

ON RECUSAL, GIVE TRUMP THE EVIDENTIARY HEARING HE DEMANDS!

There are a number of fairly insane claims made in Trump's reply seeking Judge Tanya Chutkan's recusal.

Trump scolds that an impartial judge should express no opinion.

2 Consistent with the presumption of innocence and due process, an impartial court would ordinarily avoid stating *any* opinion regarding a third party's guilt or innocence until that party has received an opportunity to present a defense. See *United States v. Microsoft*, 253 F.3d 34, 114 (D.C. Cir. 2001).

But that is precisely what Chutkan did when she said she "I have my opinions, but they are not relevant:" she *didn't* express her opinion. By Trump's own definition, Chutkan is an impartial judge!

Trump makes a *very* narrow argument that the eight additional defendants Chutkan sentenced who attributed their actions to Trump, mentioned by the prosecution, did not say Trump directed them to engage in violence, enter the Capitol, or interfere with the proceedings (I included that footnote in this post).

1 None of the excerpts cited in footnote 1 of the Response claim that President Trump directed or encouraged anyone to enter the Capitol, undertake violence, or interfere with proceedings at the Capitol. Of course, no such evidence exists. The defendants in these other cases obviously sought to explain the circumstances of their conduct, but that

had no relevance to whether President Trump should be charged. That issue was never before the Court prior to this case. Therefore, the only reasonable conclusion—and the very one that the prosecution consciously avoids—is that Judge Chutkan formed her disqualifying opinions from information outside of the courtroom.

Even ignoring that several of them *did* say Trump told them to go to the Capitol, that's a distraction. As prosecutors have shown, one of the two defendants that Trump himself raised, Robert Palmer, literally said that he went to the Capitol "at the behest" of Trump, where – because he had been persuaded by Trump and others he needed to prevent the transition of power – he proceeded to serially assault cops. Trump simply ignores that one of the two cases he himself raised did precisely that.

But the most batshit claim – one that I hope backfires wildly – is the claim that when Judge Chutkan said, "I've seen video" during the Christine Priola sentencing, there was no video in evidence before her.

Similarly, Judge Chutkan's statement that President Trump "remains free to this day," Motion, Ex. A at 29:17–30:3, had no factual or legal relevance to the matter before her. That conclusion was formed, according to Judge Chutkan, based upon unspecified "videotapes" and "footage" that the prosecution has not established were in evidence and appear not to be. *Id.* ("I see the videotapes. I see the footage of the flags and the signs that people were carrying and the hats they were wearing and the garb."). But even if they were in the record of the Priola case, they could hardly support a conclusion that President Trump should be charged.

In addition to the sentencing memo DOJ submitted for Priola, they formally noticed the following videos:

1. Government Exhibit 1 is a video approximately 26 seconds in length that shows the crowd behind the barricades on the east side of the Capitol. People in the crowd can be heard chanting, "Stop the steal." Priola's sign can be seen in the crowd.

2. Government Exhibit 2 is a video approximately 1 minute and 23 seconds in length that shows the rioters outside the East Rotunda (Columbus) doors, including some rioters reacting to pepper gas. Priola and her sign can be seen while she is standing about 15- 20 feet from the entrance. People in the crowd can be heard chanting, "USA, USA."1

3. Government Exhibit 3 is a video approximately 3 minutes in length that shows rioters outside the East Rotunda doors attempting to enter the Capitol building. Priola's sign can be seen in the crowd outside. The video also shows the doors being forced open from the inside and Priola (now inside the building) talking to another rioter on camera and walking down the corridor. People in the crowd can be heard chanting, "Who's our President? Trump!"; yelling, "Tear it down"; and later chanting, "Defend your Constitution. Defend your liberty."

4. Government Exhibit 4 is a video approximately 26 seconds in length that shows the breach of the East Rotunda doors. Priola's sign can be seen outside the building through the open doors.

5. Government Exhibit 5 is a video approximately 2 minutes and 30 seconds in length that shows the rioters

breaching the East Rotunda doors. Priola can be seen with her sign soon after she enters the building.

6. Government Exhibit 72 is a video approximately 1 minutes and 28 seconds in length that shows the rioters, including Priola, walking down the east corridor inside the Capitol Building. It also shows Priola holding her sign up to one of the windows and tapping on the glass to get the attentions of rioters outside. Rioters can be heard chanting, "Defend your Constitution. Defend your liberty." and "Who's house? Our house."

7. Government Exhibit 8 is a video approximately 14 seconds in length that shows rioters, including Priola, on the Senate Chamber floor. Priola can be seen and heard talking on her cell phone.

1 The government's sentencing memorandum incorrectly stated that the crowd could be heard chanting "Stop the steal" and "Who's our President? Trump!" during this video. ECF No. 56 at 10. [my emphasis]

More importantly, there's all the other video Chutkan had seen by October 28, 2022.

Do you know how insane it is for someone to tell Judge Tanya Chutkan that by October 28, 2022, the date of Priola's sentencing, she had not seen video evidence on which she could form an opinion about how central Trump was to January 6? Do you have any idea how many hundreds of hours of video DC judges like Chutkan, pertaining to Priola in Chutkan's case, but also pertaining to the series of assault defendants whose detention proceedings she had presided over and defendants sentenced before Priola, had seen by that point?

Trump made the argument that by October 28, 2022, Judge Tanya Chutkan had not seen sufficient evidence about January 6 to form an

opinion about Trump's role in the attack. If I were Judge Chutkan, I'd order the hearing Trump claims he wants, refuse to waive his appearance, and force him, his attorneys, and the journalists only beginning to pay attention to January 6 because Trump has been charged to review the video of the attack she had sat through by October 2022.

As one example, Chutkan presided over several spectacular assault cases, including one where a former Marine who had attended the TCF Center mob in Detroit after the election brought his hockey stick to the Capitol and used it to beat a cop, one of the many spectacularly brutal assaults that happened that day.

Trump claims that during the year and a half of January 6 cases she had presided over by October 28, 2022, Chutkan had not seen any evidence from which she could form an opinion about the event. By all means, let's put the evidence she had seen in the record.