

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, :
 :
 v. : Case No. 1:21-cr-0091-RCL-01
 :
 CRAIG MICHAEL BINGERT :
 Defendant. :

**DEFENDANT CRAIG MICHAEL BINGERT’S MOTION TO
DISMISS COUNTS 4, 5, 6, 7, & 8 AS MULTIPLICITOUS WITH
INCORPORATED MEMORANDUM OF POINTS AND AUTHORITIES**

COMES NOW Defendant, Craig Michael Bingert, by and through undersigned counsel, hereby respectfully moves this Honorable Court for the entry of an Order dismissing Counts 5, 6, 7, 8 & 9 of the Superseding Indictment (Doc. 53) 4, as multiplicitous. As grounds, the following is stated:

Background

1. Mr. Bingert is charged in Counts 4, 5, 6, 7, & 8 with violations of:

Count 4 – 18 U.S.C. § 1752(a)(1) (Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority).

Count 5 – 18 U.S.C. §1752(a)(2) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds)

Count 6 – 18 U.S.C. §1752(a)(4) (Engaging in Physical Violence in a Restricted Building or Grounds)

Count 7 – 40 U.S.C. §5104 (e)(2)(E) (Obstructing, or Impeding Passage Through or Within, the Grounds or Any of the Capital Buildings)

Count 8 – 40 U.S.C. §5104 (e)(2)(F) (Engaging in an Act of Physical Violence in the Grounds or Any of the Capitol)

A jury trial is scheduled for May 15, 2023.

2. Convictions for all these counts would violate the Double Jeopardy Clause of the U.S. Constitution. Moreover, the unnecessary multiplication of counts will prejudice a jury against Mr. Bingert. Multiplicity arises when “an indictment charges the same offense in more than one count.” *United States v. Mahdi*, 598 F.3d 883, 887 (D.C. Cir. 2010), quoting *United States v. Weathers*, 186 F.3d 948, 951 (D.C. Cir. 1999). The Double Jeopardy Clause of the Constitution protects against “multiple punishments for the same offense.” *Weathers*, 186 F.3d at 951, cert. denied, 529 U.S. 1005 (2000); U.S. Const. amend. V, cl. 2.

Also, courts have recognized that charging the same offense in multiple counts can “unfairly increas[e] a defendant’s exposure to criminal sanctions” because a jury may conclude that given the number of charges, the defendant must be guilty of something. *United States v. Clarke*, 24 F.3d 257, 261 (D.C. Cir. 1994), quoting *United States v. Harris*, 959 F.2d 246, 250 (D.C. Cir. 1992), abrogated on other grounds, *United States v. Stewart*, 246 F.3d 728 (D.C. Cir. 2001); see also *United States v. Morrow*, 102 F. Supp. 3d 232, 246 (D.D.C. 2015) (multiplicitous charges may suggest to a jury “that a defendant has committed not one but several crimes”), quoting *United States v. Reed*, 639 F.2d 896, 904 (2d Cir. 1981); *United States v. Phillips*, 962 F. Supp. 200, 202 (D.D.C. 1997).

The subject five counts of the Superseding Indictment expose the defendant to double, and even triple jeopardy for the same alleged acts. The Double Jeopardy

Clause protects criminal defendants against both successive punishments and prosecutions for the same criminal offense. *United States v. Dixon*, 509 U.S. 688, 696 (1993) (citing *North Carolina v. Pearce*, 395 U.S. 711 (1969)); see also *United States v. Davenport*, 519 F.3d 940, 943 (9th Cir. 2008); *United States v Mancuso*, 718 F.3d 780, 791 (9th Cir. 2013). When two different criminal statutes are violated, “the double jeopardy prohibition is implicated when both statutes prohibit the same offense or when one offense is a lesser included offense of the other.” *Rutledge v. United States*, 517 U.S. 292, 297 (1996)).

WHEREFORE, for the foregoing reasons and such other reasons that may appear just and proper, Mr. Bingert requests this Court to grant this motion and dismiss Counts 4, 5, 6, 7, & 8 of the Superseding Indictment, as multiplicitous counts.

Defendant, by counsel, requests a hearing on this motion.

Respectfully Submitted,

Allen H. Orenberg, # 395519
The Orenberg Law Firm, P.C.
12505 Park Potomac Avenue, 6th Floor
Potomac, Maryland 20854
Tel. No. (301) 984-8005
Fax No. (301) 984-8008
Cell-Phone (301) 807-3847
aorenberg@orenberglaw.com
Counsel for Craig Michael Bingert

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