

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

UNITED STATES OF AMERICA,

v.

Case No.: 1:21-cr-000247-JDB-1

BRADLEY WAYNE WEEKS,

Defendant.

**DEFENDANT’S MOTION FOR DOWNWARD DEPARTURE PURSUANT
TO §3E1.1(a) (ACCEPTANCE OF RESPONSIBILITY)**

Defendant, Bradley Wayne Weeks, by and through undersigned counsel and pursuant to USSG §3E1.1(a), hereby moves this Honorable Court to grant a two (2) level downward departure in the Defendant’s offense level, and in support thereof, states as follows:

1. Section 3E1.1(a) of the Sentencing Guidelines provides for a downward departure in cases “[i]f the defendant clearly demonstrates acceptance of responsibility for his offense.”

2. As outlined in his objections to the Pre-Sentencing Investigation Report (PSR), Mr. Weeks acknowledges that, generally, a client who proceeds to trial is not entitled to this downward departure.

3. Application of Note 2 to USSG §3E1.1, however, recognizes an exception to that general rule. Specifically, Application Note 2 provides:

Conviction by trial, however does not automatically preclude a defendant from consideration for such a reduction. In rare situations a defendant may clearly demonstrate an acceptance of responsibility for his criminal conduct even though he exercises his constitutional right to a trial. *This may occur, for example, where a defendant goes to trial to assert and preserve issues that do not relate to factual guilt (e.g., to make a constitutional challenge to a statute or a challenge to the applicability of a statute to his conduct).* In each such instance, however, a determination that a defendant has accepted responsibility *will be based primarily upon pre-trial statements and conduct.*

(Emphasis added).

4. Mr. Weeks' acceptance falls squarely within this exception. Prior to trial, Mr. Weeks filed a Motion to Dismiss Count One of the Indictment which charged him with Obstruction of an Official Proceeding, raising a challenge to the applicability of that statute to the conduct charged.

5. As this Court is aware, Mr. Weeks could not preserve this issue on appeal unless he proceeded to trial. As a result, Mr. Weeks waived his right to a jury trial and elected a bench trial, during which he stipulated to much of the Government's evidence. Indeed, he stipulated to his guilt as to Count II, which charged him with Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. §1752(a)(1).

6. At no time throughout these proceedings has Mr. Weeks shown anything other than acceptance of responsibility for his conduct. This acceptance

began at the inception of the Government's investigation in this case. Indeed, when he was arrested on January 21, 2021, the first time he had contact with law enforcement in this case, he did not deny his conduct on January 6th. During his interview with Special Agent Joshua McLeod of the Federal Bureau of Investigation (FBI), Mr. Weeks readily admitted his participation in the events at the Capitol and, without hesitation, consented to the search and seizure of his cellphone. In the 302 prepared by Special Agent McLeod in connection with this case, he specifically noted:

Throughout the duration of the interview, WEEKS was cooperative with the interviewing Agent and Task Force Officer. WEEKS expressed remorse for what transpired and indicated that that was never his intent. WEEKS accepted responsibility for his actions. However, WEEKS expressed that he did not feel like he did anything wrong. WEEKS claimed that he was merely supporting the President and opposing what he believed to be the results of a fraudulent election; and ensuring that his voice was being heard.

7. In addition to his pre-trial and trial conduct, Mr. Weeks' conduct both pre and post-trial has been exemplary. Recognizing the deep political divisions in this country, Mr. Weeks voluntarily removed himself from all groups, organizations, or people who continue to seek to relitigate the claim that the 2020 presidential election was "rigged." He has participated in no rallies or conventions, has ceased all social media posts about political issues and avoids discussions about politics. He does so because he loves his family and his country and does not want to contribute

in any way to damaging the people and institutions he loves and respects dearly. He has been a model of compliance during his pre-trial supervision because he believes in the rule of law and in the Constitution. He opposes, and has always opposed, the type of violence engaged in by others present at the Capitol on January 6th. All of Mr. Weeks' conduct post January 6th is consistent with the fact that he has accepted responsibility for his actions and deeply regrets them.

8. In light of the totality of the facts giving rise to Mr. Weeks' bench trial, as well as his pre-trial statements and conduct, Note 2 to USSG §3E1.1 is applicable.

WHEREFORE, Defendant, Bradley Wayne Weeks, respectfully moves this Honorable Court to apply USSG §3E1.1(a) to grant a two (2) level downward departure in his offense level.

MEMORANDUM OF LAW

A defendant is not required to plead guilty to charges against them in order to obtain acceptance of responsibility under USSG § 3E1.1(a). While it is an admittedly rare occurrence and is the defendant's burden to establish such a departure, note two of the accompanying commentary makes it clear that such a departure is not automatically precluded simply because a defendant exercises their Sixth Amendment Right to trial.

Instead, the sentencing court is empowered to look at a number of factors in determining the defendant's eligibility for a downward departure under this

guideline. As noted by the court in *United States v. McKinney*, 15 F.3d 849, 853 (9th Cir. 1994), “Our focus on the defendant’s personal contrition, rather than on his exercise of his constitutional rights, best serves the purposes of the acceptance of responsibility reduction. The primary goal of the reduction is to reward defendants who are genuinely contrite.” The court further held, “This section focuses on the defendant’s sincere remorse for his own conduct, not his assistance to authorities in incriminating others. This section itself refers only to the defendant’s ‘recognition and affirmative acceptance of *personal* responsibility for *his* criminal conduct,’ and the factors listed in the application notes similarly relate exclusively to the defendant’s manifestations of contrition for his own conduct.” (*Id.* at 854) (emphasis in original).


Similarly, in *United States v. Cortes*, 299 F.3d 1030, (9th Cir. 2022), the court held that a defendant may be eligible for an acceptance of responsibility downward departure after trial, “if he clearly demonstrate[d] acceptance of responsibility for his offense.” citing, USSG 3E1.1(a). Likewise, recognizing the defendant bears the burden to establish such reduction is appropriate, the court held that to meet this burden the defendant “[...] must manifest [] a genuine acceptance of responsibility for his actions.” (*Id.* at 1038, quoting *McKinney, infra.*). In reaching its conclusion, the *Cortes* court specifically held that the considerations contained in USSG §3E1.1 are not exhaustive:

The application notes interpreting § 3E1.1 provide that “a defendant may clearly demonstrate an acceptance of responsibility ... even though he exercises his constitutional right to a trial.” This situation “may occur where a defendant goes to trial to assert and preserve issues that do not relate to factual guilt (*e.g.*, to make a constitutional challenge to a statute or a challenge to the applicability of a statute to his conduct).” *Id.* Though this passage lists only two circumstances where the acceptance of responsibility reduction may apply despite a defendant proceeding to trial, it was not intended to be an exhaustive list. *See McKinney*, 15 F.3d at 852. We have held in several instances that even “a defendant who contests his factual guilt may ... be entitled to [the § 3E1.1] adjustment.” *United States v. Mohrbacher*, 182 F.3d 1041, 1042 (9th Cir.1999); *see also McKinney*, 15 F.3d at 853 (“[T]he reduction is also available ... [where] the defendant manifests genuine contrition for his acts but nonetheless contests his factual guilt at trial.”).

(*Id.* at 1038).

Employing the rationale of the case discussed above, Mr. Weeks respectfully submits that this court should grant a downward departure of two (2) levels for acceptance of responsibility.

Respectfully submitted,



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COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 7, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

**Jamie Carter, Assistant U.S. Attorney
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