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

UNITED STATES OF AMERICA,

Case No.: 1:21cr00592 ABJ-1

v.

**MEMORANDUM IN AID OF  
SENTENCING**

DAVID WIERSMA,

DEFENDANT

COMES NOW, David Wiersma, 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 one year probation.

**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.**

*United States v. David Wiersma*  
Case No. 1:21cr00592 ABJ-1

Memorandum in Aid of Sentencing  
Page No. 1

SENT MEMO RIOT 22/11/18 11:10:16

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Coral Springs, FL 33071  
Phone: 202.638.4100  
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1 Mr. Wiersma plead guilty Parading, Demonstrating, or Picketing in a  
2 Capitol Building in violation of 40 U.S.C. §5104(e)(2)(G). Mr. Wiersma had strongly  
3 held beliefs after the Presidential election that there had been irregularities in the  
4 election that were not proper. He decided to come to D.C. to *peacefully* protest the  
5 results of the election and the lack of attention to alleged voting irregularities. He  
6 did so with no intent to do anything but add his voice to the vocal protests over the  
7 injustice he perceived had happened in the election. He was not armed, and he  
8 committed no violent actions in his peaceful protest. Admittedly Mr. Wiersma  
9 entered the Capitol. Mr. Wiersma entered through an open door with numerous  
10 police officers inside and out. The officers were restricting access to some parts of  
11 the building but not stopping anyone to other parts of the building. Mr. Wiersma,  
12 who supports law enforcement and has been to Back the Blue events, believed the  
13 officers were there to protect them. Once he entered he asked one of the police  
14 officers about rest rooms and a possible tour. The police officers were congenial and  
15 gave no instructions. Mr. Wiersma and his friend/co-defendant Dawn Frankowski  
16 were inside the Capitol for a total of 11 minutes. Mr. Wiersma's culpability is  
17 minimal in contrast to the other individuals involved that day who destroyed  
18 property, stole property, assaulted, and threatened law enforcement officers, and  
19 attempted to disrupt Congress. Mr. Wiersma's only desire was to participate in a  
20 democratic process that is protected under the 1<sup>st</sup> Amendment of our Constitution.  
21 Unfortunately, going into the Capitol was not part of that democratic process and  
22 he now stands before the court having pleaded guilty of parading and  
23 demonstrating in the Capitol.  
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## **B. History and Characteristics of the Defendant.**

*United States v. David Wiersma*  
Case No. 1:21cr00592 ABJ-1

Memorandum in Aid of Sentencing  
Page No. 2

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1 Mr. Wiersma is 68 years old and a resident of Illinois. Mr. Wiersma  
2 has one prior arrest but this is his first conviction. Prior to the pandemic he was  
3 employed as a quality inspector in the nuclear industry. He now works in the ride-  
4 share industry. He has never married and has no children. He has close family  
5 support. According to the United States Probation Office (USPO) he has been in  
6 compliance with his pretrial supervision and the terms of his release. According to  
7 the USPO Mr. Wiersma “does not appear to present a danger to the community and  
8 the goals of sentencing may be accomplished through a non-custodial sentence.”  
9 (Dkt. #67).  
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16 **C. The Need for the Sentence imposed –**

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18 **1. To Reflect the Seriousness of the Offense, Promote**  
19 **Respect for the Law and to Provide Just Punishment for**  
20 **the Offense.**  
21

22 The offense Mr. Wiersma plead guilty to is a misdemeanor. A period of  
23 probation will still reflect the seriousness of the offense, promote respect for the law  
24 and provide just punishment. As the Supreme Court has noted probation involves a  
25 “substantial restriction of freedom.” *United States v. Gall*, 128 S.Ct. 586, 595  
26 (2007). “Inherent in the very nature of probation is that probationers ‘do not enjoy  
27 the absolute liberty to which every citizen is entitled’” (quoting *Griffin v. Wisconsin*,  
28 583 US. 868, 874 (1987)).

*United States v. David Wiersma*  
Case No. 1:21cr00592 ABJ-1

Memorandum in Aid of Sentencing  
Page No. 3

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2. **To afford Adequate Deterrence to Criminal Conduct, and**
3. **To Protect the Public from Further Crimes of the Defendant.**

This is Mr. Wiersma's first conviction and based on his past record, his acceptance of responsibility and his remorse for his conduct it is sure to be his last. Even a sentence of probation will ensure that he has no further criminal conduct and will protect the public from further crimes by Mr. Wiersma.

4. **To Provide the Defendant with Needed Educational or Vocational Training, Medical Care, or Other Correctional Treatment in the Most Effective Manner.**

Mr. Wiersma is 68 years of age and is employed in the ride-sharing business. Mr. Wiersma is not in need of any educational, vocational training or other correctional treatment.

- D. **The Kind of Sentences Available, and**
- E. **The Kinds of Sentence and the Sentencing Range Established By the Guidelines.**

As this is a Class C misdemeanor the Federal Sentencing Guidelines do not apply. 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.**  
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10 A sentence of probation would be consistent with other capitol riot  
11 defendants similarly situated. *See, e.g., United States v. Valerie Ehrke*, 21--  
12 CR00097 (PLF), 36 months probation; *United States v. Danielle Doyle*, 21-CR-00324  
13 TLM, 2 (two) months probation, \$3,000.00 fine; *United States v. Eliel Rosa*, 21-CR-  
14 00068 TNM, 12 months probation, 100 hours community service; *United States v.*  
15 *Thomas Gallagher*, 21-CR-00041 CJN, 24 months probation, 60 hours community  
16 service. See also, sentencing chart provided as Exhibit One to the government’s  
17 sentencing memorandum. (Dkt. #65).  
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23 **CONCLUSION**  
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26 “It has been uniform and constant in the federal judicial tradition for  
27 the sentencing judge to consider every convicted person as an individual and every  
28 case as a unique study in the human failings that sometimes mitigate, sometimes  
magnify, the crime and the punishment to ensue.” *Gall v. United States*, 128 S.Ct.  
586, 598 (2007) citing *Koon v. United States*, 518 U.S. 81, 113 (1996). The

*United States v. David Wiersma*  
Case No. 1:21cr00592 ABJ-1

Memorandum in Aid of Sentencing  
Page No. 5

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1 defendant's case is unique. He is a 68 year old first offender caught up in the  
2 madness that was January 6. As set out above a sentence that does not include  
3 incarceration or home detention will satisfy the 18 U.S.C. §3553(a) factors.  
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5 Dated: November 18, 2022

6 Respectfully submitted,  
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*United States v. David Wiersma*  
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Memorandum in Aid of Sentencing  
Page No. 6

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