

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

UNITED STATES OF AMERICA)
)
 v.) CASE NO. 1:21-cr-567-2 (RCL)
)
 CHARLES SMITH)
 _____)

DEFENDANT’S MEMORANDUM IN AID OF SENTENCING

Charles Smith, through undersigned counsel, submits this sentencing memorandum to aid the Court at sentencing. Based on the facts and arguments below, Mr Smith requests the Court sentence him to a period of incarceration of 12-months with the requisite period of supervised release to follow, to include a significant period of community service. We submit that this sentence would most accurately address the concerns of the sentencing statute, 18 U.S.C. §3553.

As is our practice, we are not going to belabor the Court with a recitation of the information contained in the Presentence Report. Rather we will contain our remarks to factors we feel pertinent and relevant to the Court’s sentencing calculus outside of that document, focusing on Mr Smith’s actions and memories of the events of 6 January 2021, and perspective on his position over a year later. As Mr Smith is commonly known by his family and friends as Brad, we will refer to him here by that name¹.

Prologue to 6th January.

Brad Smith was a supporter of former President Trump, becoming so during the run for president in 2016. He voted for Trump in the 2016 election, and as the 2020 election approached, he felt strongly enough about the first term that he pledged himself again to Trump’s cause. As we

¹ Brad’s father is also Charles Smith.

all observed though, the run-up to the 2020 election took on a strange tone: A very different experience than what had happened in 2016. In the period leading up to the election, perhaps sensing the political winds, the former president claimed were he to lose the election, this could only happen if election fraud were to take place. And this meme was bombarded across right-wing media.

A sad indictment of our times is media outlets have become increasingly polarized and seek not to *inform* their respective audiences, rather catering to the already-apparent biases of their demographic. In response, it is natural for the audience, hearing what they want to hear, to become increasingly fervent having their particular suspicions and fears buttressed. No one likes to lose, and reassuring any crowd that *if we lose its because we were cheated* is an incredibly powerful narcotic. This message struck a resonant chord with the right-wing faithful, and Brad was not immune. As we got closer to the first Tuesday in November the message of potential voter-fraud to the faithful increased to frenetic levels: the scene was set for discord. Trump constantly stoked the fires claiming there was an organized effort from his adversaries to “steal” the election. This was nuclearized with the message that the conservative vote as a whole was being neutralized. Again, the message resonated. Moreover, in addition to the media, the circles and friends one encounters also has a strengthening factor to personal beliefs. All this combined, and on the eve of the election the stage was set and the powder was primed.

3rd November arrived. The country watched with bated breath as the people went to the polls. Tuesday evening turned into Wednesday, the nation perched on the edge of its seat as the election leaned towards Biden. The right-wing media went into overdrive. It didn't help that recount after recount left us 4 days without a decision, but by Saturday the result was called. The effect of this four-day delay served only to ramp-up the tensions and fears as the faithful watched what appeared to be Trump's prediction coming to pass. In the wake of the result, what followed

was an explosion of frenzy with court cases, recounts, protests of cheating screamed from the rooftops. The new meme of “Stop the Steal” took over the airwaves. Brad watched, and was swayed. As court case after court case collapsed, as recount after recount confirmed the returns, and as state after state refused to nullify its result, the options for the faithful dwindled. 6th January 2021 was the scheduled date for Congress to exercise its two-hundred-year-old Constitutional duty in certifying the votes of the Electoral College, and this date quickly became the new focal point. Trump called for a huge rally for that day, and the MAGA hats responded.

6th January, 2022

As the day approached, Brad Smith considered the situation. He had observed the last eight weeks frenzy and outrage from the outlets. He had discussed the events with his close friends and circle. As mentioned, over the course of Trump’s political career Brad had been a supporter and viewed Trump to be a good man and a great president. The reports he was exposed to led him to believe that something untoward had occurred in the election. Trump shouted over Twitter that the steal had to be stopped and he wanted his people to come to Washington. Hearing that call, having already had vague talks with the like-minded, Brad, along with his friend, decided to respond to his President and make the trip to Washington DC. Trump had called for their support and it felt like it was the only right thing to do. It must be noted at this point that Brad, despite the drumbeat from radicals for conservative members of Congress or the Vice President to deny certification, was not aware of any definitive plan of what was to happen. As he looks back at it now, it was just a feeling of standing up and being counted: It was to be a show of support for the outgoing president, and defiance to the forces that were undermining what they believed to be their rights. He had been to previous rallies and saw this as a defining moment to express that support: nothing more, nothing less. How wrong he was to be.

The pair left for DC on the morning of the 6th. There had been no long term extensive planning; this was something they'd decided to do in the days leading up. Upon approaching the Greater Washington area, they arrived at the first Metro stop they came to (it was Shady Grove) and took the Red line into the city. They arrived downtown rather late, about 11:30. They were not terribly familiar with the geography of DC but found their way, with the help of others, to the Ellipse where Trump's rally was about to get underway. There has been considerable discussion in the unpacking of the events of that day as to the incendiary nature of the comments of the former president at that rally. This was the moment the soon-to-be ex-president told the crowd to go to the Capitol, and "fight like hell." Brad was there, and he recalls like it was yesterday the moment when this crowd of disaffected, disillusioned protesters transformed into a baying mob that, incensed, was sent to descend on the Capitol building down the Mall wreaking havoc.

As they joined the crowd at the Capitol, even in the parts of the crowd that were not engaged in acts of violence, it was clear that people were not content with just waving signs and chanting. The blood of the mob was up. The stakes were being raised, and Brad was sucked in. The crowd was yelling mantras such as "Who's House is this?," chants of "USA, USA!" and "stop the steal!" and Brad was sucked in. As the crowd eventually got closer to the Capitol building itself, at the front, someone, somehow gained entry to the building and the crowd surged. Brad was in the middle of the storm. At some point from behind, a large metal object was being moved overhead to the front of the crowd, And Brad Smith was sucked in. While we do not attempt to assert any kind of coercion in what was about to happen, the truth is he was following the flow and mood of the pack. This was not a situation which allowed for calm reflection, and mob mentality had taken hold. The mob had breached the police lines and were entering the building itself. But not Brad. He'd reached his event horizon. His friend was going in. But not Brad. He and his friend argued. "This is what we came to do," his friend yelled. Brad replied no: *this* was not

what he'd come for. He viewed the mob; he viewed the violence and made the decision this was far enough and he wanted out. He headed, against the force of the crowd still surging, away from the scene.

Brad made his way back to Shady Grove. He wasn't sure what he was going to do. The truck they'd come down in belonged to his friend and the last Brad had seen of him was him disappearing with the mob into the building. He contacted his family to see if they would come get him. Standing in the Metro waiting for a train, he was contacted by his friend to wait. Not wanting to wait in the city, he got on the red line train to wait at the truck. Driving home was surreal. The mood was tense; nothing much was said. Brad was already disturbed by what they'd experienced, but as the time passed and he listened to news reports of what happened in and around other parts of the building, and as he discussed with parents and family who had watched the events unfold on TV and who were racked with fear and concern, the horror of what had transpired set in. The epiphany that things would never be the same again was unshakeable.

The Present Day.

Brad Smith looks back at the events of 6th January 2021 with massive shame. He feels regret from many angles. Most importantly, he expresses remorse for his actions that day. In going to the Capitol, he had no intent to engage in any of the behavior that rose to the level we all experienced. The environment he encountered was already animated, but shocking in the manner in which it exploded with fury. He found himself swept along, both emotionally in the mentality of the mob and physically in the manner in which he found himself confronting the Capitol building itself. As we have mentioned, we do not claim in any way coercion but rather the frenzy left little time for self-reflection: the self-reflection he now employs. He looks back and understands the gravity of what happened at that building; what it meant and what it continues to mean to this day. Despite events going way beyond any initial intent, he is ashamed of his actions

and ashamed to be associated with what happened. It is the trigger of why he felt the need to get out as quick as he could. He wishes he'd encountered that epiphany before things got out of hand. He knows that despite a lack of any underlying malevolence, or any preconceived plan to alter the election, or even to *fight like hell*, he crossed a line, and he accepts full and complete responsibility for this.

Eighteen months later, he feels sadness at the damage the events of that day has done to our Republic. He came to DC with the honorable intent of displaying his support for the outgoing President. But that is not what transpired. Citizens of this nation turned and attacked the seat of our government. And Brad was there. The nature of the events the nation witnessed has cast a pall over anyone who attended that day, and his shame at his involvement is something that Brad will struggle with for the rest of his life. He believed that decisions he made were borne of patriotism but they were anything but. He has been approached on several occasions by media to provide his side of events, but has declined to do so. Quite simply his experiences of that day have left a sour taste in his mouth and he wants to put it in the past and close the door as quickly as possible. He is very frightened or what could happen to him at sentencing but he wishes to make the Court aware that he knows his actions were solely of his own volition and takes full responsibility.

Sentencing Factors.

18 U.S.C. §3553 provides:

(a) Factors To Be Considered in Imposing a Sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;

- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

Addressing these factors individually we find the following. Nature and circumstances of the offense is a very combustible issue, and we will return to it later. On history and characteristics of the defendant there is not much debate. Brad Smith has no criminal history, indeed this is his first encounter with the criminal justice system. His background displays an individual who has led a completely law-abiding existence prior to the events which bring him here. Subsection (2)(A) discusses seriousness of the offense, respect for the law, and just punishment for the offense. We will return to this also when we discuss nature and circumstances of the offense. Subsection (B) contemplates adequate deterrence to criminal conduct. Brad has been emotionally shaken by his experiences with the justice system, and the insight he has acquired has left him with the strongest of convictions that this will be his last. Incarceration is not necessary to make that point. Subsection (C) considers a similar idea as that in (B), in protecting the community from further criminal contact. Here we point out Brad is as far from being a career offender as is possible and, again, given his experiences here, the public has nothing to fear from him in the future. It must also be said that any of the defendants involved in these cases represent a far different subject than these courts normally deal with. It is difficult to see how any of these defendants would be itching to get involved in a recurrence of that day. With respect to Subsection (D), quite simply Brad Smith has no need of any of the services available to U.S. Probation. Which brings us back to sections (1) and (2)(A).

The nature and circumstances of the offense is a not a simple issue to unpack. On the one hand, the offenses Brad has accepted responsibility for, in the universe of criminal conduct, are not of such a violent nature as we are sometimes exposed to. However, taken into context with the much larger events of 6 January, the nature and circumstances question becomes much less clear.

There is no question the events of that day have left a deep scar on the national psyche. Seditious behavior has in some cases been charged. But we ask the Court to take note that Brad is one of a small group of people who despite having gone down the regrettable road of amassing at the Capitol realized the gravity of what was happening and disengaged as quickly as possible. We ask the Court to recognize that even at what appeared to be the point of no return, this was a Rubicon he made every effort to back away from. We ask the Court to view his actions against the backdrop of those with more sinister intentions as proof of his original harmless purpose and sentence him accordingly.

Addressing (2)(A), we wish to bring to the Court's attention a core value Brad has of respect towards law and order. In the aftermath of 6 January, Brad has reflected upon the effects the events of that day have had on involved law enforcement. He has taken it upon himself to donate financially to police charities, specifically the Capitol Police Fund. It may not be much, but he is willing to do whatever he can to make amends. We also highlight to the Court that at no point has there been any suggestion that he belongs to any organization that encourages civil disobedience, advocates overthrow of the government, displays extremist right-wing views, or has encouraged in any way acts of violence in the manner of those on display on 6th January. In terms of any sense of danger to the community, there is simply none: it doesn't exist. The Court should have no concerns as to his views on the respect for law either today or for the future.

The final issue §3553 to be discussed is the last part of (2)(A): just punishment for the offense. At its heart, this is the very central issue for this Memorandum as a whole. Brad Smith is a law abiding citizen who placed himself in the wrong place at the wrong time. He came to DC to exercise his right to free speech, and quickly found himself in the middle of an escalating situation in which speech, free or not, was being dropped as a form of expression by a mob, spinning out of control, and in which rage was taking over. Brad Smith has been shattered at the fallout from that

day. His life will never be the same again. This, in and of itself, is more than adequate punishment. In no way, shape, or form should the Court be under the impression that the downward departure we are seeking would be seen as getting away with anything. Having had no criminal history, the fact of now having a criminal record is a sobering thought. Brad takes this to heart. The word that most accurately describes his feelings is atonement. He knows he can't turn back the clock, but he yearns to make amends for his decisions no matter how small they proportionally may be. Given all discussed above, including the fact of his decision to disengage when he did, we ask the Court to sentence in accordance with our proposal.

Conclusion

Taking all the above into account. We ask the Court to provide the following sentence. We propose a twelve-month period of incarceration to be followed by a period of supervised release to include a significant period of community service. We believe the community would benefit far more from his service than his incarceration. We would ask the Court to allow him to make a positive change in his community by giving him the opportunity to work for the greater good. We believe this sentence to best satisfy the concerns of 18 U.S.C. §3553.

/s/ Peter A. Cooper

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