

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

Case No. 1:21-cr-317-02 (TSC)

CHRISTIAN CORTEZ

DEFENDANT’S SENTENCING MEMORANDUM

The collateral consequences of Christian Cortez’ felony conviction, and his compliance with pretrial supervision, warrant a guidelines sentence of **thirty (30) days of jail, eighty (80) hours of community service and twelve (12) months of supervised release**. The nature and circumstances of his offense, and his history and characteristics support this sentence.

I. Christian Answered a Specific Call from the Government

Christian responded to an urgent appeal from the highest levels of the United States Government. An appeal from the President and some U.S. senators to save our democratic republic by preventing Congress from certifying verifiably fraudulent votes.¹ Christian was informed that “[w]e’ve seen in the last few months, unprecedented

¹ On January 4th, 2021 at 10:07 a.m. EST Donald Trump tweeted: “How can you certify an election when the numbers being certified are verifiably WRONG. You will see the real numbers tonight during my speech, but especially on JANUARY 6th...” <https://www.presidency.ucsb.edu/documents/tweets-january-4-2021> (last visited August 24, 2022).

amount of Voter Fraud.”² As expressed by the President five days before the protest, the goal was not to thwart the Democratic process, but to protect it.³

Trespass, destruction, and mayhem were not Christian’s goal. He went to D.C., with his roommate Benjamin Larocca, for the first time in his life. He arrived at the president’s rally and was able to hear his message over loudspeakers.⁴

The purpose of the rally was well articulated by the president and patently reasonable: “to demand that Congress do the right thing and only count the electors who have been lawfully slated.”⁵ The action requested was specific: “... marching over to the Capitol building to peacefully and patriotically make your voices heard.”⁶ The legal strategy behind the protest was clear: “All Vice President Pence has to do is send [the votes] back to the states to recertify and we become president and you are the happiest people.”⁷

² On January 4th, 2021 at 10:13 a.m. EST Donald Trump tweeted: “We’ve seen in the last few months, unprecedented amounts of Voter Fraud. @SenTedCruz True!” *Id.*

³ On January 4th, 2021 at 10:23 a.m. EST Donald Trump tweeted “We are not acting to thwart the Democratic process, we are acting to protect it. @SenRonJohnson” *Id.*

⁴ PSR ¶ 20.

⁵ Naylor, Brian, *Read Trump's Jan. 6 Speech, A Key Part Of Impeachment Trial*, N.P.R, February 10, 2021. <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial> (last visited August 24, 2022).

⁶ *Id.*

⁷ *Id.*

Christian believed the President's promise. He went to D.C. and then, as instructed and with everyone else, marched to the Capitol building to peacefully protest and to save our country. Politics and deceit aside, the purpose of his trip was honorable.

II. Christian Admits the Harm that his Presence Caused

Christian, in his own words, accepts that he should never have entered the Capital building and that his "very presence interfered" with law enforcement, who were overwhelmed and understaffed.⁸ He has accepted responsibility through his guilty plea to a felony offense for interfering with law enforcement. Officers were attempting to close the North Door, and Christian distracted them from doing so. He accepts responsibility for committing this crime.

Christian joined a protest that turned into a mob. When he entered the Capital, people had already been exiting. He did not participate directly in the initial breach. He walked in through the Parliamentary Door at 2:53 p.m. This was over an hour after the lower west terrace fence line and the upper west terrace were breached (at 1:42 p.m. and 1:48 p.m. respectively), and over thirty minutes after the Rotunda was breached (2:19 p.m.).⁹ When the Parliamentary Door was breached at 2:42 p.m., there were only five officers standing inside those doors at that time.¹⁰

⁸ Exhibit 3 - Personal Statement of Christian Cortez.

⁹ Exhibit 4 at p. 14 and p. 17 – United States Capitol Police Timeline of Events for January 6, 2021 Attack.

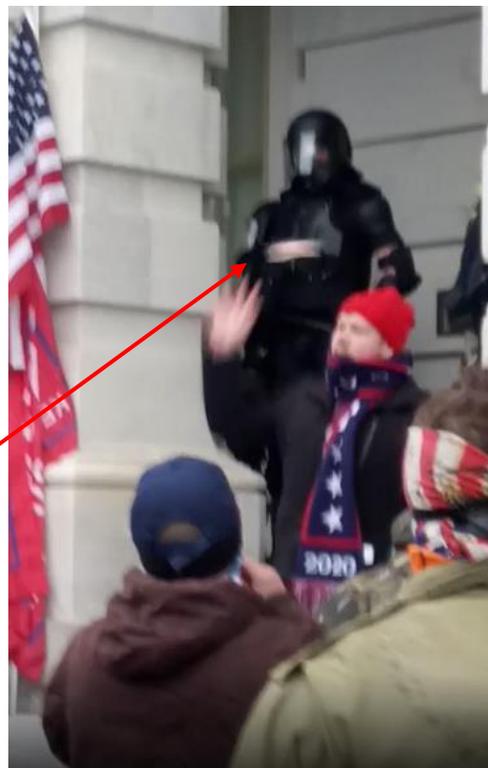
¹⁰ Exhibit 2A.

The Court should consider what Christian saw in the minutes prior to entering the Parliamentarian Door. About five minutes after the Parliamentarian Door was breached, individuals from inside the Capitol are seen casually exiting from that door. About nine minutes after the Parliamentarian Door was breached, a large group of people exit from that door as a crowd.¹¹ It is this scene, that Mr. Cortez likely witnessed prior to entering the Parliamentarian Door himself.

Christian and Ben entered through the Parliamentarian Door about eleven minutes after the door was breached.¹² They remained in the Capital for 13 minutes.¹³ He joined a protest, that devolved into a mob.

III. Christian tried to Tame the Mob

After exiting the from the North Door, Christian used his body and his words to try to block rioters from assaulting police and damaging property. Publicly available videos show Christian attempting to block an item that protesters threw towards officers outside the North Door.¹⁴ He is observed on video yelling towards the crowd. He recalls yelling at them to “fucking chill.”



¹¹ Exhibit 2B.

¹² Exhibit 2C.

¹³ PSR 23 – 24: Christian was inside the Capital from 2:53 p.m. until 3:06 p.m.

¹⁴ Defense exhibit 6 at 0:09 and defense exhibit 7 at 0:49.

Christian also recalls one specific incident during which he tried to chastise a rioter who was damaging property. When officers retreated into the Capitol through the North Door, the crowd moved in closer. A rioter approached from behind Christian and used a skateboard to try to break the glass on the North Door. Christian recalls attempting to block the skateboard and turning towards the crowd, trying to admonish them. This incident is partially captured in a publicly available video.¹⁵ The rioter was upset that Christian tried to stop him.

Christian was worried for his own safety. He withdrew away from the North Door.¹⁶ Christian was not directly present when a rioter attempted to use a bike rack to break the doors.¹⁷ He was not at the forefront when another rioter launched projectiles at the North Door.¹⁸ Christian did not engage in any of those behaviors.



Christian withdrew from the North Door, standing towards the end of a ramp, as rioters taunted and assaulted officers.

¹⁵ Exhibit 5 at 12:03, also available online: News2Share. (2021, June 4). *Battle over Northeast entrance to U.S. Capitol on January 6 ...* [Video]. <https://www.youtube.com/watch?v=9TshRdxXi9c> (Last visited August 24, 2022).

¹⁶ *Id.* at 13:57; also see Defense exhibit 8.

¹⁷ *Id.* at 6:23.

¹⁸ *Id.* at 15:07.

At one point, a capitol police officer stood bravely in front of the North Door, facing the mob but choosing not to treat them as a mob. He engaged them in rational discussion about the First Amendment. Some protesters engaged him in a discussion, while the mob chanted “let us in.” Christian was present, believing himself to be engaged in a protest, that he still hoped could remain peaceful and successful. Suddenly, the brave capitol officer appeared to observe a rioter using pepper spray. He instructed others to “grab that guy” and thus, the rational conversation ended.¹⁹

In that moment, the scene turned from tense dialogue to an attack. Officers wearing gas masks began to deploy pepper spray. Christian was hit directly in his eyes. They burned.



He screamed at the officers, “fuck you, oath breakers!” He was enraged that the officers used force against the peaceful protesters, like himself. He yelled out “do it, we are just standing here” and threw down his Trump flag, disarming himself while losing

¹⁹ *Id.* at 18:54.

hope in the protest. He offered himself as a sacrifice. “Do it some fucking more,” he yelled, as officers sprayed him in the face with a fire extinguisher.

After being maced, CCTV video shows that Christian retreated to the bottom of a ramp, away from the North Door.²⁰ He did not reapproach the North Door after this incident.²¹ He stayed away, tending to his burning eyes. When a police line approached to clear the area, Christian left, slightly ahead of Ben, without incident.²²

Christian’s intent was clear from his actions and from his words, despite his moments of anger. He did not lead an attack on police as alleged by the government.²³ He had a flag, and he was there to protest. He tried to prevent acts of violence and destruction. He regrets losing his cool and shouting at the law enforcement officers.

IV. Mercy is more Powerful than Prison as a Deterrence.

Prison has its limitations as a deterrent. Imposing an unnecessarily lengthy sentence will not change hearts and minds in an ongoing political dispute. Reasonableness and appropriately measured consequences for criminal acts, leaning on the side of mercy and understanding, is the most effective deterrent in this case.

Mercy, especially when it is unexpected, is more likely to compel an individual from committing criminal acts in pursuit of a political goal by inspiring the individual

²⁰ Defense exhibit 8B.

²¹ Defense exhibit 8C.

²² Defense exhibit 8D.

²³ Doc. 62 at page 23.

to reconsider his world view. Christian appreciates the Court's concern regarding the vulnerability of our democratic republic.²⁴

Showing Christian mercy is also appropriate because he is not a repeat offender and has never been arrested for any criminal charge. This offense is aberrant behavior for Christian. His compliance with pretrial supervision confirms this.

V. Civil Death is more Severe than Jail

A few months in jail is not enjoyable. It is a punishment. However, the disfranchisement and branding of a felony conviction, sometimes referred to as "civil death," can be more severe.²⁵ It is a more lasting punishment that Christian has already started suffering, unlike his co-defendant. Christian has accepted this status as a consequence for his actions.

A felony conviction is sufficient as a general deterrence. The public knows that Christian's actions have deprived him of the right to vote. He went to D.C. to make his voice heard. Because he crossed the line, he will be deprived some basic rights and privileges afforded every American citizen. He cannot possess a firearm.²⁶ His ability to obtain public benefits, educational and employment opportunities, professional

²⁴ Doc. 68; page 56, line 18.

²⁵ Stevenson, Bryan. "House Judiciary Committee's Over-Criminalization Task Force Hearing on Penalties." May 30, 2014. at 2. <https://ejj.org/files/bryan-stevenson-testimony-us-house-rep-judiciary-over-criminalization-05-30-14.pdf> (last visited August 24, 2022).

²⁶ Tex. Pen. Code § 46.04.

licenses, loans and even housing may be denied. Adding a lengthy jail sentence is unnecessary.

VI. Christian's History and Characteristics

Christian is known as a trustworthy, polite, helpful, and optimistic person. His neighbor, a NASA Aerospace Engineer, trusted him to babysit her children. She knows Christian as a polite and remorseful person, who shaved his head for charity.²⁷ Another neighbor recalls Christian's patience with younger children when he would take his younger siblings and go to Church on Easter Sunday.²⁸ He also recalls Christian's willingness to sacrifice himself to save others.

His godmother describes him as someone who is "always willing to help others."²⁹ As a young adult, Christian volunteered to help care for his elderly grandmother for over four years. She has been diagnosed with dementia. Christian's mother explains that he chose to support his family, sacrificing his time and employment in the process of caring for his grandmother.³⁰ His mother also describes him as someone who "always stood up for other children/people who were being bullied."³¹

²⁷ Exhibit 12 – Letter from Christian's neighbor.

²⁸ Exhibit 13 – Letter from Christian's neighbor.

²⁹ Exhibit 14 – Letter from Christian's godmother.

³⁰ Exhibit 15 – Letter from Christian's mother.

³¹ *Id.*

Christian's optimism and determination shone through when he began experiencing debilitating medical issues as a teenager: cardiac issues, muscle deterioration, fainting, chronic fatigue, and pain.³² He was told that he would not live past eighteen years old, and his mother allowed him to leave high school permanently when he was in the 11th grade.³³ After two years of hospital, doctor's visits, and medical testing, he was diagnosed with Tarui, a rare and incurable disease.³⁴ Today, his condition continues to affect the level of physical activity that he can exert and his diet. His medical struggles did not make into a bitter or hateful person.

Christian is not a danger to society. His exemplary character and reputation support that a lengthy period of incarceration is not necessary. He would welcome the opportunity to give back to community service. He envisions himself volunteering for Habitat for Humanity, putting his recently learned carpentry skills to use.³⁵

³² *Id.*

³³ PSR ¶ 67.

³⁴ Exhibit 17 – Christian's medical records from UT Mitochondrial Clinic and UT Houston Medical School.

³⁵ PSR ¶ 70.

VII. Conclusion

As baseless as election fraud claims may have been, Christian and many other Americans sincerely believed them. Despite his best effort to keep the peace on January 6th, Christian was unable to control the mob, nor his own emotions. He regrets interfering with officers and admits that his presence was the problem.

To balance the punitive effect of a felony conviction for a young man with exemplary character and no criminal history, with the seriousness of this offense, a sentence of **thirty (30) days of jail, eighty (80) hours of community service and twelve (12) months of supervised release** is sufficient but not greater than necessary.

Respectfully submitted,

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