

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

**UNITED STATES OF AMERICA**

**v.**

**TAM DINH PHAM,**

**Defendant.**

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**Case No. 1:21-CR-109 (TJK)**

**MEMORANDUM BY THE UNITED STATES IN SUPPORT OF GUILTY PLEA**

Pursuant to a written plea agreement dated July 23, 2021, and signed by defendant Tam Pham (the “Defendant”) on September 7, 2021, Defendant agreed to plead guilty to Count Four of the Information (Doc. 3), which charges him with Parading, Demonstrating, or Picketing in a Capitol Building, in violation of Title 40, United States Code, Section 5104(e)(2)(G).

**I. Elements of the Offense**

To prove that the Defendant is guilty of Parading, Demonstrating, or Picketing in a Capitol Building, the government must prove the following beyond a reasonable doubt:

- a. That the Defendant paraded, demonstrated, or picketed;
- b. That the Defendant did so in any of the Capitol Buildings; and
- c. That the Defendant did so willfully and knowingly.

**II. Maximum Penalties**

The maximum penalties for Parading, Demonstrating, or Picketing in a Capitol Building, in violation of Title 40, United States Code, Section 5104(e)(2)(G), are:

- a. a term of imprisonment not more than 6 months;
- b. a fine not to exceed \$5,000; and
- c. a special assessment of \$10.

**III. No Right to Trial by Jury for Petty Offenses**

A violation of Title 40, United States Code, Section 5104(e)(2)(G) is a class B misdemeanor, as defined by Title 18, United States Code, Section 3559(a)(7). Class B misdemeanors are “petty offenses” pursuant to Title 18 United States Code, Section 19. Accordingly, they do not carry a right to trial by jury. *See* Fed. R. Crim. P. 58(b)(2)(F); *Lewis v. United States*, 518 U.S. 322, 330 (1996) (no right to jury trial for petty offenses).

**IV. Sentencing Guidelines**

Because the applicable violation is a class B misdemeanor, pursuant to § 1B1.9 of the United States Sentencing Commission, *Guidelines Manual* (2018), the Sentencing Guidelines do not apply to this violation.

Respectfully submitted this 13th day of September, 2021.

/s/ Alison B. Prout  
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