

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, )  
 )  
 v. ) No. 22-cr-082 (JMC)  
 CHRISTOPHER W. ORTIZ )  
 )  
 Defendant. )  
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**DEFENDANT, CHRISTOPHER ORTIZ'S REPLY TO GOVERNMENT  
SENTENCING MEMORANDUM**

Christopher Ortiz, through counsel, submits this reply to the government's sentencing memorandum, where it asks for an excessive and illegal sentence. *See* ECF No. 38 (Gov't Memo).

For the following reasons, Mr. Ortiz requests that the Court reject the government's recommendation for a sentence of 5 months' incarceration followed by 36 months' probation.

**I. The government's recommendation is inconsistent with past January 6 sentences imposed.**

The government recommends a severe sentence of 5 months' incarceration followed by a period of probation. However, sentences in that range have only been imposed in other capitol misdemeanor cases with far more aggravating conduct. The government's recommendation has no support when analyzing past sentences and its imposition would result in a drastic disparity in sentencing.

In support of its position, the government provides *United States v. Honeycutt*, 22-CR-50 (CJN) where the court imposed 90 days' incarceration.

However, *Honeycutt* is not an appropriate case for comparison because the allegations in that matter involve aggravators that are not present here. In *Honeycutt*, the government accused the defendant of (1) entering a conference room, a sensitive area, (2) filming and posting videos of property destruction within the Capitol building, (3) helping to pass a wooden plank to others battling officers in the Lower West Terrace tunnel, (4) and deleting evidence after January 6. Lastly, the government alleged that illegal firearms were found in his residence during the execution of the search warrant. Even though the allegations in *Honeycutt* were more severe than the instant matter, the court sentenced him to 90 days' incarceration with *no supervision to follow*. Here, the government is asking for 5 months' incarceration followed by a lengthy period of supervision.

*United States v. Howell*, 21-cr-217 (TFH) is also not an appropriate case for comparison. In *Howell*, the court sentenced the defendant to 36 months of probation with a condition that she serve 60 days of *intermittent confinement*. This was after she pled guilty to a more serious misdemeanor, 18 U.S.C. §1752(a)(1). Firstly, 60 days of intermittent confinement is far different than 5 months of consecutive incarceration. The government cannot locate a comparable case, and instead tries to suggest that this Court should sentence Mr. Ortiz more harshly than cases that have gone before it without a basis. In *Howell*, the defendant allegedly entered a sensitive area, cursed at police, spent about an hour watching the brawl at the Lower West Terrace Tunnel, at times filming the violence. The government also accused Howell of blaming police after January 6, 2021, for the violence and accused

her of deleting evidence. After assessing the totality of the 3553(a) factors in Howell, the court imposed intermittent confinement and probation.

The government fails to point to a single case that supports its harsh and inappropriate recommendation. Mr. Ortiz acknowledges the aggravating factors in his case, however, when assessing every 3553(a) factor, the government's recommendation fails to consider his background and history, past sentences imposed, and the nature of the petty offense to which he pled.

I. **The Government Is Incorrect that 40 U.S.C. §5104(e)(2)(G) May Include Both Incarceration and Probation**

The government continues to request illegal split sentences, insisting that there are now other courts in this jurisdiction who have agreed that these types of sentences are permissible.<sup>1</sup> One of these illegal sentences is now pending appeal before the D.C. Circuit. *See United States v. Little*, 22-3018 (originating docket No. 21-cr-315 (RCL)). In *United States v. Madden*, 21-cr-55 (EGS), the Honorable Emmet G. Sullivan requested that the defense provide briefing explaining why it believes the district court in *Little* erred in imposing a split sentence. The defense

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<sup>1</sup> Most judges in this district confronted with the government's request for a split sentence for one single petty offense conviction have declined to impose such a sentence. *See United States v. Spencer*, 21-CR-147 (CKK) (amending sentence after briefing provided), ECF No. 70; *United States v. Torrens*, No. 21-cr-204 (BAH), ECF No. 110 & 125; *United States v. Kari Kelley*, 21-CR-201 (DLF) (At sentencing on March 17, 2022, Judge Friedrich rejected the government's contention that a split sentence could be imposed even after being provided notice of the *Little* decision); *United States v. Jacob Wiedrich*, 21-CR-581 (TFH) (Judge Hogan also rejecting government's proposal for split sentence); *United States v. Vic Williams*, 21-CR-388 (RC) (court did not impose split sentence despite government's recommendation of split sentence); *United States v. Zachary Wilson*, 21-CR-578 (APM) (same); *United States v. Traci Sunstrum*, 21-CR-652 (CRC) (same); *United States v. Michael Carico*, 21-CR-696 (TJK) (same); *United States v. Tanner Sells*, 21-CR-549 (ABJ) (same).

submitted a supplemental brief addressing the court's question. Mr. Ortiz adopts all of the arguments contained in that brief, attached here as Exhibit 1. Mr. Ortiz also adopts all of the arguments made in the defense opening brief in *Little*, attached here as Exhibit 2. For all of the reasons stated in *Madden* and *Little*, the court is not permitted to impose a split sentence as doing would raise significant constitutional concerns. Furthermore, the plea agreement nowhere indicates or notifies Mr. Ortiz that he may be subject to both 6 months' incarceration and 5 years' probation. A correct reading of the relevant statutes and the legislative history, as discussed in the defense pleadings in *Little* and *Madden*, make it clear that a district court has a dichotomous choice: it can either sentence the defendant to imprisonment up to six months, or it can sentence the defendant to probation for up to five years. Where, as here, there is solely one single petty offense, the statute precludes a combined probationary and a sentence of incarceration.

### **CONCLUSION**

For the reasons stated above, Mr. Ortiz respectfully requests that the Court reject the government's recommendation for an excessive and illegal sentence. Instead, Mr. Ortiz respectfully requests that the Court impose a probationary sentence with home confinement as a condition.

Respectfully submitted,

A.J. KRAMER  
FEDERAL PUBLIC DEFENDER

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