

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

**UNITED STATES OF AMERICA** )  
 )  
 v. )  
 )  
**ALAN FISCHER III,** )  
**BRIAN BOELE, et al.** )  
 )  
 **Defendants.** )

**Case No. 1:22-CR-00011 (RJL)**

**DEFENDANTS' REPLY TO GOVERNMENT RESPONSE TO MOTION TO SEVER**

COMES NOW the Defendants, ALAN FISCHER III, and BRIAN BOELE, pursuant to Fed R. Crim P. Rule 47, Local Court Rules for Motion practice, and the Reply date ordered by this Court; and respectfully submit their joint Reply in support of their original Motion to Sever at ECF No. 134, with this Reply to the Government's Response at ECF No. 144; and move this Court to grant their severance from Co-Defendants Rajewski and Brett, (and Johnson if his plea does not proceed). Mr. Fischer and Mr. Boele state the following in support of this Reply:

**I. BACKGROUND AND FACTS**

The government states in its Response at 1 that "The defendants were properly joined chiefly because they traveled to the Capitol, attacked officers together there on January 6, and are charged with many of the same offenses and the evidence against all three will be very similar. Defendants identify no substantial disparity in evidence, charges, or culpability, no specific antagonistic defenses, and no other persuasive reasons to sever Fischer and Boele from Rajewski."

First, it is false that Mr. Boele has been charged with attacking an officers. Second, it is false that Mr. Fischer, Mr. Boele, and Mr. Rajewski traveled to D.C. together. Like over a million Americans, they travelled to Washington D.C., but they had no coordinated or joint travel, even if

coincidentally Mr. Rajewski was on a flight with Mr. Bole or Mr. Fischer who travelled on different days.

Third, Mr. Boele did not know Mr. Rajewski, Mr. Johnson, or Mr. Brett prior to his D.C. trip to be with his son, AJ Fischer.

Fourth, the government's presentation of pictures showing some proximity in the crowd was based on coincidence. They were not there together. Mr. Boele, not a Proud Boy on January 6, 2021 while events happened around and at the U.S. Capitol, had no agreement or understanding to do anything with anyone outside of attending a rally on the evening of January 5, 2021 with his son.

Fifth, any calls or texts by Mr. Rajewski to either Mr. Boele or Mr. Fischer on January 6, 2021 were initiated by Mr. Rajewski, who is suspected of calling an FBI agent in the Tampa area and reporting on Mr. Fischer and Mr. Boele's location as overheard by a Proud Boy. No agency Form 302's or 1023's have been provided to Mr. Boele or Mr. Fischer as part of discovery to indicate that Mr. Rajewski was serving a federal agent or officer. Reporting is unverified except the source is reliable.

Despite the government's claims to the contrary, it has *in absentia* tried Mr. Fischer and Mr. Boele publicly as part of the *Tarrío, Nordean* Proud Boys' trial. They were declared "tools" by the government, where non-disclosed evidence was submitted and argued by the government in a hearing about what "tools" evidence could be publicly presented to the jury. The government has not provided a single transcript, allegation, or document in specific discovery after having presented Mr. Fischer and Mr. Boele as unindicted co-conspirators and serving as "tools." It is clear why the government added "aiding and abetting to almost every charge without any facts because its intent is to falsely accuse Mr. Boele and Mr. Fischer of being principals by being

"tools." As outrageous as this sounds, the government's deceptive trial strategy is becoming more transparent daily. This is an abuse of the justice system and an affront to the U.S. Constitution.

Since internet reporting lives forever, the government deliberately created exceptionally high prejudice in the false narrative presented, especially about Mr. Fischer - where he had no due process or representation.

The government's false, fabricated narrative that it made public about Mr. Fischer and Mr. Boele was deliberate. It is integral to how the government intends to induce further unfair prejudice in prosecuting the case if all co-defendants are tried together.

Because of the unfair and unjust prejudice that the government deliberately created for trial in this case, Mr. Rajewski and Mr. Brett must be severed from Mr. Boele and Mr. Fischer.

## **II. LEGAL STANDARD**

The legal standard was addressed in the Motion at ECF No. 134.

## **III. DISCUSSION / ARGUMENT**

The government downplays the "tools" fake narrative it created. Yet that is its strategy and why the government opposes severing co-defendants. Confusing the jury and making false courtroom accusations are sadly for our Country the new norm for some AUSA's. The government's presentation of proximity pictures in its Response is an attempt to create the illusion that the Co-Defendants were there together and acted together. This Court should not be fooled.

**A. The Government Created Unfair Prejudice by its False "Tools" Story.**

The Exhibits show the lengths the government went to in exposing its true trial strategy, to falsely convict the Tarrío -Nordean co-defendants, to create a false narrative of 200 attackers that included the co-defendants, and to poison the jury venire.<sup>1</sup>

The government includes falsehood after falsehood in its excuse for wrongly joining Mr. Fischer and Mr. Boele with Mr. Brett, Mr. Rajewski, and Mr. Johnson. To be clear, Mr. Fischer made no plans in advance that included Messrs. Brett, Johnson, or Rajewski.

In the response at 2, the government outright lies by claiming, "The five men spent much of the day together, moving and acting in concert and with the same purpose." There is no better word to apply than "lies" for what the government asserts. Mr. Boele and Mr. Fischer went on a march with the Proud Boys after a prayer and photo by the Washington monument. They sought no interaction with their co-defendants and conducted no actions at the U.S. Capitol with Messrs.. Johnson, Rajewski or Brett. Any proximity was coincidental, although, in retrospect from video examination, it appears possible that Mr. Johnson and Mr. Rajewski intentionally moved to be in proximity to Mr. Fischer. Mr. Boele depending upon crowd push, tried to stay near his son.

Mr. Johnson wore tactical gear with 3%er insignia after being directed to not wear tactical gear by Proud Boy chapter and national leaders. The only common goal across the membership was to avoid trouble and violence. Yet Mr. Johnson showed up dressed like a 3%er, where some narratives suggest he was working at some point for a federal effort to infiltrate the 3%ers. He may have exceeded the crime level allowed for informants and curiously was offered a plea not available to Mr. Fischer. Yet the government made Mr. Fischer the "tools" highlight.

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<sup>1</sup> The Government's sentencing memorandum inserted the false claim that the 200 Proud Boys who peacefully participated in a prayer and march, were an attack force. The co-defendants in this case are named in 1:21-cr-00175-TJK Document 855 at 14; Filed 08/17/23. Attached.

The government omits in its response that members were told to never cross a police line. There was to be no violence or drunkenness. The government hides this truth while promulgating falsehoods that the co-defendants worked in tandem. This is preposterous.

Because the government deliberately created a false narrative and highly unfair prejudice if Mr. Boele and Mr. Fischer are tried with any other co-defendants, the Court must sever them from the other co-defendants to establish some semblance of fairness. The AUSA intends to make this a Proud Boys conspiracy case and nothing in the Indictment at ECF No. 54 shows what the government intends. The Indictment deliberately contains no facts for the alleged crimes. As stated in ECF No. 150, the Counts should be dismissed. The attached exhibits are just a sampling of what the government has been doing behind this Court's and Mr. Fischer and Mr. Boele's backs.

**B. The Timing of the Charging Documents Shows falsity of the Narrative Promulgated in the Response.**

The falsity of the narrative contained in the response is shown by how and when Defendants were charged. Mr. Rajewski and Mr. Johnson were arrested the same day as Mr. Fischer in mid-January 2022. Despite prior felonies, they were immediately released without any government mention of detention. Both were indicted. Mr. Fischer was arrested the same day, but he was not released, under false accusations by the government that he had a prior police assault. He was arrested under a complaint. It was not until a month later that the government joined Mr. Fischer with Mr. Johnson and Mr. Rajewski in a superseding indictment. This was well after a year of domestic terrorism investigation where the only purpose of joinder was for unfair prejudice as the government, including the defunct January 6 Select Committee, and the US President refer to the Defendants as extremists and white nationalists who are the greatest threat to America.

Because shared discovery showed they all had been under terrorist investigation for a year, and the government knew who they each were and had identified them as being at the US Capitol

over six months prior to arrest, there can be no doubt that the separate arrests and joinder only of Mr. Johnson and Mr. Rajewski was either to protect one or both as government operatives or because they were the ones who had communications and coordination for joint travel and activities.

Mr. Boele and Mr. Brett were not arrested until June 2022 despite having been under domestic terrorist investigation for a long time. They were joined with the other three co-defendants in a second superseding indictment to create a Proud Boys conspiracy group, albeit that Mr. Johnson was going to be afforded a special deal not available to anyone else. The excuses that they are all from the Tampa area and other pablum in the Response did not justify joinder any more than Mr. Fischer and Mr. Boele hypothetically being joined with a thousand strangers who were present. There was no common transaction or endeavor. Because of this, the motion to sever should be granted.

#### **IV. CONCLUSION**

Because of unfair prejudice caused by the government *ex parte* without due process in another court, and in deliberate media leaks and releases, where there was no joint endeavor, shared goal, or action in concert, Mr. Boele and Mr. Fischer must be severed from co-defendants in order to possibly receive a fair trial.

Wherefore, for good cause shown, and for any other reasons the Court may decide, Mr. Fischer and Mr. Boele request that the Court issue the proposed order for severance that accompanied their motion at ECF No. 134.

Dated August 28, 2023

Respectfully submitted,

/s/ Carolyn A. Stewart

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**CERTIFICATE OF SERVICE**

On this 29th day of August 2023, a copy of the foregoing was served upon all parties as forwarded through the Electronic Case Filing (ECF) System.

/s/ Carolyn A. Stewart

Carolyn A. Stewart

Defense Attorney