

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

UNITED STATES OF AMERICA,

v.

Case No.: 21-cr-78 (RCL)

JOHN SULLIVAN
Defendant

**MOTION TO DISMISS INDICTMENT BASED UPON THE SELECTIVE
PROSECUTION OF JOHN SULLIVAN**

Defendant, John Sullivan, by and through undersigned counsel, does hereby move to dismiss the indictment charged against him based upon his selective prosecution. In support thereof; defendant states as follows:

1. This is a complex, multiple count, multiple party indictment arising from the events of January 6, 2021. The charges against defendant are as follows: Obstruction of an Official Proceeding, 18 U.S.C. Section 1512, and 2; Civil Disorder in violation of U.S.C. Sections 231 (a)(3) and 2; Entering and Remaining in a Restricted Building and Grounds with a Dangerous Weapon in violation of 18 U.S.C. Section 1752(a)(1) and (b)(1)(A);

Disorderly and Disruptive Conduct in a Restricted Building or Ground with a Dangerous Weapon, in violation of 18 U.S.C. Section 1752 (aa)(2) and (b)(1)(A); Unlawful Possession of a Dangerous Weapon on Capitol Grounds or Buildings, in violation of 40 U.S.C. Section 5104 (e)(1)(A)(i); Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. Section 5104 (e)(2)(D); Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. Section 5104(e)(2)(G); False Statements or Representations to an Agency of the United States, in violation of 18 U.S.C. Section 1001(a)(2); and Aiding and Abetting, in violation of 18 U.S.C. Section 2.

2. The charges in this indictment are very serious and defendant faces the prospect of a significant period of incarceration if convicted.

3. Similar and far more serious instances of alleged criminal conduct that took place on January 6, 2021 have not been prosecuted. In addition, participants in the events of January 6, 2021, specifically former United States President Donald Trump, have not been charged for roles in the events of January 6, 2021. The decision to charge John Sullivan for multiple crimes, when at most his conduct was *de minimis* when compared to former President Donald Trump, who has not been charged amounts to selective prosecution.

4. In *Armstrong v. United States*, the Supreme Court noted that the government has “broad discretion” in “enforce[ing] the Nation’s criminal laws.” 517 U.S. 456, 465 (1996). However, the discretion is not unlimited and is subject to “constitutional constraints.” *Id.* One of the constraints is “imposed by the equal protection component of the Due Process Clause of the Fifth Amendment.” *Id.* Defendant submits that pursuing charges against him, while not pursuing charges against a far more culpable person for the same event, with no justification, amounts to a selective prosecution.

5. In *United States v. Blackley*, Judge Lamberth repeated that in the context of determining whether to prosecute, “a prosecutor’s discretion is broad, it is not without constraints.” 968 F. Supp. 616, 617 (D.D.C. 1996). It was further held that “criminal charges may be dismissed on the basis of selective prosecution if a defendant is (1) singled out for prosecution from among others similarly situated and (2) the prosecution is improperly motivated, *i.e.* based on an arbitrary classification.”

6. John Sullivan is a resident of the State of Utah. He has no impeachable convictions. His parents are active and well-respected members of their community and are completely productive, law-abiding members of society and have been such throughout their lifetimes. His

father is a career retired member of the United States military. John Sullivan is also a respected member of his community.

7. On January 6, 2021, Donald Trump was the President of the United States who had already been the subject of one impeachment proceeding, and following the events of January 6, 2021, was the subject of a second impeachment proceeding.

8. The United States House of Representatives Select Committee to Investigate the Events of January 6, 2021, conducted a massive analysis of the events leading up to the events of January 6, 2021 and provided significant insight into the causes of the riot at the United States Capitol. The Committee included 9 bipartisan members of the United States Congress and dozens of staff members working in a variety of capacities to reach determinations.

9. The final report issued by the Select Committee was the product of an investigation that included interviews with more than 1,000 individuals, included ten testimonial hearings and considered more than a million pages of documents. The investigation lasted 18 months.

10. The Select Committee concluded, “The central cause of January 6th was one man, former President Donald Trump....None of the events of January 6th would have happened without him.” The Committee added,

“The insurrection gravely threatened democracy and put the lives of American Lawmakers at risk.”

11. By contrast, there is not a single mention of John Sullivan in the report of the Select Committee. Of the thousands of witnesses interviewed, there was not one witness who mentioned John Sullivan. Of the in excess of millions of pages of documents received and reviewed by the Select Committee, there is not a scintilla of evidence inculcating John Sullivan in fomenting the events at the United States Capitol on January 6, 2021.

12. There is absolutely no justification for the very serious charges for which John Sullivan has been indicted when there has not been a single charge indicted against Donald Trump for the events of January 6, 2021.

13. “To be unlawful [selective prosecution], the selectivity must be improperly motivated. Individuals are entitled to equal protection under the law and the government, even in its broad discretion, may not prosecute or otherwise enforce the law in an arbitrary fashion or based on race, religion, or other constitutionally impermissible bases.” *Branch Ministries, Inc. v. Richardson*, 970 S. Supp. 11,16 (D.D.C. 1997).

14. The specific reasons why John Sullivan was singled out for prosecution, while Donald Trump has not to date been charged, is not yet clear. It appears the former President is the subject of a grand jury

investigation in regard to the events of January 6, 2021. However, it is not clear whether there is an actual investigation being conducted and it is not clear who the subjects of the investigation are. Further, it is not known when the investigation will be concluded.

15. A “defendant alleging or invoking the selective prosecution defense... must offer at least a colorable claim both that the prosecution was improperly motivated and that it was selective in the first place.” *Attorney General of U.S. v. Irish People, Inc.*, 684 F.2d 928, 933 (D.C. Cir. 1982). What is clear is that John. Sullivan has made out a colorable claim of selective prosecution “A colorable claim presupposes that there is some possible validity to a claim.” *United States v. Shelby*, 604 F.3d 881, 885 (5th Cir. 2010), citing *Richardson v. United States*, 468 U.S. 317, 322 (1984).

16. Defendant cannot pierce the grand jury proceedings that are presently occurring. There may be an indictment returned against Donald Trump for the events of January 6, 2021. However, the grand jury proceedings may be dismissed or may be terminated by means of a negotiated plea offer. That material information will not be known for some indeterminate period of time. The grand jury issues and the reasons for the prosecution will not become known prior to the current trial date. This trial

cannot commence until such time as issues related to the grand jury proceedings involving Donald Trump become known.

17, Defendant John Sullivan relies upon the Equal Protection Clause of the United States Constitution and the inherent powers of this Honorable Court in seeking the relief requested herein.

18. The reason why this Motion is now being filed is that there now has been confirmation that the Justice Department has long delayed consideration of a Trump indictment. “A Washington Post investigation found that more than a year would pass before prosecutors and FBI agents jointly embarked on a formal probe of actions directed from the White House to try to steal the election. Even then, the FBI stopped short of identifying the former president as a focus of that investigation.”

Washington Post, June 19, 2023, FBI resisted opening probe into Trump’s role in Jan. 6 for more than a year, Carol Leonnig and Aaron C. Davis.

19. The decision to aggressively prosecute John Sullivan, while not prosecuting the far more culpable former president Donald Trump, cannot be reconciled and is a violation of rights guaranteed to John Sullivan by the United States Constitution.

WHEREFORE, the forgoing considered, defendant John Sullivan prays this Honorable Court for a dismissal of the indictment against him, or,

in the alternative, to continue the trial date until such time as more information is learned concerning the pending grand jury proceedings related to Donald Trump.

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served, via the Court's electronic filing system, upon all counsel of record on this the __19__ day of June, 2023.

_____/s/_____
Steven R. Kiersh

