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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DUKE EDWARD WILSON,

Defendant.

Case No. 21-cr-000345

**MOTION FOR VARIANCE AND
SENTENCING MEMORANDUM**

DUKE EDWARD WILSON moves the Court to grant a variance downward from the Sentencing Guidelines in this case and offers this Memorandum in support.

Introduction

On September 8, 2021, Mr. Wilson pled guilty to Counts 3 and 7 - assaulting, resisting, or impeding certain officers in violation of 18 U.S. Code §111, and obstruction of an official proceeding in violation of 18 U.S.C. § 1512(c)(2). As calculated by the Presentence Investigation Report, the guidelines range is 41 – 51 months for Mr. Wilson, based on a total offense level of 22 and a criminal history category I.

From the President's Rally to the Capitol

Mr. Wilson adopts the factual background described in the plea agreement and the Presentence Investigation Report and provides the following information, including his written statement and letters provided by friends and family. Facts more specific to Mr. Wilson's offense are detailed in paragraphs 8-11 of the SOF, and 17-20 of the PSR.

A day before the "Stop the Steal" rally in Washington D.C., Duke Wilson traveled from his home in Nampa, Idaho to Washington. The rally was promoted by various organizations, as well as the President and his supporters, who claimed the election had been stolen and that Mr. Trump was the rightful winner.

As a joint session of Congress was set to convene to certify Joe Biden's electoral vote win, thousands of the President's supporters gathered near the White House to hear him speak at noon. The President urged on the assembly, telling them, "We will never give up. We will never concede."¹

Duke Wilson was there with his son. He believed it would likely be President Trump's last such rally. He heard and believed the President's charge to the crowd; they could still help stop Joe Biden from succeeding him as President. They could protest the intended action of Congress and the Vice President.

"Mike Pence, I hope you're going to stand up for the good of our Constitution and for the good of the country," Trump told the crowd at the rally. "And if you're not, I'm going to be very disappointed in you."

¹ The narrative account in this section and quoted statements from President Trump come from various news sources, which are not individually cited. These include the Washington Post, New York Times, NPR, Fox News and CNN.

As he ended his speech, the President told the crowd: “We’re going to the Capitol. We’re going to try and give them [Republicans] the kind of pride and boldness that they need to take back our country.”

President Trump did not go to the Capitol. As his supporters moved there, he got back into his limousine and went to the White House. His supporters, including the crowd from the rally he had promoted and directed, and including Duke Wilson, moved to the Capitol grounds and began to gather there to protest certification of the election results.

Within an hour, protesters breached the barriers at the Capitol. By 2:00p.m., protesters had broken windows and climbed into the Capitol. They opened doors for others to follow. Mr. Wilson followed the crowd through a tunnel that led into the building.

Through the broken glass, the President’s supporters, displaying all sorts of flags, signs and symbols could be seen as they appeared to have taken over the building.



Within twenty minutes, the Senate and House recessed, the building went into lockdown, and members of both houses were moved to safety. At 2:24 p.m., President Trump took to Twitter:

“Mike Pence didn’t have the courage to do what should have been done to protect our Country and our Constitution.”

Duke Wilson went to the rally to support the President and protest the results of the election. He did not intend to become involved in a riot, or act in ways that would have ended with him facing a prison sentence. When he followed the crowd from the rally to the Capitol, he had no idea he would enter the Capitol or violate the law. He was part of that “sea of people” moving in the direction the President said he was going – to the Capitol.

Many in the crowd wore military clothing and carried combat equipment - helmets, gas masks, shields, batons, clubs, and pepper spray. Many carried flags – “Trump Won,” “Don’t Tread on Me” and Confederate flags. Duke Wilson wore blue jeans, an aging brown jacket, and a hat which proclaimed, “CNN - Fake News.” It was, he says, mostly a joke. It provided no shield against the events that were to come.

Duke’s only “weapon” was an iPad he intended to use to document the day’s events. He carried the iPad and an oversized wallet his friends referred to as a “man purse” in his right hand. He didn’t have camouflaged clothing, weapons of any sort or flags daring others to not “tread” on him.

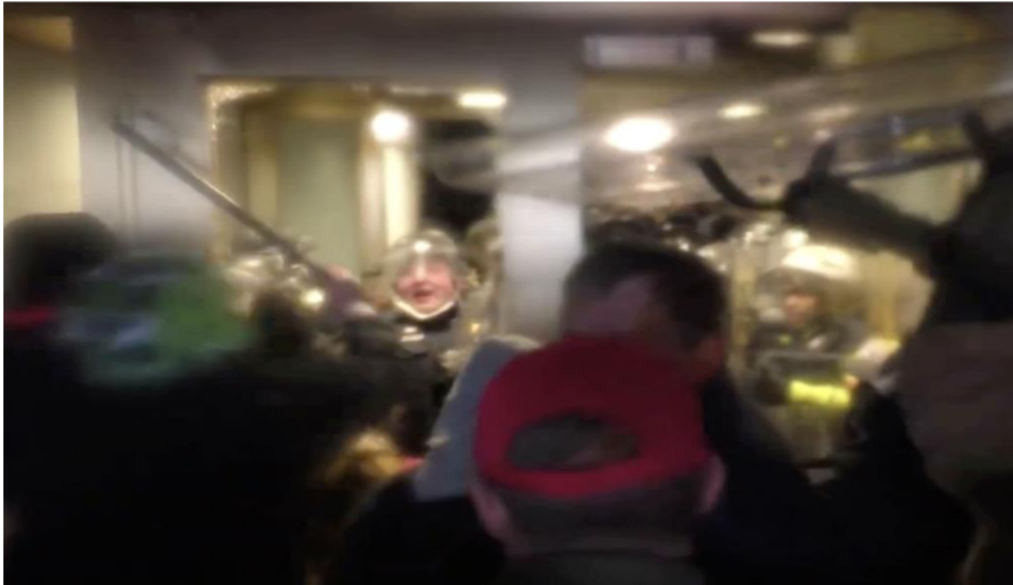
The videos produced in discovery by the Government and expected to be submitted at sentencing, record Mr. Wilson moving with the crowd into a tunnel at the Capitol. He ultimately faces officers who are attempting to keep the parade of people out of the building.

Mr. Wilson admits that while at the front of the crowd, he grabbed a door and attempted to open it. At the same time he is hit with a club from the right-side door which is held open. It is difficult to tell who struck Mr. Wilson with that club, but the blows appear to come from the side where the officers were aligned against the crowd. The video records that Duke was struck by officers several times and then punched by them as he goes down to the floor. The crowd behind Mr. Wilson continued to push him toward the officers and the door. Someone in the crowd behind him holds a piece of PVC pipe, raises it and strikes Mr. Wilson twice. He picks the PVC pipe up, faces away from the police as if to identify who struck him, then faces back toward the officers and tosses it through the broken window in the door and in their direction. The screen shot below shows Mr. Wilson as he has turned and tries to get free of the crowd, having been attacked from both sides and pepper sprayed. The broken glass of the door is plainly visible and his face is stained orange from the pepper spray.²



² Video, [y2mate.com631-655.mp4](https://www.y2mate.com/631-655.mp4).

As the video continues, a man with a bright green hat is seen near Mr. Wilson. He purposefully swings a club toward the officers, twice.³ Mr. Wilson is standing nearby, but he did not direct those blows toward the officers. He has turned and is facing the crowd, looking for a way out. The screen shot below shows that man in the green hat and the pipe in his hand as he swings it at the officers.

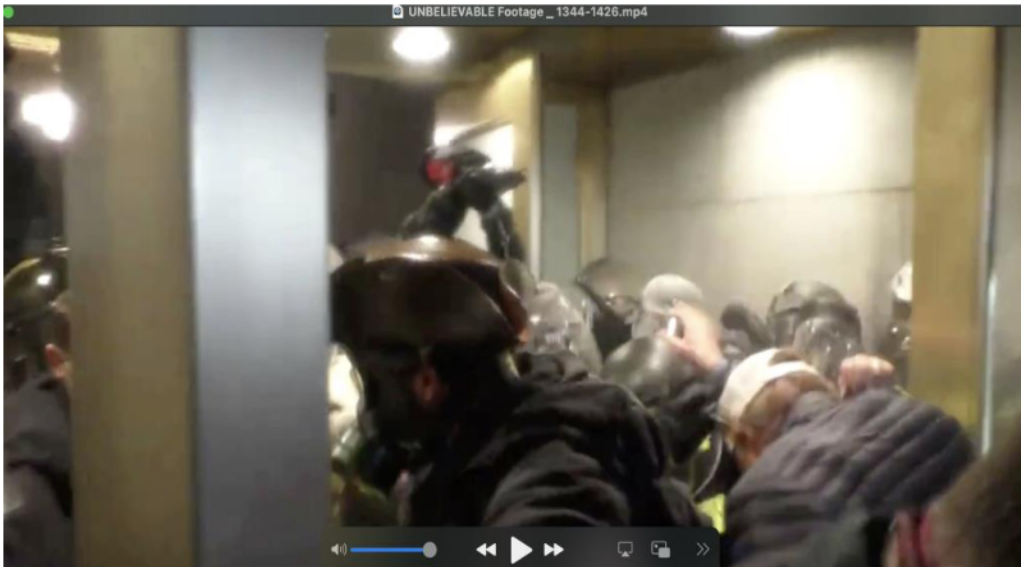


Another video clip shows the incident where the government claims Mr. Wilson assists others attempting take an officer's shield and push an officer to the ground.⁴ The crowd has pushed forward toward the officers and as the clip begins, a woman is fighting her way back past Mr. Wilson, away from the front. Mr. Wilson is pushed forward, and his hat falls off. He grabs it and puts it on his head. Another man to his left grimaces as he too attempts to get away from the front line. Duke is pushed into an officer as the crowd and police exchange pepper spray and more blows. He is hit twice by an officer's club, stumbles, then moves away toward the back, again in retreat.

³ Video, *Unbelievable Footage*_924-1035.mp4.

⁴ Video, *Unbelievable Footage*_1324-1426.mp4.

The crowd yells. A Trump flag waives from someone up front as those protesters with protective head gear and their own weapons fight with officers. Duke is not among them. The screenshot below shows Mr. Wilson, his white hat visible and an officer's hand on his shoulder.



Nothing in the videos negates Mr. Wilson's admissions of guilt. Nothing in this Memorandum should be interpreted as Mr. Wilson minimizing his involvement that day. Duke says it best in his written statement: **"Someone showed me video of me and I don't remember doing some of the stupid stuff did."** He knows that he was wrong, and he wishes he had not been there. He admits that he should have turned and walked away.

In Duke Wilson's Own Words

Mr. Wilson's Sentencing Statement tells his story in his own words. He went to the District of Columbia to support the President, for what he presumed would be Mr. Trump's last rally. He was there because of the election, which he believed had been stolen.

Mr. Wilson: “[President Trump] said it had been stolen, but I don’t know if that is true. I was not there to overthrow the government, just to show support for the country.”

As the crowd moved toward the Capitol he took pictures on his iPad “of the mass of people that were there to show their support.” The crowd moved and he went with it, channeled into a tunnel that grew narrow, and pushed by that mass toward the front line where police stood behind shields and exchanged pepper spray with those they faced. The crowd was loud. People were shouting at the officers and the officers yelling back at them. Stun guns could be heard and there seemed no easy way out from the crowd.

Mr. Wilson: “People were yelling and screaming. It was so loud I could not even think.”

The videos bear that out. At some level the term “riot” seems more fitting when the video is reviewed but within that crowd, most were folks like Duke Wilson, who never expected or intended to be in such a situation. People like Duke Wilson, who was hit and battered by both sides, and who left with blood running from his head and eyes on fire from pepper spray. People like Duke Wilson, an ordinary American who went to support a President, and who marched to the Capitol without a real sense of what was to come. Some were ordinary folks who never intended to fight or riot, like Duke Wilson.

Mr. Wilson: “I noticed that the people fighting with the police wore face coverings and some had body armor on. They would spray mace at the police and then turn around and spray into the crowd. They were a bad bunch of people. I heard later that these people were with Antifa and were getting the crowd worked up and agitated. Most of them were dressed in black clothing and were not scared of violence, but I can’t say what group they were with. I do not know. The girl that was near me broke the window out and climbed in the room with the chairs. About then tear gas canisters exploded and everyone scrambled to get away. You could hardly breathe. We were able to make our way out of the grandstands somehow and away.”

Duke Wilson is remorseful. He regrets what happened that day and he accepts responsibility for his actions. He is empathetic for the officers and others who were injured.

Mr. Wilson: “I’m not proud of what I did, but I am not the person they’re making of me out to be. I wish I could change what happened but I can’t. I didn’t destroy any property, and I know I was wrong for going in that tunnel and what went on. I have seen the videos of what I did, and I should not have been there. I did not intend to hurt anyone and I apologize to the officers. I was beaten by the crowd and I did toss that PVC pipe toward the officers, and if they say it hit someone I cannot deny it. I am also sorry for what the crowd did to the Capitol building. That was wrong.”

Motion for Variance

Duke Edward Wilson moves the Court to grant a downward variance from the Sentencing Guidelines. Such a sentence can be fashioned to be sufficient, but not greater than necessary to satisfy the relevant factors identified in 18 U.S.C. § 3553(a). Such a sentence can readily take into consideration:

- Mr. Wilson’s lifetime generally as a law-abiding citizen
- Mr. Wilson’s limited role in the events of the day, as he had nothing to do with leading, organizing or planning any of what happened
- Mr. Wilson’s willingness to tell authorities of the nature of his involvement
- Mr. Wilson’s reaction to others at the Capitol that day, with whom he pleaded to stop as they stole items and attempted to gain entrance by destroying property
- Mr. Wilson’s conduct that day did not rise to the level that would ordinarily justify the addition of 8 points for the specific offense characteristic identified in paragraph 31 of the Presentence Investigation Report
- Mr. Wilson’s age
- Mr. Wilson’s good conduct while on pretrial release
- Mr. Wilson’s history of helping others within his community
- Mr. Wilson’s compliance with the plea agreement by sitting for an interview with government special agents and attorneys
- Mr. Wilson’s support of his son, who was injured and has a long term disability

1. Duke Wilson's history and characteristics

Duke Wilson is a logger and farmer who grew up in rural Oregon. He lived in a Elsie, Oregon, a logging town in which, as he told the Presentence Investigator, “everyone knew everyone else’s business.” His father Ed Wilson was a logger and his mother, Mildred, a baker. She was murdered during a robbery in the 1960s. He grew up in a working-class home, had good relationships with friends and family and his basic needs were met. He went to college to play baseball, and in the end, and left college baseball to become a logger. He married, had a couple children, got divorced but remains close to his ex-wife and supportive of their children. One of his children, Ryan, suffered a traumatic spinal injury that left him paralyzed and unable to walk. He had been in a car wreck and when surgeons operated on Ryan, they made a mistake that left him bleeding. Duke took care of that child and worked with him, supported his treatment and therapy. Ryan was with him in Washington, but as far as Duke knows, he did not go inside the Capitol. The two were reunited after Mr. Wilson left the confrontation in the tunnel and was outside.

Mr. Wilson has now retired. He works helping others in the little community in which he lives, and he is a bit of a health nut. If asked, he will happily tell of his weight loss on a Keto diet. He has admonished his lawyer about the dangers of sugar and his sweet tooth.

Mr. Wilson's Statement provided with this Memorandum recounts his version of the events.⁵ His words are better than anything Counsel could describe about how Duke became involved in the January 6th events and the extent of his offenses.

What follows here is a summary and some highlights from letters and statements of others offered in extenuation and mitigation and provided as attachments.

Brian Baker – Mr. Baker's letter concerning Duke Wilson was unsolicited. He has known Mr. Wilson for more than 50 years. He and Mr. Wilson attended a small, country school together and he is aware of Duke's business and personal practices. Mr. Wilson is a well-respected, and described as a man of "pride, honor and integrity." He states: "I understand the serious situation Duke has found himself in, but I can assure you from my viewpoint it was one created by becoming concerned with the country and its path. I believe he made a terrible error being drawn into a situation that got out of control."

Anthony Bonn – Mr. Bonn has known Duke Wilson since they played baseball together at Eastern Oregon University in 1973. He describes Mr. Wilson as "independent, generous, principled, good humored, with a strong work ethic and a firm moral character." He also notes that Mr. Wilson "stands up for what he believes to be right but has never used force to defend his position." The example he gives of Mr. Wilson's character relates to a medical mistake that left his son with a serious spinal injury. That injury left his son partially paralyzed. He says that Duke was grieving, and very angry, but he did not bring a legal action, explaining that he was not going to ruin "someone else's life over an unintentional mistake." Concerning January 6, Mr. Bonn writes that Mr. Wilson could be counted on to be present "to make sure that the voices of rural Americans are being heard," as that "fits with his character... Stoking violence does not. Duke is not and has never been any part of a radical group, either left or right on the political scale...."

Dennis Kerfoot – Mr. Kerfoot is a retired educator and coach after 34 years in those fields. He spent his last 6 years as an assistant principal at Eagle High School, in Eagle, Idaho. Of the thousands of students, parents and teachers he met as an educator, he says "only a hand full of those people could measure up to the honesty, loyalty and overall character of Duke Wilson." He and Mr. Wilson are lifelong friends having first met at Eastern Oregon State College in 1972. He echoes Mr. Bonn and Mr. Baker's assessment that Mr. Wilson was likely caught up in the situation at the Capitol without any intention to cause harm or overthrow the government. He supports Mr. Wilson, knows his character as a good human being and as remorseful. He does not believe Mr. Wilson should be sentenced to prison.

⁵ Mr. Wilson's Statement was provided the United States prior to its submission here as part of his interest in providing any information the Government seeks by an interview.

Ross Denney – Mr. Denney has known Duke Wilson since 1998 when they contracted for logging services on 5000 acres of timberland in Idaho. Mr. Wilson is a logger by trade, and Denney describes his logging operations as being conducted in a “professional and workmanlike manner, meeting all contract obligations.” He characterizes Mr. Wilson as acting in “good faith and fairness in his negotiations and to be a man of integrity and goodwill.”

Andrea Owens – Ms. Owens has known Mr. Wilson for around 20 years as a close friend of her parents while residing in the Grand View, Idaho area. She went to school with Duke’s son and their families remain close. Mr. Wilson is described as hard working and caring. Ms. Owens says that Mr. Wilson took time to teach her brothers work ethics and techniques for harvesting timber and delivering firewood. He was very patient with her brothers. She sees Duke Wilson as busy with productive projects to better his surroundings, and a man with a big heart.

Marie Hipwell – Ms. Hipwell has known Duke Wilson for 22 years, and they also reside in the Grand View area. She states that “Duke is the type of person you want as a friend. He is kind, gentle, honest, dependable, trustworthy. He would never hurt anyone, he is a true gentleman. He would give the shirt off his own back to give to someone.”

2. A just punishment for Duke Wilson does not require confinement in a federal prison.

The guidelines indicate a sentence of 41 – 51 months for Mr. Wilson, based on a total offense level of 22 and a criminal history score I. A just sentence considers the nature and circumstances of the offense and the history and characteristics of the defendant; as well as the need to reflect the seriousness of the offense, promote respect for the law, provide punishment for the offense; deter the defendant others within the community; protect the public, and provide needed education, care, training, and correctional treatment in the most effective manner.⁶ A sentence that puts Duke Wilson in prison is not required to achieve these objectives.

Other than a DUI offense nearly 23 years ago, Mr. Wilson has no criminal record. He handled that matter without counsel, plead guilty and moved forward. As George

⁶ 18 U.S.C. §3553(a) factors, which are modeled generally after the purposes of punishment articulated in virtually every state.

Custer is reputed to have said, “it’s not how often you get knocked down, it’s how often you get back up.” Mr. Wilson learned from that event, got up and moved on. He will do the same here.

Mr. Wilson’s Sentencing Statement demonstrates how sorry he is that on that day, he abandoned his respect for the law. He understands how serious the events of January 6th were, including his own crimes. He pled guilty because he is guilty. **“I didn’t go to D.C. to fight or riot or hurt anyone. I wish none of this ever happened. I [am]not proud of myself.”** In the most honest way he can, he has admitted his crimes and will accept the decision of the Court as to sentencing.

Facing these charges and the unknown consequences will deter Mr. Wilson from ever committing another crime. The same is likely true of others who know him. The letters of support offered on his behalf evidence an understanding of how Mr. Wilson ended up in this trouble but reject the idea that Duke was right to have been there or to have violated the law.

The public need not fear Duke Wilson will commit another crime. If history is the best predictor of future behavior, then we can expect Mr. Wilson to comply with any Court order and scrupulously obey the law. He is well regarded and loved by many in his community, and he can be counted on to set an example for others. He is not in need of any type of correctional treatment that must occur in confinement. Mr. Wilson understands he was wrong.

The Government may argue that Mr. Wilson’s crimes are more serious than many others that day because he assaulted officers. In that abstract, it is true. The video shows something else. There is that moment we see his face in the video where has been

battered by the crowd and by the officers and sprayed with chemicals that have turned his face red, and later would leave his head bleeding. He is dazed, looking for an escape from the craziness in which he finds himself. A woman screams over and over, “Stop it! Stop it! Stop it!” The sounds drown out rational thoughts. He is there, but he tries to get out. As he says, he threw a piece of PVC pipe toward the officers and if it hit someone, he is responsible.

So too the video where Duke is seen up front of the crowd, his hat is knocked off by the crowd, and he picks it up. A man to his right is holding onto an officer’s shield and a woman is trying to get by. He reaches toward her to help her escape the melee. The crowd pushes forward, he falls toward the officers and holds onto a shield. Others around him continue to attack the officers. A Trump flag flutters in the pepper spray. But Mr. Wilson is not dressed for war. He is not like others in that video who wear hard hats and helmets, military style vests and clearly came expecting a riot and looking for a fight.

Mr. Wilson should have never gone inside, and he should never have been in the fight, but his actions do not rise to a level that requires a “just” sentence to include prison. Coupled with his history of law-abiding conduct and good citizenship the Court can and should impose a just sentence that spares him prison time for his crimes.

Mr. Wilson asks the Court to grant a variance below the guideline range, considering the matters in this Memorandum, his Statement and the letters of support from friends and family. A short sentence of confinement and home detention would be sufficient as punishment for his crimes. He will follow any condition imposed and will never violate the law in the future.

Dated this 24th day of February 2021.

//s//

Charles F. Peterson
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of February 2022, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, and that a copy was served on the following parties or counsel by email:

Assistant United States Attorney
Christopher T. Tortorice
Christopher.tortorice@usdoj.gov

//s//

Charles F. Peterson