

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

**UNITED STATES OF AMERICA**

**v.**

**TODD TILLEY**

**No. 1:23-cr-38-TNM**

**MOTION TO RECONSIDER WAIVER OF  
PRESENTENCE INVESTIGATION REPORT**

Pursuant to the “as justice requires” standard recognized by this District and Rule 32(c) of the Federal Rules of Criminal Procedure, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully asks the Court to reconsider Paragraph 7 of its Standing Order for Misdemeanor Cases as applied to this case (ECF 27), inasmuch as it waives the Probation Office’s issuance of a Presentence Investigation Report (PSR). Although the government and the defendant desire a prompt conclusion of this matter, the government respectfully requests that this Court order probation to complete a PSR for the defendant prior to sentencing in this case so that the Court may consider pertinent information that is not contained in the record in this case.

***Legal Standard***

“Although the Federal Rules do not specifically provide for motions for reconsideration in criminal cases, the Supreme Court has recognized, in dicta, the utility of such motions.” *United States v. Ferguson*, 574 F. Supp. 2d 111, 113 (D.D.C. 2008); *see also United States v. Dieter*, 429 U.S. 6, 8 (1976) (per curiam) (noting “the wisdom of giving district courts the opportunity promptly to correct their own alleged errors”). This Court should evaluate the merits of this motion

under the “as justice requires” standard that applies in criminal cases. *See United States v. Caldwell*, No. 21-181 (CKK), 2022 U.S. Dist. LEXIS 10043, at \*15 (D.D.C. Jan. 19, 2022).

“‘As justice requires’ indicates concrete considerations by the [C]ourt[.]” *AFL-CIO v. Bullock*, 605 F. Supp. 2d 251, 257 (D.D.C. 2009). These considerations “include whether the Court ‘patently’ misunderstood the parties, made a decision beyond the adversarial issues presented, made an error in failing to consider controlling decisions or data, or whether a controlling or significant change in the law has occurred.” *Isse v. Am. Univ.*, 544 F. Supp. 2d 25, 29 (D.D.C. 2008).

Here, the Court did not take into account controlling law regarding whether the preparation of a PSR should be dispensed with. “The probation officer *must* conduct a presentence investigation and submit a report to the court before it imposes sentence *unless*: [ . . . ] the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, and the court explains its finding on the record.” Fed. R. Crim. P. 32(c) (emphasis added). In dispensing with the preparation of the PSR in this case, the Court neither found that the “information in the record” permitted the meaningful exercise of its sentencing authority nor explained its reasoning on the record. That alone warrants reconsideration.

### ***Discussion***

The parties have entered a plea agreement whereby the defendant will plead guilty to Count Four of the Information, which charges his with a violation of 40 U.S.C. § 5104(e)(2)(G), Parading, Picketing, or Demonstrating in a Capitol Building. The Court scheduled a Rule 11 plea hearing for March 13, 2023, and indicated that it will proceeding to sentencing immediately following entry of a guilty plea. *See* Minute Order dated February 7, 2023. Paragraph 7 of the Court’s Standing Order for Misdemeanor Case provides that the Court “will typically proceed

*immediately* to sentencing after a guilty plea or guilty verdict that solely involve Class B or C misdemeanors or infractions” and that “No Pre-Sentence Investigation will be ordered.” (ECF 27).

At present, over 950 individuals have been charged with crimes stemming from the January 6, 2021, siege of the U.S. Capitol. At least 484 have plead guilty or been convicted. In virtually every one of those cases, Probation has prepared a PSR. Particularly in petty offense cases such as this one where the Sentencing Guidelines do not apply, a PSR is particularly helpful in explicating the many details about the offense and the defendant’s record that should inform the parties and the Court’s evaluation of the relevant sentencing factors under 18 U.S.C. § 3553(e). Absent compelling facts or circumstances, which are not present here, the government objects to the waiver of a PSR for this case and requests that the Court reconsider its order.

Moreover, under the “as justice requires” standard, the Court should reconsider its order on the ground that it decided beyond the adversarial issues presented. The expression of a desire to conclude a criminal case with all possible haste is different from a request to waive the preparation of a PSR, a valuable tool for the Court, the government, and the defendant in their consideration of sentencing options. Harm results from the Court’s denial of this request, specifically all parties would be deprived of this tool that is crucial for crafting a sentence that is sufficient but not greater than necessary to comply with the purposes set forth in 18 U.S.C. § 3553.

***Defense Objects to Government's Request for a PSR***

Notwithstanding the government's belief that a PSR would also be beneficial for the defendant, counsel for the defendant has represented he and his client are opposed to this motion, as they have already booked travel to D.C. and would like to resolve the matter in a single visit.

***Conclusion***

The government respectfully suggests that this case can still be brought to a prompt conclusion in a single visit to D.C. while still allowing for the preparation of a PSR. Accordingly, this Court should reconsider Paragraph 7 of Standing Order as applies to this case and order probation to complete a PSR.

Respectfully submitted,

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