

Josh knows that his incursion into the Capitol on January 6, 2021, was a serious offense. While he was among a large movement of individuals who gathered in the Nation's Capital related to the 2020 Presidential Election, his actual group consisted only of himself and two friends from Indiana. Josh and his friends supported then-President Trump, believed there was a legitimate chance the election had been fraudulent in some respect, and came to D.C. to have their voices heard in protest. Unfortunately, as Josh well understands, his actions went beyond protesting. He did chant political slogans reflecting his views – such as his dislike for President-elect Joe Biden and mistrust in the election results. However, to his great regret, he entered the Capitol building. While inside for about twenty-five minutes, he wandered, talked to various people including police officers, and chanted words in support of the “Stop the Steal” movement.” By all accounts, while inside Capitol, he behaved with understated exuberance in expressing his views about the election in that he chanted and made various provocative comments but did not appear angry or aggressive. Eventually a police officer asked him to leave, and he did. During his thirty-minute incursion into the Capitol, even though Josh observed no police attempting to stop people from entering the Capitol, he knew he was violating the law. He and others climbed in through a large window. It was readily apparent that he and those around him were not supposed to be there,

that others had done damage to the building, and that some of the police were urging the intruders to leave the building.

Josh came to D.C. on January 6 out of a truly held belief that the 2020 election had been stolen. But by the time Josh and his friends were driving home that same day and absorbing the magnitude of what they had been part of at the Capitol, Josh was afraid. While he believed in the “Stop the Steal” protest, he had never imagined he was taking part in what would later be publicly deemed an insurrection against the United States. By the time he got home, he strongly believed he would be hearing from authorities about his conduct. Upon learning that he appeared in an FBI circulation seeking to identify people who had entered the Capitol, he contacted federal authorities, surrendered himself, and consented to a search of his phone. It was apparent to agents that he was regretful. At no point did Mr. Wagner posture to challenge the facts alleged against him or seek a trial.

HISTORY AND CHARACTERISTICS OF THE DEFENDANT

Josh Wagner is a twenty-four-year-old single man with no children. He has no criminal record. He has been compliant with pre-trial services.

Josh grew up in a family he and others describe as “poor”, but very close. His work life began at fourteen years old as a seasonal farm hand. He has worked hard ever since, first as a cashier and now as a forklift operator and

production worker. Josh currently lives with his mother and his sister. His mother works full time and his sister attends college and works part time. Josh works twelve-hour shifts and sometimes as much as ninety-six hours in a two-week pay period. He brings in about \$27,000 a year. These last few years have been hard on Josh and his family personally and financially due to his father's death in 2018. Everyone contributes to the household expenses. (See Attachment A – letters from employer, family members, and friends). Someday, Josh hopes to improve his career prospects by returning to school or getting a technical degree, to get married, and to have children. He has discussed physical therapy as a career of interest because he thinks he would enjoy helping others recover from work or sports-related injuries. He has also considered studying Spanish language in school. He presently speaks “self-taught” Spanish he has learned through friends, co-workers, and by studying with the *Duolingo* language application on his phone.

The brief sampling of letters in *Attachment A* describe a quiet, kind, and duty-oriented person:

“Despite his lack of judgment in this case, he is a terrific person” – Catherine Wagner (Mother)

“Our father passed away in 2018 after losing his battle with leukemia when Joshua was twenty. Joshua is always respectful and does his best to help us around the house, as well as pay bills and buy groceries and other necessities.” -Sarah Wagner (Sister)

“He has always shown great respect for authority. He was a good student. He was never in trouble in school or with any other authority growing up. He got a job as a teenager and worked many hours as well as attending school.” – Larry and Ellen Hartgraus (Grandparents)

“He has always had great respect for his parents, family members, teachers, supervisors at work, and his elders.” – Jennifer Robinson

“Josh was extremely close to his father and struggled to accept his death. They were avid lovers of the outdoors and spend hours hunting, fishing, and camping together. I mention this to explain that regardless of his loss, Josh was determined to be strong for his mother and sister.” – Dona Babcock (Aunt)

From an early age through today, Josh believed in hard work. Unlike many who grow up with financial challenges, and many others who do not, Josh has always avoided problems with drugs and alcohol, juvenile delinquency, and criminal behavior. His character letters taken as a whole depict a young man who is duty-bound to a fault. As his uncle puts it, “Josh is definitely a person of good character although somewhat naïve.”

SENTENCING GUIDELINES CONSIDERATIONS

The sentencing guidelines do not apply.

THE NEED FOR THE SENTENCE IMPOSED TO AVOID UNWARRANTED SENTENCING DISPARITIES

Mr. Wagner has actual one co-defendant, his friend Israel Tutrow. On December 21, 2021, this Court sentenced Mr. Tutrow, who, unlike Mr. Wagner, has a criminal record, to three years probation and \$500 in

restitution. Mr. Wagner respectfully requests the same sentence.

**THE NEED TO REFLECT SERIOUSNESS OF THE OFFENSE,
PROMOTE RESPECT FOR THE LAW AND PROVIDE JUST
PUNISHMENT OF THE OFFENSE**

The need for sentences to reflect the seriousness of the offense and promote respect for the law is obviously, and uniquely, important in these cases. Mr. Wagner's conduct was serious in that his behavior joined and/or added to the momentous event that is often publicly viewed as one large, coordinated attack on the Capitol. However, neither Mr. Wagner or Mr. Tutrow came to DC as a part of an organized group. They came to protest, and made a grave mistake by entering the Capitol, though well after hundreds of others had done so and without the intent to harm people or property. A probationary sentence is appropriate given Mr. Wagner's lack of a record and other factors.

**THE NEED FOR THE SENTENCE TO AFFORD ADEQUATE
DETERRENCE**

Mr. Wagner agrees that general and specific deterrence are important factors the Court must consider. Mr. Wagner's background and sincere, immediate regret suggest that future such conduct by him is extremely unlikely. As for general deterrence, his arrest, the publicity

surrounding the charges against him which will forever follow him, the limits on his freedom while on conditions of release, and three years of probation with conditions make an important public point that transgressions like this, even non-violent ones, carry large consequences.

CONCLUSION

For the above-stated reasons, and those to be argued the Mr. Wagner's sentencing hearing, Mr. Wagner respectfully requests that the Court sentence him to three-year probation and order him to pay \$500 in restitution.

Respectfully submitted,

By Counsel

_____/s/_____

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January 2022, I will electronically file the foregoing Notice with the Clerk of Court using the CM/ECF system, which will then send a notification of said filing (NEF) to counsel of record.

_____/s/____

Christopher Leibig