeing property damage, hearing alarms, etc., especially on seeing that officers are already responding. It is not a crime to witness a crime.

Nothing can be inferred from a defendant being in the vicinity of others doing wrong or others saying things. Prosecutors have argued and the judges have refused to exclude that if

"someone" unknown yelled something in a crowd that must have been the purposes of the individual defendant who did not say those things personally. "A crowd" cannot have a motive, goal, intention, or plan. A crowd consists of individuals who all have minds of their own.

It offends the U.S. Constitution and its due process requirements to convict one person for the actions of a crowd. Moreover, this unacceptable and outrageous practice has not been limited to January 6, 2021, events, and the collectivization of guilt represents a clear and present danger to our nation's legal system.

I, therefore, hereby issue a pardon -- which may be claimed under the simplified application procedure specified in my companion Memorandum -- for any and all defendant convicted in whole or in part or arguably on evidence of the actions, intentions, or goals of a crowd rather than for the individual actions of the defendant. See, *The Dream Defenders, et al., v. Ron DeSantis*, 21-cv-191, ECF No. 137 (N.D. Fla. Sept. 9, 2021), (Mark E. Walker, Chief United States District Judge), Page 53 (injunction against anti-riot law in part because the legislation appeared to criminalize the defendant's protest activities even if he did not participate in the violent acts of others).

III. PARDON OF CONVICTIONS FOR THE ACTS OF OTHERS

I hereby issue a pardon -- which may be claimed under the simplified application procedure specified in my companion Memorandum -- for any and all defendant convicted or sentenced since January 6, 2009, in whole or in part or arguably on evidence of the actions, intentions, or goals of the actions or omissions of someone else. Joining a conspiracy requires strict proof beyond a reasonable doubt of joining in a criminal plan to pursue or implement illegal goals. However, conviction of a crime requires individualized competent proof beyond a reasonable doubt of every element of the alleged violation concerning the defendant individually.

IV. PARDON FOR CONVICTIONS OF UNSPOKEN CONSPIRACIES

I hereby issue a pardon -- which may be claimed under the simplified application procedure specified in my companion Memorandum -- for any and all defendant convicted or sentenced since January 6, 2009, in whole or in part or arguably on evidence of an unspoken conspiracy. The severe depredation of due process rights is justified, if at all, by the clear agreement of conspirators to jointly enter into an illegal agreement to pursue or implement a criminal goal. In the Oath Keepers trial, *United States v. Stewart Rhodes*, the prosecution argued that a conspiracy was formed by a knowing look between a couple of Oath Keepers at the top of the East, central stairs of the U.S. Capitol. This is not only factually insufficient but conceptually flawed. A knowing look is in the eye of the beholder and exceedingly ambiguous to the point of being meaningless.

V. PARDON FOR CONVICTIONS OF LAST-MINUTE CONSPIRACIES

I hereby issue a pardon -- which may be claimed under the simplified application procedure specified in my companion Memorandum -- for any and all defendant convicted or sentenced since January 6, 2009, in whole or in part or arguably on evidence of a last-minute or instant conspiracy. The justification for punishing one person for the actions of another under a conspiracy is that the co-conspirators are carrying out a criminal plan to implement or pursue a criminal goal. A last minute conspiracy violates the conceptual basis of punishing any conspiracy at all because it is not the joint pursuit or implementation of a criminal plan. To hold anyone accountable for the actions of another person based on a last-minute conspiracy violates the conceptual basis for a conspiracy allegation.

VI. PARDON FOR CONVICTIONS OF STACKED, OVERLAPPING CONSPIRACIES

I hereby issue a pardon -- which may be claimed under the simplified application procedure specified in my companion Memorandum -- for any and all defendant convicted or sentenced since January 6, 2009, in whole or in part or arguably in which the defendant is supposedly linked by several jumps through several different conspiracies. To punish a person for the crimes of someone else using a conspiracy theory the connection must be direct and in a single jump, and clearly show the agreement of the defendant to enter into a criminal joint plan. The idea that one person was in a conspiracy with another person who was in a different conspiracy with other people, etc., cannot make the first person liable for everything done by other people several steps removed through various different conspiracies. There is either one direct conspiracy in which a defendant is a conspirator or there are unrelated conspiracies of no consequence to one who is not proven to be a member.

VII. PARDON FOR ABUSES OF "AIDING AND ABETTING"LIABILITY

I hereby issue a pardon -- which may be claimed under the simplified application procedure specified in my companion Memorandum -- any and all defendant convicted or sentenced since January 6, 2009, for "aiding and abetting" where the prosecution did not clearly identify (1) *whom* the defendant allegedly aided and abetted. Of course, it may be that an identifiable, actual, real person can be described and proven such as with video recordings without being able to discover their name. But the current practice of convicting a defendant of aiding and abetting "someone" unknown and never identified does not comply with due process. (2) *what* the defendant actually did, exactly, to allegedly aid and abet anyone? Of course, simply expressing political opinions including opinions on the conduct of government officials or petitioning the government for redress of grievances cannot constitute aiding and abetting

since those are constitutional rights. Because of the First Amendment, celebrating what someone did (even if highly distasteful in the view of observers or rebuked by their mother), expressing an opinion that something should be done about a problem, or complaining about government actions are protected by the U.S. Constitution. Only a call (in person at the time) inciting imminent, immediate violence might be prosecuted under *Brandenburg v. Ohio.* The First Amendment gives the right to every citizen to complain about their government, like that or not.

VIII. LIMITED EXCEPTIONS FOR ESTABLISHED CONSPIRACY CONVICTIONS AND AIDING AND ABETTING

Traditionally in the laws of the United States, individuals can be charged with a criminal conspiracy under which any person who meets the precise and very limited definition of a conspirator becomes guilty of what anyone else in the conspiracy did.

That is, actions which a defendant did not do the law pretends that they did because they agreed to be part of the conspiracy.

Even where a co-conspirator did something unforeseeable, the law of conspiracy holds all co-conspirators responsible.

Clearly, where a defendant organized, directed, or led a group in committing a crime or crimes they would be guilty of their own actions in doing so and those he organized. The seriousness of their own crimes would consider the seriousness of the resulting crimes. And this would very likely satisfy the requirements of a criminal conspiracy.

Hiring someone to commit a crime is clearly punishable for the solicitor's personal actions and guilt in doing so, as if he had done the crime himself.

Yet without a defendant's clear, unambiguous, and unmistakable decision to join in a conspiracy it would be a violation of the due process clauses of the U.S. Constitution to punish one person for the acts of another.

The existence of a crime of criminal conspiracy is not in doubt. Widespread mis-use of the mechanism is unacceptable. So deleterious is it to punish one person for what someone else did that a President cannot tolerate abuses of the very limited conspiracy charge which must require climbing a very high mountain to employ.

This includes any role in sentencing decisions concerning what other people did.

So serious is the threat of – expressly and admittedly – punishing people for what they did not do that where the guilt of a crowd or the guilt of other people was used in sentencing a defendant I issue a full pardon of that defendant, not merely a commutation of the sentence, to make clear that such is never acceptable. I find that respect for the legal system, necessary to the preservation of a constitutional Republic, is severely threatened by punishing one person for what someone else did.

Unfortunately, it appears that all criminal prosecutions of all January 6 defendants violated these constitutional requirements. I find that a charge of a criminal conspiracy cannot be constitutionally sustained without precisely complying as proven beyond a reasonable doubt with every detail and element of a charge of conspiracy. Almost is not good enough. This is criminal law, not horseshoes.

IX. MY MEMORANDUM OF GENERAL INSTRUCTIONS INCORPORATED BY REFERENCE HEREIN

Attention is directed to my General Memorandum setting forth directions, details, and conditions applying to all of my pardons issued at this time. For example, as specified there my pardon includes a pardon of any charge of attempt, aiding and abetting, conspiracy to the extent founded on the pardoned charge rather than on some other grounds, and commutation of any sentence associated with the pardoned charge.

TAB 16

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Executive Order Implementing Pardon Power And Pardoning Defendants from Prosecution Based on False Statements

I. PARDON FOR CONVICTIONS PROCURED BY PROSECUTORS LYING TO THE JURY

I hereby issue a categorical pardon to any and all defendants with regard to any criminal prosecution in which prosecutors lied to the jury.

This is not merely a violation of the rights of the defendant but I am under the U.S. Constitution the ultimate boss of Federal prosecutors and the misconduct involved is important in addition to the miscarriage of justice to the defendant.

For example, repeated references are unacceptable with regard to prosecution for events of January 6, 2021, implying that police officers "were gassed" when the video recordings show that (likely through Congress failing to pay for and provide proper training and equipment kept up to date) the officers fired tear gas into the wind so that the gas blew back upon themselves, and they said so on the audio portion of the recordings. See https://open.ink/collections/j6 No police officers died on or relating to January 6, 2021. When any person – including January 6 defendants – commit suicide it is a human tragedy. But to state or imply that anyone knows why someone committed suicide many, many months later than January 6, 2021, is a lie. To state that the prosecutor or the Government witness knows what someone was thinking or why they did something is a lie. The Government does not have the ability to read minds.

II. PRESIDENTIAL DUTY TO TAKE CARE THE LAWS BE FAITHFULLY EXECUTED

Article II, Section 3 of the U.S. Constitution specifies some of the President's many duties: *[Emphasis added.]*

> *"He shall from time to time give to the Congress Information on the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers;* he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States."

The Constitution does not include an Attorney General, Department of Justice, prosecutors, or Federal Bureau of Investigation. Only the Chief Executive, the President. It has been correctly noted that no government, scarcely even a small town, could be run by a single person alone and that as a practical matter a President fulfills this duty by and through many institutions and officials at varying levels, including an Attorney General and the estimated 115,000 employees of the U.S. Department of Justice's more than 40 different sub-agencies from the Federal Bureau of Investigation to the U.S. Marshals to the Bureau of Prisons.

Obviously, where a President hires assistants to help the President carry out his duties, any and all government employees must comply with the Bill of Rights and other Constitutional rights for the protection of U.S. citizens and people present in the United States of America, including the limitations the Constitution imposes to restrain the U.S. Government and limit its authority.

III. PARDON NOT LIMITED BY COURT RULES OR PRECEDENTS

My issuance of this categorical pardon and the application to an individual case is not

constrained by court habits of declaring "no harm, no foul" or "harmless error" or jaundiced views. My duty to supervise the Federal personnel enforcing the laws is independent and unconstrained by the tendency of courts to always find an excuse for the Government's behavior.

In court, one might haggle over whether a false statement by a prosecutor before the jury was accidental or a mis-statement that was unintentional. However, Federal prosecutors should be hired, trained, proven in subordinate roles, and assigned to leading roles in court based on their training, education, expertise, and capabilities. Federal prosecutors should not be making inadvertent mistakes when addressing the jury. Usually more than one Assistant U.S. Attorney is in court together, with one or more paralegals, and an FBI "case agent" whose job is to know the entire case (though rarely from personal knowledge). Someone on the Federal prosecution team should have corrected any misstatement if only by a note passed to the speaking prosecutor. And supervising the quality of the Federal government has its own independent importance.

IV. PARDON POWER PRESENTS LIMITED OPTIONS FOR SOLUTIONS

Should a President effect a complete pardon of a defendant accused, tried, convicted, and/or sentenced where the Government's false statement to the jury may have effected only some of the counts in the prosecution or only some elements of the crimes charges?

Complicating this decision, a President has no power to order a new trial with only constitutional evidence to be included, re-doing the trial by excluding objectionable evidence or arguments. A President has no power to amend the charges to precisely and painstakingly address only non-First Amendment actions or statements. A President has no power to order jury instructions which might limit the damage before a jury. A President has no power to force an appeals court to take up an appeal, nor can a President "poll" a jury to find out what they might have impermissibly considered in a verdict.

Therefore, generally, a President faces a "light switch" choice: To pardon or not to pardon. Just as it is not possible to remove salt from a cup of coffee once it has been accidentally dumped into the coffee, but the entire cup is ruined, so as the courts traditionally say it is not possible to "unring the bell" after any part of the evidence heard by the jury is affected. The jury's understanding of the facts and the case is necessarily compromised.

V. APPLICATION TO APPLY FOR CATEGORICAL PARDON FOR INDIVIDUAL DEFENDANT

Those wishing to apply for the application of this categorical pardon to their particular case should first review my general Memorandum setting forth general instructions and directions including the contact information for the Pardon Attorney.

(1) An applicant should identify the false statement(s) made to the jury by the prosecutor. (2) Where it is clear that the prosecutor has called a witness for the prosecution to make false statements to the jury, the applicant may attempt to document and show that. (3) An applicant should identify how the prosecutor and/or witnesses called by the prosecutor knew or should have known with reasonable, minimal understanding of the subject matter that the statement(s) was/were false. (4) It is recommended that the applicant demonstrate that the prosecutor was warned by the defendant previous to the false statement(s) that the information is false. (5) It is recommended that the defendant demonstrate that the defendant asked for a correction to the prosecutor and/or to the judge and no correction was offered to the jury. (6) While the applicant does not need to prove that the false information dictated a result adverse to the applicant, the applicant must show that the false information was at least relevant to the issues in the prosecution, one of the counts being prosecuted, or one of the elements of one of the counts. (7) It is recommended that the applicant demonstrate how the false information could have

influenced the jury in its view of the defendant in general not only on one specific, narrow point.

If the Pardon Attorney determines that the evidence is convincing that the jury was exposed to knowingly false information or that not knowing that the information was false is at best a substantial failure of diligence and competence in the prosecution of the case he or she may determine that a false statement was made which could have improperly influenced the jury. The Prosecuting Attorney may determine whether the result would affect one or all or several counts of the prosecution.

TAB 17

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Executive Order Implementing Pardon Power And Pardoning Defendants of Defective Prosecution *United States v. Nordean* *Case No. 1:21-cr-00175-TJK* *U.S. District Court for the District of Columbia*

I. PARDON FOR ALL DEFENDANTS OF *United States v. Nordean* Case No. 1:21-cr-00175-TJK U.S. District Court for the District of Columbia DUE TO MISTRIAL OF JURY VERDICT

Without limiting other reasons I may find for a Pardon (including its variations) of the same individuals on other grounds, I determine that there was a mistrial of the case of *United States v. Nordean*.

Dozens of undercover government operatives were identified by the prosecutors as having infiltrated the Proud Boys or acting around them on the Capitol grounds on January 6, 2021, yet prosecutors only disclosed this in the most disruptive possible way. Judge Timothy Kelly directed plans for witnesses expected the next day and a couple of days ahead. But day after day prosecutors did not disclose that witnesses that the defendants planned to call in their defense were actually government operatives ("CHS's"). Only after court adjourned, after Judge Kelly had left the bench, too late for Judge Kelly to make changes to the next day's schedule, prosecutors asked defense counsel into the attorney's lounge. This made a mockery of the trial and was a profound disrespect to Judge Kelly. The late night disclosures each evening that the following day's defense witnesses were actually undercover government agents threw the following day's court schedule into chaos. This prejudiced the ability of the defendants to put on

a defense. This led long-term criminal defense attorney Carmen Hernandez to officially declare to Judge Kelly in open court "I am not a CHS." Repeated motions for a mistrial (new trial) were ignored without being seriously reviewed.

A spreadsheet provided to defense counsel as required under the Jencks Act before FBI Case Agent Nicole Miller testified was analyzed by the paralegal for defense attorney Nicholas Smith representing Ethan Nordean. The paralegal found that out of 80 messages showing, there were another 11,000 to 15,000 messages hidden in the spread sheet under the "filter" function. Smith began to cross-examine Agent Miller and the courtroom erupted, with Judge Kelly suppressing the evidence from the jury. The spreadsheet of hidden messages revealed that: (1) messages had been deleted and were missing in violation of *Brady v. Maryland*. (2) Agent Miller received a message from another agent saying "My boss ordered me to destroy 338 pieces of evidence." (3) Agent Miller responds "OMG INSANE." Agent Miller has a non-FBI police background so she has some context in her career to understand a boss ordering the destruction of 338 "pieces of evidence." (4) In another instance, Agent Miller was told to remove an FBI agent's name from a document summarizing who was present during a plea deal "proffer" meeting with a Defendant. Therefore, Agent Miller was told to falsify official records concerning a pending case. (5) Agent Miller commented that the emails between Rehl and "his Attorney MOSELEY" raised "interesting points." That is, she was looking at the actual litigation substance of the communications between Rehl and his lawyer. Agent Miller then comments "I will have to look for more emails." Indicating that this is an ongoing practice of reading attorney-client conversations.

Finally, after the verdict, a jury member Andre Mundell voluntarily sat down for an interview with VICE Magazine. Because the jury as a whole had just deliberated and convicted

the Proud Boys members in *United States v. Nordean* the juror Andre Mundell was describing the unanimous position of the entire jury.

VICE Magazine asked the juror, apparently a short time after the verdict:

> **What evidence convinced you that the Proud Boys had entered into a seditious conspiracy?**
>
> It was all the chatter. All the chats. Parler, Telegram…those telegram text messages back and forth. Not just the chats, but also the private texts. I think that was what it boiled down to. What they had to say prior to Jan. 6 and the fact that they wanted to do so much in secret. ***And that's why the government couldn't present too much of the evidence that they had already deleted, because it was unrecoverable. So, they didn't they definitely didn't want people to know. They didn't want everybody to know the plan, the Proud Boys, because then I guess it would have gotten out. And they didn't want it to get out.***

Todd Zwillich, "Inside the Proud Boys Jury: More than a dozen right-wing extremists have now been convicted of seditious conspiracy against the United States for their role in Jan. 6," VICE Magazine, May 5, 2023, accessible at: https://www.vice.com/en/article/epvxqw/enrique-tarrio-proud-boys-jury *(emphases added).*

In other words, the jury did not find that the charges were proven beyond a reasonable doubt. They found that the reason the jury could not find sufficient evidence to convict the Defendants there is because they speculated, imagined, and engaged in conjecture that the Proud Boys were tricky.

Nevertheless, the jury admitted that there was insufficient evidence to convict the Defendants, shifting the burden unconstitutionally to the Defendants.

VICE Magazine further asked the juror:

> **Donald Trump famously told the Proud Boys in September 2020 at the presidential debate, to stand back and stand by." That came out in evidence in the trial. How important was that?**

> It was part of it. You can't single out one thing but the debate kind of got the ball rolling ***that the Proud Boys need to be part of this.*** We need to wait for the President to set things up.

In fact, however, the transcript from that September 2020 debate makes clear that *it was Joe Biden who introduced the Proud Boys into the discussion*. See C-SPAN, September 29, 2020. Therefore, the prosecutors lied to the jury, the jury believed that lie, and based their verdict upon a known, clear, and undeniable lie. The idea that Donald Trump's mention of the Proud Boys – when it was Joe Biden who mentioned the Proud Boys – was a significant part of the jury's mistaken belief that the Proud Boys "need[ed] to be part of this." That is a clear deception by the U.S. Attorney's Office. Joe Biden mentioning the Proud Boys cannot suggest any role by the President Trump, who did not mention the Proud Boys except to satisfy Biden's question and demands in the debate.

Furthermore, the U.S. Attorney's Office violated the civil and constitutional rights of the defendants in other ways as well. The USAO flagrantly violated the constitutional due process obligations expressed under *Brady v. Maryland*, 373 U.S. 83 (1963). The Architect of the Capitol testified that the window broken by Dominic Pezzola cost only $750 to replace, which is under the $1,000 level for a felony. The findings and sentencing of terrorism of all of the defendants were based upon the breaking of the window being a felony of over $1,000. The DOJ and FBI withheld from the defendants the actual itemized costs in violation of *Brady*. The ability to correctly identify that there was no felony would have changed the characterization of the alleged crimes to a different, lesser category.

However, Judge Kelly then denied Pezzola's right to call an expert witness specially located, prepared, and ready to testify at significant expense to confirm that the damage was a misdemeanor level. So where the maintenance staff admitted that the window damage was a

misdemeanor, Judge Kelly refused to allow confirmation by Pezzola's witness. The jury then erroneously assigned a felony to all the Defendants when Judge Kelly and the prosecutors knew this was false.

Finally, although one could list many more defects, the prosecution invented a dangerous new fantasy concept dubbed the "tools theory" never heard of before. Prosecutors repeatedly seem more interested in being frustrated creative writers rather than lawyers. The "tools theory" used to convict the Proud Boys defendants argues that random bystanders can be part of a conspiracy *without knowing it* by being "tools" of the conspirators. Therefore, the principal defendants were held accountable for the actions of these "tools." This violates the already disturbingly loose standards for a conspiracy which requires participants to consent together on a common criminal purpose. By its nature, the unprecedented "tools theory" jettisons the requirement that members of a conspiracy agree together on a criminal plan.

II. MISTRIAL AND NEW TRIAL ENCOURAGED

I do not believe that as President I can use the Pardon power to direct the conduct of a trial or specify particular actions. Therefore, I do not believe I can declare a mistrial or order a new trial. I will, however, in this case, delay the effective date of the issuance of a pardon for 120 days from my signature on this order to allow prosecutors to vacate the existing convictions, such as in declaring a mistrial or the like, and issue a new trial. If a new trial has not been initiated within 120 days, or if the Defendants in this case are not released pending re-trial, then this Pardon shall go into effect. It should be understood that if the new trial includes the same legal defects or violations of law against the rights of the defendants as the first trial I am likely to issue a Pardon after such new trial.

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TAB 18

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Executive Order Implementing Pardon Power by Commutation of Sentencing in Violation of U.S. Sentencing Guidelines and Improper Sentencing Practices

I. CONSTITUTIONAL DUTY TO ENSURE EQUALITY AND NON-DISCRIMINATION IN FEDERAL CRIMINAL SENTENCING

As one of the purposes of the Act, the 1984 Sentencing Reform Act, 18 U.S. Code § 3553, requires that:

> **(a)FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE.—**The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—
>
> * * *
>
> **(6)** the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
>
> * * *

In order to implement the 1984 Sentencing Reform Act, the U.S. Sentencing Commission issued the U.S. Sentencing Guidelines, a massive manual of procedures and rules.

It has come to my attention that the U.S. Department of Justice is violating constitutional due process and constitutional rights as well as the 1984 Sentencing Reform Act and the U.S. Sentencing Guidelines by drastically inconsistent prosecution decisions and sentencing decisions in violation of the Guidelines.

II. COMMUTATION OF SENTENCING

I hereby issue a categorical commutation of sentences in the following scenarios. I do

not see a reason to limit the time period for this categorical commutation.

A. The U.S. Sentencing Guidelines require that where there is no category listed in the Guidelines for a particular misdemeanor the misdemeanor shall apply six base (6) points. However, instead, I am informed that one of the reasons why sentences for January 6 Defendants have been abnormally high and shocking to many in the public compared with Left-wing demonstrators, rioters, arsonists, looters, destroyers of public property, and assailants of police is that prosecutors and judges have been assigning 10 base points for the purposes of sentencing for misdemeanors involving the unconstitutionally vague and ambiguous concept of "disorderly" or "disruptive" conduct -- which surprisingly Congress never troubled to define – in a restricted area under 18 U.S.C. § 1752 or in a Capitol building under 40 U.S.C. § 5104. Some judges have found undefined "disorderly" or "disruptive" conduct from merely being present, standing peacefully and breathing, doing nothing at all. Yet, judges have analogized these for sentencing similar to misdemeanor assaulting a police officer at 10 points.

I hereby commute the sentence of any and all person convicted of "disorderly" or "disruptive" conduct in a § 1752 designated restricted area (grounds or building) or a § 5104 Capitol building to be calculated on the basis of only no more than 4 points. The Guidelines would specify 6 points but that is before a defendant has gone through an invalid procedure and incurred expenses and stigma and burden. Furthermore, I must balance the abuses and excesses of the prosecutors and courts against a fair sentence.

B. I hereby pardon outright any person convicted of "disorderly" or "disruptive" conduct in a § 1752 designated restricted area (grounds or building) or a § 5104 Capitol building where "disorderly" or "disruptive" conduct consisted of mere presence. Where the prosecutors and/or judge suggested in the trial that a person could be convicted of merely being present on Capitol Hill or in the U.S. Capitol even without the jury being persuaded they did anything beyond that, I find that the prosecution was defective and an abuse. This includes any objection, motions, discussions, or decisions prior to trial which would suggest to a reasonable criminal defense attorney that he or she would not be allowed to object before the jury or argue to the contrary to the jury.

C. 18 U.S.C. § 111 applies to interference with a law enforcement officer. Yet, I am informed that judges have been adding enhancements or variances to increase sentencing for an "official victim." However, the statute only involves an official victim. Therefore, any enhancement or variance for an "official victim" is redundant of the underlying statutory crime. I hereby commute the sentence of any person convicted of a violation of 18 U.S.C. § 111 to exclude any enhancement, upward variance, upward adjustment or other increases in sentencing for an "official victim" as being redundant and an abuse.

D. I am informed that prosecutors have argued for and judges have imposed enhancements, upward variances, upward adjustments or other increases in sentencing for obstruction of justice, perjury, or false testimony simply because a defendant chose to exercise his or her right to trial and to testify in

his or her own defense but was found guilty or was contradicted by other witnesses. I find that it is entirely irrational and unjust to assume that the jury – whose deliberations are supposedly in secret – found the testimony of the defendant to be untruthful, nor was able with sufficient detailed evidence to do so.

Indeed, juries are often admonished in jury instructions or otherwise by the judge to carefully weigh all of the witnesses and evidence. This and the trial process is incompatible with any idea that a defendant is automatically presumed to have committed perjury if the jury found him or her guilty after he or she testified.

I find that this attempt to "back door" a perjury charge without complying with any of the normal rules or procedures is unconstitutional under due process and a fundamental and inexcusable abuse. This practice is in effect a charge of perjury that was not brought by the grand jury indictment, with none of the rules and formalities of a criminal charge. The enhancement or upward variance does not comply with the standard of presuming a defendant innocent unless or until proven guilty beyond a reasonable doubt.

I hereby commute the sentence of any and all persons by deleting from their sentencing any enhancements, upward variances, upward adjustments or other increases in sentencing resulting from the defendant testifying in his own defense.

E. I see no rationale for limiting the time period of application of this commutation of sentences.

TAB 19

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning all Defendants Convicted of Any Legally Defective Conspiracy Relating to Events of January 6, 2021

I. PARDON FOR UNCONSTITUTIONAL WITHHOLDING OF EVIDENCE EXCULPATORY TO DEFENDANTS

I hereby issue a categorical pardon to any and all defendants charged, pending trial, or convicted (including by plea deal) of any conspiracy relating to or leading up to events occurring on or about January 5-7, 2021, occurring within the District of Columbia. This includes any act of conspiracy occurring anywhere within the United States of America but alleged to result in effects in Washington, D.C.

II. PROSECUTION VIOLATED CONSTITUTIONAL RIGHTS OF DEFENDANTS BY WITHHOLDING INFORMATION ABOUT THE NON-EXISTENCE OF ANY CONSPIRACY OR PLANNING

As only the latest example of severe and widespread violations of *Brady v. Maryland*, 373 U.S. 83 (1963), on December 12, 2024, the U.S. Department of Justice (DOJ) Inspector General Michael E. Horowitz – after spending nearly four (4) years on the topic of what the DOJ claimed was one of its largest and most important investigations – released an anemic and substandard 88 page puff piece presented as a report. "**A Review of the Federal Bureau of Investigation's Handling of Its Confidential Human Sources and Intelligence Collection Efforts in the Lead Up to the January 6, 2021 Electoral Certification**" https://oig.justice.gov/sites/default/files/reports/25-011_0.pdf Much of the 88 pages lack substance but present boilerplate context and descriptions of the OIG's own review rather than

what that review found.

Horowitz's slender brochure sparked widespread discussion about the word games employed. For example, in criminal trials of January 6 Defendants the prosecution teams were forced to admit that there were as many as 200 undercover operatives from DHS, HSI, the Metropolitan Police Department, U.S. Capitol Police, Secret Service and many believe operatives of the Central Intelligence Agency based on the similarities of actions with "color revolutions" like the Maidan coup in 2014. Yet Horowitz's report focuses only on the FBI alone. Furthermore, the language is ambiguous between the common description of full-time employees known as special agents with non-employees acting on the FBI's behalf. When Jeremy Brown was threatened to try to get him to become an informant, the recording on his "RING" doorbell system shows offices identifying themselves as being from "HSI" – not the FBI.

However, of greater concern, notably, Julie Kelly of America Greatness and Author of the Book "January 6" widely shared the reports of criminal defense attorneys that the attorneys **had legally requested** this information during criminal trials over the last three-and-a-half (3 ½) years. https://x.com/julie_kelly2/status/1867322232537592069 This information was denied to defendants who sought witnesses to prove their innocence. The FBI and DOJ prosecutors responded by asserting that it was not possible to provide defense attorneys with any information about undercover agents or operatives, informants, or confidential human sources because there is not a database or list or records of them. At the very least, defendants were told, there would be no recorded information linking any undercover agents/employees, informants, operatives, etc. to the events on or leading up to January 6, 2021, as only code names and not assignments would be recorded. One would have to talk to each "handler" individually.

But what we do know is that these informants did not know about any conspiracies or

plans to attack the U.S. Capitol or disrupt the counting of the Electoral College votes. The purpose of the informants planted by the FBI (counting only the FBI) conservative groups was to report information they learned back to their handlers.

However, conspicuous in these events is that the FBI's admitted 26 informants, probably far more, **had nothing to report** about any plans or conspiracies concerning January 6, 2021.

One of those Confidential Human Sources / informants was Greg McWhirter, Vice President of the Oath Keepers, as was revealed by the prosecution during the trial of *United States v. Stewart Rhodes*. The Oath Keepers V.P. had no information of any conspiracy.

In the Proud Boys trial *United States v. Ethan Nordean*, so many of the witnesses were revealed to be CHS's that liberal criminal defense attorney Carmen Hernandez, a well-known classic due process defense attorney, announced to Judge Thomas Kelly that she wanted everyone to know that she – Zachary Rehl's defense attorney – was not a Confidential Human Source. Defense attorneys describe the absurdity of prosecutors revealing that almost everyone involved was an FBI or DHS, etc., Confidential Human Source. Motions for a mistrial followed.

I refer to: Mark Hosenball and Sarah N. Lynch, "Exclusive: FBI finds scant evidence U.S. Capitol attack was coordinated - sources," Reuters, August 20, 2021, accessible at: https://www.reuters.com/world/us/exclusive-fbi-finds-scant-evidence-us-capitol-attack-was-coordinated-sources-2021-08-20/ . That is the results of the December 12, 2024, Horowitz puff piece was well-known three and a quarter (3 1/4) years ago:

> WASHINGTON, Aug 20 (Reuters) - The FBI has found scant evidence that the Jan. 6 attack, on the U.S. Capitol was the result of an organized plot to overturn the presidential election result, according to four current and former law enforcement officials.

Though federal officials have arrested more than 570 alleged participants, the FBI at this point believes the violence was not centrally coordinated by far-right groups or prominent supporters, of then-President Donald Trump, according to the sources, who have been either directly involved in or briefed regularly on the wide-ranging investigations.

"Ninety to ninety-five percent of these are one-off cases," said a former senior law enforcement official with knowledge of the investigation. "Then you have five percent, maybe, of these militia groups that were more closely organized. But there was no grand scheme with Roger Stone and Alex Jones and all of these people to storm the Capitol and take hostages."

Stone, a veteran Republican operative and self-described "dirty trickster", and Jones, founder of a conspiracy-driven radio show and webcast, are both allies of Trump and had been involved in pro-Trump events in Washington on Jan. 5, the day before the riot.

FBI investigators did find that cells of protesters, including followers of the far-right Oath Keepers and Proud Boys groups, had aimed to break into the Capitol. But they found no evidence that the groups had serious plans about what to do if they made it inside, the sources said.

* * *

Prosecutors have also not brought any charges alleging that any individual or group played a central role in organizing or leading the riot. Law-enforcement sources told Reuters no such charges appeared to be pending.

Conspiracy charges that have been filed allege that defendants discussed their plans in the weeks before the attack and worked together on the day itself. But prosecutors have not alleged that this activity was part of a broader plot.

> Some federal judges and legal experts have questioned whether the Justice Department is letting defendants off too lightly.
>
> Judge Beryl Howell in July asked prosecutors to explain why one defendant was allowed to plead to a misdemeanor charge carrying a maximum sentence of six months, rather than a more serious felony charge.

I further refer to: Alan Feuer and Zach Montague, **"In Proud Boys Jan. 6 Sedition Trial, F.B.I. Informants Abound,"** The New York Times, March 24, 2023, https://www.nytimes.com/2023/03/24/us/proud-boys-fbi-informants.html *(emphases added).*

* * *

> Instead, the lawyers have made a different point, arguing that ***the information the informants have provided to the government appears to be exculpatory and contradicts the central allegation in the case: that their clients went to Washington on Jan. 6 with a plan to storm the Capitol and disrupt the peaceful transfer of presidential power***.
>
> The defense, in fact, has upended the standard pattern and rather than attacking the informants has embraced them, issuing subpoenas to more than a half-dozen to appear as witnesses at the trial. But so far they have not managed to get any on the stand.
>
> On Tuesday, for example, Judge Timothy J. Kelly quashed a subpoena the defense had given to Kenneth Lizardo, a Massachusetts Proud Boy who had what the judge described as "a reporting relationship with the F.B.I." Judge Kelly ruled that Mr. Lizardo could avoid testifying at the trial because if he were called he planned to exercise his Fifth Amendment right against self-incrimination.
>
> His situation suggests the extent of the bureau's network of informants. On the day before the Capitol attack, Mr. Lizardo accompanied Mr. Tarrio (who was himself a former F.B.I. informant) to a meeting with Stewart Rhodes, the leader of the Oath Keepers militia, in an underground parking lot in Washington. At that time, Mr. Rhodes's chief

lieutenant in the Oath Keepers, Greg McWhirter, the group's vice president, was also working as an informant for the bureau.

While not much is known about the identities of the other informants in the Proud Boys, the bureau had placed secret sources in several chapters around the country, including in Cleveland and in Salt Lake City, according to a private log of internal F.B.I. messages obtained by The New York Times.

During the trial, defense lawyers have also mentioned an informant known only as Danny Mac, who once led a Proud Boys chapter in New Jersey. Matthew Walter, a former chapter president from Tennessee, told The Times last month that he had a relationship with the F.B.I. that lasted several months around the time of Jan. 6 and added that as many as 20 other members of the group did as well.

* * *

The constant and unexpected emergence of informants has unsettled the defense team. At the court hearing on Thursday, several defense lawyers complained to Judge Kelly that they had no idea if there were more informants hiding in the wings.

"There's more C.H.S.s than there are defendants in this case," Sabino Jauregui, one of Mr. Tarrio's lawyers said, using an abbreviation for confidential human source, the F.B.I. official term for an informant.

"I asked my intern the other day if she's a C.H.S.," he said.

* * *

And I refer to: Alan Feuer and Adam Goldman, ***"Among Those Who Marched Into the Capitol on Jan. 6: An F.B.I. Informant,"*** The New York Times, September 25, 2021, preserved, available at https://www.nytimes.com/2021/09/25/us/capitol-riot-fbiinformant.html. reported *(emphases added):*

> As scores of Proud Boys made their way, chanting and shouting, toward the Capitol on Jan. 6, one member of the far-right group was busy texting a real-time account of the march.

The recipient was his F.B.I. handler.

In the middle of an unfolding melee that shook a pillar of American democracy — the peaceful transfer of power — the bureau had an informant in the crowd, providing an inside glimpse of the action, according to confidential records obtained by The New York Times. In the informant's version of events, the Proud Boys, famous for their street fights, were largely following a pro-Trump mob consumed by a herd mentality ***rather than carrying out any type of preplanned attack.***

After meeting his fellow Proud Boys at the Washington Monument that morning, the informant described his path to the Capitol grounds where he saw barriers knocked down and Trump supporters streaming into the building, the records show. At one point, his handler appeared not to grasp that the building had been breached, the records show, and asked the informant to keep him in the loop — especially if there was any violence.

The use of informants always presents law enforcement officials with difficult judgments about the credibility and completeness of the information they provide. In this case, the records obtained by The Times do not directly address whether the informant was in a good position to know about plans developed for Jan. 6 by the leadership of the Proud Boys, why he was cooperating, whether he could have missed indications of a plot or whether he could have deliberately misled the government.

But the records, and information from two people familiar with the matter, suggest that federal law enforcement had a far greater visibility into the assault on the Capitol, even as it was taking place, than was previously known.

At the same time, the new information is likely to complicate the government's efforts to prove the high-

> ***profile conspiracy charges it has brought against several members of the Proud Boys.***
>
> On Jan. 6, and for months after, the records show, the informant, who was affiliated with a Midwest chapter of the Proud Boys, ***denied that the group intended to use violence that day. In lengthy interviews, the records say, he also denied that the extremist organization planned in advance to storm the Capitol.*** The informant's identity was not disclosed in the records.
>
> The records describing the informant's account of Jan. 6 — excerpts from his interviews and communications with the F.B.I. before, during and after the riot — ***dovetail with assertions made by defense lawyers who have argued that even though several Proud Boys broke into the Capitol, the group did not arrive in Washington with a preset plot to storm the building.***
>
> * * *

Page 6 of the December 12, 2024, OIG report agrees with the New York Times reporting of three years earlier, that the informants did not know about any plans or conspiracies:

> This information was no more specific than, and was consistent with, other sources of information that the FBI and its WFO had received about the potential for violence on January 6, including from other sources of tips the FBI received and from social media. Thus, although the WFO and Domestic Terrorism Operations Section at FBI Headquarters did not direct field offices to canvass their CHSs in advance of January 6, ***our review of documented CHS reporting in FBI field offices as of January 6 did not identify any potentially critical intelligence related to a possible attack on the Capitol on January 6 that had not been provided to law enforcement stakeholders prior to January 6.***

III. PROSECUTORS, FBI, DHS, AND OTHER AGENCIES VIOLATED THE SIXTH AMENDMENT TO THE U.S. CONSTITUTION

In our system of government, an accused defendant is presumed innocent – for all purposes at all times – until and unless proven guilty beyond a reasonable doubt (by valid and "competent" admissible evidence). The Sixth Amendment to the U.S. Constitution requires that:

> **Amendment VI**
>
> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; ***to have compulsory process for obtaining witnesses in his favor,*** and to have the assistance of counsel for his defense.

Here, for three and a half (3 ½) years, the DOJ has had actual knowledge that the many informants, plants, undercover agents, operatives, and confidential human sources that it cultivated and placed within conservative and patriot organizations did not report any conspiracies or plans to attack the U.S. Capitol or disrupt the counting of Electoral College ballots by a Joint Session of Congress on January 6, 2021.

The DOJ knew that some outspoken conservatives had belly-ached and traded trash talk about how unhappy they were that the 2020 election had been fraudulently stolen in dozens of different ways, most notably changing the rules in the middle of the game and news media misinformation. However, it is an American citizens' right to complain about his government.

Yet knowing this, the DOJ withheld this exonerating, exculpatory evidence from defendants' criminal defense attorneys. Defense attorneys might have called these informants to the witness stand (possibly with protection of their identity) to establish that the informants were tasked with reporting back to their FBI handlers but had nothing to report as to any plans or conspiracies by the defendant(s) on trial.

Thus, defendants were denied their constitutional right "**to have compulsory process for obtaining witnesses in his favor,"** including a violation of due process under *Brady v. Maryland.* Defendants were prevented from proving their innocence. Indeed, the failure to provide these witnesses should have meant that the government did not prove their guilt.

Defense attorneys did in fact request this information and were told that it would be impossible to find and identify the undercover informants because no central records are maintained of confidential human sources. I am not suggesting that is true, only that defendants made the request for these witnesses but were denied access to the information.

IV. CATEGORICAL PARDON AGAINST ALL CONSPIRACY CHARGES

For the foregoing reasons, although I am not required to state my reasons, I issue a pardon to any and all defendants charged, pending trial, or convicted (including by plea deal) of any conspiracy in relation to any events taking place or culminating in the District of Columbia on or leading up to protests, demonstrations, or other events of January 6, 2021. No further application or processing is required.

I find that the tainted criminal trial process cannot be salvaged. The salt cannot be removed from the coffee which it was spilled into; a little bit of food poisoning cannot be removed from the stew. Denying to defendants the chance to prove that they are not guilty cannot be remedied now. If I as President under the Pardon Power could order a new trial, I probably would. But that option is not available to the President.

Had the DOJ not concealed from defendants in violation of the due process clause of the U.S. Constitution recognized by *Brady v. Maryland* undercover informants whose assignment it was to learn of and report any plans or conspiracy – but had no knowledge of any such plans or conspiracies in reality – defendants could have proven conclusively that they did not engage in

any conspiracy relating to the events of January 6, 2021. A judge would have been forced to dismiss those charges on motion without allowing the question to go to the jury.

I further note that one of the main effects of a conspiracy is to treat one member of the conspiracy as guilty for acts he or she did not commit but were committed by another person instead. Prosecutors put defendants on trial for the actions of a crowd or others, of which there was little or no evidence that the defendant committed any of those actions. Therefore, defendants were convicted and punished for things that – admittedly – they did not do on the theory that they were part of a conspiracy. But the DOJ prevented them from proving that they were not part of a conspiracy and had no plans to do other than demonstrate.

Obviously, this pardon does not address those who whether they planned it or not did in fact brawl with police or commit violence themselves, personally. But they cannot be punished for the actions of other people.

V. MY MEMORANDUM OF GENERAL INSTRUCTIONS INCORPORATED BY REFERENCE HEREIN

Attention is directed to my General Memorandum setting forth directions, details, and conditions applying to all of my pardons issued at this time, including a pardon of any charge of attempt, aiding and abetting, conspiracy to the extent founded on the pardoned charge.

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TAB 20

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning Defendants from Pleading Guilty to What is Not a Crime

I. PARDON FOR CONDUCT THAT IS NOT A CRIME BUT PLED TO IN A PLEA DEAL

I hereby issue a categorical pardon to any and all defendants with regard to any individual count of a criminal prosecution (including attempt, aiding and abetting or conspiracy founded thereon) who pled guilty to an alleged criminal violation of a law although an appellant court or courts have fully and finally determined with regard to that defendant or any other that

A. The law in question is invalid or unconstitutional, on its face or as applied to the circumstances at issue, or

B. The conduct that the defendant is alleged to have committed including defenses does not constitute a violation of the cited law.

I find that it is not constitutionally possible for a person to plead guilty to something that is not a crime. Prosecutors cannot invent a crime by asking a defendant to plead guilty to conduct that does not actually violate any law. Likewise, defendants have no power to invent a crime by pleading guilty to something that is not actually a crime. The U.S. Constitution is explicit in Article I that all legislative powers are invested in the U.S. Congress Prosecutors pressuring a defendant to plead guilty cannot usurp the role of the Congress in criminalizing conduct or defining a crime. A defendant who is badly advised by ineffective assistance of counsel also cannot be guilty of something that is not a crime.

As a result, I issue a categorical pardon where an appellate court strikes down a law even though the time for bringing an appeal for a different defendant has expired or the appeal was (wrongly) decided. I issue such a categorical pardon without the technicalities of a defendant having to request any relief after a decision by the appellate court so that a defendant is automatically included and affected by the determination that the alleged crime is actually not a crime.

For example, 18 U.S.C. § 1752 has a statutory definition included defining what constitutes a "restricted building" or "restricted grounds." The U.S. Court of Appeals for the District of Columbia decided *United States v. Couy Griffin*, Record No. 22-2042, on October 22, 2024, argued December 4, 2023. *Griffin* analyzed in detail that § 1752 comes from the authority given to the U.S. Secret Service and emphasizes over and over that the statute was created to empower the U.S. Secret Service.

Therefore, only the Secret Service can declare a § 1752 restricted area. However, on January 6, 2021, the U.S. Secret Service did not declare a restricted building or ground under § 1752. A construction zone was declared by the U.S. Capitol Police Board on September 3, 2020, to run through February 28, 2021. Therefore, no § 1752 restricted area came into existence under the statutory definition of § 1752. No one on January 6, 2021, can be guilty of violating 18 U.S.C. § 1752 on or about Capitol Hill.

Regardless of that illustration, I hereby issue a pardon to any person who has pled guilty to conduct that under appellate decisions or later precedent cannot be a crime.

I do not see a reason to limit the time period for this categorical pardon.

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TAB 21

President of the United States Donald J. Trump

[Proposed Draft Suggested by Condemned USA]

Order Implementing Pardon Power And Pardoning Defendants Convicted of First Amendment Protected Speech and Activity Under the Freedom of Access to Clinic Entrances Act

I. PARDON FOR UNCONSTITUTIONAL CRIMINALIZATION OF RIGHTS UNDER THE FIRST AMENDMENT TO THE U.S. CONSTITUTION

I hereby issue a categorical pardon to any and all defendants charged, pending trial, or convicted (including by plea deal) on the basis in whole or in part of statements, expressions, or actions protected by the First Amendment to the U.S. Constitution, in relation to any asserted violation of the Freedom of Access to Clinic Entrances Act, codified at 18 U.S.C. 248.

I find that the FACE Act, 18 U.S.C. 248, is unconstitutional in the extreme, on its face, in every and any circumstance other than an act of actual violence against any person, property destruction, an act of attempted or simulated violence so severe and shocking as to place an average person in fear of imminent serious bodily harm, and by such intimidation to prevent them from exercising their rights, or physically blocking a person from entering or exiting an abortion clinic. I find that trivial or exaggerated claims of property destruction cannot qualify to over-ride the protections of the First Amendment. I find that inadvertent, accidental, or unintended and also harmless brushing or light touching is insufficient to over-ride the protections of the First Amendment. I find that touching an extension of a person such as something they are holding or their clothes is insufficient to over-ride the protections of the First Amendment.

I find that no reasonable person could imagine that the FACE Act passes constitutional muster except with regard to an act of violence, property destruction, simulated or near violence causing severe apprehension so as to interfere with the exercise of rights, or blocking a person's passage. I find that under no circumstances can words, singing, praying or the like be criminalized under the U.S. Constitution. I therefore pardon any person ever convicted at any time of speaking, standing quiet vigil, praying, singing, or the like near an abortion clinic.

Where a defendant is found guilty of making so much noise, including by any noise-making device or amplified sound, so as to disrupt a funeral or other gathering or medical facility, I do not support such disruption. This would include noise audible strongly and clearly inside an abortion clinic or other medical facility.

I do, however, commute any sentence to the average sentence imposed in that jurisdiction for similar noise complaints, including disruption of a funeral or religious service. I find no constitutional basis to discriminate on the basis of viewpoint to protect abortion clinics from excessive noise differently from any other activity, institution, or facility. Whatever the punishment is in that jurisdiction for noise violations so as to disrupt must apply equally.

Where a defendant is found guilty of physically blocking the passage of any person I do not issue a pardon for that particular conduct but I do commute any sentence to the average sentence imposed in that jurisdiction for blocking foot travel or road traffic or entrance into any building, facility, or institution. A viewpoint discriminatory distinction as to the political or other opinions at issue is unconstitutional. Punishment cannot be based upon the viewpoint or opinions expressed.

EXPLANATION IN THE HOPE OF STOPPING SEVERE DETERIORIATION OF OUR CONSTITUTIONAL REPUBLIC

No President has any responsibility under the Pardon power to explain his or her reasons or the basis or grounds for issuing a pardon. However, it is beneficial that I do so.

A President's use of the pardon power historically is not limited to any factual or legal error in the court system but includes a President's determination that the system as it is being applied, perhaps where mistakes have crept into court precedents and endorsed by precedents yet remain unconstitutional, unsound, or illogical, is abusive or improper. A President's use of the pardon power is not limited to my explanation for the public good of my reasons, although my analysis may be of some informative value to the Pardon Attorney in implementing my order.

As I interpret our nation's constitutional history, one of the primary reasons for the Presidential power of a pardon or commutation of sentence (clemency) is not so much to recognize a reformed and rehabilitated life (although this has been a common and traditional use of the power) but to cure and curb excesses and unjust results in the legal system, including poorly-written Congressional statutes, irrational interpretations by courts, prejudice and bias against certain persons or groups, or the like. I believe the latter purpose and effect is by far more important. I believe that exposing and highlighting problems to public scrutiny and encouraging reform is one important reason why a President may decide to issue a pardon. The goal that excesses and abuses not be repeated is as important as the effect on an individual person or group of persons being pardoned.

Although I am not required to explain, I feel that it is beneficial to improvement and reform of our political, government, and legal system that the reasons for my issuance of a pardon be available for officials, decision-makers, and the public to understand and consider.

Free speech; freedom of expression; the right to criticize and question the government, government officials, and the effectiveness of government, the right of political association and political activism, and to individually or collectively petition the government for redress of grievances are at the beating heart of America and in the national D.N.A. of the United States of America. Yet we have gone within a generation from the cry of "Question Authority!" to "Silence Dissent!"

II. "COUNTER SPEECH" DOCTRINE IS AT THE HEART OF AMERICA'S NATIONAL AND POLITICAL D.N.A., HEART AND SOUL: THE ONLY PERMISSIBLE ANSWER TO SPEECH IS MORE SPEECH

America was founded and exists on the "Counter Speech Doctrine." Justice Louis D. Brandeis established it in his classic concurring opinion in *Whitney v. California* (1927), when he wrote:

> "If there be time to expose through discussion, the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

It is anti-American and an affront to human rights to censor opinions or criticisms rather than to answer them with robust, reasoned, and effective debate. Justice Anthony Kennedy cited Justice Brandeis' famous principle in his plurality opinion in United States v. Alvarez (2012) and his dissenting opinion in *Williams-Yulee v. Florida Bar* (2015). In *Alvarez*, the Court struck down the constitutionality of the Stolen Valor Act, a law that broadly prohibited virtually any false speech about military honors.

> "The remedy for speech that is false is speech that is true."

Kennedy wrote.

> "This is the ordinary course in a free society. The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straight-out lie, the simple truth."

Id.

> Under the First Amendment, there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas").

Gertz v. Robert Welch, Inc., 418 U. S. 323, 418 U. S. 339-340 (1974) (concurring opinion / dissent).

III. *BRANDENBURG V. OHIO* CLARIFIES THAT IT IS UNCONSTITUTIONAL TO CRIMINALLY PROSECUTE A PERSON FOR THE EXERCISE OF FIRST AMENDMENT RIGHTS

It is unconstitutional to punish a person for his or her expressions of free speech guaranteed as rights under the First Amendment, except within the narrow and strict test *Brandenburg v. Ohio*, 395 U.S. 444, 448 (1969).

> [T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. * * * A statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments."

See also NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982) and *Hustler Magazine v. Falwell,* 485 U.S. 46 (1988) *(*"The fact that society may find speech offensive is not a sufficient reason for suppressing it" – Chief Justice William Rehnquist"), under 18 U.S.C. 241.

> If the line drawn by the decree between the permitted and prohibited activities of the NAACP, its members and lawyers is an ambiguous one, we will not presume that the statute curtails constitutionally protected activity as little as possible. For standards of permissible statutory vagueness are strict in the area of free expression. See *Smith* v. *California*, 361 U.S. 147, 151; *Winters* v. *New York*, 333 U.S. 507, 509-510, 517-518; *Herndon* v. *Lowry*, 301 U.S. 242; *Stromberg* v.

California, 283 U.S. 359; *United States* v. *C.I.O.*, 335 U.S. 106, 142 (Rutledge, J., concurring). *N.A.A.C.P*. at 432.

N.A.A.C.P. v. Button, 371 U.S. 415, 83 S. Ct. 328 (1963).

NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982) explains (emphasis added):

> The boycott of white merchants in Claiborne County, Miss., that gave rise to this litigation had such a character; ***it included elements of criminality and elements of majesty.***
>
> * * *

The Mississippi Supreme Court quoted from the trial court:

> In carrying out the agreement and design, certain of the defendants, acting for all others, engaged in acts of physical force and violence against the persons and property of certain customers and prospective customers. Intimidation, threats, social ostracism, vilification, and traduction were some of the devices used by the defendants to achieve the desired results.
>
> * * *

This U.S. Supreme Court decided that:

> * * * As we so recently acknowledged in Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley, 454 U. S. 290, 454 U. S. 294,
>
> > "the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process."

The Supreme Court concluded:

> The right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected.

IV. MY MEMORANDUM OF GENERAL INSTRUCTIONS INCORPORATED BY REFERENCE HEREIN

Attention is directed to my General Memorandum setting forth directions, details, and conditions applying to all of my pardons issued at this time, including a pardon of any charge of attempt, aiding and abetting, conspiracy to the extent founded on the pardoned charge.