

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

UNITED STATES OF AMERICA,

V.

No. 21-cr-78 (RCL)

JOHN EARLE SULLIVAN

**REPLY TO OPPOSITION TO MOTION TO DISMISS
(Selective prosecution)**

Defendant, by and through undersigned counsel, does hereby Reply to the opposition of the United States to the Motion to Dismiss Indictment as follows:

The United States argues “defendant has failed to identify ‘similarly situated’ individual or group of individuals that the government afforded different treatment.” Government’s Opposition, PACER, 94. This argument fails. Defendant has specifically identified former President Donald Trump as a similarly situated individual who has not been charged but yet has been specifically assigned by a Congressional committee as being responsible for the events of January 6, 2021. Defendant cannot think of a

more compelling and precise argument related to the selective prosecution of John Sullivan.

The Supreme Court has recognized that there are a variety of considerations that may factor into a prosecutor's decision to prosecute someone. "The strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the Government's overall enforcement plan...Defendants are similarly situated for purposes of a selective prosecution claim 'when their circumstances present no distinguishable legitimate prosecutorial factors that might justify making different prosecutorial decisions with respect to them.

United States v. Stone, 394 F. Supp. 3d 1, 31 (D.D.C. 2019), citing *United States v. Hastings*, 126 F.3d 310, 315 (4th Cir. 1997).

In *United States v. Lewis*, the First Circuit held, "A similarly situated offender is one outside the protected class who has committed roughly the same crime under similar circumstances but against whom the law has not been forced." 517 F. 3d 20,27 (1st Cir. 2008).

A simple comparison between Donald Trump and John Sullivan clearly evidences selective prosecution against Sullivan.

- a. Former President Trump was specifically cited by members of Congress as being responsible for the events of January 6, 2021. No congressional inquiry has blamed John Sullivan for the events of January 6, 2021.
- b. The strength of the case against Donald Trump. He has already been impeached for his actions. There are a vast number of tapes and witnesses

who inculpate Donald Trump in the events of January 6, 2021. There exists no more compelling evidence against John Sullivan;

c. The Government's enforcement priorities. There can be no stronger governmental interest in pursuing charges against a former President of the United States who, by virtue of a report issued by members of Congress, was accused of serious criminality on January 6, 2021. John Sullivan's actions on January 6, 2021 pale in comparison to the actions of Donald Trump.

The United States has not offered a reason or explanation regarding why Donald Trump has not been charged for his actions on January 6, 2021. Indeed, there is no valid explanation for why charges have not been brought 2.5 years after the assault on the Capitol.

The fact remains that John Sullivan has been indicted and is facing an impending trial while Donald Trump has escaped indictment. If John Sullivan has been indicted for Obstruction of an Official Proceeding, it is beyond question that Donald Trump should also have been indicted. The failure to indict Donald Trump can on only be attributed to selective prosecution.

Defendant's argument is not based upon speculation, insinuation and inference as the Government suggests. To the contrary, the argument is

based on objective and indisputable facts. “Though a prosecutor’s discretion is broad, it is not without constraints.” *United States v. Blackley*, 986 F. Supp. 616, 617 (D.D.C. 1997). Without any explanation or justification for the decision not to prosecute Donald Trump, in light of the extensive record documenting criminal acts on his part, a colorable claim has been made related to the selective prosecution of John Sullivan.

Taking into account all the arguments presented on behalf of John Sullivan, a dismissal of the indictment is requested for his selective prosecution.

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 ____2nd ____ day of July, 2023.

_____/s/_____
Steven R. Kiersh