UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Case No.: 21-CR-28-5 (APM)**
	:	
BENNIE PARKER	:	

BENNIE PARKER'S SUPPLEMENTAL MEMORANDUM INAID OF SENTENCING[1]

COMES NOW Defendant, Bennie Parker, through undersigned counsel, Stephen F. Brennwald, Brennwald & Robertson, and submits the following Memorandum in Aid of Sentencing. Defendant argues herein that under the unique circumstances of his case, a sentence of home confinement, followed by a period of supervised release and an order of restitution, would constitute a sentence that is sufficient, but not greater than necessary, to accomplish the goals enumerated in 18 U.S.C. § 3553(a).

Background

After a six-week trial, on March 16, 2023, Mr. Parker was found ***not guilty*** of Obstruction of an Official Proceeding and ***not guilty*** of Conspiracy to Prevent Officers of the United States from Discharging Their Duties, but guilty of the misdemeanor charge of Entering and Remaining on Capitol Grounds. The jury was deadlocked on the charge of

[1] Defendant submitted his initial sentencing memorandum on August 21, 2023. He then intended to supplement it by yesterday, August 22, 2023, but literally while typing the supplemental memorandum, counsel's computer began exhibiting various colors on the screen, and the screen began shaking. Counsel took the computer to an Apple repair store, and was told that it would take four days for the computer to be fixed. And the first available appointment at an Apple store was not until Thursday, August 24, 2023. Thus, counsel was forced to purchase a new laptop, and transfer the data on his old laptop to the new laptop. That process took hours (counsel did it himself, as the Apple store could not promise when it could complete the process), and counsel finished transferring the material to his new laptop until after early in the morning of Wednesday, August 23, 2023. Then counsel spent the day in court on previously scheduled matters, and was only able to resume working on this memorandum this evening. He still needs to complete the "sentencing disparity" material, but wanted to submit what he has thus far as soon as possible, given the government's August 25, 2023, response deadline.

Conspiracy to Obstruct an Official Proceeding.

After 13 hours of additional deliberation on this count alone (as well as on a count involving co-defendant Michael Greene), on March 21, 2023, the jury found Mr. Parker guilty on the conspiracy charge to obstruct an official proceeding charge (18 U.S.C. § 1512(k)).[2]

Prior to the jury's announcement, defendant had filed a motion for mistrial based on the fact that the jury had already deliberated on the conspiracy charge before returning its initial verdicts on March 16, 2023, and had, as of the time of the filing of the mistrial motion, deliberated an additional 13 hours before reaching a verdict. That substantial period of time would, in itself, indicate that the jury was uncertain about the defendant's guilt or it wouldn't have had to talk for that many more hours about the issue to reach a decision.

On May 30, 2023, defendant filed a motion for judgment of acquittal that is still pending. The government opposed the motion, and defendant (in a joint filing with defendant Connie Meggs, filed by her counsel, ECF Doc. 994) filed his reply.

Defendant submits that Mr. Parker's new trial motion should be granted, such that there would be no need for sentencing at all.

[2] How the jury reached its verdicts in general, but also including its verdicts about Mr. Parker, was the subject of a disastrous and embarrassing (for the juror who gave the interview) recorded interview by a juror who was a C-Span employee. This may be discussed in greater detail should defense counsel have the time to address this important issue sufficiently cogently by the deadline for the submission of Mr. Parker's memorandum.

Summary of Arguments[3]

1. **Any Conceivable Participation in a Conspiracy Lasted Minutes**

2. **The Defendant, if Guilty, is Entitled to a Minimal Role Adjustment**

3. **The Eight-Level Enhancement Under 2J1.2(b)(1)(A) Does Not Apply to Mr. Parker**

4. **The Three-Level Enhancement Under 2J1.2(b)(2) is Inappropriate**

5. **The Two-Level Enhancement Under 2J1.2(b)(3) Does Not Apply To Mr. Parker**

6. **The Two-Level Enhancement for Obstruction of Justice Does Not Apply**

7. **The Terrorism Enhancement Does Not Apply to Mr. Parker**

8. **The Terrorism Enhancement Does Not Apply to Mr. Parker**

9. **Mr. Parker Is in Extremely Poor Health**

10. **Mr. Parker Needs the Assistance of his Wife to Care for Him.**

Argument

1. Any Conceivable Participation in a Conspiracy Lasted Minutes

Any conceivable participation by Mr. Parker in a conspiracy could have lasted only minutes, assuming for the sake of argument that he was ever a part of any conspiracy. Of course, defendant denies having even known of any conspiracy among

[3] It has been difficult for counsel to craft the appropriate wording for many of these arguments as each argument would necessarily assume that Mr. Parker is guilty of illegal conduct when the evidence simply does not support such a conclusion. The foregoing arguments assume, literally for the sake of argument, that Mr. Parker conspired with anyone on January 6, 2021, to obstruct an official proceeding.

the people he knew to obstruct the official proceeding taking place in the Capitol on January 6, 2021. The only people he knew (loosely speaking) other than his wife were co-defendant Jessica Watkins and co-defendant Donovan Crowl. And he hardly knew Ms. Watkins, and he knew Mr. Crowl even less.

He did not know Connie Meggs, Laura Steele, William Isaacs, or Michael Greene at all, and he certainly did not know Kelly Meggs. Yet Kelly Meggs is supposedly the person who announced to "a" group[4] (there were two groups or "huddles" according to government witness Caleb Berry, and there was no clear testimony about who was in each group) that the group was going to go up the hill (on the North side of the Capitol) and try to stop the vote count.

While the government misleadingly claims that the Parkers (Bennie, and his wife Sandra) "first connected with the Oath Keepers on November 7[, 2020] at a rally protesting the outcome of the 2020 election, where they met Watkins," the truth is that when Ms. Watkins and Mr. Parker met on November 7, 2020, he said that Ms. Watkins told him that she was part of the Ohio State Regular Militia, "or something like that."

He added that later on, when he and Mrs. Parker told her that they were worried

[4] There is no evidence that Mr. Parker was in whichever group, or "mix of people" present, when Kelly Meggs allegedly made the statement that the group was going to go inside the Capitol, help two members who had become separated from the group, and interfere with the counting of the votes. The only witness to describe this scene and those alleged words was co-defendant, Caleb Berry. He testified as part of a cooperation agreement, hoping to receive a lesser sentence. He testified that there were two occasions during which various members of the larger group "huddled." And he said that at *one of those two huddles*, Kelly Meggs informed the group that they were going to go into the Capitol to try to stop the vote counting. Mr. Berry could not say that Mr. Parker was a part of the group that heard these alleged words, so there is literally no evidence, other than that created by assumptions or suppositions, that Mr. Parker even heard these words, if they were ever uttered. Mr. Parker testified that he did not hear Mr. Meggs say anything about that alleged plan.

about their safety while in Washington, D.C., Ms. Watkins told them that she was part of the Oath Keepers too. When they looked up the Oath Keepers online, "…it said that they were retired police and military, EMT, people like that, and we figured how can you not feel safe around people like that…?"

Neither Mr. Parker nor Mrs. Parker were included in any pre-January 6 chat groups where people discussed an insurrection or a plan to interfere with Congress. They came to the city to hear the former president speak, and that was it, so any claim that they came to the city as part of any Oath Keeper group is completely false.

After various speeches at the Ellipse, and when everyone said they were going to head to the Capitol to hear more speeches, Mr. and Mrs. Parker loosely walked with the group. Mr. Parker could not walk as fast as the others, and fell behind.

At some point, when the larger group had reached the lower Northwest area of the sidewalk leading up to the Capitol's East side, there was apparently a huddle, and then there was a second huddle toward the top of that sidewalk, perhaps even near the East steps. It's not clear during which huddle Mr. Meggs – *assuming arguendo* that he made such a statement – said that they group was going to go into the Capitol and stop the vote count.

Thus, again *assuming arguendo* that the huddle where Kelly Meggs allegedly discussed going into the Capitol to stop the vote count took place at the bottom of the sidewalk on the Northwest side, and further *assuming arguendo* that Mr. Parker somehow

decided to join that effort in some way (how is not exactly clear), his participation in the conspiracy would have lasted from the time he decided to walk up the sidewalk toward the East side (as he did not walk with the group led by Kelly Meggs) until the time he decided to leave the area near the bottom of the steps. And while he was there, in the East plaza, he stood around talking to people, and gave a brief one-minute and thirty second interview to a Swiss-Italian reporter. He did not try to go up the stairs, encourage anyone else to go up or in, or do anything other than stand in an area that appeared, by that point, to be open to the public.[5]

This in itself demonstrates the illogic of any conclusion that Mr. Parker had agreed to enter into any such conspiracy. While Mr. Parker believed that the election was stolen, he never posted anything online before or after January 6, 2021, indicating any plan or desire to go to the Capitol to interfere with the vote count, and he never did go into the Capitol.

He also testified at trial that he did not know what was going on inside the Capitol at that time. He explained that he doesn't "follow that stuff a lot, so [he] didn't even know they were going – they were in there to – for a vote or what they were doing." Sometimes that type of statement sounds less than credible given our knowledge today, but one must remember that the vast majority of people learned a great deal about the

[5] It is noteworthy that the reporter with whom Mr. Parker spoke never even insinuated that the area where they were standing was closed to the public. Rather, he asked Mr. Parker about the legality of the actions of the people who went up the stairs and into the Capitol. That implies that neither Mr. Parker nor the reporter even considered that the plaza where they were standing was closed to the public.

election process *after* the events of January 6, not before.

In any event, if Mr. Parker ever did agree to conspire with anyone to obstruct an official proceeding, he would have become aware of the conspiracy at the very last minute, and would have had to make a rapid decision to join it by walking up the sidewalk and standing outside the East steps while the others went inside.

For literally that conduct, and that conduct alone, the probation office has recommended a sentence of 5 years in jail. The government has recommended "a significant sentence."

There is no doubt that when Mr. Parker was in the East plaza, he expressed his belief to a reporter that he believed that the election was stolen. He also stated that he did not think that what the people who went inside the Capitol were doing was "legal," as he saw chaos on the steps, and many police officers at the top of the steps apparently struggling with "protestors."

The ambiguity of the statement about the illegality of the conduct of those who went inside demonstrates that it is impossible to determine from that statement whether Mr. Parker ever joined any conspiracy to obstruct, as many people went inside not to stop the count but to yell and scream and protest.

The government points to the splitting up of the group of people who went inside with Kelly Meggs, one smaller group going towards the House, and the other going towards the Senate. Mr. Parker, obviously, did not see anyone do anything once they

went inside the building so he would have had no way of knowing whether they went in there to protest, to help others (as his wife Sandra did, in his mind), or to try to stop the vote count. Even if he'd heard what Kelly Meggs had allegedly said during one of the huddles, and approved of that thought internally, nothing that Mr. Parker did evinced a desire and willingness to join a conspiracy to obstruct the proceedings that day.

Again, however, assuming that he somehow demonstrated an intent to join a conspiracy to obstruct the vote count, it would have only begun at the lower end of the sidewalk on the north side of the Capitol (if, again that was the "huddle" where Mr. Meggs allegedly made his vote-count statement) and it would have ended when he left the plaza to try to go find his wife.

That conduct does not merit any time in jail. At all.

2. Defendant, if Guilty, is Entitled to a Minimal Role Adjustment

The government concedes in its memorandum that the defendants in Oath Keepers 3 are entitled to a two-level reduction because of their "minor" role in the offense.

Defendant maintains that under the particular circumstances of his case, he is entitled to a four-level reduction as a minimal participant. U.S.S.G. § 3B1.2(a).

This is evident when one considers that Mr. Parker's alleged participation in this conspiracy entailed walking up the sidewalk at the north end of the Capitol and standing on the east side plaza for a period of time, chatting with folks, and waiting for his wife to come out of the building.

If the conduct of those who went into the Capitol was minor, Mr. Parker's conduct was certainly minimal, as it consisted of walking up a sidewalk and standing around outside for a relatively brief period of time.

Application Note 4 states that "[u]nder this provision, the defendant's lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant." That correctly sums up the extent of Mr. Parker's alleged participation in this crime.[6]

3. The Eight Level Enhancement Under 2J1.2(b)(1)(A) Does Not Apply to Mr. Parker

The government argues that this enhancement applies to each defendant, but in its memorandum explaining how the enhancement applies to each of them, it does not explain how it applies to Mr. Parker. That is because it does not.

Even assuming for the sake of argument that Mr. Parker somehow agreed to obstruct the official proceeding after supposedly hearing Mr. Meggs say that the group was going to go into the Capitol and try to stop the vote count, that message alone would not have informed him that the plan involved violence, rather than an effort to talk to Senators and members of Congress and persuade them not to vote in favor of certification.

[6] One must also remember that Jessica Watkins had told Mr. and Mrs. Parker that they would be escorting VIP's during their stay in Washington, and in fact, Mr. Parker and other did escort the mother of a scheduled speaker to the Capitol. Thus, the idea that the defendants' claims that they went to the Capitol to provide security is false is belied by the testimony of the government's own witnesses, including Caleb Berry.

U.S.S.G. § 2J1.2(b)(1)(B) states that "[i]f the offense involved causing or threatening to cause physical injury to a person, or property damage, in order to obstruct the administration of justice, increase by 8 levels. A reading of the "Background" section that follows the application notes clearly demonstrates that Mr. Parker's conduct does not fit within this enhancement. The enhancement was intended to apply to very serious efforts or attempts to obstruct justice, including threats of force, stealing or altering court records, using intimidation to influence testimony, and more.

Mr. Parker stood outside the Capitol on the east side plaza chatting with people. He never spoke to any member of Congress inside the Capitol, he never instructed anyone else to take any action to obstruct any proceeding, and he certainly never caused or threatened to cause property destruction or injury to others.

Thus, on its face, the enhancement does not apply to Mr. Parker (and, again, the government has not pointed to any piece of evidence that would draw Mr. Parker's conduct into the ambit of this enhancement.

4. The Three-Level Enhancement Under 2J1.2(b)(2) is Inappropriate

Defendant is aware of this Court's prior determination that this enhancement applies in January 6 cases, but raises this objection for the record. He relies on the opinion of a member of this Court in *United States v. Seefried*, 21-cr-287 (TNM), ECF Doc. 123.

5. The Two-Level Enhancement Under 2J1.2(b)(3) Does Not Apply To Mr. Parker

This enhancement clearly would apply to a number of defendants in the so-called Oath Keeper cases. Quite a few of the defendants did plan for this event rather extensively, some more than others. Mr. Parker, on the other hand, did not plan any criminal activity at all. He and his wife were duped by Jessica Watkins into joining them on the walk to the Capitol after the speeches at the Ellipse. The entire trip to Washington, D.C. resulted in part from Ms. Watkins' desire to impress others by bringing as many people as possible to the rally, and pretending as if her "chapter" of the Oath Keepers was larger than it was.

Mr. Parker was never an Oath Keeper. He only came to the city to hear a speech. At best, it wasn't until Kelly Meggs said something about going into the Capitol to stop the vote count that Mr. Parker would have known that this was now the new plan (as opposed to going to the Capitol to hear more speeches, as was revealed at trial). And even then, that simple phrase would not have informed Mr. Parker about the scope and extent of Mr. Meggs' and Mr. Rhodes' plan.

Mr. Parker, like many others, viewed the people who went into the Capitol as protestors – people who could scream and yell and have their voices heard. There is no basis to believe that he thought or knew that anyone was going to go in (especially the supposedly "law and order Oath Keepers) to cause violence of any kind. He may have also speculated that they were going to meet with members of Congress or senators to impress upon them the need to object to the certification.

Whatever the case, this enhancement should not apply to a man who was duped into walking to the Capitol under the guise of being needed to provide security to VIP's, especially when that man did nothing to plan any activity at all.

6. The Two-Level Enhancement for Obstruction of Justice Does Not Apply

The government contends that this enhancement applies to Mr. Parker in two ways: First, it claims that it applies because after these events, he deleted his communications with Jessica Watkins from his phone. Second, it claims that Mr. Parker was not completely truthful on the stand, weakly alleging that his claim that he brought his AR-15 to Virginia in the hope that he could go target shooting was false.

Neither basis for an enhancement applies.

First, Mr. Parker testified that he deleted his messages to Ms. Watkins after these events "[b]ecause after that, I just wanted nothing to do with any militia. And actually, I kind of felt like we were kind of duped into some of this, I think, to make – I think Jessica wanted to make her militia look a little bit bigger than two or three people."

That was the real reason he deleted his contacts with her, and that does not constitute an intentional effort to obstruct justice.

As to the second alleged basis for this enhancement, the government argues that Mr. Parker "provided false testimony about his reasons for bringing an AR-15 firearm to the D.C. area for January 6." "Specifically," the government asserts, "he claimed the weapon was only for target practice, but could not point to any evidence of plans or even

a possible location for such activities."

The government misstates basic facts, as well as Mr. Parker's testimony.

First, Mr. Parker did not bring the gun to the "D.C. area." While metropolitan areas can be quite expansive, there is a limit to that expanse. Google Maps puts the distance between Winchester, Virginia, where the guns were left, and the White House, which was Mr. Parker's ultimate general destination, at 79.9 miles, a distance it estimates would take an hour and 26 minutes by car when there is no traffic on the road.

Second, the government incorrectly states that Mr. Parker could not identify a location where he hoped to shoot the gun. That is simply not true. While Mr. Parker hadn't done research to find a particular gun store that may offer target shooting, he naturally (and correctly) inferred that Virginia's countryside would offer plenty of opportunities where one could fire a weapon.

However, when he arrived at the house where he and his wife (and Ms. Watkins and Mr. Crowl) were going to stay, it turned out to be "in … a subdivision." As a result, Mr. Parker said, "we just left the gun packed away."

That testimony, literally, was the only testimony the government pointed to in its attempt to argue that Mr. Parker was not truthful on the stand.

This Court, which certainly has a better memory than counsel, can likely recall the impression it had after Mr. Parker left the stand after his second and final day of testimony. That impression undoubtedly was that Mr. Parker was being candid, and

expressed regret that he had ever come to Washington for what turned out to be a cataclysmic event in his life, as well as the life of his wife, Sandra Parker.

In any event, the Court should not apply this enhancement to Mr. Parker.

7. The Terrorism Enhancement Does Not Apply to Mr. Parker

It is no longer surprising, at this point in a review of the government's sentencing memorandum, that it would go so far as to claim that Mr. Parker should be hit with a terrorism enhancement. It is a head-shaking allegation, but it is no longer surprising.

In support of its argument, the government points to Mr. Parker's words while on the east side plaza. Those words, as discussed earlier, included a claim that the 2020 election had been stolen. This was a belief that was, unfortunately, held by tens of millions of Americans. He also added, again as discussed earlier, that there was "not a whole lot that they can do with this many people."

The government clearly interprets these words in a self-serving way when, in fact, the words are at best ambiguous. But in the context of his entire statement, it is clear that Mr. Parker was referring not to any effort to stop the vote counting, but to the impossibility of stopping people from protesting and exercising their First Amendment rights.

Defendant is not arguing that people had the right to go into the Capitol to yell and scream that the election was stolen. That was clearly trespassing. But he was not referring to any vote count when he was saying that the police couldn't stop the people

who had gone into the Capitol. This is further evidenced by the fact that Mr. Parker had no idea what people were doing in the Capitol itself, as he was never in the building.

Again, even if he had heard Mr. Meggs say that Meggs and some others were going to go into the Capitol to try to stop the vote count, that does not lead to the conclusion, given Mr. Parker's lack of knowledge of Mr. Meggs' and Mr. Rhodes' plan, that violence, rather than attempts at persuasion, would be called for or used.

We are all, understandably, looking at past events with the benefit of years of revelations about how the proceedings were supposed to unfold, and what occurred on all sides of the Capitol. But like many others, Bennie Parker had an extremely limited base of knowledge about practically every aspect of the events of the day.

Finally, Mr. Parker's final statement on the video interview – that there may need to be a civil war in the future- clearly proves that the civil war, at least in his mind, was not going to take place that day, and certainly was not unfolding before his very eyes. If he had thought otherwise, he would have said that "this is" a civil car, "we are taking care of this here and now." But his statement, as unfortunate as are the thoughts it revealed, was a forward-looking statement, and no more. For these reasons, no adjustment under U.S.S.G. § 3A1.4 should be applied.

8. The Enhancement Under U.S.S.G. § 5K2.6 Does Not Apply

Not surprisingly, given what we've seen already, the government argues that this enhancement should apply to Mr. Parker because he allegedly "left [his] home state[]

with weapons [he] planned to contribute to the QRF."

The government literally has no evidence that this is true. In fact, the evidence roundly contradicts this claim. One need look no further than the fact that Mr. Parker left both his handgun and the AR-15 in Winchester on his way to Washington, D.C. Thus, it is not as if Mr. Parker brought the gun to Arlington or whichever city where the defendants stayed during their time here and then decided to take it back out to Winchester. He never brought it to the location of the QRF, and in fact, he didn't even know what the acronym QRF meant when Ms. Watkins mentioned that there would be one.[7]

It is troubling that the government would advance this argument, given the clear and undisputed facts of this case, but "here we are."

Final Sentencing Computation:

Defendant calculates his final sentencing numbers as follows:

Base Offense Level	14
Increase under 2J1.2(b)(2)[8]	3
Minimal Role Adjustment	- 4
Final Total	13

Criminal History Category I

[7] He testified that, as the text message thread with Mr. Watkins revealed, he never answered Ms. Watkins' text about the QRF because he was embarrassed to admit that he didn't know what the acronym meant.
[8] Defendant assumes the Court will impose this enhancement.

Guideline Range: 12-18 months.

Analysis of Sentencing Factors

As this Court knows, pursuant to *United States v. Booker*, 543 U.S. 220 (2005) and *Gall v. United States*, 128 S.Ct. 586, 596-97 (2007), not only are the United States Sentencing Guidelines no longer mandatory, they are not even presumptively reasonable. In determining an appropriate sentence, this Court must consider the factors delineated in 18 U.S.C. § 3553(a), and impose a sentence that:

1) reflects the seriousness of the crime;
2) promotes respect for the law;
3) provides just punishment;
4) deters criminal conduct;
5) protects the public from further crimes, and
6) provides the Defendant with any necessary educational or vocational training, medical care, or other correctional treatment.

In addition, this Court must also consider

1) the nature and circumstances of the offense;
2) the history and characteristics of the defendant;
3) the kinds of sentences available;
4) the sentencing range;

5) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and

6) the need to provide restitution to any victims of the offense.

Analysis of 3553(a) Factors

The Proposed Sentence Would Reflect the Seriousness of the Crime

In order to decide what type of sentence would adequately reflect the seriousness of the crime, it is necessary to determine how serious the crime was in the first place.

In the abstract, the offense of Conspiracy to Obstruct an Official Proceeding is a serious offense,[9] as in this case it allegedly involved a plan to stop the certification of the 2020 presidential vote.

Looking specifically at Mr. Parker's conduct, however, one comes to a completely different conclusion about the seriousness of his alleged crime.

The totality of his purportedly illegal conduct on January 6, 2021, was this:

He walked up a sidewalk that had no signs indicating that one couldn't be there (by the time he arrived), and he stood in the plaza on the East side of the Capitol for a period of time. There was also no way for him to know that he wasn't allowed to be in that plaza on that day as the bike racks that had been there earlier were no longer in place, and the officers who had been at the bottom of the Rotunda

[9] This assumes that the offense applies to the facts in this case, which defendant has argued it does not. The Court has already rejected that argument.

steps were no longer there, but had moved up to the top of the steps. While in the plaza, he chatted with others who were milling around, and he gave a one-minute and 13-second interview to a reporter wherein he expressed his views that the election had been stolen from his candidate, agreed that it was not "exactly" legal for people to go inside the Capitol, and stated that it may be necessary (obviously in the future) for there to be a civil war.

He then walked back down the sidewalk and eventually found his wife and two of his co-defendants (Jessica Watkins and Donovan Crowl), after which they all left the city.

For this conduct, again, the probation department concluded that five years in prison was a fair sentence. The government has asked for a "significant sentence," clearly realizing that Mr. Parker's actions on that day were the most minor among all of the defendants charged in the overall Oath Keeper cases, again assuming that he is even factually guilty.

Defendant submits that, assuming his guilt, any sentence greater than home confinement, especially given his medical condition as outlined below, would over-reflect the seriousness of *his* alleged participation in the crime.

The Proposed Sentence Must Also Promote Respect for the Law, Provide Just Punishment to Mr. Parker, and Deter Criminal Conduct, both by him and by Others.

Interestingly, where a sentence is excessive, as it would be were this Court to

adopt the sentencing recommendations of the probation office and the United States Attorney's Office, it produces contempt for the law, not respect. And anyone viewing this case from the outside would first wonder how Mr. Parker could be guilty in the first place. Then one would wonder how any jail time would be warranted for his very limited actions.

In addition, any sentence greater than home confinement would not provide just punishment, but would be unjust, given Mr. Parker's very limited activity. Finally, the proposed sentence would deter anyone who might be tempted to walk up a sidewalk and stand in the East plaza. This is because although the proposed sentence does not include prison time, no one would prefer to be detained in their home for a period of 6 months simply for doing what Mr. Parker did.

Mr. Parker certainly does not need any further deterrence, as this entire experience has been surreal and extremely stressful for him and his wife. He intends never to set foot in the District again save for his required court appearance, and there is no chance that he would, at his age, ever commit any crime in the future.

The Need to Protect the Public from Further Crimes.

There is no risk that Mr. Parker will commit a crime for the rest of his life. He is 73 years old, cannot walk without a device, needs constant medical supervision because of his diabetes, and is in a great deal of pain when he does ambulate. Thus, this risk is absolutely non-existent.

The Court's Duty to Provide the Defendant with any Necessary Educational or Vocational Training, Medical Care, or Other Correctional Treatment.

Mr. Parker is retired, and has no need of any educational or vocational training. He also has doctors he sees regularly for his various ailments. He also does not need the Court to provide him with any medical care in the community that he is not already receiving. However, incarcerating him at his age, with his serious health concerns, would unnecessarily create difficulties that should be avoided.

Counsel has mused to others that if Mr. Parker were presently incarcerated, he would likely be on a list of people who were ready to be released by the Bureau of Prisons ("BOP") on a compassionate release basis. It would make no sense, therefore, to incarcerate him only for the BOP to have to turn around and release him. And the delay in doing so could cause serious complications with his medications and needlessly harm him physically, given his terrible bodily pain.

As this Court is aware, pursuant to U.S.S.G. §5H1.1 (age) and §5H1.4 (physical condition), the Court may depart from the guidelines where those factors distinguish that person from the "…typical cases covered by the guidelines."

As the guideline states, "[a]ge may be a reason to depart downward in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement might be equally efficient as and less costly than incarceration."

Similarly, physical condition, which may be related to age, is also a basis for a downward departure. The guideline states: "An extraordinary physical impairment may be a reason to depart downward; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.

That is certainly the case here. As the report of Dr. Sri L. Koneru notes, Mr. Parker visited Dr. Koneru because of joint pain, swelling at the ankles, and abnormal results of his blood work and urine testing.

Dr. Koneru, a rheumatologist, noted that Mr. Parker suffers from psoriatic arthritis. Psoriatic arthritis, also known as PsA, is a long-term inflammatory arthritis that occurs in people affected by the autoimmune disease psoriasis. The classic feature of psoriatic arthritis is swelling of entire fingers and toes with a sausage-like appearance, known as ("sausage digit").[10]

[10] Ritchlin, CT; Colbert, RA; Gladman, DD (March 2017). Psoriatric Arthritis, *New England Journal of Medicine* (Review). **376** (10): 957–70. doi:10.1056/NEJMra1505557. PMID 28273019. S2CID 43867408.

Were that Mr. Parker's only issue, one could surmise that the Bureau of Prisons could address it in some way, perhaps by providing Mr. Parker with a wheelchair. But aside from this issue, Mr. Parker also suffers from severe lumbar spondylosis and stenosis. This Court may recall how difficult it was for him to walk up to the witness stand during trial. Counsel constantly worried that whenever Mr. Parker stood up when His Honor and/or the jury entered the courtroom, he would fall over, as he was very unsteady on his feet.

That condition, unsteadiness caused by his orthopedic ailments, has only worsened since the trial concluded over five months ago.

Because of his intense pain, Mr. Parker received an epidural injection in his

lumbar spine in June (see report, at 1 and 4), and is scheduled to receive another injection shortly. As the Court may know, these are not procedures one undergoes lightly, given the amount of pain the injection itself entails.

On the date that Mr. Parker saw Dr. Koneru, he also underwent an injection to his left wrist joint (see report, at 4).

He arrived at the doctor's office in a motorized scooter, and was driven to the appointment by his wife, Sandra Parker, on whom he relies almost completely every day of his life.

The report notes that Mr. Parker experiences "difficulty with daily activities due to pain at the left wrist, in the lower back, weakness in his legs, pain and swelling at the ankles. Needing a lot of assistance from his wife including for dressing…. [he] is not on his feet much due to the pain and also feeling unstable." Report, at 1.

Aside from his pain, weakness, and unsteadiness, Mr. Parker is unfortunately not able to give himself his insulin shots as he cannot grip the needle. His wife handles that duty as well. His adopted daughter is unable to help Mr. Parker get up or ambulate because of her diminutive size – 4 feet 10 inches and 90 pounds. Also, his daughter is fearful about driving, and cannot help Mr. Parker with his appointments as she will not drive anywhere except to school and back. It is only through his good fortune in having a caring wife that he is able to get through the day, eat, dress, go from one room to another, and go to his various medical appointments.

Most concerning are the referrals Dr. Koneru made to a cardiologist and a nephrologist because of Mr. Parker's blood work and urine test results.

Mr. Parker has, since the date of the referral, seen a cardiologist, and that cardiologist recommended further testing. Mr. Parker has not yet been able to get an appointment to see a nephrologist despite the worrisome kidney function numbers.

The picture that is painted here is one of an older man whose "health age" is much greater than his chronological age. Mr. Parker is in poor health from a cardiac, orthopedic, and nephrologic standpoint. Incarcerating him could be quite dangerous to his health and chances of survival for any length of time.

Finally, although undersigned counsel does not represent Mr. Parker's wife, he is very concerned, as is Mr. Parker, about the possibility that she could be incarcerated, and thus leave Mr. Parker in a situation where he would have to leave his home of many years and move into a nursing facility.

But all of this is truly unnecessary, given the facts of the case as they pertain both to Mr. and Mrs. Parker. It is clear that they were duped, and used, by Jessica Watkins for her own purposes. And although they had strong feelings about the election, these were not people who, but for Ms. Watkins's involvement, would have gone to the Capitol and acted illegally in any way.

For these reasons, defendant submits that the proposed sentence of home detention is appropriate under these circumstances.

The Need to Avoid Unwarranted Disparities

Of all of the individuals charged in connection with the so-called Oath Keeper cases, it is clear that Mr. and Mrs. Parker are the least culpable of all. Unlike some of the co-defendants in their trial group ("group three"), they did not post inflammatory messages beforehand signaling a desire or intent to storm the Capitol or to commit any acts of violence. They also did not bring the helmets and other gear that they were eventually given on January 5 when they were told that they would be acting as security for several VIP's.

Any way one looks at these two defendants, a comparison with all of the other defendants in the three trial groups shows that they bear no resemblance to those individuals.

And a comparison with other defendants who have been sentenced in "1512" conspiracy cases also demonstrates why the proposed sentence of home confinement is appropriate here.

To be Supplemented.

Conclusion

To be Supplemented.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by email, this 23rd day of August, 2023, to all counsel of record.

/s/

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Stephen F. Brennwald