

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	No. 21-cr-508-01-BAH
v.	:	
LUKE WESSLEY BENDER,	:	
<i>Defendant.</i>	:	

SUPPLEMENT TO DEFENDANT’S SENTENCING MEMORANDUM

Since the date of the originally scheduled sentencing hearing to the present, Luke Bender has remained in complete compliance with every condition of the High Intensity Supervision Program (with GPS monitoring), as he has since his arrest in July 2021. He continues to maintain full employment, often getting to work at 5:00 a.m. and ensuring each day that he complies with the Court’s evening curfew requirements. The Court’s stringent release conditions have allowed Mr. Bender to become a productive member of society and to provide for himself and his wife as they begin the process of starting a family.

To the Government, none of these facts matter. It asks this Court to sentence Mr. Bender to 2.5 years of incarceration. But why? It is not because he violently broke into the U.S. Capitol on January 6, 2021, as surveillance video shows him walking in and walking around after the evacuation of members of Congress and the suspension of the joint session to certify the Electoral College vote. Nor is it because he assaulted or threatened anyone (including law enforcement) or stole or defaced any property inside the U.S. Capitol, as surveillance video shows Mr. Bender engaging in no such conduct. Rather, the Government asks this Court for lengthy incarceration because Mr. Bender, during the minutes of parading and demonstrating inside the U.S. Capitol,

entered into the Senate Chamber. To the Government, this crosses a special threshold that alters its discretionary decision as to whether Mr. Bender should be able to plead guilty to a petit misdemeanor (maximum six-month) offense or to a felony obstruction of an official proceeding offense. The consequences of this discretionary decision — for nearly identical conduct — could not be harsher, as one has historically resulted in no incarceration, while the other, as the Government asks here, could result in multiple years of incarceration in a Bureau of Prisons (“BOP”) facility.

The Government’s arbitrary distinction creates obvious sentencing disparities. Below are the names of every January 6, 2021 Capitol breach defendant for whose conduct the Government did not seek a sentence of incarceration:¹

Morgan-Lloyd, Anna	Parks, Jennifer	Colbath, Paul
Ehrke, Valerie	Reimler, Nicholas	Lewis, Jacob
Bissey, Donna	Miller, Brandon	Lentz, Nicholes
Hiles, Jacob	Miller, Stephanie	Daughtry, Michael
Wangler, Douglas	Hatley, Andrew	Juran, John
Harrison, Bruce	Pert, Rachael	Genco, Raechel
Sizer, Brian	Winn, Dana	Macrae, Douglas Farquhar
Bustle, Jessica	Wickersham, Gary	Seymour, Paul Sr.
Bustle, Joshua	Schwemmer, Esther	Seymour, Paul Jr.
Doyle, Danielle	Kelly, Kenneth	Ferguson, Jamie
Bennett, Andrew	Straka, Brandon	Fontanez-Rodriguez, Samuel
Mazzocco, Matthew	Sizer, Julia	Bostic, Karegan
Rosa, Eliel	Blauser, William	Bostic, Willard Jr.
Gallagher, Thomas	Barnard, Richard	McFadden, Tyrone
Vinson, Thomas	Witcher, Jeffrey	Mileur, Aaron
Dillon, Brittiany	McAlanis, Edward	Williams, Carrie
Sanders, Jonathan	Lollis, James	Rutledge, Meghan
Fitchett, Cindy	Schubert, Amy	Saer, Lilith
Sweet, Douglas	Schubert, John	Cantrell, Eric
Cordon, Sean	Orangias, Michael	
Wilkerson, John IV	Quick, Michael	
Jones, Caleb	Quick, Stephen	
Brown, Terry	Reda, Kenneth	
Wrigley, Andrew	McCreary, Brian	

¹ See Government’s Sentencing Table of January 6 Capitol Breach Defendants, dated April 7, 2023.

The above list does not include all the defendants for whom the Government sought, but judges in this District, nonetheless, refused to impose, a sentence of incarceration at a BOP facility:

Vinson, Lori	Krzywicki, Carla	Spigelmyer, Paul
Griffith, Jack	Kulas, Christian	Uptmore, James
Torrens, Eric	Kulas, Mark	Brooks, James
Gruppo, Leonard	Von Bernewitz, Eric	Yazdani-Isfahani, Abigail
Croy, Glenn	Ballesteros, Robert	Yazdani-Isfahani, Loruhamah
Stotts, Jordan	Peart, Willard	Comeau, Jason
Cordon, Kevin	Spain, Jr., Edward	Evans III, Treniss
Abual-Ragheb, Rasha	Chapman, Robert	Castle, Trudy
Nelson, Brandon	Tagaris, Jody	DiFrancesco, Kimberly
Markofski, Abram	Sywak, William Jason	Wood, Matthew
Marquez, Felipe	Sywak, William Michael	Wiersma, David
Mariotto, Anthony	Laurens, Jonathan	Frankowski, Dawn
Edwards, Gary	Cunningham, Christopher	Buxton, Jonas
Tutrow, Israel	Torre, Benjamin	Billingsley, Steven
Kostolsky, Jackson	Suarez, Marissa	Gross, Juliano
Rusyn, Michael	Todisco, Patricia	Council, Matthew
Sells, Tanner	Persick, Kerry	Johnson Jr., Thaddis
Walden, Jon	Buckler, Matthew	Bond, Stacy Lee
Prado, Nicole	Cavanaugh, Andrew	Conlon, Paula
Williams, Vic	Ortiz, Christopher	Witzemann, Shawn
Wiedrich, Jacob	Homer, Lisa	Slaeker, Tyler
Stepakoff, Michael	Fracker, Jacob	Montalvo, Matthew
Wilson, Zachary	Carlton, Daniel Jonathan	Gable, Levi
Wilson, Kelsey	Thurlow, Steven	Faulkner, Luke
McAuliffe, Justin	McNicoll, Lois Lynn	Javid, Iraj
Williams, Andrew	Youngers, Darrell	Lanham, Melanie
Sunstrum, Traci	Vollan, Cody	Gleffe, Marcos
Gonzalez, Eduardo	Carollo, Anthony	Heathcote, Chad
Strong, Kevin	Bratjan, Frank	Manwaring, Susan
Nalley, Verden	Ferreira, Leticia	Bustos, Alexis
Carico, Michael	Connor, Francis	Bustos, Bryan
Loftus, Kevin	Ferrigno, Antonio	Myers, Rachel
Kelley, Kari	Lunyk, Anton	Grover, Logan
Martin, Zachary	Vincent, Reva	Cramer, Country
Cudd, Jenny	Ayres, Stephen	Gordon, Vaughn
Jackson, Micajah	Hentschel, Cara	Gerwatowski, Eric
Ivey, Bryan	Munn, Dawn	Ambrose, Lawrence
Burruss, Gabriel	Munn, Joshua	Tilley, Todd
Pettit, Madison	Munn, Kayli	Montoya, Samuel
Fee, Thomas	Munn, Kristi	
Zlab, Joseph	Munn, Thomas	
Fox, Samuel	Munger, Jeffrey	
Hardin, Michael	Rodean, Nicholas	
O'Malley, Timothy	Mels, James Allen	
Rebegila, Mark	Clark, Christy	
Conover, Thomas	Clark, Matthew	

If none of the individuals in the above-referenced lists were sentenced to a day in prison for their actions on January 6, 2021, why should Luke Bender, who did not destroy, assault, harass, deface, or injure when walking inside the U.S. Capitol that day or when walking past law enforcement on the way out. Does the fact that Mr. Bender walked onto the Senate Floor, not by breaking-in or by force, but by walking in, justify a sentencing disparity of years? It does not.

As for defendant *Jennifer Horvath*, No. 22-cr-00192 (BAH), this Court sentenced her, like it did her then boyfriend, Glen Wes Lee Croy, to 36 months' probation and 3 months' home detention (with a 14-day period in a residential reentry center (*i.e.*, halfway house)). In that proceeding, the Government asserted that Ms. Horvath deserved a sentence of incarceration because she:

(1) was among a group of rioters that surrounded, taunted, and assaulted Metropolitan Police Department ('MPD') officers as they arrived to defend the Capitol on January 6, 2021; (2) climbed through metal scaffolding to be one of the first rioters to reach the Northwest Courtyard; (3) unlawfully entered the Capitol Building through the Senate Wing Door at 2:18 p.m., just five minutes after the initial breach at that location; (4) entered a sensitive location, a Senate Conference Room; (5) proceeded toward the Crypt area of the Capitol Building while chanting, "who's house? Our house!"; (6) menacingly yelled, 'Where's Nancy?' as she proceeded through the Capitol Building; (7) was part of the mob that overran and made physical contact with United States Capitol Police ('USCP') officers in the Crypt; (8) was instructed to leave the Capitol Building but remained on restricted Capitol Grounds for nearly 45 minutes, during which time she climbed to the top of a government vehicle; (9) re-entered the Capitol Building through a different door amidst a mass of rioters who pushed past police officers who were attempting to keep them out; (10) evaded officers who were attempting to clear the area near the Rotunda doors and then entered the Rotunda; and (11) made social media posts in the days following January 6, 2021 in which she falsely claimed that law enforcement officers protecting the Capitol were attempting to 'agitate' the crowd 'until Antifa positioned.'

22-cr-192 (BAH) (D.E. 30 at 2). A period of incarceration at a BOP facility was as unwarranted for Ms. Horvath as it is for Mr. Bender, who entered the U.S. Capitol 27 minutes after Ms. Horvath had entered, remained inside for less time than she did, did not reenter a second time, and did not

engage in the other conduct described by the Government, including yelling, “Where’s Nancy?” or standing on top of a government vehicle outside the U.S. Capitol. As another example, this Court sentenced Ms. Horvath’s codefendant, *Terry Lynn Lindsey*, No. 21-cr-162-2 (BAH), to five months’ incarceration when he:

physically shoved a police officer, used illegal substances on Capitol grounds, evaded law enforcement during a second entry into the Capitol Building, threatened to return to the Capitol with guns, lied to and misled the FBI during his post-arrest interview, committed offenses and pretrial release violations during the pendency of his case, and entered a belated plea agreement more than a year after his arrest and just shortly before the scheduled trial date.

Id., 07/15/22 Tr. at 64-65. Mr. Bender engaged in none of this conduct and yet the Government wants him to be incarcerated for years. The sentencing factors do not permit such a sentencing disparity solely because the Government chooses to charge individuals with felonies based on an arbitrary line of prosecutorial demarcation.

Mr. Bender is a very young man who turned his life around and is both fully employed and fully in compliance with his release conditions. The life-long felony conviction and lengthy period of supervision that he will incur in this case serve as more than just deterrence and punishment for his specific actions when participating in the events of January 6, 2021. Sentencing him to a federal prison would be a sentence “greater than necessary” to comply with the statutory purposes of sentencing and would only serve to undermine the progress that he has made over the last two years.²

² To address the Government’s assertion in its Sentencing Memorandum (D.E. 113 at 31) that Mr. Bender is facing multiple felonies in Stafford County, Virginia, arising from an offense when he was 20 years old, that entire matter was resolved with a misdemeanor plea to destroyed property. Mr. Bender has since made full restitution and received a sentence of probation. Mr. Bender has left his past behind him and has no pending charges or violations. The decision now is whether he should be allowed to continue in the exceptional progress that he has made from a wayward youth to a responsible adult and husband, or rather, should he be sentenced to a federal prison. Mr. Bender respectfully asks this Court to give him the opportunity to further prove himself through

CONCLUSION

For the foregoing reasons and others that may appear to the Court or may develop at the sentencing hearing, Mr. Bender respectfully requests that this Court impose a sentence of three years of supervision, with a period of home confinement, in addition to the mandatory restitution of \$2,000 to the Architect of the Capitol.

Dated: April 17, 2023

Respectfully submitted,

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continued Court supervision, as was afforded to the two hundred other “rioters” and “insurrectionists” listed above for similar conduct on January 6, 2021.