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

UNITED STATES OF AMERICA,

Case No.: 1:21-cr-00259-TSC

v.

**MEMORANDUM IN AID OF  
SENTENCING**

MARK K. PONDER,

DEFENDANT

COMES NOW, Mark K. Ponder, 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 below the advisory sentencing guideline range.

**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. Ponder plead guilty to Assaulting, Resisting, or Impeding Certain  
 2 Officers Using a Dangerous Weapon in violation of 18 U.S.C. §111(a)(1) and (b). Mr.  
 3 Ponder had strongly held beliefs after the Presidential election that there had been  
 4 irregularities in the selection that were not proper. He decided to come to hear the  
 5 president's speech and to *peacefully* protest the results of the election and the lack  
 6 of attention to alleged voting irregularities. He did so with no intent to do anything  
 7 but add his voice to the vocal protests over the injustice he perceived had happened  
 8 in the election. Unfortunately, he got caught up in the riotous atmosphere of the  
 9 crowd and erroneously perceived the police as standing in the way of the crowd's  
 10 desire to protest the election results.  
 11  
 12  
 13

#### 14 **B. History and Characteristics of the Defendant.**

15 Mr. Ponder is a 56 year old African American and life-long resident of  
 16 the metropolitan area. Although he has a criminal history dating back to 1984, he  
 17 was last released from prison on April 2, 2010, and has not had any other contact  
 18 with the criminal justice system in the last 12 years.  
 19  
 20

21 Mr. Ponder was the product of a broken home and suffered abuse as  
 22 detailed in the Presentence Investigation Report (PSIR). Mr. Ponder was addicted  
 23 to crack cocaine but has overcome that habit and has been drug free since his  
 24 incarceration in 2007.  
 25  
 26  
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#### **C. The Need for the Sentence imposed –**

- 1                   **1. To Reflect the Seriousness of the Offense, Promote**  
2                   **Respect for the Law and to Provide Just Punishment for**  
3                   **the Offense.**
- 4
- 5                   **2. To afford Adequate Deterrence to Criminal Conduct, and**  
6
- 7                   **3. To Protect the Public from Further Crimes of the**  
8                   **Defendant.**

9                   The guideline range for Mr. Ponder is 57-71 months. A sentence below  
10                  57 months would still reflect the seriousness of the offense, promote respect for the  
11                  law and provide just punishment afford adequate deterrence and protect the public  
12                  from other crimes by the defendant.  
13

- 14
- 15
- 16                   **4. To Provide the Defendant with Needed Educational**  
17                   **or Vocational Training, Medical Care, or Other**  
18                   **Correctional Treatment in the Most Effective**  
19                   **Manner.**

20                  A sentence below the guideline range would still provide Mr. Ponder  
21                  with educational/vocational training, medical care and/or other correctional  
22                  treatment.  
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 noted the defendant's guideline sentencing range is 57-71 months.  
However, this court is free to impose any sentence that is ". . . sufficient but not

1 greater than necessary, to comply with the purposes [of sentencing] set forth in  
2 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 below the guidelines a not create an unwarranted sentence  
11 disparity given Mr. Ponder’s age and his background.  
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16 **CONCLUSION**  
17  
18

19 “It has been uniform and constant in the federal judicial tradition for  
20 the sentencing judge to consider every convicted person as an individual and every  
21 case as a unique study in the human failings that sometimes mitigate, sometimes  
22 magnify, the crime and the punishment to ensue.” *Gall v. United States*, 128 S.Ct.  
23 586, 598 (2007) citing *Koon v. United States*, 518 U.S. 81, 113 (1996). The  
24 defendant’s case is unique. He is a 56 year old offender caught up in the madness  
25 that was January 6. A sentence below the guideline range will satisfy the 18 U.S.C.  
26 §3553(a) factors.  
27  
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Dated: July 18, 2022

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Respectfully submitted,

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