BY ASKING FOR TANYA CHUTKAN'S RECUSAL, TRUMP INVITED A LESSON IN HIS CENTRALITY TO JANUARY 6

Trump's motion for Tanya Chutkan to recuse was not designed to work. Rather, it was designed as a messaging vehicle, to establish the basis for Trump to claim that a Black Judge was biased against him so he can better use it to discredit rule of law and as a campaign and fundraising vehicle.

Because Trump's motion was primarily a messaging vehicle, the — legally apt — messaging with which DOJ responded is of some interest.

Invited to do so by Trump, DOJ laid out how central Trump is to the thousand other January 6 prosecutions.

Invited to do so by Trump, for example, DOJ provided eight other times — in addition to the cases of Robert Palmer and Christine Priola cited in the recusal motion — where defendants before Judge Chutkan have implicated Trump in their actions.

> This Court, like all courts in this District, has presided over dozens of criminal cases related to January 6. And this Court, like all courts in this District, gained knowledge about the events of January 6 and insight about the persons charged based on its daily administration of those cases. For instance, the Court learned that numerous individuals charged with January 6 crimes attempted to minimize their actions and spread blame to others, including to defendant Trump and

> to the mob that each rioter joined at the Capitol. Indeed, the Court regularly heard variations of such arguments from other defendants, in the form of sentencing memoranda and allocutions, before similar claims were made by the defendants in the two sentencing hearings on which the defendant bases his claim of bias.1
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> 1 See United States v. Bauer, 21-cr-49, ECF No. 38 at 3 (D.D.C. Oct. 6, 2021) (Def. Sentencing Mem.) (arguing that Bauer "only decided to turn from the Ellipse and head towards the Capitol when then-President Trump directed the crowd to proceed in that direction" and then followed the group); United States v. Hemenway, 21-cr-49, ECF No. 39 at 2 (D.D.C. Oct. 6, 2021) (Def. Sentencing Mem.) (arguing that Hemenway decided "to take part in the political rally on the Ellipse" and got "caught up in the group mentality of the crowd that entered the Capitol"); United States v. Bissey, 21-cr-165, ECF No. 29 at 17 (D.D.C. Oct. 12, 2021) (Sentencing Tr.) (defense attorney arguing that Bissey had minimal role on January 6 and "did not come to D.C. with any intention other than supporting her president"); United States v. Miller, 21-cr-226, ECF No. 52 at 4 (D.D.C. Dec. 8, 2021) (Def. Sentencing Mem.) (arguing that "[Miller] had absolutely no expectation or desire to overthrow the government. Rather, she was supporting the President in what he claimed were legitimate efforts to claim victory in the Presidential election."); United States v. Perretta, 21-cr-539, ECF No. 55 at 2 (D.D.C. Jan. 4, 2022) (Def. Sentencing Mem.) (arguing that Perretta "attended the 'Save America' political rally, where then-President Trump encouraged listeners to march to the Capitol to make their voices heard" and then went to the Capitol with

> thousands of other individuals from the Ellipse); United States v. Ehmke, 21-cr-29, ECF No. 30 at 2-5, 8-9 (D.D.C. May 6, 2022) (Def. Sentencing Mem.) (arguing that Ehmke had a minor role and that others, "including the former president, the rally's organizers and speakers, and other nefarious, organized groups . . . arguably bear much greater responsibility"); United States v. Ponder, 21-cr-259, ECF No. 58 at 21-22 (D.D.C. Jul. 26, 2022) (Sentencing Tr.) (Ponder asserting that he marched from Ellipse to Capitol "with the intentions on a peaceful protest. However, things had spiraled out of control" and he "got caught up in it."); United States v. Cortez, 21-cr-317, ECF No. 80 at 38 (D.D.C. Aug. 31, 2022) (Sentencing Tr.) (defense attorney arguing that Cortez was "being told these things by the president, you need to save your country, and he's trying to do something right"). [my emphasis]

Again, these are *just* defendants Judge Chutkan has already sentenced. The footnote conveys how routine it is for defendants, before every single DC judge, to blame Trump for their role in assaulting the Capitol.

Invited to do so by Trump, DOJ laid out how Christine Priola wore Trump merch as she surged through the East door alongside the Oath Keepers and Joe Biggs, and then helped occupy the Senate floor on January 6.

> On October 28, 2022, the Court sentenced Christine Priola, who on January 6, 2021, surged with other rioters into the Capitol and onto the Senate floor, "carrying a large sign reading, 'WE THE PEOPLE TAKE BACK OUR COUNTRY' on one side and 'THE CHILDREN CRY OUT FOR JUSTICE' on the other," United States v. Priola, 22-cr-242, ECF No. 65 at 3 (D.D.C. July 26, 2022) (Statement of

> Offense), and wearing pants with the phrase, "MAKE AMERICA GREAT AGAIN," id., ECF No. 56 at 13, 16 (D.D.C. Oct. 21, 2022) (Govt. Sentencing Mem.). Priola was charged with, and pled guilty to, obstructing an official proceeding, in violation of 18 U.S.C. § 1512(c)(2). Id., ECF No. 66 at 2 (D.D.C. Feb. 21, 2023) (Sentencing Tr.)
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> In her sentencing memorandum, Priola, too, laid the groundwork for spreading the blame to others, noting that "[a]fter the presidential election, Donald Trump . . . and his inner circle began spreading the word that the election was 'stolen' from him by Democrats and others," with claims "made on media sources, as well as by the President himself, that the election system had been corrupted and that the integrity of the election should be questioned." Id., ECF No. 57 at 3 (D.D.C. Oct. 21, 2022) (Def. Sentencing Mem.). Priola's sentencing memorandum then sought leniency for Priola in part because she "played no role of importance" at the Capitol, and had she not been there, "there wouldn't be one change in what transpired." Id. at 14.
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> At her sentencing hearing, Priola likewise explained that, at the time of her criminal conduct, she believed that the election had been stolen and that "certain politicians or groups have, like, taken over things that maybe weren't supposed to be." Id., ECF No. 66 at 26 (D.D.C. Feb. 21, 2023) (Sentencing Tr.). [my emphasis]

Because Priola raised Trump in her sentencing submission, DOJ explained, binding precedent required Chutkan to respond to it.

Similarly, on Trump's invitation, DOJ laid out how Palmer claimed he went to the Capitol "at

the behest of" Trump where, while wearing a Florida for Trump hat, he serially assaulted cops defending the Capitol.

> On December 17, 2021, the Court sentenced Robert Scott Palmer, an individual who, on January 6, 2021, after attending the former president's remarks at the Ellipse and while wearing a "Florida for Trump" hat, "threw a wooden plank at" police officers; "sprayed the contents of a fire extinguisher at the officers until it was empty, and then threw the fire extinguisher" at them; and "assaulted another group of law enforcement officers with a 4-5 foot pole," which he threw "like a spear at the officers." United States v. Palmer, 21-cr-328, ECF 30, at 10, 2 (Govt. Sentencing Mem.); id., ECF No. 23, at 3 (D.D.C. Oct. 4, 2021) (Statement of Offense). Palmer was charged with, and pled guilty to, assaulting, resisting, or impeding certain officers using a dangerous weapon, in violation of 18 U.S.C. §§ 111(a) and (b). Id., ECF No. 24 at 1 (D.D.C. Oct. 4, 2021) (Plea Agreement).
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> In a sentencing memorandum filed before his hearing, Palmer's attorney asserted that he had gone to the Capitol "at the behest of" the defendant and had been convinced by individuals, including the defendant, that the election was fraudulent and that Palmer needed to take action to stop the presidential transition. Id., ECF No. 31 at 8 (D.D.C. Dec. 13, 2021) (Def. Sentencing Mem.). Two paragraphs later in the memorandum, Palmer's attorney argued that the Court should, as a mitigating factor, "consider that the riot almost surely would not have occurred but for the financing and organization that was conducted by persons unconnected to Mr. Palmer who will likely never be held

> responsible for their relevant conduct." See id. at 8-9. [my emphasis]

Because Palmer blamed Trump for his actions in his sentencing package, DOJ explained, binding precedent required Chutkan to respond to it.

Even before it laid out how the claims of defendants obligated Chutkan to address their claims that Trump caused them to do what they did, DOJ laid out the precedents that apply to intrajudicial comments about related cases, a much higher standard for recusal than the precedents Trump invoked. At Trump's invitation, then, DOJ cited Watergate, where the DC Circuit did not find that Judge John Sirica should have recused from the Haldeman trial because he had, during the burglars' trial, correctly judged that the conspiracy extended well beyond those men.

> [T]he Supreme Court has held that where a recusal motion rests on statements made in a judicial setting and reflect "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings," recusal will be warranted "only in the rarest circumstances" where the comments "display a deepseated favoritism or antagonism that would make fair judgment impossible." Id. at 555. After all, "opinions held by judges as a result of what they learned in earlier proceedings" are "normal and proper," and "not subject to deprecatory characterization as 'bias' or 'prejudice.'" Id. at 551; see Belue v. Leventhal, 640 F.3d 567, 573 (4th Cir. 2011) ("The high bar set by Liteky for predispositional recusals makes good sense. If it were otherwise—if strong views on a matter were disqualifying—then a judge would hardly have the freedom to be a judge.").

> This higher standard applies equally when a court's intrajudicial statements were made in separate proceedings, including proceedings in which the defendant was not a party. The D.C. Circuit made this clear in its decision in United States v. Haldeman, 559 F.2d 31 (D.C. Cir. 1976) (en banc). There, defendants sought recusal of the judge presiding over numerous, separate Watergate-related matters, in part based on statements the judge had made during an earlier, separate trial in which, among other things, he "expressed a belief that criminal liability extended beyond the seven persons there charged." Id. at 131-32 & n.293. The Circuit found that recusal was not warranted because the grounds for the claim were "judicial acts" including "prior judicial rulings . . . or the exercise of related judicial functions." Id. at 133-34. The Circuit further stated that the "disabling prejudice" necessary for recusal "cannot be extracted from dignified though persistent judicial efforts to bring everyone responsible for Watergate to book." Id.

At Trump's invitation, DOJ likened the January 6 rioters to Watergate burglars directed by those trying to help the President retain power.

And, at Trump's invitation, DOJ recalled a more recent DC Circuit opinion finding that far stronger intrajudicial statements *also* did not require recusal. At Trump's invitation, DOJ recalled how Trump's people had started selling out the country even before being sworn in.

> On the other side of the ledger are countless cases in which recusal based on judicial comments was deemed unwarranted—even based on comments that, unlike this Court's comments on which the defendant bases his motion, directly criticize a defendant. For instance,

> recently in this District, a judge told a defendant at a hearing, “Arguably, you sold your country out. . . . I’m not hiding my disgust, my disdain for this criminal offense.” In re Flynn, 973 F.3d 74, 83 (D.C. Cir. 2020) (en banc) (per curiam). The D.C. Circuit found that these statements did not meet the Liteky test, stating, “the District Judge was not simply holding forth on his opinions; rather, each of the statements to which Petitioner objects was plainly made in the course of formal judicial proceedings over which he presided—not in some other context.”

Trump wants his January 6 trial to be messaging and fundraising vehicle.

But that may serve as little more than an invitation for DOJ to lay out just how deeply implicated he is in the entire assault on the Capitol.