

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

ANDREW RYAN BENNETT

Criminal No.: 21-227 (JEB)

DEFENDANT’S MEMORANDUM IN AID OF SENTENCING

Defendant Andrew Bennett, through undersigned counsel, respectfully submits his Memorandum in Aid of Sentencing.

Background

Mr. Bennett was arrested on January 26, 2021, pursuant to a criminal complaint charging him with Knowingly Entering or Remaining in a restricted building or grounds without lawful authority in violation of 18 U.S.C. § 1752 (a)(1)(2)(3) and (4) and Disorderly Conduct on Capitol Grounds in violation of 40 U.S.C. § 5104(e)(2)(D) and (G). The charges were based on his conduct relating to his entry into the United States Capitol building on January 6, 2021. Later that day he appeared for initial appearance in Magistrate Court. The government did not seek pretrial detention, and Mr. Bennett was released on his personal bond.

On July 22, 2021, Mr. Bennett appeared before the Court and entered a guilty plea to count four of the criminal information charging him with one count of Parading, Demonstrating, or Picketing in a Capitol Building 40 USC § 5104(e)(2)(G). The Court did not change his conditions of release and the government did not seek a modification of his bond. Pursuant to the conviction Mr. Bennett faces a maximum prison term of six months and a maximum fine of

\$5,000 and a special assessment of \$10. Dollars. The United States Sentencing Guidelines do not apply and Supervised Release is inapplicable.

ARGUMENT IN SUPPORT FOR A SENTENCE OF PROBATION

Mr. Bennett is before the Court facing his sixth criminal conviction. However, his prior criminal history is dated. His first conviction took place almost two decades ago in 2003. Mr. Bennett had just reached adulthood when he was arrested and charged with theft. His last conviction took place over eleven years ago in 2010 when he was twenty-five years old. Since his arrest on March 25, 2010, Mr. Bennett has not had a single contact with law enforcement. The Presentence Investigation Report (“PSR”) notes that none of his arrests were for violent conduct or serious drug offenses.

Regrettably, Mr. Bennett is before the Court for a particularly notorious and unprecedented criminal case. He stands to be punished after attaining a productive family oriented life. His history of good citizenship is now stained. He is ashamed, embarrassed by his conduct, and humiliated by the public opprobrium. However, consistent with his character he is remorseful, full of contrition and ready to apologize and make amends for his conduct.

Up until November 2020, Mr. Bennett had never engaged in bitter partisan politics. Throughout the majority of his adult life he never pursued or espoused conservative or right wing extremist views. Regrettably, Mr. Bennett like thousands and hundreds of thousands of American citizens felt prey to a pervasive, destructive and false message emanating from the most powerful political pulpit in the United States. Donald Trump from the time he ran for the presidency campaigned on grievances. He created a false dichotomy between urban elites and mostly rural and suburban whites who had been left behind during the eight years of the Obama presidency. His more truculent and personal grievance focused on the unsupported allegations

that he was victimized by the established political system. He also railed that many people, mostly undocumented immigrants, voted against him when they didn't even have the right to vote¹. Even after winning the election, he defaulted to the familiar grievances in his inauguration speech and reemphasize that:

“For too long, a small group in our nation's capital has reaped the rewards of government, while the people have borne the cost. Washington flourished, but the people did not share in its wealth. Politicians prospered, but the jobs left and the factories closed. The establishment protected itself, but not the citizens of our country. Their victories have not been your victories. Their triumphs have not been your triumphs, and while they celebrated in our nation's capital, there was little to celebrate for struggling families all across our land. That all changes, starting right here and right now, because this moment is your moment --- it belongs to you.”²

He highlighted that “The forgotten men and women of our country, will be forgotten no longer.” And that the “American carnage stops right here and stops right now.” The message of grievances continued unabated through and after the campaign for the 2020 presidential election. After he lost the election, Donald Trump would not accept defeat. Instead, he doubled down on his claims of fraud, corruption, and the influence of outside players among other unsupported claims. Sadly, many people believed him. He successfully sold his toxic message along with his exhortation for people to do something on his behalf. Donald Trump had many supporters, including politicians, business people, lawyers, and media personalities who willingly amplified his message. Even in Congress both in the House and Senate, Donald Trump had supporters who remained steadfast in supporting his alleged victimization and enabled his claims to

¹ See “Donald Trump’s campaign has become one big airing of grievances” available at <https://www.washingtonpost.com/news/the-fix/wp/2016/10/27/donald-trumps-campaign-has-become-an-airing-of-grievances/>; see also “Rigged election? A chorus of complaint from Team Trump” available at <https://www.usatoday.com/story/news/politics/elections/2016/2016/10/16/rigged-election-chorus-complaint-team-trump/92195244/>; “Trump’s ‘rigged’ election complaints find eager ears while officials fume” available at <https://www.usatoday.com/story/news/politics/elections/2016/10/18/donald-trump-rigged-election-complaints/92313194/>; “Trump claims millions voted illegally in presidential poll” available at <https://www.bbc.com/news/world-us-canada-38126438>

² From “Full text: 2017 Donald Trump inauguration speech transcript” available at <https://www.politico.com/story/2017/01/full-text-donald-trump-inauguration-speech-transcript-233907>

continue the fight to “Stop the Steal”.³ The gravitas surrounding Donald Trump’s claims of voter fraud and suppression was given a veneer of legitimacy by the numerous lawsuits that were filed in Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin⁴.

Mr. Bennett, like many hundreds of thousands, actually millions, of republicans were persuaded by Donald Trump’s incessant and negative messaging. His messaging was supported and amplified by his powerful allies in government, business and the media. The message to his captive audience was that American democracy was in peril. To redress the vulnerability and the stolen election Donald Trump called for action. Specifically, he called on his millions of supporters to travel and demonstrate in Washington, D.C. on January 6, 2021. Mr. Bennett answered that call.

Mr. Bennett left his house at about six in the morning to show his support for Donald Trump. Mr. Bennett could not have anticipated what was destined to happen. He was coming to the Washington mall to participate in a march and demonstration that are frequent in Washington, D.C. Mr. Bennett never intended to participate in violent conduct and to enter the Capitol. Mr. Bennett entered the Capitol but he did not act violently or aggressively. Equally important he never threatened law enforcement personnel. On the contrary, Mr. Bennett acted responsibly by beseeching others to not harm or threatened police officers.

³See generally “Senate's McConnell says Trump has right to probe election 'irregularities'” available at <https://www.reuters.com/article/us-usa-election-trump-republicans/senates-mcconnell-says-trump-has-right-to-probe-election-irregularities-idUSKBN27P2NE>; “Once a Foe of Trump, Cruz Leads a Charge to Reverse His Election Loss” available at <https://www.nytimes.com/2021/01/03/us/politics/trump-cruz-election-fraud.html>; “GOP Sen. Hawley Will Object To Electoral College Certification” available at <https://www.npr.org/sections/biden-transition-updates/2020/12/30/951430323/gop-sen-hawley-will-object-to-electoral-college-certification>;

⁴ See generally “Trump and his allies filed more than 40 lawsuits challenging the 2020 election results. All of them failed” available at <https://www.businessinsider.com/trump-campaign-lawsuits-election-results-2020-11>; “Trump And His Allies Have Lost Nearly 60 Election Fights In Court (And Counting)” available at <https://www.buzzfeednews.com/article/zoetillman/trump-election-court-losses-electoral-college>’

Mr. Bennett was not in the Capitol with a conspiratorial agenda. On January 6, 2021, he drove to Washington, D.C. by himself. Mr. Bennett acknowledges that he was a part of massive group of people who ultimately and collectively endangered democracy by trying to stop the peaceful transfer of power. Upon seeing the broken barricades, the acts of violence against law enforcement, and hearing the violent chants, he should have immediately turned around and gone home. He should have listened to his conscious and understood that what was taking place around him was the antithesis of peaceful assembly or freedom of speech.

Mr. Bennet did not leave but instead walked inside the Capitol and began to video record what was taking place. However, unlike others who exhorted verbal assaults on politicians, and assaults and threats against police officers, Mr. Bennett pleaded with others to remain peaceful, to not harm the police and not destroy property. In the tumult of the chaos and violence inside the Capitol, there were few people who acted and try to reason with others as Mr. Bennett did. However, none of his good conduct justifies his illegal act of entering the Capitol in the first place.

Five days later on January 11, 2021 the FBI Baltimore Joint Terrorism Task Force (JTTF) showed up at his residence at 6:00 am to execute a search warrant. The sight of the highly armed unit scared Mr. Bennett. He never expected to see multiple officers in tactical gear showing up in the residence he shares with his mother. He immediately knew they were at his residence because of his entry inside the Capitol on January 6, 2021.

After he was shown the warrant, Mr. Bennett opened the door and let the officers look wherever they wanted. Although he did not have to, he voluntarily agreed to be interviewed. He declined waiting until he could be advised by a lawyer. Mr. Bennett provided a detailed narrative of his travel to Washington D.C. on January 6, 2021. He told them when he left for

D.C., how he traveled there, where he went after parking his car, and where he met up with the hundreds of other people who came to march in support of Donald Trump. The information he provided accurately tracked what law enforcement knew about Mr. Bennett's travel and participation in the terrible events that unfolded in the Capitol. Mr. Bennett willingly provided his cell phone to the agents and fully cooperated with them.

Mr. Bennett is full of remorse for his reckless decision to enter the Capitol. He knows that his participation, even within the limitations of his conduct, was part and parcel of one the ugliest events in the history of the United States. His actions in tandem with others was nothing less than an insurrection or riot at the seat and heart of American democracy. Once inside he witnessed events that shocked him, including assaults on police and destruction of property. He also heard the echo of the aggressive and threatening chants that resembled an unhinged mob.

The government has pointed out that "it is unclear whether he expressed remorse to the U.S. Probation Officer who prepared the presentence report." As an initial matter, the United States Probation Officer during a PSR interview does not ask a defendant if he or she wants to express "remorse" about the criminal conduct or if the person feels remorseful. The succinct and relevant question to address acceptance of responsibility is if the person "accepts responsibility". Routinely, the probation officer will ask the defendant if he accepts responsibility as detailed in the statement of offense. As a general policy, undersigned counsel will advise clients that there is no need to elaborate on accepting responsibility. By the point, the statement of offense has been signed, accepted and affirmed under oath before the court during the plea hearing. Simply put, there is no ambiguity regarding Mr. Bennett's remorse. Counsel's advice should not be construed against Mr. Bennett. The government is correct that Mr. Bennett very early decided that he wanted to plea guilty. He did not need to review discovery, which was voluminous,

because he was inside the Capitol, he knew what he had done and he wanted to acknowledge his culpability.

As he told the government, he wants to “get past” this terrible episode which has had an outsize effect on his life. His decision to enter the Capitol has upended his life. Not long after he was identified and charged in Federal Court, he began receiving numerous media inquiries. His name also began appearing in numerous online media publications. Articles with his photograph inside the Capitol became ubiquitous. Every court appearance and court filings have been reported in the media. It will be a while before Mr. Bennett regains the anonymity he had before January 6, 2021.

Notwithstanding the infamy he’s brought on himself, Mr. Bennett has been the same hardworking motivate person that he’s been throughout his life. Mr. Bennett devotes a lot of his time to help with the care of his mother because of the medical conditions referenced in the PSR ¶ 48. Similarly, he has demonstrated to be a nurturing and committed father. He welcomes his parental obligations and has ensured that his son is never in need of financial and moral support. PSR ¶ 50.

Mr. Bennett has also overcome difficult personal hardships. PSR¶¶ 55-57. Some of the hardships were beyond his control and were conditions that surfaced unexpectedly. PSR ¶ 55. Similarly, the frightening incident documented in the PSR ¶ 53 took a significant toll on his physical and mental health. Mr. Bennett also demonstrated a lot of resilience and commitment in overcoming the struggles referenced in the PSR ¶¶ 59-61. The relief that his mother expressed is the result of his successful efforts in overcoming a condition that he had struggled with for many years.

The content and quality of Mr. Bennett’s character is exemplified through his consistent

employment history. Mr. Bennett began working and learning vocations from the time he was in high school. PSR¶ 63. Mr. Bennett has been gainfully employed throughout his entire life. Mr. Bennett has worked as a laborer, as a contractor installing floors and as a manager in a restaurant. Mr. Bennett was employed prior to January 6, 2021 and he has remained employed.

Undersigned counsel is confident that Mr. Bennett will successfully move forward and put this regrettable episode behind him. An important step in that direction was his guilty plea to his criminal conduct. His decision was based on the simple fact that he participate in an awful event. Mr. Bennett admitted that he was wrong and that his conduct was illegal from the first time he spoke with law enforcement. Mr. Bennett conveyed the same during his guilty plea before the Court on July 22, 2021.

Mr. Bennett wants to prove to the Court and the government that he has learned a painful but valuable lesson. Mr. Bennett is asking the Court for leniency so that he may continue to lead a productive life. Mr. Bennett wants the opportunity to demonstrate a commitment to responsible and law-abiding behavior. On account of the totality and circumstance of his life and pursuant to the applicable sentencing statutes, Mr. Bennett respectfully requests that the Court sentence him to a term of probation.

Given his employment obligations, his care for his mother and son, undersigned counsel does not believe that home confinement is necessary or warranted. The conviction, the notoriety of the case, the requirements of supervision are encumbrances that amount to a “sufficient and not greater than necessary” sentence. Moreover, from the time he appeared in Magistrate Court on January 26, 2021, Mr. Bennett has demonstrated impeccable compliance with the requirements of pretrial release.

CONCLUSION

Mr. Bennett is a decent and well-meaning person who made the reckless decision to enter the United States Capitol on January 6, 2021 along with hundreds of other people. He knew or should have known that he had no right to enter the Capitol. That decision has had terrible consequences for him. In the context of Mr. Bennett's character and background, it is safe to assume that it is unlikely that he will re-engage in any criminal conduct.

Mr. Bennett wants the opportunity to demonstrate that he can lead an exemplary life that characterized by responsible behavior. For these reasons, undersigned counsel requests that the Court sentence Mr. Bennett to a period of probation of two years.

Respectfully submitted,
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