

# THE CHALLENGE OF TREATING THE PROUD BOY LEADERS AS TERRORISTS

The omnibus sentencing memo for the Proud Boy Leaders – an 80-page document supplemented by another 15 pages for each – describes their crime this way:

The defendants organized and directed a force of nearly 200 to attack the heart of our democracy.

[snip]

None of this was mere happenstance or accident. In the months leading up to January 6, 2021, they had brought their army of violence to Portland, Kalamazoo, and Washington, D.C. And then they brought that army of violence to the Capitol to exert their political will. In doing so, these defendants attempted to silence millions of Americans who had placed their vote for a different candidate, to ignore the variety of legal and judicial mechanisms that lawfully scrutinized the electoral process leading up to and on January 6, and to shatter the democratic system of governance enshrined in our laws and in our Constitution.

For years, these defendants intentionally positioned themselves at the vanguard of political violence in this country. They brought that violence to the Capitol on January 6 in an effort to change the course of American history, and the sentences imposed by this Court should reflect the seriousness of their offenses.

[snip]

The justice system's response to January 6 will impact whether January 6 becomes an outlier or a watershed moment. "By nearly every measure, political violence is seen as more acceptable today than it was five years ago." Adrienne LaFrance, *The New Anarchy: America faces a type of extremist violence it does not know how to stop*, THE ATLANTIC, Mar. 6, 2023 (citing a 2022 UC Davis poll<sup>31</sup> that found one in five Americans believes political violence would be "at least sometimes" justified, and one in 10 believes it would be justified if it meant the return of President Trump). Left unchecked, this impulse threatens our democracy.

The defendants in this case sought to capitalize on this undercurrent in our society to change the result of a presidential election. They called for using force, intimidation, and violence to get political leaders to stop the certification of the election. They recruited others to this mission. They organized and participated in encrypted messaging groups and meetings to further their plans. Such conduct in leading and instigating an attack like January 6 demands deterrence. It is critical that this Court impose significant sentences of incarceration on all the defendants in this case to convey to those who would mobilize such political violence in the future that their actions will have consequences.

That language is a succinct statement of the terrorism committed by the Proud Boys.

But the document as a whole is a testament to how the asymmetrical treatment of terrorism in the United States makes it much harder to hold men like Enrique Tarrio and Joe Biggs accountable for attacking the Capitol that it would be if they were Islamic terrorists, rather

than right wing Trump supporters.

<i>Defendant</i>	<i>Offense Level after application of Terrorism adjustment (§3A1.4)</i>	<i>Role adjustment (§ 3B1.1)</i>	<i>Obstruction adjustment (§ 3C1.1)</i>	<i>Adjusted offense level</i>	<i>Criminal History Category</i>	<i>Guidelines Range (in months)</i>	<i>Sentence in years (and months)</i>
Tarrio	32	4	2	38	VI	360 - life	33 years (396)
Biggs	32	4	2	38	VI	360 - life	33 years (396)
Nordean	32	4		36	VI	324 - 405	27 years (324)
Rehl	32	3	2	37	VI	360 - life	30 years (360)
Pezzola	32	-	-	32	VI	210 - 262	20 years (240)

- Enrique Tarrio
- Joe Biggs
- Ethan Nordean
- Zach Rehl
- Dominic Pezzola

The reason why the government had to dedicate 80 pages to justify sentences of 30 years for the core leaders of the January 6 attack is because it requires massaging the sentencing guidelines to treat white (or Afro-Cuban, as Tarrio identifies as) person terrorism like the US has long treated Islamic terrorism.

Here's what DOJ had to in order to justify calling for these sentences:

- Ask for consecutive sentences, effectively stacking some sentences on others
- Adopt the treason sentencing guideline for sedition (which doesn't otherwise have one), even while the maximum sentence for sedition is just 20 years
- Ask that Judge Tim Kelly use the conspiracy convictions to apply the conduct of each defendant against the other,

to apply the assault and property damage done by Pezzola against the others and the sedition conviction against Pezzola

- Use enhancements for property destruction, substantial interference in the vote certification, and extensive planning on the obstruction charges
- Use leadership or management enhancements for everyone but Pezzola
- Ask for additional departures from the guidelines for “conduct [that] resulted in a significant disruption of a governmental function” and an “intent to frighten, intimidate, and coerce” federal lawmakers
- Dismiss challenges (led by Nordean attorney Nick Smith over two years) to the treatment of the vote certification as an official proceeding that can be obstructed
- Ask for a terrorism enhancement for the destruction of property (tied to the window Pezzola broke and some bicycle racks)
- Ask for terrorism

enhancement based on the clear political intent of all these crimes, including sedition, which is explicitly political

- Add enhancements for Biggs, Tarrío, and Rehl for obstructing the investigation or trial (which is why Nordean's proposed sentence is lower than the other guys')
- Describe the Oath Keeper as late-comers to sedition, by comparison
- Laugh at any claim these men accepted responsibility for their crimes

The sentences make sense – particularly when you compare the damage these terrorists did against the aspirational Islamic terrorists who have been sentenced to even longer sentences. But in the scope of the sentencing guidelines as they exist, it all comes off as funny math.



Update: I probably should have explained in the post *why* this happens. Because domestic

terrorism is not a crime unto itself, but instead an enhancement (which is the way it is being used with the destruction of property here), it is not finally used as a label until sentencing. Prosecutors have, in fact, been calling the Oath Keepers and Proud Boys terrorists throughout their prosecution in detention memos (relying on the same destruction of property). I addressed this in this post and this one.

Update: Here's a post I wrote in 2015 about this asymmetry.

*Note: The image accompanying this post is a challenge coin for January 6 introduced as an exhibit in Christopher Worrel (who has skipped bail as he awaits sentencing). The Proud Boys literally made the attack on the Capitol into a coin of their terrorist group. Update: Added the image to the body of the post, too, bc I confused people by referencing it w/o including it.*