



## The High-Stakes Legal Battle Over Inauguration Protests Starts Today

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Around the same time **Donald Trump was being inaugurated** as America's 45th president, thousands of protesters surged down the streets of the nation's capital, some clad in all-black. Chanting slogans like "Whose streets? Our streets!" and brandishing signs with messages like "No Border No Walls" and "Join the Revolution" flags, they were defiant at the prospect of a man who stoked white nationalism time and again on the campaign trail becoming the most powerful person in the world. The DC-based political organization **Disrupt J20**, an umbrella coalition of activist groups that launched after Trump's election and had some overlap with the **antifa movement**, helped lead the march.

As can happen at mostly peaceful protests, vandalism erupted in fits and starts: According to police, protesters—some of whom **were armed with hammers and trash cans**—smashed Starbucks and Bank of America windows, **torched** a parked limo, set (purchased) "Make America Great Again" souvenirs aflame, and **sprayed** "Revolution or Death" on walls of local buildings. Police in riot gear responded by surrounding the march and unleashing rubber bullets, water cannons, flash grenades, and pepper spray.

"Back up! Back the fuck up!" officers yelled, hitting the huddled mass with clubs, as video footage later revealed. "I'm a native veteran. This is my land, this is my country!" one woman yelled as cops circled the group. "You can't do this to my people!"

Now 194 people arrested at the protests face up to decades in prison in what legal observers have dubbed an unprecedented assault on protest. After all, the US Attorney for the District of Columbia has slapped almost all of the defendants with felony charges of incitement to riot and destruction of property, among other charges. The first trial—of six individuals, including a journalist—was set to begin with jury selection Wednesday in DC Superior Court. It's to be followed by a series of others, since the court could not hear all the cases at once.

With political polarization as high as ever and violent white supremacists clashing with antifa activists an increasingly routine facet of American life, the cases could set the contours of protest in the Trump era. And with such aggressive legal tactics on display, experts and civil liberties advocates feared the saga might dampen activism.

Suggesting that their mere presence at the protest made them responsible for the violence, DC prosecutors alleged in their court filing that defendants used "**Black Bloc**" tactics to "prevent law enforcement from being able to identify the individual perpetrators of violence or destruction."

“Individual defendants wore black or dark colored clothing, gloves, scarves, sunglasses, ski masks, gas masks, goggles, helmets, hoodies, and other face-concealing and face-protecting items to conceal their identities,” prosecutors wrote, claiming some individuals were armed with crowbars, bricks, and explosive devices. They went on to argue protesters took part in a “conspiracy” with intent to cause a public disturbance.

Both DC prosecutors and police declined requests for interviews, citing the pending trial, but a spokeswoman for the city’s Metropolitan Police Department claimed in a statement that all 190-plus defendants engaged in an illegal violent protest.

Basically, she insisted, the protesters had it coming.

“During the 58th Presidential Inauguration, there were thousands of individuals who exercised their constitutional right to peacefully assemble and speak out for their cause,” the spokeswoman, Rachel Reid, wrote in an email. “Unfortunately, there was another group of individuals who chose to engage in criminal acts, destroying property and hurling projectiles, injuring at least six officers.”

About **230 people were initially arrested** at the inauguration protest march. A handful were not charged because they were under 18 or confirmed to be journalists or legal observers, while others have already taken plea deals for misdemeanor charges, according to Sam Menefee-Libby, a DC activist advocating for those arrested. (At least one protester also **pleaded guilty** to felony rioting and felony assault on a cop in April.)

But while some may protesters clearly crossed a line, defense attorneys and civil liberties advocates, along with fair number of impartial experts, said the government is clearly overreaching with blanket charges against a diverse array of people exercising First Amendment rights.

Alexei Wood, a journalist who was filming the march when he was cornered by cops and arrested, is among the first group to face trial, and faces up to 61 years in prison. His protest footage “speaks for itself” in revealing his innocence, according to his defense attorney, Brett Cohen.

“In the age of video, there is an overwhelming amount of evidence, and I think a jury will see the evidence for what it is,” he told me. “It’s rare that I have a case where what the government is accusing my client of is all on video. It’s all there.”

Wood’s 42-minute video shows him documenting the march and the police engaging in a common law-enforcement tactic known as “kettling,” where a cordon of officers surround a crowd to physically confine them in a small space in hopes of dispersal or arrest. At the end of the video, officers are seen spraying tear gas at the group, and Wood appears to sink down to the ground, exclaiming, “This is some of the worst pain I’ve ever had in my life.”

Cohen said the other defendants are likely to testify that they, too, not damage any property.

Across-the-board riot charges for so many people, including journalists, are unparalleled in recent US history, according to College of William and Mary law professor Tim Zick. Prosecutors typically target individuals, rather than the whole group, with offenses alleged at mass protest like this one, he said. “The dangers for protesters and free speech and assembly are serious,” Zick, who specializes in First Amendment rights, told me via email.

He added that if the riot theory succeeds in this trial, it could be used to target marches with “far less serious or even minor” damages. “In that event, the threat of felony charges and possible conviction could hang over many large-scale public protests,” he told me. “This could result in a significant chilling of protest activities, as individuals may be reasonably concerned that they could be falsely charged (i.e., through misidentification) or subject to prosecution for merely associating with ‘anarchist’ groups.”

The prosecution follows a larger recent pattern of state legislatures increasing punishments for protest-related activities, according to the professor. “The trend has been to crack down on acts of civil disobedience in ways that make public protest legally—and in some instances even physically—more perilous,” he said.

Jonathan Blanks, a research associate for the Project on Criminal Justice at the Cato Institute, a libertarian think tank, echoed Zick’s concerns that the mass prosecutions raised “serious questions about individual culpability and proximity to crime during mass demonstrations.”

“There is no question some individuals broke the law and should be held accountable for their actions, which included property damage and injuring bystanders and police officers,” he told me. “It is important to hold wrongdoers accountable for their actions, but going too far threatens Americans’ First Amendment rights of free speech, free press, and peaceable assembly.”

To Scott Michelman, a senior staff attorney for the DC ACLU, the mass arrests are just one part of the government’s overreach in handling inauguration protesters. The civil liberties group is engaged in an ongoing lawsuit against the District of Columbia and local cops for what they said were unconstitutional arrests carried out with excessive force and invasive searches. They also alleged cops denied protesters access to food and water. That suit, filed on behalf of four people of those, including a journalist and legal observer, is pending in US District Court.

The ACLU in DC has also sought to block the feds from investigating Facebook accounts of activists involved in the protest, after the government filed a subpoena demanding Facebook turn over the accounts of three such individuals. Earlier this week, a DC judge **ruled** the government could use the accounts, but in a limited way.

As Michelman put it, “We think the government has the responsibility to foster free speech and respect it, not kill it with aggressive search and seizure.”