

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
WASHINGTON, D.C.

UNITED STATES OF AMERICA

§

VS.

§

CASE NO. 1:21-CR-109

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TAM DINH PHAM

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DEFENDANT’S MEMORANDUM IN AID OF SENTENCING

TO THE HONORABLE TIMOTHY J. KELLY, UNITED STATES DISTRICT
JUDGE FOR THE DISTRICT OF COLUMBIA, WASHINGTON, D.C. DIVISION:

COMES NOW, TAM DINH PHAM, Defendant, by and through his attorneys of record, Nicole DeBorde Hochglaube and David Adler, and files this memorandum to aid the Court in addressing factors set forth in 18 U.S.C. § 3553(a) when imposing sentence. Pursuant to §1B1.9 of the guidelines, the federal sentencing guidelines do not apply to Mr. Pham’s case because he plead guilty to a Class B misdemeanor. However, the Supreme Court has noted that the objectives set forth in 18 U.S.C. § 3553(a) tells the sentencing judge to consider (1) the offense and offender characteristics; (2) the need for a sentence to reflect the basic aims of sentencing, namely, (a) “just punishment,” (b) deterrence, (c) incapacitation, (d) rehabilitation, (3) the sentences legally available; (5) Sentencing Commission policy statements; (6) the need to avoid unwarranted disparities; and (7) the need for restitution. *Rita v. United States*, 551 U.S. 338 (2007). The provision also tells the sentencing judge “to impose a sentence *sufficient, but not greater than necessary*, to

comply with” the basic aims of sentencing. *Id.* (emphasis added); *see also United States v. Reinhart*, 442 F.3d 857, 864 (5th Cir. 2006).

Course of Proceedings

On February 10, 2021, Mr. Tam Pham was charged by information to the following counts: (1) Entering and Remaining in a Restricted Building, in violation of 18 USC § 1752(a)(1); (2) Disorderly and Disruptive Conduct in a Restricted Building, in violation of 18 USC § 1752(a)(2); (3) Violent Entry and Disorderly Conduct in a Capitol Building, in violation of 40 USC § 5104(e)(2)(D); and (4) Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 USC § 5104(e)(2)(G). These charges came as a result of conduct that occurred on January 6, 2021 in our nation’s capitol. On September 20, 2021, Mr. Pham pleaded guilty to Count 4 – a Class B misdemeanor, a petty offense. He is scheduled for sentencing on December 9, 2021.

I. Mitigating Sentence Information and §3553 Considerations

1. Who and Why

Tam Dinh Pham is a father, a Buddhist, and a hard-working man who wakes up every day grateful for the gift of living in and raising a family in the best country in the world. [REDACTED]

[REDACTED] Still, with little food and painful poverty, he woke every day giving thanks for the opportunities and freedoms of our great nation. Every morning, Tam wakes at sunrise, offers prayers of gratitude and

begins the hard work of the day ahead. He believes President Biden is the correct and honestly elected President. He holds the President in the highest reverence as the leader of our free world and is deeply ashamed to be associated with the people who raged against our democracy on January 6th and who continue to do so today. The pain and devastating shame over his presence and involvement on that day are searing to this day. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He will continue to be productive and to bring good and peace into the world no matter the sentence. There is no sentence which could cause him to feel even more pain over his involvement than he already endures day and night.

How does a man like Tam find himself in this situation? Seemingly small choices in the moment without thought of the meaning or consequence have brought him to this cross roads. An active participant in his temple and community, Tam's daily exposure was to other conservative Vietnamese people. During the Presidential campaign, the upcoming elections were of interest broadly in his community. Tam, himself, had no particular interest in the campaign or who would ultimately win the election, but there were community activities at that time where other members of the community sought to involve people like Tam in the conversation. Tam never became personally interested, but many around him in the Vietnamese community in Houston were engaged in the conversation. Tam's non-political social media supports the fact of his non-involvement.

He was not a member of any group interested in these issues and finds the groups at the center of this case repugnant. Contrary to the government's persistent hammering on the notion of his work as a peace officer somehow pointing to some leadership role or position of strength, Tam Pham was and is a mild and quiet man who loves this democracy.

In the days leading up to January 6th, family friends invited Tam and his wife to go to Washington DC to see then President Trump speak. Tam was excited about the invitation because, for many years, he and his wife Thuy had been hard at work in their garage which had been converted to a test kitchen. Tam and Thuy had toiled for hours over old family recipes they hoped to turn into a food business for large catering events. People love their food, and they just knew they had the possibility for success. Tam was excited to go to Washington DC because he wondered about the Vietnamese community there and wanted to see firsthand whether he could find contacts to buy their sausages in bulk for events. Tam was also very excited to see our Capitol in person. He did not appreciate the dangers of Trump's rhetoric at that time and found him amusing. This trip would be a perfect opportunity to work on his family's food business, see the Capitol of the country he loves, and hear what he predicted would be an historically entertaining speech.

Once Tam, his wife and friend were at the speech, they found themselves caught up in the crowd. It was hard to hear what was going on because of their position in the crowd. It was hard to find restrooms and something to eat during a long day. At some

point in the speech, the crowd began to move down the mall. Tam and his companions followed the crowd somewhat unclear on what was happening. Tam's wife and her friend ultimately stopped following the crowd because they were tired, but agreed they would meet up after Tam got tired. The government has made much of some collective and clear plan by the hoard of people at the Capitol that day. While this was certainly true of many who planned well in advance what they would do when they got to DC, this is *not* true of Tam. He was excited to be in DC. He was excited to be seeing things and places he had only read about. He was not focused on what this collective was doing but made the horrible choice to follow them towards the building and got caught up in the moment. It is the type of decision that is so critically important in hindsight but in the moment seemed so meaningless.

As Tam followed the crowd, he noticed police officers and even took pictures since police officers and their work interested him. They were not acting in a way that indicated stress or chaos when he saw them. In fact, the barricades he saw were turned over and set aside when he saw them. He walked over fences on the Capitol grounds that had been *previously* laid or knocked over and saw police officers as he approached the U.S. Capitol. He continued to walk past a broken or dismantled fence, and he passed other barricades on his way to the U.S. Capitol Building. He never "climbed" over any barricade. He walked around or over barricades that were already down.

He heard members of the crowd saying, “They are letting us in!”. He did not then and would never do something to make officers feel unsafe if he was consciously aware that would be the result. He went into the area of the Capitol that is ordinarily opened to the public, milled around, took pictures and touched nothing. He followed people who were walking down a hallway, realized it was not part of the Capitol building with things to see and photograph, and walked right back out. After milling around for a short while, taking in what he was seeing, he did become concerned that the crowd appeared to be out of control. As soon as he consciously realized the situation seemed out of control and potentially unsafe, he left.

He wishes that he had never been there at all. This event had no personal meaning to him. For 18 years he was a police officer because he loved helping people. He was valuable to the Houston Police Department because he spoke Vietnamese. He was happy in his role as a police officer without rank and never sought promotion because he liked working on the streets in his community to answer the call when people needed help. He has lost all of that goodwill and his retirement over something he cared nothing about. He has shamed himself before the community and his family. Despite the governments cries for some sort of vengeful retribution, there is nothing more that can be done to this man to make him appreciate the price he has paid in his community and before his children, and he will continue to pay for his choices.

2. History and Characteristics of Mr. Pham

Tam Dinh Pham was born on March 2, 1972 in Da Nang, Vietnam to parents Phi Pham and Huc Thi Tran. Mr. Pham grew up with eight older siblings and their family was very poor. Tam's father suffered from a stroke a few months after Tam was born and was left paralyzed on one whole side of his body. Because of his father's condition, Tam's mother became the sole provider for Tam and his eight siblings. Tam reports often feeling starved as a child and receiving harsh discipline from his siblings who helped to raise him. In 1991 at age 17, Mr. Pham moved to the United States with his parents, one of his siblings, and his nephew. He did not know a word of English. His family instilled in him the importance of education, and so he enrolled in the University of Houston. They also nurtured him through a Buddhist upbringing. Though he was mostly focused on school, he worked many jobs to learn English, and was able to put what he learned in school to good use.

In one of his proudest moments, Mr. Pham was naturalized as a United States Citizen in 2001. He loves this country and the opportunities it has afforded him and his family. In 2002, he graduated from University of Houston with a degree in Management and Information Systems and worked for the computer lab there for a while. One day, someone mentioned that the Houston Police Department was hiring and he decided to apply. He was accepted in to the academy and became a police officer in 2003. Mr. Pham worked as a patrol officer for the Houston Police Department for eighteen years. He ended his career as a patrol officer and was just two years away from retirement when the

investigation into the present offense took place. While he likely would have been terminated because of this case, he chose to end his career because of the shame he felt he had brought onto the department. This was a devastating loss. His very identity had been intertwined with his role as a peace officer because he saw himself as a protector of the community he loves. The community loved him back. The commendation letters and glowing reviews of his performance over the years are attached as ***Exhibit 1***.

Mr. Pham married Thuy Huynh Dang in 2007. She was also born in Da Nang, Vietnam and is a naturalized United States Citizen. In 2009, Mr. Pham's father passed away due to complications from another stroke. Devastated, his mother moved back to Vietnam and later passed away after a cancer diagnosis in 2018. Tam's siblings are scattered in Vietnam, Germany, and the United States. Tam and his wife Thuy have three children together. Trish is fifteen, Karen is eleven, and Hannah is nine. Mr. Pham's girls' health and happiness is the most important thing to him. Since the time of Tam's arrest, his case has been in the local media, and Tam is pained by the suffering his choices have caused his family as a result. He is proud that he and his wife have provided his children with a good life here in America where they can realize their dreams, whatever they may be. For example, his eldest Trish aspires to become a physician. He and his wife have aspirations in the food service industry. Thuy came up with recipes for Vietnamese sausages and cakes, and people love their food. In 2017, she opened her own store. Sadly, with the devastation of Hurricane Harvey to the Houston area, they were forced to shut down the

shop before it could really succeed. But over the past few years Thuy persisted with perfecting the recipes, and they are currently in the process of re-opening a new one. The two look forward to bringing their Vietnamese cuisine to their community and beyond.

3. Circumstances of the Offense

January 6, 2021 was a devastating day for the United States. Every American sat at home and watched as our Capitol building was breached by an angry mob who broke glass, shouted terrible phrases, and threatened our leaders. The atrocities of that day are not lost Tam Pham. But the people who were actually *at* the Capitol that day did not have the benefit of drone-camera footage and news coverage of the events as they unfolded. There was a crowd of thousands of people stretching miles. It was impossible for any one attendee of the rally-turned-riot to know what was happening at every moment in every single place. It is under these circumstances that Mr. Pham walked in to the capitol building, unaware initially that he was not welcome inside and not knowing the extent to what others were doing or planned to do once they forced their way inside.

Mr. Pham and his wife Thuy traveled to Washington, D.C. to meet up with friends, visit the Vietnamese community, try food as research for their business, and do some sight-seeing. Tam had never before been to D.C. and was excited to see the architecture and the history of his beloved country. Mr. Pham does not consider himself to be a “political” person. To him, the most important thing is being able to earn money through making a living and through the stock market so that he can support his girls at home. His wife and

her friend noted that there was a rally going on for Trump and they wanted to attend. Tam tagged along to “see history.” He had no clue just how historical that day would be.

At the rally, Tam was glued to his phone checking on the trends in the stock market. A lot of people were giving speeches, but he was not paying attention much to what they were saying. It was also difficult to hear over the wind and the intermittent cheers and roars of the crowd. After President Trump finished his speech, a full hour passed before Tam, his wife and her friend even started walking toward the Capitol building due to a long bathroom line. Mr. Pham saw people walking toward the Capitol, so he followed. He recounts being so excited to see our nation’s Capitol building up close. Tam took some photos with Trump flags throughout the day, but none of them belonged to him and he did not bring them to the rally. Tam saw people with flags and posters, but not any weapons. Tam saw people who were excited, but he did not see them as angry from his place in the crowd.

Tam left his wife and her friend by the reflecting pool and walked up to get a closer view of the building. Tam tried to get as close as possible to the building so he could keep taking pictures and videos. He saw officers behind a barricade standing watch. Tam then started walking down back toward his wife when he heard people saying, “They’re leaving! They’re letting them in!” He is now painfully aware he should have kept walking down the hill and away from the building. Instead, he turned around and followed a crowd in to the Capitol building through a side door which was open. Despite the government’s

contention that alarms were blaring, Tam did not hear them over the chants of the crowd. Notably, no alarms can be heard in any of the videos that were provided to undersigned counsel. However misguided his decision to enter the building was, Tam saw that officers were gone and genuinely believed it was alright to go in. He did not cross through “numerous barricades.” As soon as he got in to the building he took pictures and videos of the ceiling, the architecture, and the art on the walls. Tam, in his mind, was “documenting history.” He walked around the building and saw no violence whatsoever. He took his pictures and videos and eventually walked back out. Tam confronted no one and touched nothing. Tam did not enter the building with any intention of hurting anyone or disrespecting his fellow officers. To describe him as a rioter is absurd. He was parading and pic Tam had no idea that others had broken windows, had brought in zip ties, or had threatened the lives of our public servants. If he had all of the information that we had back at home, he never would have gone inside.

Tam did not know that anything violent had occurred until after they made their way back to their hotel and saw the harrowing news coverage. He then deleted the photos in his phone and off of his Facebook because he was worried that the Houston Police Department would not appreciate him being present at such an event once he had the benefit of hindsight. He did not want to have his beloved department associated with that day. Deleting these photos and videos occurred long before Tam could even fathom that

he would be facing federal charges for his conduct, certainly well before any federal agents reached out to him.

The other photos Tam took that demonstrate the tourist nature of his visit to our nation's Capitol:




And in doing the detailed analysis of Mr. Pham's phone the government found *nothing* but peaceful images. There were no social media posts and no plans to participate in advance. Tam was so excited to visit the Capitol of the country that he loves that welcomed him in his youth. Tam moved to the United States as a young person who did not know a word of English. He was able to build a life, a family, and a career he was proud of. To Tam, ours is the only country in the world that can afford anyone that type of opportunity. He would never want to do anything to disrupt our democracy or our republic. He is ashamed and mortified that his actions that day reflect any sentiment other than pride and gratitude.

Upon learning that an officer had been killed and over 100 officers were injured that day, Tam was devastated. He considered those officers his brothers and sisters. The government wants to assign more culpability and responsibility to Tam because of his work as a police officer and his experience working at a protest the summer before. But as the government also admits, the peaceful George Floyd march in Downtown Houston during the Summer of 2020 was nothing like the January 6, 2021 insurrection. In Houston, peaceful protestors walked through downtown to memorialize the life of an African American Native Houstonian who had been murdered in cold blood and to tell the world that "Black Lives Matter." The march ended at City Hall where speeches were given and then people went home. The government appears to attach some sort of meaning to the fact that Tam was dressed in required uniform at the protest. Tam's own peaceful and

non-stressful experience at that event does not mean he knew what the officers were experiencing at the Capitol. Tam absolutely should have turned around once he realized that the officers were outnumbered and that they were being shouted at by the people in the crowd. It is important to note, though, that he never witnessed an officer being assaulted or threatened in any way. Tam would not be before this Court for sentencing after a guilty plea if he did not understand the severity of the situation. Mr. Pham worked his entire career as a patrol officer and never held any rank of leadership in any way. Tam's experience as a law enforcement officer did not guide him to leave the building until moments before he did so.

Mr. Pham accepts responsibility for his actions.

Mr. Pham plead guilty and accepted full responsibility for his actions. He knows that he made a truly terrible choice by not being more aware of his surroundings that day and by going to the Capitol. Despite not knowing the full scope of what was happening, Tam should have never been a part of this group and should not have walked in to the building that day. He fully appreciates and understands that now. Tam resigned from the Houston Police Department on January 14, 2021. (*Exhibit 2*). The Department's Chief of Police noted on his resignation that Tam was to be a "NO REHIRE!". Losing the career he worked so hard for and the job that he loved has not been easy for Tam. However, he knows that was a consequence of his own actions. Tam has taken steps to try to right this wrong. 

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Tam is looking forward to putting this serious misstep behind him and continuing to contribute to society in a positive way. He is putting all of his energy in his family by spending time with his girls and helping his wife to grow their new business. Tam is doing what he can to seek some positives out of this very bad situation he put himself in.

Probation is a just sentence for Mr. Pham and incarceration is not appropriate.

“This Court, in fashioning a fair and just sentence, should look to a number of critical factors, to include: (1) whether, when, how the defendant entered the Capitol building; (2) whether the defendant engaged in any violence or encouraged violence; (3) whether the defendant engaged in any acts of destruction or encouraged destruction; (4) the defendant’s reaction to acts of violence or destruction; (5) whether during or after the riot, the defendant destroyed evidence; (6) the length of the defendant’s time inside of the building, and exactly where the defendant traveled; (7) the defendant’s statements in person or on social media; (8) whether the defendant cooperated with, or ignored, law enforcement; (9) whether the defendant otherwise exhibited evidence of remorse or contrition; and (10) whether the defendant held a position of trust or influence in the

community. While these factors are not exhaustive nor dispositive, they help to place each individual defendant on a spectrum as to his or her fair and just punishment.”

We agree with these factors and will address each one in turn:

- (1) Tam entered the capitol building through an open door after hearing that the crowd was being allowed to go in.
- (2) Tam did not engage in or encourage or any violence.
- (3) Tam did not engage in any acts of destruction or encourage destruction.
- (4) Tam had no reaction to acts of violence or destruction because he did not witness any.
- (5) Tam did not destroy any “evidence” during or after the riot. He deleted photos that he took on his own phone long before the investigation because he was immediately ashamed. They were easily recovered in the deleted photos folder on his phone that he showed them to federal agents upon request.
- (6) Tam was inside of the building for approximately twenty minutes. He took photos and videos and did not touch anything. To contend that because he walked “into an office area with desks, a computer, and numerous paper files” he is more culpable than others is misguided. Once he realized this was not an area of photographic interest, he left.
- (7) Tam posted a photo of himself wrapped in a Trump flag in front of the Capitol building but the photo had no caption. He quickly deleted it for fear that others

would think he was expressing support for President Trump, not because he was worried about any sort of criminal charge. Tam's statements on video of "Stop the Steal" were made because he was chanting along with others as he was caught up in the moment, which he very much regrets. Tam does not and has never believed that President Joe Biden stole the election. When Tam said, "we're taking the house back!" he literally meant that they were "in the house," not that they were going to disrupt anything that the House of Representatives or Senate were doing. Though he does speak English well, it is still his second language and presents a significant barrier at times. Hearing the statements and videos in their complete context, which was then unavailable to him, Tam is ashamed.

(8) Tam neither cooperated with nor ignored law enforcement because he had no interactions with any officers on that day. He has since cooperated with the government.

(9) Tam has exhibited remorse and contrition




(10) Tam, as a police officer for almost 20 years, did hold a position of trust in the community. But Tam was at the Capitol that day as a private citizen acting alone. His influence has nothing to do with his actions or the actions of others on that day. In fact, he has lost much as a result of his position.

When considering where to place Tam on the spectrum previously described, these ten factors point overwhelmingly to a placement on the low end of involvement. This is a petty offense for which many similarly situated defendants have received probation and no jail time. Even more culpable defendants have received home confinement. Tam should be given the same to avoid sentencing disparities.

4. Mr. Pham has great family and community support.

The letters submitted by Tam's friends and family describe a hard-working, kind, dependable, respectful, responsible, trustworthy, and family-oriented man. (*Exhibit 3*). Many of them express a feeling of shock and sadness for the situation Tam put himself in. Close friend Anh Truong writes, "Tam Pham is a kind, good, and honest person who is always willing to help others. He donates money to charity to help people with difficulties. During Harvey hurricane, a police officer, he worked day to night to protect people and make sure everyone is safe." Friend Nhung Le adds, "Tam Pham is also a Buddhist. He values peace and harmony in his everyday life activities. He practices Buddhism every day." Neighbor Yen Kim Trieu says, "He is also a very loving and supportive father and husband to his wife and children. I could still remember how Tam always took great care of both of his elderly parents when they were both alive...I can honestly say that I never witness anybody I know taking care of their parents like Tam." All of the letters express Tam's commitment to his career as a public servant. Pierceson Le summarizes it well. "Even though Mr. Pham served public as a police officer for almost two decades, he never once complained about his job or the work that he did. On the contrary, he was very

proud of his roles and duties, along with dedication and commitment. He is willing to go above and beyond expectations. He cares greatly not only for the people he knows but strangers alike.” Tam has a beautiful family and support from the greater Houston community who will help him get back on his feet after this difficult period in his life.

Conclusion

Mr. Tam Pham is a beloved father, husband, brother, friend, mentor, and former peace officer who made a grave error in judgment in this instance. A period of probation would be a sentence sufficient, but not greater than necessary, to comply with the basic aims of sentencing in this case. Tam is non-violent man who regrets deeply his choices on a terrible day in our nation’s history. He should not have gone in to the building. He has accepted responsibility and faced national ridicule. Probation would be a just sentence for a man who has already learned a valuable lesson in this instance and lost his lifelong career over his actions. We respectfully request a sentence of probation.

Respectfully Submitted,

/s/ Nicole DeBorde

NICOLE DEBORDE

Federal ID No. 16839

TBA No. 00787344

3515 Fannin Street

Houston, Texas 77004

Telephone: (713) 526-6300

Facsimile: (713) 808-9444

Email: Nicole@debordelawfirm.com

Attorney for Defendant,

TAM DINH PHAM

CERTIFICATE OF CONFERENCE

I hereby certify that a copy of the above and foregoing Defendant's Memorandum in Aid of Sentencing has been delivered to AUSA Alison Prout via email (alison.prout@usdoj.gov) and USPO Aidee V. Gavito via email (aide_gavito@dcp.uscourts.gov) on the 6th of May, 2022.

/s/ Nicole DeBorde

NICOLE DEBORDE