

(Transcription of Brian Mock's handwritten Motion to Dismiss)

Case 1:21-cr-00444-JEB Document 35 Filed 11/22/21¹

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
UNITED STATES OF AMERICA
v.
BRIAN CHRISTOPHER MOCK, DEFENDANT
CASE NO. 1:21-cr-00444-JEB-1

DEFENDANT MOCK'S MOTION TO DISMISS ALL COUNTS OF INDICTMENT

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INTRODUCTION

1. I, Brian Christopher Mock, acting as Pro Se Defense Counsel, seek dismissal of all counts of indictment based on dereliction of duty, insubordination and excessive use of force by the United States Capitol Police and other law enforcement agencies at and around the Capitol building and grounds during the events of 1/6/21. Much has been stated about the protest on 1/6/21, characterizing the peaceful protestors as a "violent mob" that descended upon the Capitol, intent on violence and destruction, in an attempt to usurp democracy by stopping the certification process of the 2020 U.S. Presidential Election, due to a "blind loyalty" to President Donald Trump and a mistaken belief that the election consisted of rampant fraud, thereby resulting in a stolen election by Democrats on behalf of their puppet candidate Joe Biden. While it is true that most individuals present did reasonably believe that fraud took place during the 2020 Presidential Election due to overwhelming amounts of evidence, that, for a variety of reasons, courts at the state and federal levels refused to hear, that is where the similarities between the above listed false narrative ends and the truth about the partial points and events of 1/6/21 begins.³

Internal documents from the D.O.J., provided by the prosecution through discovery, entitled DOJCB-001-15 Capitol Police Reports of Investigation, clearly prove beyond a reasonable doubt, through police officers' own words, actions, recollections and thoughts, that based on a series of breakdowns in planning, preparedness, response, communication, action, negligence, insubordination, dereliction of duty and ultimately excessive force, that the USCP and other law enforcement agencies present were directly responsible for instigating, encouraging, perpetuating and actively directing the unnecessary violence that occurred on 1/6/21. While the defense contends that the responsibility for the violence on 1/6/21 rests upon the shoulders of the law enforcement present, mostly USCP command, effort should be made to uncover those in leadership positions also responsible for contributing to the conditions that helped create and escalate the violence, including but not limited to, Muriel Bowser, Nancy Pelosi and those in the Pentagon tasked with deployment of National Guard soldiers.⁴

While it is simple and quite frankly a lazy effort to lump all protesters in one group, law enforcement in another and characterize all actors on one side in a positive light and the other a negative light, the defense will not fall into the same trap as the prosecution has done to present this case through a filter of black and white. The defense instead offers, through eye witness testimony and countless videos, that the pure protesters, civilians on the Capitol grounds, can be classified into the following categories: Agitators, Violent Followers, Victims of Police Abuse who acquiesced, Victims of Police Abuse who responded in self-defense and Bystanders. Very few people there were at the Capitol engaged in direct conflict with law enforcement and almost all who did, did so in response to excessive police violence. There was an extremely low number of people who directly instigated violence against police or followed those who did so. Police had ample opportunity to identify and put a stop to those engaged in such activity. As will be evidenced, law enforcement failed to do so for a variety of reasons and instead created a situation where all peaceful protesters were targeted by police and subjected to excessive force, twice resulting in the deaths of unarmed women. The police themselves can be broken into four categories: Violent Instigators, Violent Followers, Peace Keepers (De-escalators) and Command, which by all accounts, did little to direct, provide communication or any sort of [support] to [officers] on the ground.⁵

What has become abundantly clear is that there was a complete breakdown in leadership and command decision making well before 1/6/21. It has come to light that Pelosi met with the Joint Chiefs of Staff and that ultimately the ability to deploy the National Guard, right that should rest with the Commander in Chief, was placed in the hands of the Pentagon. President Trump and others wanted the National Guard present, however, politicians including Pelosi, Bowser and others decided not to deploy the National Guard because of "optics." Political optics was deemed more important than public safety, law enforcement or the legislative body. The inadequacies in the ability of law enforcement to properly defend the Capitol was

well known by Pelosi and she was the first to evacuate, leaving her staff, constituents and the Vice President behind as she fled.⁶

The false narrative of the events of 1/6/21 has been repeated ad nauseum by politicians, media, law enforcement, FBI investigators, the D.O.J., and an army of prosecutors. The defense offers a true account, along with evidence from law enforcement present, as is the basis for this motion. Following hours of peaceful protesting at and around the Ellipse and Washington Monument, throughout the morning of 1/6/21, the crowd of approximately one million U.S. citizens and patriots, marched east down Pennsylvania Ave, at the urging of sitting President Donald Trump, to continue their protest at the U.S. Capitol, lending support to the lawmakers who publicly announced their intentions to object to the certification of the 2020 U.S. Presidential Election.⁷

FACTS/EVIDENCE

To adequately represent the entirety of the defendant's claim in this motion, several factors have to be investigated and facts brought to light, including but not limited to intelligence disseminated to law enforcement, mindset of officers, training (or lack thereof or adherence to), conflicting reports, poor and/or lack of communication, absence of command decisions, unpreparedness, differing responses to protestors based on location, insubordination, dereliction of duty and excessive use of force.⁸

The following pieces of evidence are all statements from officers present on 1/6/21 at the Capitol, either concerning alleged officer misconduct or in response to allegations of misconduct. Of note, prosecution provided this discovery titled "DOJCB_001 - US Capitol Police Reports of Investigation," indicating investigations numbered 21-002 through 21-050. However, not included in the discovery are investigations numbered 21-003, 21-007, 21-011, 21-017, 21-022, 21-024, 21-025, 21-027, 21-029, 21-030, 21-031, 21-032, 21-033, 21-034, 21-035, 21-036, 21-037, 21-038, 21-040, 21-041, 21-042, 21-043, 21-044, 21-045, 21-046, 21-047, 21-048 or 21-049. Defense is left to ponder what further evidence of police misconduct exists within these missing reports, why they weren't included in discovery and if, in fact there are no reports after number 21-050.⁹

The following excerpt, from a written statement, by an officer, whose name has been redacted, exposes initial intelligence, state of mind, conflicting reports, unpreparedness and poor command decisions:

"I was originally drafted for CDU (Civil Disturbance Unit) at 1000 hours on January 06, 2021. I then swap my starting time with another officer whose starting time was at 0600 hours... Few minutes after our roll call, my squad was directed to help the

East Front security posture at the Capitol Division. As I was crossing the street at traffic... a radio broadcast was sent out to all outside unit 'Attention, all unit on the field we are not looking for any "Pro-Trump" in the crowd we are only looking for any "Anti-Pro-Trump" who wants to start a fight.' At that point, I started thinking about the initial intelligence that was disseminated the entire crowd was a threat based on the intelligence, the Pro-Trump are the threat because they were coming to stop the count. Now, I convinced myself that perhaps the mission has changed. The CDU that was scheduled at 1000 hours was initially supposed to be part of our rotation. However, they were sent to patrol garages around the House Division. At that point I was convinced that the mission has changed and the threat was not a high level threat because of the radio call and the decision that were made to send the other group to patrol garages."¹⁰

"I was at the East-Front with officers, a small group (perhaps prior or still in the military) approached one officer and ask him if he wants to talk because what is happening at the Lower West Front Terrace will happen at the East Front as well and nothing will stop that. I automatically realized that there is a disconnect or a miscommunication about the event that is occurring today. I was alert at that point. My action during the chaos were to protect the man next to me. I was not leaving anyone behind. However, I also want my family to get their answers if [anything] ever happened to me." (OPR 21-039, CAPD-000000814 - CAPD-000000815) ¹¹

The gravity, importance and implications of what this statement reveals cannot be overstated. This proves that as early as 0600 AM and perhaps sooner, all Trump supporters were viewed as a "threat" by law enforcement and that they were there to stop the count. The defendant was not and never has been a threat and never had any intentions or delusions that he, or anyone, other than duly elected officials or the courts could do anything to affect the certification of the election. Everyone the defendant interacted with on 1/6/21 understood this and felt the same way. The defense finds it unbelievably coincidental that the false narrative used in this prosecution, supposedly developed after the events of 1/6/21, was disseminated to law enforcement at 6:00 AM some 3-4 hours before any protestors arrived at the Capitol.¹²

It also disproves the false narrative Nancy Pelosi and House Democrats used to try to impeach President Trump, claiming his speech incited violence on 1/6/21. The attempted impeachment was a political witch hunt and the subsequent prosecution of protestors present on 1/6/21 is just a continuation of that same witch hunt.¹³

Tracing back to the officer's statement, we see a shift in what he describes as a "mission",

when command releases a radio call concerning Pro-Trump vs Anti-Trump. It is clear there is some sort of intelligence that command received that prompted this call and the officer specifically notes this point. Inexplicably, this call doesn't ever go out again and is not in any briefings to officers who arrive for shifts at 10:00, 12:00 or 2:00. The defendant and his companions witnessed dozens of people throughout the course of the day who they, and others, identified as Antifa and law enforcement in plain clothes. Recent reports have indicated that hundreds of FBI, DHS and other agents embedded in the crowd and similar reports reveal the same is true regarding Antifa members. A recent article from the NY Times has uncovered evidence that the FBI had many informants present, embedded within right wing groups and even revealed text messages directing these informants to instigate violence because the peaceful protesters wouldn't do it themselves.¹⁴

It is fair to deduce that based on this law enforcement intelligence that indeed people associated with extremist Alt-Left groups and ideologies were in fact in the crowd and were involved in instigating, perpetuating violence that day. It is of note that the only person arrested in the Capitol, carrying a handgun with a high capacity magazine was a man who identified with these Alt-Left ideologies.¹⁵

We must not forget to consider mindset. The officer states specifically that the intelligence disseminated at the roll call indicated the mission was to be on the lookout for "any Pro-Trump," making the "entire crowd" a threat hours before a single peaceful protester had come anywhere near the Capitol grounds. Law enforcement, who is supposed to serve and protect was using military terms like intelligence, mission and threat when describing lawfully assembled U.S. citizens engaged in their Constitutionally protected rights of free speech and assembly. This is particularly important because, as the defense will show, this precise mindset is present in CDU officers who engaged in violence on the west side of the Capitol. This bias mindset towards Trump supporters by law enforcement is a key factor in the violent use of excessive force they chose to inflict upon innocent victims, including the defendant and his companions.¹⁶

The officer proceeds to describe how CDU were taken off the grounds and sent to patrol garages. This begs the question and warrants further investigation to uncover who made this decision and was it done deliberately to leave the Capitol vulnerable? The officer states that because of these actions by command, he was led to believe there was not a high level threat. He goes on to describe a "disconnect or miscommunication about the event occurring," when a group of protestors came to talk. The media, politicians and the prosecution insist on describing all protestors as a "violent mob" yet here, we see just one of many examples that contradicts this false narrative. As violence is occurring, this group is attempting to talk to law enforcement in an attempt to avoid violence, the officer responds in kind and then, as will be

evidenced, he is written up for misconduct in his attempt to maintain peace.¹⁷

The officer goes on to describe his experience after a line breach:

"Successfully identified an Alpha Male (what made him an alpha?) ... he said he came with a group ... he said we cannot do anything to stop them breach ... he said it is going to happen today... he said they were done talking it is time to act ... I then tried to find a connection with the gentleman because if I can't break him then I can't control the crowd. I can either waist my energy to yell or talk to the alpha male to get his crowd in control.

I tried to be efficient and effective at the same time because my guys on my side were not getting back to the line, because they got spray and don't have enough water to decon... I asked the guy if he was a prior service, he said yes and I said as a brother to a brother, same oath to protect and defend the constitution, military to military, I am asking you to help me calm your people down. Just your people promise me this is not a fair fight. In return I will take a picture with you. I will not [tell] to get back, however you guys will not push my team. Stay here and scream and make noise that's all. I successfully managed to get what I wanted." (OPR 21-039, CAPD-000000815) 18

It is clear that when this officer used his training and words that he could de-escalate a situation, even following a breach. This scenario plays out time and again throughout the Capitol and demonstrates precisely what the defense claims in this motion, that protestors and law enforcement alike, fall into several different categories based on their actions and reactions and should not be viewed through a narrow scope of two opposing homogenous forces, each with their own stated agenda intent and objective. There are countless examples of law enforcement peacefully interacting with protestors, taking pictures, giving fist bumps and allowing people to walk freely and orderly through the Capitol. This is in stark contrast to the violence perpetrated elsewhere by law enforcement and again contradicts the false narrative characterizing protestors as a "violent mob."¹⁹

It should also be noted that a vast majority of these investigations into police misconduct were concerned with [officers] peacefully interacting with the crowd. If officers did not assault protestors, their actions were called into question. They were met with suspicion and forced, under oath, to pledge no loyalty to Donald Trump or association with any organization that supported Trump. The same thing played out in the military following 1/6/21, with the administration attempting to root out and ostracize anyone not blindly loyal to the Democrats. These motions, investigations and this very prosecution harken more to Nazi Germany, Stalin Russia and modern day North Korea than that of the supposedly free, democratic republic we claim to be to the rest of the free world. Only one report in these 800 plus pages concerns excessive use of force when an officer, on video, who was unprovoked, clearly punches a

protestor. This was dismissed out of hand with absolutely no investigation. Defense was not provided with a single report alleging police brutality or excessive use of force that was actually investigated, even though both were rampant that day and thousands of complaints were made about it. This begs the question, did the DOJ not investigate these crimes or have these reports just been buried because the shocking truth proves the false narrative, propagated by politicians, media and prosecution, is indeed a lie and just an excuse for this political witch hunt? ²⁰²⁰²⁰²⁰

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It has come to light that US Capitol Police beat a pregnant woman to death and then tried to cover it up by claiming she was trampled. If law enforcement, the DOJ, politicians, media, etc. would cover up a murder, it comes as no surprise to the defense that these same people refuse to acknowledge massive police misconduct and continue to attempt to cover up the truth. The officer goes on to state,

"A FBI agent spent most of his time to ask me who sprayed you? Do you recall what he looks like or what he's wearing? I was upset because none of his questions that day was did you see anything in the crowd that needed immediate attention? After his interview I then sat down and told him about the entire event..." ²¹²¹

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This officer is upset because all the FBI cared about was finding someone, anyone, to charge with a crime. They didn't even want to hear the officer's testimony about the events, just something to identify someone they decided was guilty of a crime without so much as the alleged victim's account of the events. The defendant in this case (Mock) sits accused of an alleged assault against a police officer and investigators, after nine months, haven't identified this supposed officer. How can investigators claim they have performed a thorough investigation and prosecutors bring felony charges when they can't even produce a police victim? The FBI in this case never would have listened to the officer's story if he hadn't insisted on the agent doing so. These investigations are a sham and all the charges brought upon the defendant are based on lies and fraud. ²²²²²²²²

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Further evidence of this unjust criticism and subsequent witch hunt is apparent from an officer who was stationed inside the Capitol. Again names have been redacted. He was at the Senate Wing door when it was breached and was helping direct people out of the building.

"Stated there was a gentleman, seeming to act like a liaison between U.S. Capitol Police and the Trump group, who was having a conversation with Lieutenant [redacted]. Stated no officials on scene were directing the officers to 'shove them

out' and that they seemed to be 'allowing this'. Testified he wasn't there to agitate the situation and he believed yelling at people would have 'drummed it up'. Recalled there were enough officers standing there in the lobby and the mood became calmer. Stated he believed he established a dialogue with one of the groups and [agreed] to be photographed. Stated he believed he was diffusing the situation by taking a photo. Stated, 'I can't help what they do. If you want to take a photo, I'm not going to say no because we are always told to interact and keep the situation calm.' Stated some people were agitators and others were just nosey, but there were many people there that were military and law enforcement. Stated he had taken several pictures ('4 to 5 at the most') with other group members, some of which were retired law enforcement. Stated he is not a member of any pro Trump groups or organizations. Was asked how did he believe he was diffusing the situation by taking photos as the crowd exited the building. Stated to be honest I don't know if they were leaving or coming in at the time. If they were exiting, maybe the photo was taken not to excite the people as far as them coming or going. At taking the picture, I wasn't concentrating on that. All I know was the situation was calm at that point." (OPR 21-002, [citation])²³

This speaks to two completely conflicting mindsets of officers on the ground and proves that when law enforcement did not start or escalate violence, protestors behaved in a civilized manner. It also illustrates, in the officer's own words, the point the defense has been making, the protestors could be split into different categories, when he stated, "some people were agitators and others were just nosey." He speaks of de-escalating the situation, establishing a dialogue and notes that officers are trained to keep the situation calm. He succeeds in doing precisely that, even when confronted with those he classifies as "agitators."²⁴

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This comes in stark contrast to the mindset and [actions] of the officers on the West side of the building who were admittedly looking for a fight and testimony [shows] they repeatedly attacked first and escalated the situation. As this officer states, they are trained to keep the situation calm and yet, he is chastised and formally investigated for following his training. His loyalty is called into question and he is forced to denounce any support for Donald Trump, an action Stalin and Hitler would applaud and take credit for inspiring. Had this officer answered in the affirmative, having supported Trump or had an association with any Pro-Trump organization, he would have been fired, chastised in the media, denounced as a traitor and terrorist by politicians, arrested, deprived of due process, had his civil rights trampled upon, been unlawfully detained and been placed in a prison cell in Washington D.C. This would on the surface, seem like an outlandish claim, if it weren't exactly what has happened to the defendant and dozens of other innocent U.S. citizens who languish in prison cells beside him. This officer made one critical mistake. He followed his training and failed to attack and abuse

non-violent U.S. citizens. If he had done so, he would be applauded as a hero, free from any scrutiny by the DOJ.²⁵²⁵²⁵²⁵

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The question becomes then, if officers on the East side and inside the Capitol could speak, joke and take selfies with peaceful protestors and even those they describe as "agitators," how and why did the events on the West side of the Capitol, where the defendant and his companions became trapped, devolve into violence and a riot? The answers can be found in the officers' own statements about the intelligence disseminated to them, communication (or lack thereof), leadership (or lack thereof), mindset, insubordination, and violent actions they took against unarmed citizens. The following excerpts are shocking and chilling testament that reveals a quite different mindset and subsequent actions by officers located on the West side of the Capitol. These come from (OPR 21-006A, CAPD 000000062 - CAPD 000000069) where officers are questioned about their actions at an upper west terrace door.²⁶

"Ah man, this is brutal. This is tough. I want to say something since this is on record. You know mindset is key to a lot of what was going on at that door. I was resolved in my mind that a second escalation of force at that point-the only outcome at that point was deadly force. Overwhelmed by an adversary of significant numbers and of size and us, with limited options to repel them after already trying to fight and after having already tried to go to physical force to do so. I had checked off and resolved in my mind that deadly force was going to be the only way to do it and the only way we were going to get there was if we initiated that force on the front end. Trust me I wanted to fight. I thought that was going to be the fight of my life... The only way we could have prevented those people from coming in that door was killing 'em."

"A physical confrontation occurred where we began pushing and hitting the leading edge of the crowd in an attempt to expel them from the building. There was an [elderly] lady in the front of the group carrying a protest sign that began to scream in pain as she was crushed between us... I believe mindset is also key in the actions I took at the upper west terrace door. I was prepared to fight... resolved that had a second confrontation to expel this group occurred, that the end result would have been lethal force. What pulled me back, it caused me to break the cycle of thought of preparing to fight where I then transitioned in my mind to do what was necessary to preserve life."

"An attempt to go hands on with the protestors would have yielded injury to officers and no achievable objective... Rear of crowd began pushing, causing front of group to advance on the line. Another decision was made to fall back. With no safe and

achievable objectives, the goal was to find a larger contingent of officers and push the crowd outside the building."

"I mean personally, I wanted to hold the line there. I wanted to fight them..."

"Do you believe there was a failure to take appropriate police action? Personally, yes, I do but seeing it from an official's standpoint that was there, I understand the decision... who knows whether we would have gotten hurt or worse if we tried to stop them there. But I personally was frustrated that at least we didn't try."²⁷²⁷²⁷²⁷

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"...Using deadly force... what are your thoughts on that at that time... was that an option? I mean, yes. It's obviously in our heads. In this situation where it was just people with flagpoles, sticks and such, based on [what] I had already seen feel like it would have just made things worse."

"I mean at this point, they're not really fighting us. So it's-you have to take into consideration here, if they're not fighting, there are some in there that are fighting you. We have no tactical advantage... if you look at use of force, I mean you're a sergeant, use of force, what would you do there? Because there's nothing that you can do. You can't use lethal force, look at how many there are nor do you have justification for doing it. What happens when you hit slide lock-they're gonna take the gun from you. You can't use OC, you can't use batons here, where's that going to get you... this is a result of the Department's failures on so many levels."²⁸²⁸

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When asked if there was a failure to take appropriate police action during this incident at the UWT door, [redacted] stated, "No" Stated that he has never been trained in a scenario like he faced during the incident. Similar quotes and incidents appear in other documents.

"Was there a failure to take appropriate police action by yourself during the incident at the line door? I guess you can say there is, I'm not sure I know what appropriate action is... I mean, I'm willing to go to any training to tactically learn what to do here but I don't think that there was clear action." (OPR 21-006B, CAPD_000000152)

"So right there specifically-was there a plan, what was the plan? I don't think there was a plan the entire day. I think-truthfully speaking, from even the short observations from things I tried to figure out, none of them seemed to work out. I don't think there was a plan." (OPR 21-006B, CAPD_000000150)²⁹²⁹²⁹²⁹

Another officer speaks of being in a construction site,

"I used verbal communication and empty hand control techniques to force them to stop which yielded in negative results. To deescalate the situation, so I drew my baton, a large number of protestors were able to break through the doors causing me to holster my baton and withdrawing my firearm... the situation was defused and the protesters left. I holstered my weapon.

When I was in the construction site, there were a group of individuals that broke into one of the doors and made their way inside. I demanded that they had to leave and that they were not allowed inside. They did not seem to be harmful nor did I feel like my life was at risk, but I was being very cautious of everyone in front of me while taking control of the scene. I was able to get a few of them to leave, there were a few individuals that refused to leave because they just wanted to be heard. At the time I felt the best way not to escalate the situation and keep it under control was by the actions I took. I allowed a few of them speak as they made their way to the exit. They stated that they were peaceful and supported us, in which I told them that they were not allowed inside the Capitol or grounds. They offered to help the first responding officer (FRO) and I by creating a circle around us to bring us back with the other officers. I told them that it is not safe for neither of us and that we need for them to leave. A couple of them leaned in for a hug and/or fist bump in which I gave in order to prevent any escalation. They immediately left and closed the door that they broke into... I was not supporting or standing with them in any way." (OPR 21-04[?], CAPD-000000751 - CAPD-000000752) 30

The defense could write a novel based on these select quotes alone, of which there are many more, but trusts the Court will be able to more thoroughly dissect each individual statement for their meaning and implications. As such, the defense offers a synopsis of the key points for the Courts consideration. First, an officer quite literally places full blame on law enforcement, accepting guilt for the actions of 1/6/21, stating, "This is a result of the Department's failures on so many levels." This statement alone is cause to bring a motion for dismissal.³¹

What is most abundantly evident is the clear difference in mindset between officers on the West side of the Capitol versus what has been evidenced on the East side and within the Capitol. These officers, by their own admission, are looking for a fight, instigating violence by pushing and hitting protesters, crushing elderly women. Multiple officers admit to considering murdering protestors and one even admits to pulling his gun. Yet the DOJ is more concerned when minutes later, he takes a picture with a protestor, per his training, and as we see time and again, denounces Trump, the real goal of these investigations.³²

Multiple officers admit to a failure in police action, indicating a lack of planning and/or training. While some officers are quite literally split seconds from dispensing death, others state lethal action wasn't even a consideration and even use of OC spray or a baton were not warranted. Yet the defendant endured hours of constant police attacks with teargas, explosives, projectiles, OC spray and batons. Conversely, we find repeated examples of officers simply talking to protestors, after the officer resorts to violence and realizing the protestors are peaceful and supportive of law enforcement. The defendant himself was wearing a "Blue Lives Matter" face mask, displaying his support of law enforcement.³³

All of the claims raised by the defense in this motion are born out in these pages of quotes. All protestors present were viewed as a threat and the innocent were attacked repeatedly, for hours on end by officers who were, by their own admission, just looking for a fight, in complete disregard to public safety or human life. Authorities and the prosecution can rationalize and characterize the events of 1/6/21 any way they choose, but at the end of the day law enforcement killed two unarmed women that day and by their own admission, they are responsible.³⁴

As shocking and disturbing as the previous quotes are, the most damning evidence of police misconduct follows and displays how the breakdown led directly to the violence that occurred on 1/6/21. The excerpt below is a report from an officer describing "Misconduct by Senate Division 3 Lieutenants, as well as unacceptable lapses by other USCP officials during the events of 01-06-21."³⁵

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SD 3 Lt [Redacted]

"Lt [redacted] was commander of Senate Division CDU Units assigned to the area of Constitution Ave / New Jersey Ave NW. CDU officers assigned to this area immediately recognized the threat to the US Capitol and immediately responded to the Lower West Terrace with great risk to their personal safety.

Officers assigned to Lt [redacted] command heard over the radio that the west front show force was breached. Lt [redacted] had multiple CDU squads in her area. One of the squads responded to the west front immediately. The remaining approximately 25 officers were ordered by Lt. [redacted] to line up along the already broken fence line along Constitution Ave. Lt. [redacted] scolded these officers for bunching up. Officers pleaded with Lt [redacted] to allow them to respond to the west front. All of these officers had been issued CDU helmets and were within sight of the west front.

Officers describe Lt [redacted] as unable to make a decision and frantically making phone calls. After a few minutes the officers on the line made a plan and then told

Lt. [redacted] they were going to find their sergeant, and responded to the Capitol via Del Ave Door R308. The actions of Lt [redacted] after the officers left is unknown." 36363636+1

SD 3 Lt [Redacted]

"Lt [redacted] was commander of Senate Division CDU units assigned to the area of Constitution Ave / New Jersey Ave NW [and had] a clear view of the hundreds of individuals who were gathered in the 200 block of Constitution Ave NW.

Officers told Lt. [redacted] that the situation was dire and that they were going to respond to the Capitol through the Delaware Door of the Russell SO3. [Redacted] told the officers "Okay" but that he was going to retrieve his CDU helmet and PR-24 baton. The location of those items was unknown to the officers, and the officers responded to the Capitol without Lt. [redacted]. The actions of Lt. [redacted] after this time is unknown. It is the opinion of [redacted] shift that in stressful situations Lt. [redacted] cannot make leadership decisions and will disappear." 37

Events on the West Front 01-06-21

"A crowd of about 200 protestors approached Peace Circle from the 200 block Constitution Ave NW. No radio calls or advisement from USCP watch command was heard on the radio. This group violently breached a police line at the NW walkway of the West front.

[I] listened to the Lower West Terrace about a minute after the walkway police line was breached it was immediately apparent that the crowd is going to attempt to violently breach the U.S. [Capitol]. Casual officials could be heard discussing our lines being actively overrun. Individuals in the crowd approached me on the police line and told me that unless USCP command communicated to the crowd the severity of the situation, violent actors were coordinating efforts to breach the police lines. I relayed this message to [redacted] who was attempting to hold the line with officers on the west front.

It seemed at the time that no one was able to make a decision about the next steps and coordinate a response to the realities on the ground. I do not recall any coordination of units but rather units fighting side by side to hold ground beneath them." (OPR 21-023 A-C, CAPD_000000757 - CAPD_000000758) 38

"In conclusion, I do not take pleasure in pointing out the deficiencies of USCP employees during the unprecedented attack of [01-06-21]. In writing this report, I am attempting to represent the views of Senate Division officers who willfully and selflessly conducted operations vital to restoring law and order to the Capitol complex without leadership from USCP Lieutenants and above. During the siege and since, it has become abundantly clear that some USCP officials are unwilling, unprepared or unable to lead USCP officers. The officers that I observed were repeatedly making critical decisions in real time without any coordination, direction or leadership from supervisors such as Lt [redacted] and Lt [redacted] who remain Senate Division and CDU commanders. While some Senate Division officials have proven themselves in the most difficult circumstances, unfortunately others have

[displayed] unacceptable conduct as supervisors and leaders." (OPR 21-023 A-C, CAPD-000000759) ³⁹³⁹³⁹³⁹

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The following excerpts come from (OPR 21-016, CAPD_000000706 - CAPD-000000714) stemming from allegations that a Lieutenant who was a "vocal Trump supporter" may have assisted the protestors. He simply seems inexperienced and a bit in over his head.

"They said that he was assigned a hard squad and at some point in time, his sergeant for the day had received an email from one of the other squads saying they were hardening up, do all their gear. And he showed it to Lieutenant. He said, 'well, I didn't receive anything. So we're not donning our gear.'" (CAPD-0000000708)

"Was CDU Lieutenant assigned to the West Front? Um, I started at around 1000 hours... I talked mostly with Sergeant, who was assigned, you know, as a squad sergeant for my... platoon. But he's just very experienced and really knows a lot [more]. Probably a lot more than I do. I've not been on it that long and he's been on it for many years." (CAPD-0000000710) ⁴⁰⁴⁰⁴⁰⁴⁰

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He goes on extensively describing bringing their gear to the Botanical Gardens but never getting dressed and leaving it unattended.

"And then that kind of never really happened. From then just this whole wave of people just started coming and coming... I remember being on the upper west, um... and maybe on the inaugural stage and seeing, you know, like a group of people, this was, this was earlier in the day, but, um, um, you know I guess we were kind of perplexed that there was like one group of people that was out by like Third Street, Northwest that we don't really know what they were doing, like, I don't really know what they were doing... I guess at some point after, you know, it was when I headed down by the Botanical Gardens to, you know meet up with the bus, get my gear off of... after that you [know] all the, you know, we saw that all these people had just kind of seemingly came out of nowhere but it was like thousands of people and now it was it became pretty apparent that they were working their [way], you know, heading, like going through all the, in all of your old [stands] and all that stuff that had been set up for the inauguration. And they were, you know, clearly working [their way] up into areas that they weren't supposed to be in. So that's when I kind of [said] alright, we gotta... take off and head up there to try to... to try to stop them... that's when it was pretty much on..." (CAPD_000000710 -

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Could not recall if there was a specific direction given, instructing them to don their hard equipment. "No... we certainly had intentions of getting our gear [on] and being out there... I mean generally what we do is... we bring everyone in, we have roll call and, you know everything was kind of a question mark... we certainly knew that the President was going to be speaking... these people were gonna probably come after that. Um, so, so I mean, we, we certainly had, but I don't, I don't remember anyone saying, okay, make sure you're out there at two o'clock with you[r] gear, [or], I don't remember anything like that." (CAPD-000000712) ⁴²

Stated that there was no warning that the protesters were on their way to the Capitol and that units were instructed to don their equipment. Stated "prior no, [at] that time, [it] was just chaos. And no one came over the air and said, we've got a very large group coming, CDU needs to don their equipment or anything. You never heard anything like that." (CAPD-000000712 - CAPD-000000713) ⁴³

The officer described a YouTube video of himself, stating, "It must've been early because I know I had I know [I] have my mask on for an awfully long time, you [know] it was so chaotic, you know, and a lot of that happened there. Cause the gas just kept coming and coming and coming and just kept getting hit." (CAPD-000000714)

"Stated that he remembered responding to the Lower West Terrace with CDU at 1200 hours." (CAPD-000000714) ⁴⁴

OPR showed another YouTube video of the officer on the Lower West Terrace. "Explained, like there were points I was getting hit and I couldn't even see... people were literally guiding... you to the water so that you [can clean] yourself. I mean, because... I couldn't even open my eyes because, you know, I was just hit so many times. At some point, like our own grenadier... the pepper balls and stuff at them, but then the wind kind of blowing back..." (CAPD-000000715) ⁴⁵

Another officer states, "On January 6, 2021, I was part of a CDU soft squad on the Senate division. I was told to stand along the bike racks on Constitution Ave in the [area] preventing pedestrians from crossing the street. Shortly after I was told by my acting squad sergeant that we have to make our way to the West front of the Capitol. While [I] was heading our there I saw protesters running towards the Capitol, breaching the police line. I began running to the West Proud Terrace, where I helped create a police line with the rest of the officers to stop the protesters from getting any closer to the Capitol. During this I did not know what the

protestors intended to do that day or moment and nor was I aware of how many protestors were there." (OPR 21-021, CAPD-000000751) ⁴⁶⁴⁶⁴⁶⁴⁶

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The defense won't belabor every word, point and passion evidenced in these quotes. The truth revealed should be abundantly clear. The facts and timeline concerning the events and actions taken by protestors and law enforcement alike are now clearly evident and proves that the narrative timeline presented as fact by politicians, media, DOJ and the prosecution in this case is undeniably false. ⁴⁷⁴⁷

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The first breach of any police line occurred [at] the walkway of the Capitol grounds [at] Constitution Ave. The defense was shown video evidence of this breach where three officers stood behind a few bike racks. A man whispered to a known FBI informant and then seconds later jumped into the bike racks, possibly making contact with an officer. Officers stood aside and fell back as approximately 200 people walked up the walkway and removed the temporary plastic snow fence that served as a border and contained the only signs to notify the public that the Capitol grounds were temporarily closed. No radio call went at that time. "Agitators" gathered at the fence and not a single officer alerted command that a group was gathered near Third Street earlier in the day even though it seemed strange to the officers. This defies logic. Dozens of CDU officers witnessed this group and if one single officer had simply reported this group, the subsequent events never would have happened. They had another opportunity to organize, stop and arrest these 200 people when the first breach occurred yet every officer inexplicably rushes to the Lower West Terrace to fight. ⁴⁸⁴⁸⁴⁸⁴⁸

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It is important to clarify several points here. First, there are conflicting reports from law enforcement in regard to mindset and intention at this point. Some officers claim this group had clear violent intentions and these officers responded to the Lower West Terrace intent on administering violence. Other officers stated they didn't know the intentions of the 200 people and were simply responding to the breach. This speaks to the very issues the defense raises in this motion. The police were fed bias misinformation, not one clear instructions were grossly and deliberately mismanaged and unprepared, left effectively leaderless and eager to fight anyone who crossed their path. Unfortunately, some elected to beat, maim and shoot, while others thankfully decided to talk, joke and [fist bump] Americans. ⁴⁹

Second, law enforcement accounts make the Lower West Terrace appear as an impromptu fall back position where fleeing law enforcement made some sort of heroic stand against a marauding force. This, like every other public narrative surrounding 1/6/21, is patently false.

The Lower West Terrace was chosen as a place of violence days before any protestor set foot in Washington DC. Bike racks were arranged in an arc at the least visible part of the Capitol. Law enforcement positioned themselves within walls on three sides. A media tower and scaffolding further blocked their actions. There is a low wall to the west and law enforcement was fully aware that once this area was full of people, based on the incline of Capitol Hill, they could operate completely free from public view. ⁵⁰⁵⁰

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Law enforcement acts like this all happened organically, without warning. Yet officers repeatedly testify that they knew the crowd was coming and were prepared enough to [set up] a P.A. system with speakers blaring a looped recording to leave. The problem is, they set it up on the Lower West area, in a spot where you couldn't hear it until you were quite literally trapped on the Lower West Terrace. The defense and prosecution have video evidence of this time stamped shortly after noon and the video also shows police deploying tear gas and explosives. ⁵¹⁵¹

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By law enforcement's own admission, no radio call went out when the first 200 agitators arrived or when one million protestors were marching to the Capitol. Defense finds this unbelievable and the only conclusion that can possibly be drawn is this was done purposefully with nefarious intent or it is a result of law enforcement incompetence so ferocious that it can only be classified as criminal negligence. ⁵²⁵²⁵²⁵²

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Either way this set the stage for the violence that ensued. The prosecution, politicians, media, DOJ, etc. would have us believe that on 1/6/21, at the U.S. Capitol, where Congress, Senate and Vice President are all assembled, one mile from where the President just spoke, approximately one million Americans who were just hours before deemed a threat, just snuck up on an unsuspecting police force. This police force, decked in riot gear that effectively held off a million people for hours, couldn't handle approximately 200 "agitators." Washington DC is the seat of power to the free world, the most secure and guarded city in the world and yet, we are supposed to believe 200 unarmed people couldn't have been stopped, handcuffed and arrested immediately. The narrative is a blatant lie. Instead of arresting these 200 people, officers rushed to the Lower West Terrace, the stage for the planned violence, while an unsuspecting group of peaceful protestors walked straight into a trap. ⁵³

We see exactly why this happened. CDU units [were on the] perimeter at the NW corner of the [grounds] where the fence was removed. However, they didn't want to serve and protect people according to their oath. They were a "hard squad" that wore military tactical gear and

carried military weapons. Officers in their own words, "formed a plan." This plan was to disobey direct orders and abandon their post in a flagrant display of insubordination and telling their lieutenant they were leaving to go fight. If this occurred in the military every single one of these officers would have faced a court martial for that offense. This self-deployment of officers clad as storm troopers, making up their own orders and rushing off to attack unarmed U.S. citizens played out no less than three times that day. Instead of following orders, they left the Capitol grounds wide open, with no fence, barrier or police presence to indicate to the public, who were just told by their President to go there, that the Capitol grounds, public property, was off limits, something the average person could [not] have reasonably known.⁵⁴

These were the conditions when the defendant and his companions arrived outside the Capitol grounds, just before noon, after stopping for lunch. There was no sign, fence, barrier of any kind and no [police] within sight of the NW corner of the property. The defendant grew up approximately 30 miles from the Capitol in Northern Virginia and has been on the Capitol grounds hundreds of times over the course of 40 years. He has never seen the grounds closed to the public and up until the time of his arrest and indictment never knew the Capitol grounds were off limits. It's clear the U.S. President and approximately one million citizens present did not know this either. Had officers not acted free of command and abandoned their post they [would] have been present to articulate the closure to the defendant, his companions and others. Yet, due to police insubordination and dereliction of duty the defendant, his companions and all others present, who were falsely identified as a threat were effectively victims of entrapment, unwittingly committing the misdemeanor crime of trespassing. Law enforcement responded in an egregious display of excessive force over the course of the most shocking, beating and pain [on] unarmed U.S. citizens. They subjected the innocent to attacks with flashbangs and other explosives, OC spray, tear gas, pepperballs, rubber bullets and other projectiles.⁵⁵

The defendant heard the first flash bang, shot off by law enforcement, shortly before noon, which was mistaken by much of the crowd for fireworks. The second round of flash bangs, seconds later was captured on video by the defendant and is part of discovery. It shows a group of protestors on and around the Lower West Terrace responding with a loud, collective "BOO," to the unwarranted attack. In reviewing the video, no rational person could possibly describe the crowd as either "violent" or a "mob". It was, as defense has described throughout this motion a peaceful group of protestors, quite literally just milling around, trying to ascertain what was happening. As described previously, due to the intentional positioning of law enforcement, nobody approaching the Lower West Terrace or climbing the stairs could see any police line or violence as law enforcement spread their attack from the handful of "agitators" to the entire crowd. The defendant and his companions continued up the walkway towards the West Terrace and proceeded up the stairs, completely unaware of what lay ahead. The crowd drew dense, literally packed shoulder to shoulder and the wave of people,

as previously described by law enforcement, swept the defendant and his companions and propelled them up the stairs, struggling to stay together and alive for fear of being trampled.

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Upon reaching the Lower West Terrace, the defendant and his companions were immediately forced to their right and trapped in an area filled with protesters and bike racks, since identified as a [tunnel] line. CDU units in full tactical gear, uniformed police and individuals in unmarked, unidentified tactical gear formed a line behind and in between gaps of the bike racks. The defendant immediately witnessed a man bleeding profusely from his nose [and] mouth attempting to escape through the crowd but unable to do so. Another elderly man was laying on the ground, [cowering], reaching his hands up to try to deflect blows as a CDU officer in full tactical gear savagely and mercilessly beat him with a baton. A woman attempted to intervene and another officer quickly attacked her in the same fashion until those in the crowd were able to pull them out of range, enduring several blows from batons for their efforts. ⁵⁷⁵⁷

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The defendant and his companions became separated within minutes of arriving, as the crowd surged left, right, forward and backward in an attempt to avoid a constant barrage of teargas and explosives. A lieutenant described being blinded by the gas that [blew] back over their lines and having to be directed and literally led to water. He said, "It kept coming and coming and coming." It did indeed and the cannisters of tear gas and explosives landed right at and on the feet of the defendant. Other officers had giant guns loaded with OC spray that they relentlessly and indiscriminately used to douse anyone within range. The defendant and others begged law enforcement to stop the attack [and] assist the wounded but were met with threatenings, spray, explosives, projectiles and gas attacks. ⁵⁸⁵⁸⁵⁸⁵⁸

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The defendant and most of the crowd was unarmed and most of those who were armed carried flagpoles and protest signs. As testified to by officers, some protestors had civilian issued pepper spray but that paled in comparison to the arsenal that law enforcement chose to unleash that day. They did so, clad in military grade tactical gear with riot shields, face/gas masks, batons, tasers, OC spray, firearms, teargas, rubber bullets, pepper balls, etc. This attack lasted [for] hours, with those in the front unable to retreat and not wanting to advance, even though at any point they could have [overtaken] law enforcement through sheer size and numbers. This crowd was not violent and didn't want to hurt or injure law enforcement that virtually all of crowd, including the defendant supported. ⁵⁹

As one officer previously described, the back of the [crowd would] periodically surge, forcing

the front, the defendant included, into contact with the police line and those in the [tunnel] attack. Protestors would then gather the wounded and attempt to triage and decon on site amongst tears and explosives. These were the conditions that law enforcement created on the Lower West Terrace. Yet inexplicably, with a veritable war zone that had erupted right outside the Capitol, leadership decided to call both houses of Congress into session. Yet again one can only conclude that this was either a political setup or an example of law enforcement incompetence so ferocious that it can only be classified as criminal negligence. As shocking and horrifying as the scene was, where the defendant was trapped on the Lower West Terrace, on the East Side of the building, protestors freely entered, sometimes invited in by law enforcement, meandering through the Capitol, talking to, chuckling with, hugging, fist bumping and taking selfies with officers [who] identified the fact that this crowd wasn't a threat. ⁶⁰⁶⁰⁶⁰⁶⁰

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Yet the defendant, who has proven he was not a threat, based on the fact that he endured hours of police brutality without any response except pleas to stop that were met with savage fearlessness, sits accused of assault. The defendant was beaten, shot, exposed to teargas and explosives for hours. The Capitol had been breached elsewhere during this time and at no point was the Capitol breached from the Lower West Terrace. Congress had been called into session, recessed and evacuated. Thousands of people were wandering around the Capitol and still, the defendant endured attacks. There was no reason for law enforcement to [fight] with the crowd in this area in the first place and to continue until after 2:30, after Congress had left. The protesters on the Lower West Terrace had anything to do with disrupting the proceedings inside. Congress evacuated only when the Capitol building was breached elsewhere and the defendant is being charged as though he was responsible for this while he was on the Lower West Terrace, a victim of horrific abuse at the hands of law enforcement. The defendant has been demonized, stripped of due process, his civil rights, his reputation, his family, his livelihood and his freedom because of two pushes with his bare hands. After everything the defense has described in this motion, that is nothing less than a complete travesty of justice. Following this alleged assault [which occurred], law enforcement left the Lower West Terrace, redeploying elsewhere. The defendant remained there, assisting the injured, participating in group prayer, chanted "We The People" and attempted to locate his companions, all while trying to document the events with photos and videos. After a few hours he and a companion ascended to the Upper West Terrace. They witnessed violent clashes between police and a small number of protestors and people climbing through open windows. The defendant and [companion] did not agree with either of these actions and did not participate. Neither the defendant, nor his companions damaged property, entered the Capitol or engaged in direct violence with law enforcement. They observed the 6:00 PM curfew imposed upon Washington D.C. and left around that time. ⁶¹

CONCLUSION

These charges never should have been brought against the [defendant]. It is both astounding and confounding that politicians and law enforcement could even create the conditions for such events to take place. The actions of law enforcement involved, were quite literally criminal. The DOJ is fully aware of this. The evidence quoted within this motion comes from their own investigations. They [know] the truth and [doubtless] have further evidence, more egregious and horrifying that has yet to be released. The defense harkens back to those missing DOJ reports. In the very words of the officers themselves, they were guilty of inappropriate action, they instigated violence, they wanted to fight and were ready to murder their fellow Americans. They are guilty of abandoning their post, insubordination, dereliction of duty and excessive use of force, by their own admission. One quote from an officer sums it all up, "This is a result of the Department's failures on so many levels here." Dozens of others have given testimony to law enforcement's guilt and accepted it themselves. It is based on this voluminous amount of testimony and undeniable facts, that the defense implores the court to dismiss all charges, the only just action available when considering the truth of the events of 1/6/21. ⁶²⁶²⁶²⁶

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The defense acknowledges and assumes this motion lacks all proper form and does not adhere to any of the rules set forth by the courts. However, the defense asks the court not to reject this motion based on form and/or rules but rather judge it based on fact and content for the following reasons: The defendant, representing himself pro se, is quite literally a political prisoner, arrested and detained based on bias, lies and fraud. The defendant is a victim of a political agenda set forth by Nancy Pelosi and Democrat leadership. The defendant has been stripped of due process and had his civil rights so flagrantly and egregiously violated that they have to be addressed in another motion and are the basis for dozens of civil suits to come. ⁶³⁶³

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The defense writes this motion by hand on notebook paper and is forced to hand write every copy. The defense is forced to do so because he has been denied access to a computer, copier [or] printer. The defendant has been denied access to the courts. He was arrested on 6/11/21 and has been detained in the D.C. Jail/CTF since 6/23/21. The defendant/defense has no access to a law library, legal paper, legal books, Constitution, computer, tablet, internet, copier, printer, telephone, standby counsel or any discovery except on a flash drive [without] a C.D. In fact, the defendant has either never received, been denied access to or had stolen over 99% of his discovery. The defense does not even have a copy of the indictment. ⁶⁴⁶⁴⁶⁴⁶⁴

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The defendant was compelled to dismiss his court appointed attorney [as] his counsel was so ineffective, it became clear he had no interest in representing the best interest of the

defendant [and] was effectively acting second chair to the prosecution. At the defendant's Faretta hearing, the above listed issues were brought to the court's attention and were subsequently brushed aside with the defendant being told he was warned about the limitations he would face while representing himself as a detained defendant. The defendant does recognize the inherent limitations and did so at that time. The defense did however make the court aware that jail policy and the actions of it's officers, employees and management did not merely create limitations or hindrances [to] the defense, it made the process of investigating and defending oneself an impossibility. At the time of the hearing on 9/24/21, after 32 days in the facility, the jail still refused to provide the defendant with so much as paper and a writing implement. To their credit, they have provided paper and a pen since then. However, this is the sum total of what the defense has at it's disposal to defend himself against the full weight and might of the United States Federal Government. So, the defense addresses the court in this motion, with that paper, pen, it's own limited legal knowledge and armed only with the truth and understanding that his rights under the Constitution should be all that is necessary to vindicate him and set him free. ⁶⁵⁶⁵⁶⁵

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The Court asked on 9/24/21 for the prosecution to assist the defense in gaining access to the courts. The prosecution has been silent in this matter and seems to have no interest in assisting the defense to be able to actually defend himself against the prosecution. The defendant is exactly where the prosecution wants him to be: persecuted, silenced and with no ability to defend himself. ⁶⁶

The defense simply asks that the court not [penalize] the defendant any further by rejecting this motion based on form or rules he may not be adhering to because of ignorance. The defense would follow all rules and form and has attempted to do so but has been so stymied by his lack of access to the courts that he cannot do so. ⁶⁷

Again, the defense implores the Court to ignore any [procedural] shortcomings, inadequacies and deficiencies in this motion. Instead, the defense asks the Court to base its decision on the merits of the claims contained within the overwhelming abundance of evidence that supports them and the subsequent dismissal of the indictment in its entirety. ⁶⁸

RESPECTFULLY SUBMITTED

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