

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

CRAIG MICHAEL BINGERT, ISAAC
STEVE STURGEON, and TAYLOR
JAMES JOHNATAKIS,

Defendants.

Case No.: 1:21-cr-00091-RCL

GOVERNMENT’S RESPONSE IN OPPOSITION TO MOTION TO SEVER

The UNITED STATES OF AMERICA, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits its Response in Opposition to Defendant Craig Bingert’s Motion to Sever (Dkt. Entry 110) which was joined by Defendant Isaac Sturgeon. Defendants contend that their trials should be severed from the trial of co-defendant Taylor Johnatakis because Defendant Johnatakis’ possible *pro se* status¹ would prejudice them at a joint trial. As set out below, the *pro se* status of a co-defendant is not a proper basis on which to grant a severance and the defendants have not shown that a joint trial, even if defendant Johnatakis were to proceed *pro se*, would compromise a “specific trial right” or prevent the jury from reaching a reliable verdict.

FACTUAL BACKGROUND

The government incorporates the factual background set out in its Response in Opposition to the Defendants’ initial Motion to Sever. Dkt. Entry 91.

¹ The government believes that defendant Johnatakis’s *pro se* status may still be unresolved. There does not appear to be any order on the docket granting his motion to appear *pro se*. Nor, to government counsel’s knowledge, has a hearing pursuant to *Faretta v. California*, 422 U.S. 806 (1976) been held in this case. As set out below, the government is requesting that the Court schedule a hearing regarding defendant Johnatakis’s *pro se* status.

ARGUMENT

The Court should deny Defendant Bingert's late-filed Motion to Sever for the same reasons it should deny Defendant Sturgeon's Motion to Sever: because defendants fail to show that there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro v. United States*, 506 U.S. 534, 539 (1993). Defendant Bingert's latest motion to sever adds an argument that co-defendant Johnatakis's possible *pro se* status at trial is an additional reason why Defendants Bingert and Sturgeon should have separate trials. However, and as Defendant Bingert acknowledges, there is no support in the caselaw for the proposition that the *pro se* status of a co-defendant is an adequate basis for a severance. And while defendant's motion does not explicitly state that the severance is sought to protect Bingert and Sturgeon from prejudice that may result from Johnatakis's disruptive conduct at trial, "[c]ourtroom misconduct by a co-defendant must be especially egregious to mandate severance." *United States v. Tucker*, 12 F.4th 804, 825 (D.C. Cir. 2021) (citing cases). Nothing suggests that defendant Johnatakis's behavior at trial will rise to this level. Additionally, cautionary instructions to the jury are sufficient to protect any potential prejudice in these circumstances.

Defendant Bingert points the Court to two recent January 6 cases where severances were granted, claiming that these decisions support his position that a severance is required because of a co-defendant's *pro se* status. However, while a defendant's *pro se* status was one factor considered by the judges in these cases, the decision to sever the *pro se* defendants in these cases was primarily based on other factors.

For example, in *United States v. James Beeks*, 21-cr-00028-APM-19, there were a total of eight defendants set for trial. Due to physical space constraints, the courtroom could only accommodate 6 defendants during one trial. Thus, at least two of the defendants had to be tried

separately because of physical space limitations. In making the determination which defendants to sever, Judge Mehta considered the fact that Beeks had recently elected to go *pro se* and likely needed more time to prepare for trial. Therefore, while Judge Mehta did consider the possible prejudice that Beeks' *pro se* status may cause other defendants, it appears his primary motivations for severing Beeks were space limitations and Beeks' ability to have a fair trial based on his new *pro se* status. Neither of those circumstances are present here: the district court is capable of holding a three-defendant trial and Defendant Johnatakis still has ample time to prepare for trial, even if he is granted the right to proceed *pro se*.

The defendant also points the Court to *United States v. Pollock*, 21-CR-447-CJN. That case involves five defendants, one of whom is a fugitive. The four identified defendants are set for a trial in early March. Approximately six weeks before the trial, one of the defendants (Hutchinson) decided he wanted to proceed *pro se*. Hutchinson then filed a motion stating he was not prepared for trial and required more time to review the discovery. 21-CR-447-CJN, Dkt. Entry 173. Judge Nichols ultimately granted Hutchinson's co-defendant's motion to sever, at least in part, to give Hutchinson more time to prepare, as well as to avoid any prejudice to his co-defendants from his *pro se* status. *Id.* 1/25/2023 Minute Entry. Again, this case is distinguishable from *Pollock*. The trial in this case is still ten weeks away – and there is a pending motion to continue the trial to an even later date - and defendant Johnatakis has not indicated that his *pro se* status has or will hinder his ability to prepare for trial.

Under these circumstances, the efficiency of trying the three defendants together outweighs any prejudice to the defendants and the Court should deny Defendant Bingert's Motion to Sever.

REQUEST FOR HEARING

The government requests that a hearing be set regarding Defendant Johnatakis's ability to proceed *pro se* pursuant to *Faretta v. California*, 422 U.S. 806 (1975). During a *Faretta* hearing, courts typically question a defendant regarding his decision to proceed *pro se*. Specifically, defendant should be advised of the dangers of self-representation, the defendant's familiarity with the Federal Rules of Evidence and Federal Rules of Criminal Procedure should be probed, he should be given a warning regarding the dangers of self-representation, admonished as to requirements for trial preparation, advised of the benefits of being represented by an attorney, and questioned regarding his ability to act as his own attorney. *See id*; *see also United States v. Hayes*, 231 F.3d 1132, 1138 (9th Cir. 2000). The government believes a hearing may also be needed to resolve any ambiguities with respect to the appointment of standby counsel for defendant Johnatakis.

CONCLUSION

For the foregoing reasons, the government respectfully requests that defendant Bingert's motion to sever be denied and that the Court hold a hearing pursuant to *Faretta v. California*.

Respectfully submitted,

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