UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA v. LANDON BRYCE MITCHELL, Defendant.	Crim. Action No. 21-508-02 (BAH)

MR. MITCHELL'S REPLY TO THE GOVERNMENT'S POSITION ON SENTENCING

Landon Mitchell respectfully submits this Reply to the government's Position on Sentencing. In this Reply, Mr. Mitchell, through counsel, addresses the following points raised by the government: First, the comparison cases the government cites in support of a sentence on the high end of the guideline range are distinguished and therefore unpersuasive. Second, restitution of $2000, in addition to a significant period of imprisonment, exceeds what is necessary to achieve the goals of sentencing for Mr. Mitchell, who is destitute.

Counsel also letters to the Court from Landon Mitchell and his brother, Luke. Counsel respectfully request the Court review these letters in addition to the letter attached to the Position on Sentencing as relevant to the Court's consideration of the 3553(a) factors.

I. A sentence of 18 months will avoid unwarranted disparity; the cases cited by the government are easily distinguishable.

The defense has presented cases factually similar to Mr. Mitchell's to show that a sentence of 18 months is fair and avoids unwarranted disparity. On this point, the government relies on cases that are factually dissimilar and therefore unavailing.

First, the government relies on *United States v. Christian Secor*, No. 21-cr-157 (TNM). The government charged Secor in a twenty-count indictment, which included two counts of assaulting, resisting, or impeding officers and employees. Secor entered the Capitol at 2:26 pm, almost 20 minutes prior to Mr. Mitchell, and while in the Capitol he joined a group of rioters pushing against the East Rotunda doors, which officers were attempting to keep closed. Gov't Sent. Mem, ECF No. 49 at 2. Secor and the other individuals at the East Rotunda doors succeeded in overpowering the officers, thereby assisting other individuals in entering the Capitol. *Id*. Secor then went to the Senate chamber where he sat in the seat previously occupied by Vice President Trump on the dais. *Id*. In the days following January 6, Secor deleted and destroyed evidence showing him in the building, including photographs, his Twitter account, and the phone he took into the Capitol. *Id*. at 2-3.

Secor's conduct is distinguished from Mr. Mitchell's in significant respects. The government did not charge Mr. Mitchell with assault because he did not push against officers or in any way assault officers. In fact, Mr. Mitchell did not even engage with any officers until he complied with their request to leave the Senate chamber and Capitol building. Additionally, Secor was one of the first individuals into the building, while Mr. Mitchell entered almost 20 minutes later, after the Senators had

evacuated. Finally, Mr. Mitchell did not destroy evidence, throw away his cell phone, or delete his social media accounts in an attempt to avoid detection. Despite the fact that Secor directly engaged with officers while in the Capitol and later destroyed evidence, the court sentenced Secor below his advisory Guidelines range to 42 months incarceration—just under 18% off the low end of Secor's Guidelines range. Mr. Mitchell's conduct, which did not involve violence or destruction of evidence, also warrants a below-guidelines sentence and a sentence significantly less than Secor's. A sentence of 18 months incarceration would be sufficient but not greater than necessary to avoid unwarranted disparity.

Jacob Chansley, infamously known as the "Shaman," also engaged in distinguishable conduct. Chansley entered the Capitol at approximately 2:14 pm through a broken window—about 6 minutes before the members of Congress evacuated—and was one of the first 30 individuals to enter the Capitol. *United States v. Chansley*, No. 21-cr-3 (RCL), Gov't Sent. Mem, ECF No. 81 at 7. While inside the Capitol, Chansley used his distinctive appearance and a bullhorn to encourage the crowd to push against a line of officers and to "demand that lawmakers be brought out." *Id*. at 8. Chansley was extremely vocal and recorded shouting obscenities and other remarks to rile up the other rioters. *Id*. at 9-10. After Chansley made it to the Senate chamber, he took over the chair on the dais, led others in an incantation which included "we will not allow the American way of the United States to go down," and wrote a threatening note on a piece of paper intended for Vice President Pence. *Id*. at 11. In the days following January 6, Chansley gave interviews regarding his conduct

on January 6, claiming that he was lead into the Capitol by law enforcement and was trying to bring God back into the Senate. *Id*. at 12. The court sentenced Chansley to a within-Guidelines sentence of 41 months.

Other than the fact that Mr. Mitchell entered the Senate chamber and stood (briefly) on the dais, Mr. Mitchell's conduct is entirely distinguishable from Chansley. Chansley entered the Capitol prior to the evacuation of Congress and over 30 minutes before Mr. Mitchell. During his entire progression into and through the Capitol, Chansley encouraged others to defy officers, shouted for members of Congress to come out, and otherwise attempted to instigate action by fellow rioters. There is no evidence that Mr. Mitchell similarly attempted to instigate others to act. Additionally, Mr. Mitchell did not deface any documents with threatening messages or regale his actions to the media following January 6. An 18-month sentence of incarceration would fairly distinguish Mr. Mitchell's conduct from Chansley's.

Finally, both parties cite *United States v. Hodgkins*, No. 21-cr-188 (RDM). Hodgkins entered the Capitol carrying a backpack that contained goggles, rope, and latex gloves. Gov't Sent. Mem. ECF No. 32 at 3. The contents of Hodgkins' backpack indicated that he travelled to Washington, D.C. prepared to engage in conflict. *Id*. at 10. Mr. Mitchell, on the other hand, did not bring anything comparable into the Capitol that would indicate he prepared for conflict. Despite Hodgkins' preparation, he was sentenced to a below-Guidelines sentence of 8 months, an almost 50% variance

from the low end of the Guidelines range.[1] Due to Mr. Mitchell's less culpable actions, a below-Guidelines sentence of 18 months is sufficient, but not greater than necessary.

II. A sentence of both 33 months' incarceration and restitution is not necessary to satisfy the purposes of punishment.

The government has requested that the Court order Mr. Mitchell to pay $2000 in restitution in addition to serving 33 months in prison. Restitution is a punishment in and of itself. *See United States v. Cohen*, 459 F.3d 490, 496 (4th Cir. 2006) ("[R]estitution is […] part of the criminal defendant's sentence."). Mr. Mitchell does not have the means to pay restitution. *See* PSR at ¶¶ 137-42 (noting Mr. Mitchell has $8 in a bank account). He is an hourly-wage worker. No matter what sentence the Court imposes, Mr. Mitchell will struggle to pay restitution when he is released. The government's proposed sentence of 33 months' incarceration in addition to $2000 restitution is more than necessary to achieve the goals of sentencing. A sentence that will enable Mr. Mitchell to begin working again sooner rather than later so that he can start to make a dent in restitution will recognize that restitution for someone in Mr. Mitchell's position is far more punitive than it would be for someone with means. Eighteen months' incarceration in addition to restitution is sufficient to satisfy the purposes of sentencing.

Respectfully submitted,

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[1] Mr. Mitchell's criminal history results in a higher Guidelines range than Hodgkins and the requested sentence is only a 33% variance from the bottom of the government's Guidelines range and a 15% variance from Mr. Mitchell's calculated Guidelines range.

A. J. KRAMER
FEDERAL PUBLIC DEFENDER

/s/

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