

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

**UNITED STATES OF AMERICA**

**v.**

**LOUIS VALENTIN**

**Case No. 21-cr-702-02 (JEB)**

**DEFENDANT’S MEMORANDUM IN AID OF SENTENCING**

Mr. Louis Valentin will be before the Court for sentencing on July 14, 2023, having accepted responsibility for his conduct at the U.S. Capitol on January 6, 2021 and having successfully completed twenty months of pretrial supervision. Mr. Valentin came to Washington, D.C. to support President Trump, who told his followers on that day that the election results were incorrect, that this created a national security threat, and that his supporters should go to the Capitol to urge Senators and Vice President Mike Pence to take what he described as lawful steps provided for under the Constitution to correct the election results. Mr. Valentin traveled with the crowd from President Trump’s Stop the Steal rally to the U.S. Capitol. He entered the building and walked into the Rotunda. While in the building, he did not engage in any violence, he did not taunt or insult police, he did not damage property, he did not encourage others to engage in violence, and he did not celebrate violence.

Mr. Valentin is 37 years old, a loving husband, a father of two teenage sons, and an avid baseball fan and coach. His decision to attend the Stop the Steal rally and follow the crowd to the U.S. Capitol is not an accurate reflection of Mr. Valentin’s character. A sentence of 24 months’ probation with community service and \$500 in restitution is sufficient, but not greater than necessary, to achieve the purposes of punishment.

## **BACKGROUND**

Louis Valentin has now been under community supervision for twenty months. During that time, Mr. Valentin has demonstrated that he is without question a person who can succeed on supervision and who will abide by any conditions set by the Court. For almost two years, he has maintained strict compliance with his conditions of release. While there were some positive marijuana tests during his first month of supervision, Mr. Valentin took the Court's directives seriously. He completed outpatient treatment and has not tested positive since then. Mr. Valentin maintained contact with his pretrial officer; focused on employment and his family; and, importantly, had no contact with law enforcement.

Finding himself in a situation that is completely at odds with who he is as a person, Mr. Valentin feels a deep sense of shame and remorse. *See* Ex. 1, Letter of Louis Valentin. He is overwhelmingly disappointed for letting down not just himself, but also those who depend on him. Mr. Valentin, however, is now focused on the future and determined to close this dark chapter of his life. He is particularly excited about his two sons who are college bound and have promising baseball careers—a passion that has lived with Mr. Valentin his entire life. *See id.*

In January 2021, Mr. Valentin made a decision to come to Washington, D.C. and support President Trump. Mr. Valentin traveled with his friend, Julio Baquero. They arrived on January 5, 2021 and spent the day exploring D.C., including visiting Arlington Cemetery, the Lincoln and Vietnam memorials, and the 9/11 memorial at the Pentagon. The following day, Mr. Valentin went to the Stop the Steal rally and heard the speech given by President Trump. He was excited to see President Trump speak and the crowd was lively, energetic, and overwhelming. After the speech, Mr. Valentin, like many individuals, followed the crowd. He followed others to the Capitol, eventually entering the building and making his way into the Rotunda. While in the Rotunda, Mr. Valentin wandered and looked around the room, taking in

the history and artwork on display. He was in the building for less than 40 minutes and after he left the building, he did not reenter. Mr. Valentin committed no violence, encouraged no violence, committed no vandalism and encouraged no vandalism. After he left the building and left the area, he learned more about the actions of others present that day and the extent of the damage and violence. He was immediately shocked and ashamed of the fact that he was a part of the event on January 6.

## **ARGUMENT**

### **I. Legal Standard**

As a Maryland District Court aptly explained, “[t]he sentencing of defendants in federal court is such a common occurrence that it is important to occasionally pause and remember what is at stake. A human life, designed both by nature and our nation’s Constitution to live free and pursue happiness, is taken away from family and familiar surroundings to serve days, months, years, or a lifetime in a prison cell.” *United States v. Faison*, No. GJH-19-27, 2020 WL 815699, at \*1 (D. Md. Feb. 18, 2020). And, “[f]or him, every day, month and year that was added to the ultimate sentence will matter. The difference . . . between ten and fifteen months may determine whether a son sees his sick parent before that parent passes away; the difference between probation and fifteen days may determine whether the defendant is able to maintain his employment and support his family.” *Id.*

This concern exists “whether it is the newly incarcerated individual’s first experience with incarceration or just the most recent,” because regardless, “he must quickly adapt to the stunning loss of freedom and privacy while struggling to maintain any sense of his personal dignity.” *Id.* Thus, the court continued, “it is crucial that judges give careful consideration to every minute that is added to a defendant’s sentence.” *Id.*

When imposing a sentence, the Court must consider several factors, including (1) the United States Sentencing Guidelines; (2) the nature and circumstances of the offense; (3) the history and characteristics of the defendant; (4) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, provide just punishment, and afford adequate deterrence to criminal conduct, along with the kinds of sentences available; and (5) the need to avoid unwarranted disparities. *See* 18 U.S.C. § 3553(a); *United States v. Booker*, 543 U.S. 220, 259 (2005).

Congress has further provided that:

[t]he court, in determining whether to impose a sentence of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in Section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation.

*See* 18 U.S.C. § 3582 (emphasis added). With that limitation and considering all of the purposes of sentencing, the Court must impose a sentence that is “*sufficient, but not greater than necessary*, to comply with the purposes [of sentencing].” 18 U.S.C. § 3553(a) (emphasis added).

The Court must “make an individualized assessment,” considering the factors set forth in § 3553(a). *Gall v. United States*, 552 U.S. 38, 50 (2007). *Booker* and § 3553(a) require the Court to tailor an individualized sentence that achieves § 3553(a)’s objectives in the case before it. *See Rita v. United States*, 551 U.S. 338, 348, 350 (2007). “It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Gall*, 552 U.S. at 52 (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)).

## II. The United States Sentencing Guidelines

Mr. Valentin agrees that the U.S. Sentencing Guidelines do not apply to this case because the offense of conviction is a Class B misdemeanor. However, Mr. Valentin asks the Court to consider the policy reasons and justifications behind upcoming amendments to the U.S. Sentencing Guidelines for zero-point offenders when determining whether any term of incarceration is necessary in this case. Sentencing Commission data analyzing recidivism rates shows that individuals, like Mr. Valentin, with zero criminal history points<sup>1</sup> have considerably lower recidivism rates, including lower recidivism rates than individuals with only one criminal history point. See United States Sentencing Commission, *Recidivism of Federal Offenders Released in 2010* (Sept. 2021), available at [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210930\\_Recidivism.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210930_Recidivism.pdf). The Commission found that just over one-quarter (26.8%) of individuals with zero criminal history points were rearrested. *Id.* at 26. The rearrest rate of zero-point individuals was significantly lower than individuals with just one criminal history point, of which 42.3% were rearrested. *Id.* The fact that Mr. Valentin has no prior criminal history makes him statistically less likely to reoffend or be rearrested. The low likelihood of rearrest supports a finding that a sentence of probation is sufficient, but not greater than necessary, to satisfy the purposes of punishment including providing adequate deterrence and protecting the public.<sup>2</sup>

The upcoming amendments to the Sentencing Guidelines also stress the appropriateness of a sentence other than imprisonment “in cases in which the defendant is a first offender who

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<sup>1</sup> Mr. Valentin has no prior juvenile or adult convictions, therefore, had the Sentencing Guidelines applied, he would have zero criminal history points.

<sup>2</sup> The Sentencing Commission report also found that “[f]ewer than one third (29.3%) of offenders sentenced to probation were rearrested[; and o]ffenders sentenced to a probation term of any length had lower rearrest rates compared to offenders sentenced to prison.” *Id.* at 36.

has not been convicted of a crime of violence or an otherwise serious offense.” United States Sentencing Commission, *Amendments to the Sentencing Guidelines* at 80 (April 27, 2023), available at [https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202305\\_RF.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202305_RF.pdf). The upcoming amendments add a comment to Guideline § 5C1.1 indicating that a sentence other than imprisonment is “generally appropriate” for first-time offenders or zero-point offenders, who fall into Zone A or B on the sentencing table. Although the Sentencing Guidelines are not applicable to Mr. Valentin’s offense, the policy justifications for recommending non-incarceration sentences for first-time or zero-point offenders whose guidelines range does not exceed 15 months (the top of any Zone B range) is equally applicable here. As a first-time offender, who has not committed a crime of violence or otherwise serious offense, a sentence of incarceration would be greater than necessary to satisfy the purposes of punishment.

**III. Imposing a Sentence of Probation is Sufficient, But Not Greater Than Necessary, to Comply with § 3553(a).**

The primary directive in § 3553(a) is that the Court must impose a sentence that is “sufficient, *but not greater than necessary*, to comply with” the purposes of sentencing. *See* 18 U.S.C. § 3553(a) (emphasis added). Honest application of the federal sentencing statute confirms that a sentence of 24 months’ probation with community service and \$500 restitution is sufficient but not greater than necessary to meet the goals of sentencing.

**A. Mr. Valentin’s History and Characteristics**

Mr. Valentin is 37 years old. He grew up in Yonkers, New York, which is where his love of baseball and the New York Yankees began. He moved with his mother to Florida when he was about 12 years old and still lives in Florida today. He married his high school sweetheart and together they have two teenage sons who are about to start college on baseball scholarships.

*See* Ex. 1 (“My older son Brandon will be playing at Allegany College a small school in Maryland. My younger son Alex will be attending the University of Miami, he is a very promising prospect, and many MLB teams are scouting him.”). Mr. Valentin is a committed father and husband. *See* Ex. 2, Letter from Nancy Gonzalez (“Mr. Valentin is a great husband and father. He always supports his family and always helps when someone needs his help.”); Ex. 3, Letter from Alex Valentin (“He has always been my biggest inspiration seeing how hard he works to keep food on the table and to make sure we have all the clothes we need and whatever funds may come with baseball.”). He works as an Uber driver and runs a small business selling comic books from his home.

Although his parents divorced shortly after he was born, Mr. Valentin had a good childhood. He was primarily raised by his mother and his maternal grandparents. His grandparents are now deceased, but his mother still lives in Florida and they continue to have a close relationship. Mr. Valentin is currently estranged from his father after a recent legal dispute. Mr. Valentin and his father purchased his maternal grandparents’ home together with the intent of renovating it. Mr. Valentin has been living in the home since the purchase and believed that he and his family could continue to live in the home after the renovations were complete. His father disagreed and sued Mr. Valentin over the home in 2020. Last year, a court held that Mr. Valentin’s father owned the home, but Mr. Valentin and his family were permitted to remain in the home until September 2023. After September, Mr. Valentin and his family intend to move in with his wife’s parents until they can find another suitable residence.

Despite the challenges with his father, the uncertainty of future housing, and the stress and shame related to this pending case, Mr. Valentin remains a dedicated father and an enthusiastic supporter of his sons’ baseball dreams. Mr. Valentin’s passion for baseball

developed at a young age. He played baseball growing up, including in high school and an independent semi-professional league until he was about 20 years old. As a father, Mr. Valentin was an active coach for his two sons, coaching their baseball teams from 3-years-old to their sophomore years in high school. Mr. Valentin has coached recreational leagues, travel and tournament leagues, and at his sons' high school, the same high school Mr. Valentin himself attended. His passion for baseball continues with his two sons, who are about to begin college in the fall on baseball scholarships. His pride is evident when he speaks of his family and his love of coaching shines through when he describes his teams. See Ex. 4 (photos of Mr. Valentin with some of the teams he coached). Mr. Valentin hopes to get back into coaching baseball now that his sons have graduated and are moving on with their college baseball careers.

As discussed above, Mr. Valentin has no criminal record and the events of January 6 are an aberration in his life and character. He regrets his decision to go to Washington, D.C., to attend the Trump rally, and, most importantly, to enter the U.S. Capitol building. See Ex. 1 (expressing genuine regret and apologizing for his actions). His success on pretrial release demonstrates that he can live a law-abiding life, as he has for his entire life aside from the events of January 6. Mr. Valentin's history and characteristics demonstrate that incarceration is not necessary to satisfy the purposes of punishment in this case.

**B. The nature and circumstances of Mr. Valentin's offense**

After the presidential election, former President Trump, members of his inner circle and some members of the media began circulating the word that the election was "stolen." The false claims spread on media—from local news outlets, to Facebook, to some national broadcasts—that the election had been corrupted.<sup>3</sup> Like tens of millions of other Americans, Mr. Valentin

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<sup>3</sup> The false claims spread on media—from local news outlets, to social media, to some national broadcasts, that the election had been corrupted. For example, one news source stated that



was a supporter of President Trump. He was not affiliated with—nor did he support—any extremist organizations and he is opposed to violent action. When President Trump started advertising the “Stop the Steal” rally, Mr. Valentin decided to attend to protest the election.

When he traveled to the “Stop the Steal” rally, Mr. Valentin intended to protest the election and support Mr. Trump. While the events that unfolded on January 6 have been labeled “an insurrection,” Mr. Valentin did not attend the rally intent on overturning the government. He attended to show his support for President Trump. The rally was exciting and the crowd was very energetic. Mr. Valentin heard President Trump’s speech and the call to meet him at the Capitol. After the rally, Mr. Valentin followed the crowd to the Capitol where he believed they were going to continue to protest.

When Mr. Valentin arrived at the Capitol, the Upper West Terrace Door was open and the crowd was moving inside the building. Mr. Valentin followed the crowd to the Rotunda

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Texans should be wary of voting by mail in the 2020 election because mail in ballots are “ripe for fraud and abuse.” Robert Montoya, *Are Texas Elections Secure?*, Texas Scorecard (Nov. 6, 2020), <https://texasscorecard.com/state/are-texas-elections-secure/>. See, e.g., Tucker Higgins & Kevin Breuninger, *Texas sues for battleground states in Supreme Court over ‘unlawful election results’ in 2020 presidential race*, CNBC (Dec. 9, 2020), <https://www.cnbc.com/texas-sues-four-battleground-states-in-supreme-court-over-unlawful-election-results.html> (reporting on Texas lawsuit filed after the 2020 election which argued that the election results in Pennsylvania, Georgia, Wisconsin, and Michigan . . . should be declared unconstitutional based on the states’ use of the COVID pandemic to change their election outcomes); Donald Trump (@realDonaldTrump), *Twitter*, (Dec. 9, 2020, 8:39 AM), <https://twitter.com/realDonaldTrump/status/trump-tweets-his-campaign-will-join-paxsons-election-suit> (Mr. Trump tweeted in support of the above Texas lawsuit contesting the election results in battleground states, stating that the lawsuit was “very strong, [with] ALL CRITERIA MET. How can you have a presidency when a vast majority think the election was RIGGED?”); Kate McGee, *Texas Republicans decline to condemn President Trump’s premature declaration of victory while votes are still being counted*, The Texas Tribune (Nov. 4, 2020), <https://www.texastribune.org/texas-republicans-trump/> (reporting how many Texas republicans, including Senator Ted Cruz, Senator John Cornyn, and Governor Greg Abbott, were silent on the matter of “Donald Trump prematurely and falsely [declaring victory]” in the 2020 election and U.S. Rep. Jodey Arrington stating that “there are legitimate concerns regarding the potential for fraud [in the election] that must be addressed in order for the country to move forward”).

where he stayed until leaving less than 40 minutes later. The government argues that Mr. Valentin watched as Mr. Baquero and others pushed against police. In government exhibit 5, at approximately the 00:35 mark, Mr. Valentin briefly walks toward the right edge of the frame and then quickly moves back away from the crowd, less than 20 seconds later. It is unclear from the video what, if anything, Mr. Valentin is watching; and it is also unclear what is occurring in the right hand side of the image, but many individuals are streaming into the Rotunda from some area to the right of the camera. What is evident, however, is that Mr. Valentin is not engaging with any officers, pushing officers as part of a crowd, or otherwise participating in any acts of violence, aggression, or destruction. In much of government's exhibit 5, Mr. Valentin can be seen spinning in slow circles and looking around the room unsure where to go or what to do.

Mr. Valentin's desire to not engage with any officers and clear lack of intent to commit any act of aggression is also evident in government's exhibit 11, which shows Mr. Valentin initially following Mr. Baquero, but as soon as it is clear Mr. Baquero was engaging with officers, Mr. Valentin backs quickly away, gets out of the way of officers coming from the other direction to assist, and continues to move further and further away from the conflict. Mr. Valentin's behavior is in stark contrast to that of Mr. Baquero. Additionally, in the minutes before he exited the building, Mr. Valentin is standing in the lobby sandwiched between other protestors, again looking around because he is not sure where to go and he cannot find his friend, Mr. Baquero, who is the only person he knows in Washington, D.C. At one point, a flood of additional individuals move into the building and force Mr. Valentin away from the exit. Again, Mr. Valentin stands for a few more moments, looking lost, and looking for Mr. Baquero. After a few moments, Mr. Valentin pushes against the crowd coming into the building to leave on his own. The government's statement that Mr. Valentin remained in the building until he had no

choice but to leave is contradicted by the fact that Mr. Valentin is seen pushing against a crowd of people entering the building in order to exit and that he leaves behind an entire room full of individuals continuing to try to move further into the Capitol. He was not pushed out by officers, but instead left on his own, against the flow of individuals entering the building.

Mr. Valentin should also not be held responsible for Mr. Baquero's actions or sentenced to a term of incarceration because he failed to prevent Mr. Baquero from engaging with police. Mr. Valentin did not know Mr. Baquero intended to engage with police when he moved toward the officers and it was not his responsibility to stop Mr. Baquero. What was Mr. Valentin's responsibility were his own actions, which did not involve any acts of aggression, violence, or destruction. Mr. Valentin did not steal or vandalize any object within the Capitol. He did not wear combat gear or carry any weapons. He did not engage in any violence towards law enforcement nor did he taunt members of law enforcement. Unlike many others present on January 6, Mr. Valentin did not celebrate or glorify the violent actions of others in the days after January 6.<sup>4</sup> A probationary sentence is sufficient, but not greater than necessary, to account for the nature and circumstances of Mr. Valentin's offense.

**C. The need for the sentence imposed to satisfy the purposes of punishment**

A sentence of probation, community service, and restitution is sufficient, but not greater than necessary to satisfy the purposes of punishment. As stated above, Mr. Valentin's status as a

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<sup>4</sup> Mr. Valentin also disputes the government's characterization of statements made during his interview with the FBI. He explained that he walked up the steps after other individuals and that the door at the top of the steps was open, so they went inside. The video of Mr. Valentin entering shows the door was in fact open. There is no reason to believe Mr. Valentin saw other individuals force their way through the door. Additionally, the fact that he did not specifically recall the amount of time he was in the building and underestimated does not indicate that he was attempting to minimize his actions on January 6. He honestly answered all of the FBI's questions without counsel present and voluntarily provided the videos he took outside the building.

first-time offender is significant and a sentence of incarceration is not necessary to deter Mr. Valentin or protect the public from future crimes. Mr. Valentin's success on pretrial release and lack of interactions with law enforcement over the past 20 months demonstrates that his actions on January 6, 2021 were an aberration and that he has returned to his law-abiding life. Although the government cites to Judge Hogan's statement in the *Bustle* case about not presuming that probation is appropriate in January 6 cases, both Joshua and Jessica Bustle—who entered guilty pleas to the same charge as Mr. Valentin—received sentences of 24 months' probation and \$500 in restitution. *See United States v. Bustle*, No. 21-cr-238 (TFH), 8/4/2021 Minute Entry.

Counsel has also reviewed the recent chart showing sentences to date in January 6 cases and, since June 22, 2023, there have been just over 320 individuals sentenced on misdemeanor charges under 40 U.S.C. § 5104, as Mr. Valentin will be. Of those cases, approximately 60% received no term of incarceration and over half of those that did not receive incarceration received probation or a fine, with no term of home detention. Probationary sentences are appropriate and incarceration is not necessary to satisfy the purposes of punishment in this case.

Additionally, an incarceration sentence is not necessary for specific deterrence. Research shows conclusively that “[t]he *certainty* of being caught is a vastly more powerful deterrent than the punishment,” that “[s]ending an individual convicted of a crime to prison isn't a very effective way to deter crime,” and that “[i]ncreasing the severity of punishment does little to deter crime.” *Five Things About Deterrence*, Nat'l Inst. Justice, U.S. Dep't of Justice, 1-2 (May 2016) (emphasis in original); *see also* James Austin *et al.*, *How Many Americans Are Unnecessarily Incarcerated?*, Brennan Ctr. For Just., N.Y. Univ. School of Law, 22 (2016) (quoting a 2011 study by criminologists concluding that “across all offenders, prisons do not

have a specific deterrent effect. Custodial sentences [jail and prison] do not reduce recidivism more than noncustodial sanctions”).

**D. The need to avoid unwarranted sentencing disparities**

While Mr. Valentin’s conduct was serious, probation remains an appropriate resolution as it is well within the guidelines and would not result in disparity. *See e.g., United States v. Brian Sizer*, No. 22-376 (JEB) (12 months’ probation); *United States v. Douglas Farquhar Macrae*, No. 22-181 (JEB) (12 months’ probation with community service); *United States v. Gary Edwards*, No. 21-366 (JEB) (12 months’ probation with community service and a \$2500 fine); *United States v. Andrew Bennett*, No. 21-227 (JEB) (24 months’ probation with community service and 3 months’ home detention); *United States v. Caleb Jones*, No. 21-321 (JEB) (24 months’ probation with community service and 60 days’ home detention). *See also, e.g., United States v. Jeffrey Witcher*, No. 21-235 (RC) (12 months’ probation with community service); *United States v. Julia Sizer*, No. 21-621 (CRC) (12 months’ probation and \$2000 fine); *United States v. Andrew Wrigley*, No. 21-42 (ABJ) (18 months’ probation with community service and a \$2000 fine); *United States v. Jennifer Parks*, No. 21-363 (CJN) (24 months’ probation with community service); *United States v. Rachel Pert*, No. 21-139 (TNM) (24 months’ probation with community service); *United States v. Esther Schwemmer*, No. 21-364 (DLF) (24 months’ probation with community service); *United States v. Andrew Cavanaugh*, No. 21-362 (APM) (24 months’ probation with community service); *United States v. Brandon Nelson and Abram Markofski*, No. 21-344 (JDB) (24 months’ probation with community service and a fine); *United States v. Andrew Hatley*, No. 21-98 (TFH) (36 months’ probation); *United States v. Valerie Ehrke*, No. 21-97 (PLF) (36 months’ probation with community service); *United States v. Anna Morgan-Lloyd*, No. 21-164 (RCL) (36 months’ probation with community service); *United States v. Joshua Munn and Kayli Munn*, No. 21-474 (BAH) (36 months’ probation with

community service); *United States v. Micajah Jackson*, No. 21-484 (RDM) (36 months' probation and a \$1000 fine); *United States v. Joseph Zlab*, No 21-389 (RBW) (36 months' probation with community service and a \$500 fine).

Comparing Mr. Valentin specifically to some of this Court's prior sentences in January 6 misdemeanor cases evidences that a probationary sentence is appropriate. First, Mr. Valentin's actions are comparable to *United States v. Brian Sizer*, No. 22-376 (JEB), who also entered the Capitol building, but committed no acts of violence or destruction therein. Mr. Sizer, like Mr. Valentin, also had no criminal history and he received a sentence of 12 months' probation. Second, counsel distinguishes Mr. Valentin from *United States v. Jordan Revlett*, No. 21-281 (JEB). Mr. Revlett, like Mr. Valentin, entered a guilty plea to parading and picketing in the Capitol building. The government seeks the exact same sentence for Mr. Valentin that it sought for Mr. Revlett. However, Mr. Revlett, unlike Mr. Valentin, took video of altercations between police and rioters, broadcasted his actions on social media, used a bullhorn inside the Rotunda to join in chants and encourage other rioters, and claimed he was invited into the building by Capitol police officers. Mr. Revlett was sentenced to 14 days' incarceration and 12 months' probation. Mr. Valentin, on the other hand, while present inside the Capitol, did not encourage others, use a bullhorn to encourage other protestors, or broadcast his actions on social media. Mr. Valentin's behavior was less egregious than Mr. Revlett's and a lighter sentence, specifically a non-incarceration sentence, is warranted to acknowledge those differences.

The cases cited by the government are also not good comparators. The government points the Court to Derek Jancart, No. 21-148 (JEB), and Erik Rau, No. 21-467 (JEB), who both entered guilty pleas to disorderly conduct, not parading and picketing. Mr. Jancart brought a gas mask with him to Washington, D.C., posted on Facebook celebrating rioters pushing through a

police line, posted numerous supportive messages on Facebook following the events of January 6, and suggested that he would engage in violence as part of a revolution. Mr. Rau similarly brought Kevlar-lined gloves and a medical kit to Washington, D.C., celebrated when rioters pushed passed a police line, and deleted evidence from his cell phone that showed his participation on January 6. Mr. Valentin's actions are not comparable to either Mr. Jancart or Mr. Rau. Mr. Valentin did not celebrate or encourage violence, he did not come prepared for an altercation, he did not post on social media celebrating January 6, and he did not destroy any evidence. In fact, he voluntarily provided the FBI with the videos he took on January 6 during his interview.

The other cases cited by the government are also distinguishable. In the case of *United States v. Matthew Mazzocco*, No. 21-54 (TSC), Judge Chutkan found that Mr. Mazzocco engaged in a cover up by destroying video footage from the body worn camera he wore on January 6. *See* Sent. Tr. at 29, ECF No. 32. In *United States v. Charles Pham*, No. 21-109 (TJK), Judge Kelly found that Mr. Pham, as a former police officer, was not credible when he claimed he did not realize that he was not allowed in the Capitol building. Additionally, Mr. Pham deleted images from his phone, which Judge Kelly found was at least in part to limit his exposure to prosecution, which he would understand as a former police officer. *See* Sent. Tr. at 69, ECF No. 47.

A sentence of probation with community service is sufficient, but not greater than necessary, to achieve the purposes of punishment and will not result in unwarranted sentencing disparities.

**E. A split sentence of incarceration and probation is impermissible.**

The government continues to request split sentences, noting that there are courts in this jurisdiction who have agreed that these types of sentences are permissible.<sup>5</sup> The issue is now before the D.C. Circuit in *United States v. Little*, 22-3018 (originating docket No. 21-315 (RCL)), and counsel raises this objection to preserve the issue for Mr. Valentin. *See United States v. Little*, Brief of Appellant, No. 22-3018 (July 28, 2022); *United States v. Little*, Reply Brief of Appellant, No. 22-3018 (Oct. 7, 2022).

A correct reading of the relevant statutes and the legislative history make it clear that a district court has a dichotomous choice in “petty” misdemeanor cases: it can either sentence a defendant to imprisonment up to six months, or it can sentence a defendant to probation for up to five years.<sup>6</sup> Where, as here, the conviction is to one single “petty” misdemeanor offense, the statute precludes a sentence of both incarceration and probation. A sentence of incarceration and some term of supervision following incarceration is only permitted for offenses that carry with it

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<sup>5</sup> Many judges in this district confronted with the government’s request for a split sentence for one single petty offense conviction have declined to impose such a sentence. *See, e.g., United States v. Spencer*, No. 21-147 (CKK) (amending sentence after briefing provided), ECF No. 70; *United States v. Torrens*, No. 21-204 (BAH), ECF Nos. 110 & 125; *United States v. Kelley*, No. 21-201 (DLF) (At sentencing on March 17, 2022, Judge Friedrich rejected the government’s contention that a split sentence could be imposed even after being provided notice of the Little decision.); *United States v. Wiedrich*, No. 21-581 (TFH) (Judge Hogan also rejecting government’s proposal for split sentence); *United States v. Williams*, No. 21-388 (RC) (declining to impose split sentence despite government’s recommendation of split sentence); *United States v. Wilson*, No. 21-578 (APM) (same); *United States v. Sunstrum*, No. 21-652 (CRC) (same); *United States v. Carico*, No. 21-696 (TJK) (same); *United States v. Sells*, No. 21-549 (ABJ) (same).

<sup>6</sup> *See* 18 U.S.C. § 3551(b) (emphasis added) (“An individual found guilty of an offense shall be sentenced . . . to (1) a term of probation . . . ; (2) a fine . . . ; or (3) a term of imprisonment. A sentence to pay a fine may be imposed in addition to any other sentence.”); 18 U.S.C. § 3561(a) (emphasis added) (“A defendant who has been found guilty of an offense may be sentenced to a term of probation *unless* . . . the defendant is sentence at the same time to a term of imprisonment for the same or a different offense.”).



the potential for a term of supervised release. Supervised release is not applicable in petty misdemeanor cases. *See* 18 U.S.C. § 3583(b)(3) (emphasis added) (“the authorized terms of supervised release are . . . for a misdemeanor (*other than a petty offense*), not more than one year”).

Lastly, the government asserts that, at a minimum, the Court can impose intermittent confinement as a condition of probation. Again, this issue is pending appeal in the D.C. Circuit. Contrary to the government’s assertion, the Court does not have statutory authority to impose any sentence of imprisonment and probation for a petty offense regardless of what language the Court uses to define the term of incarceration. *Cf.* 18 U.S.C. § 3583(d) (term of intermittent confinement pursuant to § 3563(b)(10) may be imposed only for a violation of condition of supervised release). A sentence of “intermittent confinement” as a condition of probation for a petty offense raises significant issues and potential constitutional issues. *See United States v. Voda*, 994 F.2d 149, 151 n.2 (5th Cir. 1993) (“Voda expressly waived any argument that imposition of sixty days’ confinement served over sixty day period is “imprisonment,” as opposed to intermittent confinement, and thus a violation of section 3562”).

**CONCLUSION**

For the foregoing reasons, and such others as may be presented at the sentencing hearing, Mr. Valentin respectfully requests that the Court impose a sentence of 24 months' probation with community service and \$500 restitution.

Respectfully submitted,

A. J. Kramer  
Federal Public Defender

*/s/ Diane Shrewsbury*  
Diane Shrewsbury  
Assistant Federal Public Defender  
625 Indiana Avenue, N.W., Suite 550  
Washington, D.C. 20004  
(202) 208-7500