

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEREK NELSON,

Defendant.

No. 24 CR 00074
Hon. Carl J. Nichols

**DEFENDANT DEREK NELSON'S
SENTENCING MEMORANDUM**

Sentencing Request

Derek Nelson respectfully requests a sentence of 36 months' probation and community service. The government's request for a six-month custodial sentence poorly serves the well-known factors in 18 U.S.C. § 3553(a) and is predicated in part on the reckless liberties it takes with the facts of this case. (Doc. 54). The notion that Derek Nelson arrived in Washington D.C. as an independent actor, intent on harming others, conveniently ignores the influential voices that drove thousands to march on the U.S. Capitol. Contrary to the government's selective narrative, Mr. Nelson quickly realized the gravity of January 6 and he has never minimized his behavior or shirked personal responsibility for his criminal conduct. During his proffer on June 7, 2024, Mr. Nelson candidly admitted that *at the time* he believed President Trump's claims that "the nation was being harmed and votes were not being properly counted."¹

¹ Seemingly doubting the earnestness of Mr. Nelson's beliefs, one of the agents incredulously asked him during his proffer if he was aware that no court had upheld the

A very different man returns to Washington on July 10, 2024. The first time, Derek Nelson's head was full of nonsense, discontent, and conspiracy theories. As he and his father-in-law make the long drive back on July 9, Derek's mind is squarely focused on his love of God and family, respect for the rule of law, and regret for his actions on January 6, 2021.

The government's submission is excruciatingly long on offense conduct but painfully short on context and personal characteristics. A complete accounting of Mr. Nelson's involvement and his personal characteristics demonstrate that a custodial sentence is greater than necessary in this case. *See* 18 U.S.C. § 3553(a) (district courts to impose a sentence that is sufficient, but not greater than necessary to effectuate the statutory goals contained in section 3553(a)(2)).

Introduction

*I believe in the forgiveness of sin
and the redemption of ignorance.*

Adlai Stevenson II

The Cook County Juvenile Center in Chicago houses human frailty, failure, and trauma. The big building on the west side has many windowless courtrooms that see cases of juvenile delinquency and the loss of parental rights. Most clients grapple with addiction, abuse, and mental illness. Dean Bastounes helps the fearful and confused families trapped in the system. He sits outside the Abuse and Neglect courtrooms daily at 8:00 a.m., drinking coffee and handing out free advice. Lawyers

president's grievances.

in Chicago call him the “Mayor of Juvenile Court.” Dean sees hope and redemption where society sees brokenness. He has worked for decades as a court-appointed lawyer for poor parents who want to heal, recover, and reclaim their parental rights. His successes have been quiet but countless. Dean’s work is not a profession, but a calling. He is a true public servant and defender. In January of 2021, he took his hardest case.

A good Greek father would do anything for his children, and Dean and his wife JoAnn have three lovely daughters. They knew that their oldest daughter Estelle had a strange boyfriend when she was studying engineering at the University of Illinois in Champaign-Urbana. They didn’t know much about Derek Nelson except that he didn't have a steady job and he liked to participate in LARPing² events, including Renaissance Fairs and Civil War reenactments. Derek appeared on good terms with his family, but the Nelson clan were standoffish and seemed distrustful of outsiders.



These are pictures of Derek Nelson in Renaissance and LARP outfits at fairs and camps in the United States, United Kingdom, and Poland. Donning costumes for events was quite common for Mr. Nelson before January 6, 2021.

Dean and JoAnn were shocked when they found out that their future son in law had been involved in the Capitol attack on January 6, 2021. Derek was

² Live Action Role Playing.

remorseful as he realized he made a huge mistake and wanted forgiveness. As usual, Dean did not criticize but acted and worked on rehabilitating and redeeming him. The Bastounes family took Derek under their wing, shepherding him on a personal, societal, and spiritual journey to new life. In this case, the results have been remarkable.

Guidelines Calculation

Because Mr. Nelson receives an adjustment under U.S.S.G. § 4 C1.1 and his applicable guideline range is in Zone A, a sentence other than imprisonment is generally appropriate.³ U.S.S.G. § 5C1.1., comment no. 10; *see also* 28 U.S.C. § 994(j) (The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense...); PSR at ¶114. Probation's Guidelines calculations place Mr. Nelson in Criminal History Category I, with an adjusted offense level of 2. Probation's calculations are correct.⁴ PSR at ¶ 58.

³ *See United States v. Yang*, No. 23-CR-100, 23-CR-284, 2024 WL 519962 (D.D.C. Feb. 9, 2024) (applying § 4C1.1 because the defendants did not act with the degree of aggression necessary to fairly characterize their actions as violence).

⁴ In ¶ 77, footnote 4, the PSR notes that one of Mr. Nelson's tattoos reads "Uber Alles," a German phrase translated to "above everything else." The complete tattoo, however, reads "California Uber Alles," the 1979 debut single from the punk rock band Dead Kennedys. The song's lyrics are a satirical attack on Jerry Brown, the governor of California. https://en.wikipedia.org/wiki/California_%C3%9Cber_Alles. This is not an objection to the PSR, but a clarification.

Offender Characteristics

*Derek is one of the kindest, most loyal people
I've known in my lifetime.*

Skyler Vanderhoof

I. Mr. Nelson's History and Characteristics Justify 36 Months' Probation.

Since entering the Capitol on January 6, 2021, Derek Nelson has been reborn, stripped of self-interest and devoted to spirituality, his family, and fellows. He left for Washington D.C. as a "Nelson" but returns for sentencing as a "Bastounes." His PSR shows that he has greatly improved his work history and become reliable and accountable. He married Estelle Bastounes in 2022 and he is now the first son of the Bastounes family. Derek was baptized in the Greek Orthodox Church, and they now have three small children, including a newborn (D.N. (3), R.N. (1yr), and G.N. (4 months)). See Character Letter of JoAnn Auster-Bastounes; Character Letter of Dean Bastounes. Derek took his first Eucharist with love, respect, and confidence that he could fall due to weakness but rise again to a new life. Contrast the following photographs with those included in the government's sentencing memorandum.





These are photographs of Derek Nelson today, including his baptism.

The Court knows well the type of family Derek Nelson comes from. Even when his son faced jail time, his father refused to cooperate with Probation’s interview or write a letter to support his son. PSR at ¶ 70. When asked why, he said, “We don’t talk to those people.” Similarly, not one of his blood relatives wanted to talk to Probation or write to the Court. Luckily, Derek has left these people behind.

Before finding his wife, Mr. Nelson did not have a strong family bond in his home life. His parents split up when he was two years old, and his mother moved away. *See* Character Letter of JoAnn Auster-Bastounes; PSR at ¶ 67. He lost touch with his relatives. *See* Character Letter of Dean Bastounes. When Mr. Nelson met his wife’s family, he experienced what he had always desired. “He [saw] the family connections and he wanted that for himself and future family.” *See* Character Letter of JoAnn Auster-Bastounes. Since then, Mr. Nelson has made his wife and children his top priority. In his letter, Dean Bastounes attests:

Derek includes us all in the family events, encourages frequent contact, and he treats my daughter with kindness and respect. His sons adore him, and he provides his family with physical, emotional, and financial support. A grandfather can ask no more. He has become a family asset. Derek is there when needed and has never refused to help myself or my

wife.

Despite the distant relationship with his own parents, Mr. Nelson “is an outstanding example of a young father. He takes this responsibility very seriously.” *See* Character Letter of Reverend Michael Condos. Mr. Nelson “is a devoted husband and father to his wife and three sons, always ensuring that their needs are met.” *See* Character Letter of Nick Principali. He “actively participates in his children’s upbringing and provides unwavering support to his wife in managing their household.” *Id.*

The characters letters are replete with Mr. Nelson’s care and love for his family. *See* Character Letter of Nick Principali; Character Letter of Reverend Michael Condos; Character Letter of Estelle Nelson; Character Letter of Dave Holden. He prioritizes his family above all else and works hard to support them. Mr. Nelson “has always managed to be home when it mattered and was an irreplaceable support as we welcomed each of our three children.” *See* Character Letter of Estelle Nelson. Mr. Nelson cares deeply for his family and his friends. His friends call him kind, loyal, and a great friend. *See* Skylar Vanderhoof’s letter. Joseph Hudson’s letter recounts Mr. Nelson’s kindness. He describes how Mr. Nelson helped a sick stranger get back to the hotel by walking with him for 45 minutes. *See* Joseph Hudson’s letter. This is one of many ways Mr. Nelson shows compassion for others.

These powerful written submissions provide proof that Derek Nelson is today a gentle, thoughtful, and kindhearted person. He is dedicated to supporting his family and helping his friends and community. Three and a half years ago a foolish and

impressionable young man drove to Washington D.C. to participate in the “Stop the Steal” protest.

A new man returns. Derek Nelson’s remorse and acceptance of responsibility for his criminal conduct is manifest and sincere. The government’s rejoinder on this point is flatly wrong. No “winky face” accompanied Mr. Nelson’s statements of contrition. He immediately confessed his regret to his then girlfriend and her parents long before any law enforcement intervention.⁵ Once charged, he admitted his wrongs to the Court, the government, and Probation. Mr. Nelson’s history and characteristics alone justify a sentence of 36 months’ probation. Such a sentence is sufficient but not greater than necessary to fulfill the objectives of sentencing articulated in 18 U.S.C. § 3553(a).

Offense Conduct

We must stop the steal...

*This is the most corrupt election in the history, maybe the world.
... if you don't fight like hell, you're not going to have a country anymore*

President Donald J. Trump
January 6, 2021

A granular recounting of the activities of January 6, 2021 at this late date seems to be extra icing on a cake already frosted. This is not meant to minimize the severity of the events. The actions that occurred on January 6 threatened the American political system, jeopardized the integrity of this nation’s electoral system and caused millions of dollars in damages. Some who came to the Ellipse that day were induced by ideology, others bewitched by bravado, and still more ensnared by

⁵ Agents first approached Derek Nelson in early February 2022.

evangelism. Regardless of the precise reason, they all came for a shared cause: to protest what they perceived to be a stolen election. Derek Nelson was no different, lured by a guileless but misguided sense of patriotism. Mr. Nelson's actions, however, are not to be conflated with other protestors, leaders, and organizers of January 6, 2021.

II. The Nature and Circumstances of the Offense Warrant 36 Months' Probation.

Millions of Americans thought the 2020 presidential election was rigged by voter fraud as of January 6, 2021. Even today, almost a third of Americans polled think voter fraud changed the election's outcome.⁶ In January 2021, the President and other leaders asked Americans to join the "Stop the Steal" rally at the Ellipse on the day Congress and the Vice-President would confirm the election results. Derek Nelson and his friend Derek Dodder were among thousands who went to Washington D.C. to back the President.

Mr. Nelson had never been to our Nation's capital and decided, as was his practice, to don a Minuteman's uniform. He and Mr. Dodder were former U.S. Marines and while Mr. Nelson's tenure with the Marines ended less than honorably, he did earn awards of distinction for Good Conduct, National Defense Service Medal, Global War on Terrorism Service Medal, Sea Service Deployment Ribbon, and Sharpshooter Rifle Qualification Badge. PSR at ¶ 92. Mr. Nelson served on the USS Harper's Ferry with missions in the Middle East and the Pacific. Contrary to the

⁶ <https://www.nbcnews.com/meet-the-press/meetthepressblog/almost-third-americans-still-believe-2020-election-result-was-fraudulent-rcna90145>

government's spurious suggestion that Mr. Nelson came prepared for violence, he and Mr. Dodder brought no weapons or chemical spray. Nor did they threaten anyone. When asked why he brought goggles and a respirator, Mr. Nelson candidly and credibly stated that they were concerned about counter-protestor groups (Atifa, BLM, etc.) using pepper spray on attendees at President Trump's rally as these groups had in the past.⁷

Section § 3553(a) directs the Court to look at each defendant's actions individually. 18 U.S.C. § 3553(a); *see also Kimbrough v. United States*, 552 U.S. 85, 90 (2007); *Gall v. United States*, 552 U.S. 38 (2007). Here, Mr. Nelson did not organize, plan, or plot the events that occurred on January 6. He did not partake in physically damaging the Capitol nor did he take any items from inside the Capitol. Before January 6, 2021, Mr. Nelson never posted threats to public officials on social media, nor did he post any threats or celebratory photos *after* January 6. Mr. Nelson never deleted social media posts, videos, or photos to avoid criminal prosecution and obstruct the Government's investigation. Mr. Nelson did not bring a weapon nor did he encourage others to bring weapons to the Capitol. Most importantly, Mr. Nelson never said he would do this again if given the chance. In fact, if Mr. Nelson could rewind to January 6, 2021, he would have remained home with his family. *See* Character Letter of Dean Bastounes.

⁷ Mr. Dodder's proffer corroborates Mr. Nelson's statements to the prosecution. Dodder stated that he "felt like anyone who supported [President] Trump at the time were always under attack and were often called fascists. [He] hoped he could film the event and then produce a documentary with a positive bias spin on the edited film of political conservatives. [He] wanted to show how peaceful conservatives were, but how violent BLM/Antifa was."

Derek Nelson did, however, unlawfully enter the Capitol and remain inside for approximately 48 minutes. Per both Mr. Nelson and Mr. Dodder, at least part of their delay in exiting the Capitol was due to not knowing how to get out once inside. The PSR describes Mr. Nelson as an “average participant,” and he acknowledges that his choice to enter the Capitol is indefensible and unjustified. PSR at ¶ 43. He has shown himself as a person who takes responsibility for his actions. Mr. Nelson maintained that stance by pleading guilty and agreeing to cooperate with the government in any way asked. Mr. Nelson has denounced his actions as “profoundly stupid” and “[h]is contrition is sincere.” *See* Character Letter of Skylar Vanderhoof. The PSR and the letters in support of Mr. Nelson demonstrate the appropriateness for a sentence of 36 months’ probation.

Deterrence and Just Sentence

Each of us is more than the worst thing we’ve ever done.

Bryan Stevenson

III. A Sentence of 36 Months’ Probation is Not Just Punishment but Punishment that is Just.

The Court must consider how the sentence meets the need to deter crime and prevent the defendant from harming the public in the future. A sentence of 36 months’ probation with community service is enough to achieve these goals, based on Mr. Nelson’s criminal conduct and background. A carceral sentence is not necessary to deter Mr. Nelson from committing future offenses and such a sentence would be unjust and greater than necessary under § 3553(a).

Studies by the United States Sentencing Commission demonstrate that

individuals in lower Criminal History Categories are less likely to recidivate. Mr. Nelson is placed in Criminal History Category I, placing him in a group least likely to commit future crimes. *See* U.S. Sent’g Comm’n, *The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders*, pp. 7-8 (Mar. 2017) (finding that the higher the criminal history category of an individual, the higher the recidivism rate). Indeed, only 33.8% of individuals with a Criminal History Category of I are rearrested, compared to 80.1% of those in Criminal History Category VI. *Id.* at 7. Mr. Nelson does not need to be sentenced to a term of incarceration to deter him from committing future offenses. He falls within Criminal History Category I, placing him in a low recidivism rate and increasing his likelihood of rehabilitation.

More valuable than research and data, however, is the life Derek Nelson has lived in the last three and a half years. Since his arrest in this case, Mr. Nelson has changed his personal values and priorities. His wife and father-in-law attest that Derek has “come a long way in the last few years” and “the birth of [his] first son made him realize what truly matters.” As these letters illustrate, Mr. Nelson “has learned from this situation, and is ready to move on with his family and his life.” *See* Character Letter of Dave Holden. Looking back, according to Dean Bastounes, “if [he] had the life he has now, back on January 6, he never would have gone to the Capitol.”

This prosecution is a mixed bag for Derek Nelson. On one hand, he is terrified about the consequences that prolonged incarceration will have on his wife and children.⁸ On the other hand, it was his arrest and prosecution that rallied a new

⁸ *See* PSR at ¶ 73 (Estelle Nelson née Bastounes states the family can financially withstand her husband’s absence for one month, but that a longer period would necessitate

family and spiritual community to his side and provided him with a new lease on life. Rarely does a criminal defendant look at the bright side of prosecution, but Derek Nelson does. The government's request for a six-month carceral sentence is extreme, unjust, and serves no legitimate purpose.

IV. A Sentence of 36 Months' Probation Would Not Create an Unwarranted Sentencing Disparity.

A sentence of 36 months' probation is appropriate and would not create an unwarranted sentencing disparity. Similarly situated January 6, 2021 defendants who pled guilty to the exact same criminal charge (18 U.S.C. § 1752(a)(1)) have received probationary sentences. The following chart is an example of individuals similarly situated to Mr. Nelson who received a sentence of probation.

Case No.	Offense of Conviction	Sentence	Offense Conduct
<i>United States v. Matthew Lebrun</i> No. 22 CR 136	18 U.S.C. §1752(a)(1)	24 months' probation \$500 restitution	Breached the restricted perimeter on the West and engaged in confrontation with officers who were protecting the Capitol. Encouraged other rioters to strike law enforcement.
<i>United States v. Jerod Bargar</i> No. 23 CR 78	18 U.S.C. §1752(a)(1) § 1752(b)(1)(A) (felony)	60 months' probation \$4,000 fine \$2,000 restitution	Traveled with and carried a 9mm semi-automatic pistol onto restricted Capitol grounds without a license to carry a firearm in Washington D.C.
<i>United States v. Joshua Hall</i> No. 23 CR 246	18 U.S.C. §1752(a)(1)	12 months' probation 60 hours community service \$200 fine \$500 restitution	At the front lines and one of the first individuals to go through the Parliamentary Door after the door was breached.
<i>United States v. Billingsley</i> No. 21 CR 519	18 U.S.C. §1752(a)(2)	24 months' probation 60 hours community service \$500 restitution	Shouted at officers "they can't stop us in numbers, remember that. <i>This is war.</i> " Stated, "no, we do want to hurt Pelosi. I do. Yeah, I would hang her from that big-you see that tree

the sale of their home).

			<p>over there? We'd put a rope and hang her. We hang her and Schumer over there, they'll all go 'oh shit.'"</p> <p>Admitted to unhooking a barricade and letting himself and others through on restricted grounds.</p>
<p><i>United States v. James Brooks</i> No. 22 CR 18</p>	<p>18 U.S.C. §1752(a)(1)</p>	<p>12 months' probation 60 hours community service \$500 restitution</p>	<p>Entered the U.S. Capitol from the west side. Climbed onto the railing of the Upper West Terrace and waved a South Carolina flag with a smaller Marine Corps flag. Entered the Capitol and remained in a restricted area.</p>
<p><i>United States v. Jenny Cudd</i> No. 21 CR 68</p>	<p>18 U.S.C. §1752(a)(1)</p>	<p>60 days' probation \$5000 fine \$500 restitution</p>	<p>Traveled to the U.S. Capitol and remained in the capitol for approximately 20 minutes. Posted videos on social media and admitted to entering the Capitol.</p> <p>Stated, "I would absolutely do it again" when discussing January 6, 2021.</p>
<p><i>United States v. Verden Nalley</i> No. 21 CR 116</p>	<p>18 U.S.C. §1752(a)(1)</p>	<p>24 months' probation 60 hours community service \$500 restitution</p>	<p>Entered and remained in the Capitol for approximately 30 to 40 minutes. Photographed the inside of the Capitol and posted on social media.</p> <p>Stated on social media that "The media is telling you lies we took the Capitol with no weapons only to show them We the People outnumber the Government 10 thousand to 1 if we have to come back we will bring guns and take our country from them"</p> <p>Further stated on social media that "we took it with no weapons and we will be back with guns in two weeks if it's not fixed [...] It was Pence that cause this demonstration. 90% of the people that was at Washington feel the same."</p>

Unlike the above referenced defendants that received a sentence of probation, Mr. Nelson never took to social media threatening public officials, never incited or

encouraged the use of firearms, and most importantly never stated he would do it again if given the chance. While Mr. Nelson acknowledges each case is different, a sentence of probation would not create an unwarranted sentencing disparity. Any sentence of incarceration would be greater than necessary and would not comply with the purposes of sentencing articulated in § 3553(a).

Conclusion

It was once said of Winston Churchill that “he mobilized the English language and sent it into battle.” Partisan politics in this country have done the same, weaponizing our language to wage a battle between warring parties and ideologies. Derek Nelson was steeped in the language of division, and fed a diet of discourse that demonized the other side. It’s no wonder that he came to the Capitol deluded by a line of thinking that had been served ad nauseum. Thankfully, in the past three and a half years Derek Nelson lost his appetite for rancor and changed his own narrative. To paraphrase Churchill, Derek “has bought his knowledge, he has bought it dear, he has bought it at our expense, but at any rate let us be duly thankful that he now at last possesses it.”⁹

Derek Nelson caught a lucky break when he met Dean Bastounes. When most men would have grabbed their daughter and run away, the Bastounes family ran towards Derek as they saw someone worth saving. Their efforts have not been in vain. A good husband, father, and member of the community now appears before this Court. This is who must be sentenced, not the misguided individual who unlawfully

⁹ Winston Churchill’s address to Parliament, November 12, 1936.

entered the Capitol on January 6, 2021.

For the foregoing reasons, Mr. Nelson respectfully requests that this Court sentence him to 36 months' probation and 100 hours of community service. Such a sentence is sufficient, but not greater than necessary, to comply with the purposes of sentencing articulated in 18 U.S.C. § 3553(a).

Respectfully submitted,

/s/ Todd S. Pugh

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/s/ Jonathan M. Brayman

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