

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

ELMER STEWART RHODES III, et al.

Defendants.

Case No. 22-cr-15-APM

**UNITED STATES' MOTION TO DISMISS TERM OF SUPERVISED RELEASE AND
PROBATION PURSUANT TO EXECUTIVE ORDER**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this motion.

As the Court is aware, an Executive Order issued on January 20, 2025, Granting Pardons and Commutation of Sentences for Certain Offenses Relating to the Events at Or Near the United States Capitol on January 6, 2021. *Unnumbered Proclamation*, __ *Fed. Reg.* __ __ __ __ (Jan. 20, 2025), <https://perma.cc/W4NT-4K4S>. This Proclamation included the above-listed defendants in the list of defendants whose sentences had been commuted. “The Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case.” *See United States v. Nixon*, 418 U.S. 683, 693 (1974).

The Court entered an Order dated January 24, 2025 Amending Conditions of Release (ECF 940). The defendants, however, are no longer subject to the terms of supervised release and probation, as the Executive Order “commute(d) the sentences” of these defendants. As the terms of supervised release and probation are included in the “sentences” of the defendants, the Court may not modify the terms of supervised release; the term is no longer active by effect of the Executive Order. *See United States v. Haymond*, 588 U.S. 634, 648 (2019) (Supreme Court has

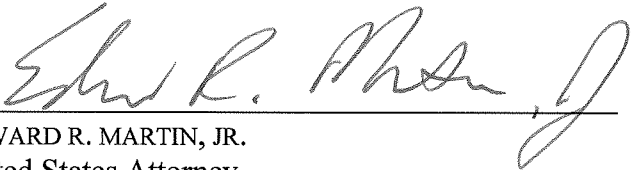
acknowledged “that an accused's final sentence includes any supervised release sentence he may receive” and therefore “supervised release punishments arise from and are treat[ed] as part of the penalty for the initial offense”) (cleaned up)).

The United States hereby indicates that the Order must be vacated.

Respectfully submitted,

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