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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Case No.: 1:21-cr-00488-CRC-1

v.

**MEMORANDUM IN AID OF
SENTENCING**

NOAH BACON,

Defendant

COMES NOW, Noah Bacon, through counsel, Joseph Conte, pursuant to Federal Rule of Criminal Procedure 32 to address the sentencing factors of 18 U.S.C. §3553(a) in aid of the defendant’s sentencing and to request that the court impose a sentence of five years probation with home confinement and community service.

IMPOSITION OF SENTENCE

This court must impose a sentence that is “. . . sufficient but not greater than necessary, to comply with the purposes [of sentencing] set forth in section 2 of 18 U.S.C. §3553(a).”

In determining the sentence to be imposed this court must consider the §3553(a) factors. Those are:

A. The Nature and Circumstances of the Offense.

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1 Mr. Bacon was found guilty, after a jury trial, of Entering and
2 Remaining in a Restricted Building in violation of 18 U.S.C. §1752(a)(1) a Class A
3 misdemeanor, Disorderly and Disruptive Conduct in a Restricted Building or
4 Grounds in violation of §1752(a)(2), a Class B misdemeanor, Entering and
5 Remaining in the Gallery of Congress in violation of 40 U.S.C. §5104(e)(2)(B), a
6 Class B misdemeanor, Disorderly Conduct at the Grounds and in a Capitol Building
7 in violation of 40 U.S.C. §5104(e)(2)(D), a Class B misdemeanor, Parading,
8 Demonstrating, or Picketing in a Capitol Building in violation of 40 U.S.C.
9 §5104(e)(2)(G), and Obstruction of an Official Proceeding and Aiding and Abetting
10 in violation of 18 U.S.C. §1512(c)(2) and 2, a Class C felony. Mr. Bacon was in
11 Washington, D.C. on January 6, 2021, to listen to the speech of then President
12 Trump. After being told by then President Trump to go to the Capitol he followed
13 the crowd to the Capitol and then, following the crowd entered the Capitol building.
14 Mr. Bacon spent approximately 51 minutes in the Capitol including approximately
15 10 minutes in the Senate Chamber. He was not armed, and he committed no
16 violent actions. Mr. Bacon did not destroy anything.
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22 **B. History and Characteristics of the Defendant.**

23 Mr. Bacon is 30 years old and a resident of Massachusetts. He has
24 never had any previous contact with the Criminal Justice System. As the court can
25 glean from the two score letters submitted to the court by Mr. Bacon's friends and
26 family, Mr. Bacon has not achieved his full potential in life. Despite having the
27 ability, he has yet to obtain a college degree or found meaningful employment. He
28 is employed doing odd jobs while he attends on-line college classes. Mr. Bacon has
spent the greater part of his adult life practicing and teaching yoga and in spiritual

1 meditation. (Mr. Bacon spent some minutes inside the Capitol meditating). In
2 letters to the court Mr. Bacon has been called “a lost soul” and “naïve” (See Letter to
3 the court from Susan Bacon Lodge (Dkt. #83)). “A peaceful person, devoted to yoga,
4 meditation, and spirituality” (Letter from Stevie Jick, (Dkt. 82)). “Gentle” (Letter
5 from Katharine Perkins, (Dkt. #84) and Letter from Elizabeth McNamara, (Dkt.
6 #88)). “Peaceful” (Letter from Jeannie Ramey and Bruce Biewald, (Dkt. #86)). “A
7 work in progress” (Letter from Gerald Frank, (Dkt. #87)). Collectively the letters to
8 the court portray a person seeking to find his place in life but a person who is
9 peaceful, generous with his time, devoted to yoga and meditation and not deserving
10 of incarceration for his out-of-character actions on January 6, 2021.

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14 **C. The Need for the Sentence imposed –**

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16 **1. To Reflect the Seriousness of the Offense, Promote**
17 **Respect for the Law and to Provide Just Punishment for**
18 **the Offense.**

19
20 The offenses Mr. Bacon was found guilty of are serious and include five
21 misdemeanors and a felony. A period of probation with home confinement and
22 community service will still reflect the seriousness of the offenses, promote respect
23 for the law and provide just punishment. As the Supreme Court has noted
24 probation involves a “substantial restriction of freedom.” *United States v. Gall*, 128
25 S.Ct. 586, 595 (2007). “Inherent in the very nature of probation is that probationers
26 ‘do not enjoy the absolute liberty to which every citizen is entitled’” (quoting *Griffin*
27 *v. Wisconsin*, 583 US. 868, 874 (1987)).
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1 **2. To afford Adequate Deterrence to Criminal**
2 **Conduct, and**

3 **3. To Protect the Public from Further Crimes of the**
4 **Defendant.**

5
6 The letters to the court from Mr. Bacon's family and friends, as well as
7 Mr. Bacon's own letter to the court (Dkt. #108), reflect that his aberrant behavior on
8 January 6 was incomprehensible given his background, upbringing, and the way he
9 has spent his entire life. Based on his background and his actions post-arrest there
10 is ample evidence that a probationary sentence will afford adequate deterrence to
11 criminal conduct and there is also ample evidence that Mr. Bacon will not commit
12 further crimes.
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17 **4. To Provide the Defendant with Needed Educational**
18 **or Vocational Training, Medical Care, or Other**
19 **Correctional Treatment in the Most Effective**
20 **Manner.**

21 Mr. Bacon is enrolled in an on-line university and incarceration will
22 only interrupt his education.
23
24

25 **D. The Kind of Sentences Available, and**

26 **E. The Kinds of Sentence and the Sentencing Range**
27 **Established by the Guidelines.**
28

 As computed by the probation office, Mr. Bacon's Total Offense Level
is 17 and he is in Criminal History Category I. The sentencing range is 24-30
months. The court must consider the guidelines however the court is free to impose

1 any sentence that is “. . . sufficient but not greater than necessary, to comply with
2 the purposes [of sentencing] set forth in section 2 of 18 U.S.C. §3553(a).”
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6 **F. The Need to Avoid Unwarranted Sentence Disparities**
7 **Among Defendants with Similar Records Who Have Been**
8 **Found Guilty of Similar Conduct.**
9

10 A sentence of probation with home confinement and community service
11 would not constitute an unwarranted sentence disparity.

12 There is no dispute that Mr. Bacon’s criminal conviction in this case is serious and
13 will likely have irreparable unintended consequences. Any lengthy prison term
14 would nonetheless be an inappropriate sentence for Mr. Bacon. The Court should
15 not impose a sentence which would result in an unwarranted sentence disparities
16 among defendants with similar records who have been found guilty of similar
17 conduct. Counsel has surveyed other January 6th cases / sentences and notes five
18 similar defendants who committed factually similar behavior.
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24 Paul Hodgkins entered the Capitol building at approximately 2:50 p.m.
25 entered the Senate Chamber at 3:00 p.m., walked among the desks, took a “selfie,”
26 and stood with individuals shouting and cheering with a bullhorn. He was in the
27 Senate Chamber for approximately 15 minutes. See Statement of Offense [23], 1:21-
28 CR-00188- RDM. Mr. Hodgkins pled guilty to one felony count of 18 U.S.C.

1 1512(c)(2) and he was sentenced 8 months' incarceration and 24 months supervised
2 release. Unlike Mr. Hodges, Mr. Bacon did not go near the desk in the Senate
3 Chamber and did not associate with anyone in the front of the room, e.g. the people
4 shouting on the bullhorn.
5

6
7 Richard Michetti repeatedly entered and exited the Capitol building. See
8 Statement of Offense, [41] 1:21-CR-00232-CRC. Mr. Michetti shouted at police
9 officers in the hallway by the Senate Chamber among a group of rioters. He was
10 inside the U.S. Capitol Building for less than an hour and he never entered onto the
11 Senate Floor. Mr. Michetti pled guilty to one count of 18 U.S.C. 1512(c)(2) and he
12 was sentenced to 9 months incarceration and 24 months supervised release. Mr.
13 Bacon did not re-enter the Capitol building after exiting. He did not shout at or
14 confront police officers and was respectful to the officers who told him to leave the
15 building.
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19 Matthew Wood climbed through a window, only the tenth person to climb
20 through that window. See Statement of Offense, [46] 1:21-CR-00223-APM. Mr.
21 Wood walked into the Speaker of the House's office suite / conference room, as well
22 as other parts of the Capitol Building. Mr. Wood also removed velvet ropes,
23 dropping them onto the ground. Mr. Wood pled guilty to one count of 18 U.S.C.
24 1512(c)(2), among others, and he was sentenced to 12 months home detention and
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1 36 months probation. Mr. Bacon entered the building through an open door and did
2 not enter anyone's private offices.
3

4 John Andries climbed through a broken window into the U.S. Capitol
5 Building two minutes after the rioters' initial breach at that location. See Statement
6 of Offense [61] 1:21-CR-00093-RC. While in the Crypt area, Mr. Andries, among
7 other rioters, surged past police officers and then wandered around the House of
8 Representatives Chamber. Mr. Andries again pushed past police officers upon
9 leaving. He then went to the area of the House of Representative's Chamber – but
10 he never went onto the floor. He then went to the Speaker's Lobby area. Mr.
11 Andries pled guilty to one count of 18 U.S.C. 1512(c) and he was sentenced to 12
12 months and one day incarceration with 36 months of supervised release. Unlike
13 Mr. Andries, Mr. Bacon entered the building through an open door. He did not go to
14 the Speaker's lobby area and while in the Senate Chamber he stayed in the back of
15 the room, seated, only observing.
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24 Anthony Puma entered the U.S. Capitol building by climbing through a
25 shattered window, walked into various offices, and joined other rioters smoking
26 marijuana. See Statement of Offense [48] 1:21-CR-00454-PLF. Mr. Puma pled
27 guilty to one count of 18 U.S.C. 1512(c)(2) and he was sentenced to 9 months
28 incarceration and 24 months supervised release. Mr. Bacon entered the building

1 through an open door. He did not enter anyone's private offices, nor did he smoke
2 marijuana or anything else while inside the Capitol building.
3

4 Here, Mr. Bacon falls among a group of January 6th defendants who did not
5 commit violent acts while inside or outside of the Capitol. Mr. Bacon walked into
6 the Capitol building through its doors, walked into the Senate Chamber, stayed for
7 a short time and left.
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11 To avoid an unwarranted sentencing disparity, this Court should fashion a
12 sentence similar to January 6 defendants Mr. Hodgkins, Mr. Michetti, Mr. Wood,
13 Mr. Andries, and Mr. Puma.
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21 CONCLUSION

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23 “It has been uniform and constant in the federal judicial tradition for
24 the sentencing judge to consider every convicted person as an individual and every
25 case as a unique study in the human failings that sometimes mitigate, sometimes
26 magnify, the crime and the punishment to ensue.” *Gall v. United States*, 128 S.Ct.
27 586, 598 (2007) citing *Koon v. United States*, 518 U.S. 81, 113 (1996). The
28 defendant’s case is unique. He is a 30-year-old offender caught up in the madness

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1 that was January 6. As set out above a sentence of probation with home
2 confinement and community service will satisfy the 18 U.S.C. §3553(a) factors.
3

4
5 **RECOMMENDATION**

6 Should the court determine that incarceration is justified Mr. Bacon
7 requests that the court recommend to the Bureau of Prisons that he be incarcerated
8 as close as possible to his family in Massachusetts.
9

10
11 **GOVERNMENT'S POSITION ON SENTENCING**

12
13 In their sentencing memorandum the government has requested that
14 the court add two points to the guideline computation under U.S.S.G. §3C1.1 based
15 on Mr. Bacon's "demonstrably false trial testimony." (Dkt. 106 page 22). Mr.
16 Bacon's testimony at trial was truthful and not meant to mislead the jury. The
17 court should not assess a two-level enhancement under U.S.S.G. §3C1.1.
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21 Dated: July 19, 2023

22
23 Respectfully submitted,

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