

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

UNITED STATES OF AMERICA :
 : **No. 21-cr-91-RCL**
v. :
 :
CRAIG BINGERT, :
 :
Defendant. :

**GOVERNMENT’S OPPOSITION TO THE DEFENDANT’S
MOTION FOR JOIN, ADOPT, AND CONFORM
MOTION FOR RELEASE PENDING APPEAL**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully opposes defendant Craig Bingert’s motion for release pending appeal. ECF 244. On May 24, 2023, following a four-day bench trial, this Court convicted Bingert on seven counts, including obstruction of justice and assaulting police officers. ECF 166. On September 26, 2023, this Court sentenced Bingert to concurrent terms of: 96 months on Count 1 (Obstruction of Congress); 96 months on Count 2 (Assault on Federal Officers); 36 months on Count 3 (Civil Disorder); 6 months on Count 4 (Entering and Remaining on Restricted Grounds); 6 months on Count 5 (Disorderly and Disruptive Conduct on Restricted Grounds); 6 months on Count 6 (Engaging in Physical Violence on Restricted Grounds); and 30 days on Count 8 (Engaging in Act of Violence on Capitol Grounds).

Bingert is currently incarcerated, having self-surrendered on November 7, 2023. His co-defendant Isaac Sturgeon is set to self-surrender on January 4, 2024, but he has filed a motion for release pending his appeal, which Bingert joins in the instant motion. ECF 241. The Government opposed that motion. ECF 246. Co-defendant Taylor Johnatakis is currently in custody pending sentencing, following his conviction by a jury on all counts on November 21, 2023.

The Government hereby incorporates and relies on the arguments detailed in its opposition to Sturgeon’s motion for release pending appeal, which Bingert joins, asserting the same arguments. ECF 246. In summary, Bingert and Sturgeon fail to show that the appeal “raises a substantial question of law or fact likely to result in” reversal or a reduced sentence that is less than the expected duration of the appeal process, and so their motion for release pending appeal should be denied. 18 U.S.C. § 3143(b)(1). First, regardless of whether Bingert’s 18 U.S.C § 1512(c)(2) claim on Count 1 succeeds on appeal, his sentences on his other counts of conviction are years longer than the expected duration of the appeal process and they are unaffected by this claim—namely, his sentence of 96 months on Count 2 (Assault on Federal Officers) and his sentence of 36 months on Count 3 (Civil Disorder). Second, his claims related to the Official Victim enhancement pursuant to U.S.S.G. § 3A1.2(c)(1) do not raise a substantial question of law or fact, and regardless, even assuming success on these claims, they will not result in a reduced sentence less than the expected duration of the appeal process. Specifically, if Bingert succeeds on the first argument, that there was impermissible “double-counting,” and the six-level adjustment pursuant to U.S.S.G. § 3A1.2(c)(1) were removed from Count 1—his offense level on Count 1 (Obstruction) would be 27—resulting a Guidelines range of 70-87 months. Counts 2 and 3 would remain unchanged at offense level 29 with a Guidelines range of 87-108 months. If Bingert succeeds on the second argument, that the Court erred in finding that the facts support application of § 3A1.2(c)(1), the resulting offense level on Count 1 (Obstruction) would be 27—resulting a Guidelines range of 70-87 months—and on Counts 2 (Assault) and 3 (Civil Disorder), it would be 23—resulting in a Guidelines range of 46 to 57 months.¹

¹ Bingert’s offense levels are two levels higher than Sturgeon’s because the Court applied U.S.S.G. § 3C1.1 for Bingert’s untruthful trial testimony.

In addition to demonstrating that his appeal raises a substantial question that will likely lead to reversal or a reduced sentence on all counts of conviction, the defendant must also demonstrate to the Court “by clear and convincing evidence” that he is neither a flight risk nor a danger to the community. “The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.” Fed. R. Crim. P. 46(c). Bingert fails to meet his burden here. Now that Bingert has been convicted and sentenced to a significant period of incarceration, rather than merely charged with crimes, the incentive to flee or engage in dangerous conduct has grown. That concern is particularly relevant here where Bingert has yet to accept responsibility for his actions for what he did—to the Court or to the victim officers he assaulted. Indeed, his testimony at trial evinced a total lack of remorse. In addition, the Court found Bingert incredible on at least five different areas of his trial testimony (*see* ECF 166), and accordingly, the Court applied the enhancement for obstruction pursuant to U.S.S.G. § 3C1.1 at sentencing.

Finally, Bingert must demonstrate that his appeal is not for purposes of delay. Again, the Defendant bears the burden of proof on this issue and again, the Defendant offers no meaningful argument to meet that burden. *United States v. Nacchio*, 608 F.Supp.2d 1237, 1242 (D. Colo. 2009) (defendant “offers neither an affirmative statement that the appeal is not interposed for purpose of delay, nor any meaningful argument.”). Rather, Bingert, like Sturgeon, does nothing more than to state that the appeal is not for delay. ECF 244 at 3. That is insufficient. The Defendant has not yet filed his brief on appeal, but as demonstrated above and in the Government’s opposition to Sturgeon’s motion (ECF 246), none of the issues that he has indicated he intends to raise on appeal presents a substantial question that is likely to lead to a reversal or reduced sentence that is less than the duration of his appeal. In addition, further

delay is unfair to the public and the victims, who have an interest in justice and the purposes of sentencing being served here.

For these reasons, and the reasons set forth in the Government's opposition to Sturgeon's motion for release pending appeal (ECF 246), the Defendant's motion for release pending appeal is without merit and should be denied.

Respectfully submitted,

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