

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

UNITED STATES OF AMERICA

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V.

CRIMINAL NO. 1:21-cr-00235-RC

JEFFREY SHANE WITCHER

**DEFENDANT JEFFREY SHANE WITCHER'S
MEMORANDUM IN AID OF SENTENCING**

The Defendant, Jefferey Shane Witcher (“Shane”), respectfully submits this Memorandum in Aid of Sentencing. Shane entered a plea to one count of 18 U.S.C. 1752(a)(1): Entering and Remaining in a Restricted Building or Grounds. The Defendant requests a sentence of 24 months’ probation, \$500 in restitution and 50 community service hours.

Introductory Statement

Jefferey Shane Witcher (“Shane”) is a disabled veteran of the United States Marine Corps and the United States Army. He is disabled as a result of his service in combat zones and imminent danger zones. Shane Witcher suffers from Post-Traumatic Stress Disorder. He deeply regrets his participation in the breach of the U.S. Capitol on January 6, 2021. The damage and violence inflicted on that date by others is contrary to everything he stands for in his prior service to the United States. Shane Witcher particularly regrets entry in the U.S. Capitol while yelling and screaming, as it no doubt exacerbated a terrible situation. He knows he contributed to the hostile atmosphere and is embarrassed when he looks back at his conduct. Notably, once in the Capitol Shane and his friend Barnard shielded and protected Officer Lopez and other officers at the time a fire extinguisher had been thrown and the officers were being threatened with violence. Shane recalls telling them, “we won’t let anything happen to you!” Shane engaged in no property destruction but as he looks back on the scene and chaos, he is ashamed that he participated at all

in the events that day. Shane takes responsibility for his part in this sad event in U.S. history. Finally, Shane is grateful for the heroism and commitment of the U.S. Capitol Police on January 6, 2021.

18 U.S.C. 3553(a) Factors

As this Court is fully aware, the Court, under Title 18 of the United States Code, Section 3553(a) is required to consider : the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence to reflect the primary purposes of sentencing; the kinds of sentences available; the sentencing range established; policy statements; avoidance of unwarranted sentencing disparities among similar defendants and the need to provide any restitution. Undersigned counsel will not repeat the legal standards contained in the Government's Sentencing Memorandum in their entirety but will emphasize Shane Witcher's history and characteristics and make comments about his offense conduct to demonstrate the appropriateness of probation without detention in his case.

Unique Factors Nature of Offense - Witcher

Mr. Witcher's involvement in this misdemeanor offense has factors that are unique to most of the other misdemeanor defendants in this case. Those factors include:

- 1) **Shane Witcher initiated contact with the FBI** less than two weeks after January 6, 2021. In the words of the Government's Sentencing Memorandum – Shane made "*unsolicited contact*" with the FBI and provided "a fulsome statement concerning his actions" on January 6th.
- 2) Shane Witcher **provided his phone to the FBI with full consent** at his interview and admitted to them he had sought to delete images shortly after January 6th.
- 3) Shane Witcher (along with his companion Barnard) took **active verbal and physical measures to protect law enforcement** once inside the Capitol. He stated "These cops are not our enemies!"
- 4) Shortly after realizing there was a violent and destructive nature to

the crowd, Shane **exited the Capitol after 15 minutes.**

5) Shane Witcher **agreed to plead guilty at his first opportunity.**

History and Characteristics of Shane Witcher

Shane Witcher, uniquely, has served in both the U.S. Army and the United States Marine Corps. He has been decorated numerous times for his service, as is referenced in the Presentence Report. He is married, suffers from PTSD as a result of his combat and imminent danger service and supports his family through his disability pay. However, he is known as a leader and a servant among his community, family and military colleagues. For instance, **Doug Teague** [letter attached in **Appendix A**] writes:

“ . . . I am a retired Peace Officer with 27 years of honorable service. . . I have known Shane Witcher for over 30 years and served 4 years with him in the U.S. Marine Corps Reserves. . .

“ . . . Shane was an exceptional leader . . . I recently learned of the criminal charges filed on Shane and briefly spoke to him about this incident. Shane was accountable for his actions and didn't cause physical harm to anything or anyone . . .

“ . . . [Shane] deployed multiple times to Iraq and Afghanistan and is a combat veteran. . . Shane's infectious personality and sense of humor has gained him many friends in the Bastrop community, where he is well respected and loved. . . Shane is an honest, loyal and trustworthy person, and it is an honor to know Shane for all these years and call him my friend . . .”

Albert Mercado [letter attached in **Appendix A**] writes:

“ . . . I have known Shane Witcher as a fellow Marine, co-worker with at risk youth and as a close friend since 1982. . .

“ . . . Shane served in Egypt, Iraq and Afghanistan. When many of his friends and even some of his family questioned his going to war at his age Shane would that his Oath has no expiration date. . .

“ . . . We started post military careers together as counselors for at risk youth in a therapeutic wilderness setting. . . I was pleasantly

surprised to watch my friend make the transformation from Marine grunt to a man whose strongest virtues would become compassion and empathy for the plight of so many kids in our care . . .”

Robert M. Racer [letter attached in **Appendix A**] writes:

“ . . .Shane served his country for 10 years two separate times in his life. He put his country before his family and has lost a marriage and years spent with his son while he was growing up due to the loyalty Shane has for his country. . .

“ . . .Shane has also spent numerous years mentoring teenagers and showing them through his own actions how to be a good man, a good husband, and what a good father is to his child. . .”

Leslie Pointdexter [letter attached in **Appendix A**] writes:

“ . . .I am writing this letter of reference with pleasure, regarding an outstanding neighbor and friend, Shane Witcher. . .

“ . . .He has willingly helped me with yard issues, antenna problems, power washed my driveway and sidewalks out of kindness and been a big help in times of crisis and need. . .

“ . . .Shane has shown me to be a professional man of his word, goes above and beyond in anything he does, and genuinely cares about others and his community. . . I would trust him with my life if it ever came to that. . .”

Obviously, one of Shane Witcher’s outstanding characteristics is his service to the United States through two separate lengthy commitments, including service in imminent danger and combat areas. This commitment to his country makes Shane all the more regretful that he entered the U.S. Capitol and contributed in any way to the violence and destruction that took place outside of his watch. When he observed aggression toward law enforcement inside the Capitol, he did what he could to protect and then quickly exited the situation.

Finally, it should be noted that Shane Witcher, soon to be 60 years old, suffers PTSD due to combat service and receives 100% disability from the Veteran’s Administration. Additionally, he has been diagnosed and treated for prostate cancer. He has committed many years in his post

military career to working with troubled teens. These factors should be considered as weighing against any incarceration or detention.

Deterrence Principles – Applied to Witcher

Rehabilitation and deterrence have been achieved with Shane Witcher. There is no doubt that, once a few days cleared and Shane became aware of the reality of what happened on January 6th, he felt great remorse. In fact, he realized he had made a huge mistake entering the Capitol as soon as he saw actions involving destruction and violence by others. He acted to try to protect police officers but then realized he had to remove himself completely from the situation growing out of control. After a few days passed, Shane made the decision to call the FBI on his own without counsel. He cooperated fully in a very short period of time after the events at the Capitol.

Shane Witcher has fully complied with all pretrial services requirements, has accepted responsibility for his actions and his role in January 6, 2021 was not as an instigator of the breach or as an encourager of destruction or violence in any manner. He did make regrettable statements for a very brief period of time upon entry but soon realized he needed to turn around and leave. The general message to the public being sent should be that those who violated the law are held accountable but not imprisoned or sentenced to home detention if they cooperate and were not participants in property destruction or violence.

Sentencing Disparity Issues

As the Government's Sentencing Memorandum points out, a similarly situated defendant (Rachel Pert) received twenty-four months of probation without home detention for similar conduct. One could argue that Shane has the additional mitigation factor that he essentially self-reported his involvement to the FBI, saving government resources. Additionally, the Government's Sentencing Memorandum points out the Danielle Doyle case in which Doyle stayed

in the Capitol for a longer period of time, photographed and recorded destruction of property and texted an open source video more than a month after the riots occurred. Ms. Doyle received probation for two months with a \$3,000 fine.

Conclusion

Shane Witcher requests this Court to impose probation without incarceration or home detention, given the unique factors outlined in all of the filings in this case, including this Sentencing Memorandum. His age, medical condition(s) and full cooperation in this matter warrant a probation sentence. Any detention or incarceration would serve no proper sentencing purpose and would be inconsistent with actions taken by Shane Witcher immediately following his participation in the entry into the U.S. Capitol on January 6, 2021. Said actions saved government resources and allowed them to quickly identify other defendants without the need for subpoenas or search warrants. Finally, the Court will be able to judge Shane Witcher's sense of remorse for this terrible chapter in his life and in U.S. history.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Mr. Brandon Regan
Assistant United States Attorney
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_____/s/ Samuel E. Bassett_____
SAMUEL BASSETT