

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

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No. 1:22-CR-118(DLF)

JACOB GARCIA

**DEFENDANT’S RESPONSE TO GOVERNMENT’S SENTENCING MEMORANDUM**

JACOB GARCIA, by and through his undersigned counsel, hereby submits the following response to the government’s sentencing memorandum, and shows as follows:

The Court must impose a sentence “sufficient, *but not greater than necessary*” to accomplish the statutory objectives of sentencing. 18 U.S.C. § 3553(a) (emphasis added). The Court must “consider all of the § 3553(a) factors,” and make “individualized assessment based on the facts presented.” *Gall v. United States*, 552 U.S. 38, 50 (2008). In assessing a sentence, the Court must consider the nature and circumstances of the offense and the history and characteristics of the defendant. 18 U.S.C. § 3553(a)(1).

**A. Garcia does express remorse for his actions.**

The government stated numerous times in its sentencing memo that Garcia has expressed no remorse for his actions, therefore incarceration is warranted. (Doc. 26.) This is simply not true. Garcia feels deep remorse for entering the Capitol. He told Probation Officer Reichler the following:

“On January 6, 2021 I regretfully entered the US Capitol without any permission to do so and displayed inappropriate behavior. If given the opportunity to relive this date again, I would have stayed home. The event was not beneficial to ANY party involved.” (PSR ¶ 22.)

Garcia has also expressed remorse to the two people who are closest to him, his parents. (See letters to the Court from Angela Kidd and Barney Garcia). He has told them both he regrets ever setting foot in the Capitol. *Id.*

The government appears to believe that Garcia's social media posts in July and October of 2022 show that he lacks remorse. (Doc. 26.) However, those posts do not discuss entering the Capitol on January 6, 2021, but abstract political opinions about the integrity of the 2020 and midterm elections. (Doc. 26.) These same opinions have been routinely blasted over the media by even high-ranking government officials. At the time of the offense, the top official in our government expressed similar opinions and encouraged other less educated citizens like Garcia to share in that sentiment. However, this is almost beside the point. A citizen simply cannot be punished for expressing what appear to be sincerely held opinions, whether those beliefs are right, wrong, or odious. *See Wisconsin v. Mitchell*, 508 U.S. 476, 485 (1993) ("a defendant's abstract beliefs, however obnoxious most people, may not be taken into consideration by a sentencing judge").

Garcia accepts responsibility for the crime he committed, parading in the Capitol on January 6, 2021. But not only does he accept responsibility, he has shown genuine remorse for his behavior. In Garcia's own words, if he were "given the opportunity to relive this date again, [he] would have stayed home" because "the event was not beneficial to ANY party involved."

## **B. The Offense**

The government candidly acknowledges that Garcia did not engage in any violent or destructive acts. (Govt. Memorandum at 12.) Contrary to its claims, the absence of any

violence or destruction *is* a mitigating consideration when the court considers “the nature and circumstances of the offense” and the “history and characteristics of the defendant” under § 3553(a). *See* 18 U.S.C § 3553(a)(1). It also bears on the question of what sentence is necessary to “to reflect the seriousness of the offense” and “protect the public from further crimes of the defendant.” *See* 18 U.S.C. § 3553(a)(2)(A) & (a)(2)(C); *see also* 18 U.S.C. § 3553(a)(1); 18 U.S.C. § 3661 (“no limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which a court . . . may receive and consider for the purpose of appropriate sentence.”).

Additional circumstances bear on Garcia’s relative culpability. Many people were already in the building at the time Garcia entered the capitol. A still shot of Garcia’s go-pro video at the time of his entry shows that many people entered in front of him without any apparent resistance. (Exhibit 1.) When Garcia entered the building, the entry door was wide open. (Exhibit 2.) This door appears to be not only undamaged but propped wide open at the time of his entry. Garcia entered without any difficulty; and while he was there, he did no damage to any property nor harm to any other. The analysis starts and begins there.

### **C. Behavior on Pre-Trial Release and Previous Confinement**

Although the probation officer recommends that Garcia serve 36 months of probation, he has already served over 10 months on pre-trial release with almost the exact same conditions the probation officer now recommends. (PSR ¶ 7; Doc. 10, 16, 17, 18—pre-trial compliance reports.) Garcia has strictly complied with each and every condition of his pre-trial release.

It should be noted that Garcia served nearly three days in custody after being

arrested. (PSR ¶ 5; Doc. 5-6.) Garcia was arrested for the underlying offense late in the day on Friday, March 18, 2022. Garcia was attending his sister's wedding rehearsal dinner with his family at the time federal officials arrested him. (See letter submitted to the Court from Zac Mclarry,) He was arrested in front of his family at Joe T. Garcia's, a well-known Mexican restaurant in Fort Worth, Texas. Garcia missed his sister's wedding the next day and spent the rest of the weekend in federal custody. He had absolutely no idea that he had a warrant or that he would be arrested that day. Had Garcia known he had a warrant for his arrest, he would have voluntarily surrendered himself. His compliance with pre-trial release conditions certainly supports that position, as the probation officer pointed out in her recommendations to the Court. (PSR ¶ 7; Doc. 25.)

**D. Conclusion**

The character letters submitted to the Court show that Garcia is a dependable person who works hard as an electrician. Getting arrested in the presence of his family and spending 3 days in federal custody was punishment enough. Serving more time in custody will serve no other purpose. On the other hand, a sentence of probation is sufficient but not greater than necessary to punish Garcia. Garcia has strictly abided by the Court's terms of pre-trial release and he looks forward to proving to the Court that he will be successful on probation, should the Court deem this an appropriate sentence. Garcia respectfully requests a sentence of 24-months of probation. Any additional incarceration would be "greater than necessary" to accomplish the statutory objectives of sentencing. 18 U.S.C. § 3553(a).

WHEREFORE, Garcia respectfully submits this response to the government's sentencing memorandum and respectfully requests the Court to take this response into

consideration when determining Garcia's sentence.

Respectfully Submitted,

/s/ Matthew J. Smid

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#### **CERTIFICATE OF SERVICE**

I, MATTHEW J, SMID, hereby certify that on January 23, 2023, I electronically filed the foregoing document with the clerk for the U.S. District Court, District of Columbia, using the electronic filing system for the court.

/s/Matthew J. Smid

MATTHEW J. SMID