

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

UNITED STATES OF AMERICA,

V.

MARK MIDDLETON

**Case No.:1:21-cr-367 (RDM)
Trial date: August 21, 2023**

And

**JALISE MIDDLETON,
Defendants**

MOTION TO DISMISS INDICTMENT BASED UPON THE SELECTIVE PROSECUTIONS OF MARK MIDDLETON AND JALISE MIDDLETON, OR, IN THE ALTERNATIVE, MOTION TO CONTINUE TRIAL DATE UNTIL A DECISION HAS BEEN REACHED BY THE UNITED STATES DEPARTMENT OF JUSTICE WHETHER TO CHARGE DONALD J. TRUMP FOR MATTERS RELATED TO THE EVENTS OF JANUARY 6, 2021.

Defendants, Mark Middleton and Jalise Middleton, by and through undersigned counsel, do hereby move to dismiss the indictment charged against them based upon their selective prosecution. In the alternative, defendants move to continue the trial date until the grand jury proceedings related to Donald Trump's involvement in the events of January 6, 2021

have concluded. In support thereof, defendants respectfully set forth as follows:

1. This is a complex, multiple count, multiple party indictment arising from the events of January 6, 2021. The charges against the defendants are as follows: 18 U.S.C. Sections 111 (a)(1), Assaulting Resisting, or Impeding Certain Officers; 18 U.S.C. Section 231 (a)(3), Civil Disorder; 18 U.S.C. Sections 1512 (c)(2), 2, Obstruction of an Official Proceeding; 18 U.S.C. Section 1752 (a)(1), Entering and Remaining in a Restricted Building or Grounds; 18 U.S.C. Section 1752 (a)(2), Disorderly and Disruptive Conduct in a Restricted Building or Grounds; 18 U.S.C. Section 1752 (a)(4), Engaging in Physical Violence in a Restricted Building or Grounds; 40 U.S.C. Section 5104 (e)(2)(D), Disorderly Conduct in the Capitol Grounds or Buildings; 40 U.S.C. Section 5104 (e)(2)(F), Act of Physical Violence Within the Capitol Grounds or Buildings.

2. The charges in this indictment are very serious and defendants face the prospect of significant periods 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 Mark Middleton and Jalise Middleton for multiple crimes, when at most their conduct was limited to a very few moments *outside* the United States Capitol, 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.* Defendants submit pursuing charges against one person or persons, while not pursuing charges against another similarly situated person for the same event, with no apparent distinction, 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. Mark Middleton and Jalise Middleton are two residents of the State of Texas. They are gainfully employed individuals who have no prior criminal records. They are parents, active and well-respect members of their community and are completely productive, law-abiding members of society and have been such throughout their lifetimes. There is absolutely nothing in their personal histories to in any manner suggest they present a danger or threat to society.

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 either Mark Middleton or Jalise Middleton in the report of the Select Committee. Of the thousands of witnesses interviewed, there was not one witness who mentioned either Mark Middleton or Jalise Middleton. Of the in excess of millions of pages of documents received and reviewed by the Select Committee, there is not a scintilla of evidence inculpatory either Mark Middleton or Jalise Middleton 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 Mark Middleton and Jalise have been indicted when there has not been a single charged indicted against Donald Trump for the events of January 6, 2021. To reiterate, Mark Middleton and Jalise Middleton did not conspire to commit any offense on January 2, 2021; did not incite any

person to commit criminal acts on January, 2021; and never entered the United States Capitol on 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 Mark Middleton and Jalise Middleton were 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 Mark Middleton and Jalise Middleton have

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. Defendants 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, Defendants Mark Middleton and Janise Middleton rely upon the Equal Protection Clause of the United States Constitution and the inherent powers of this Honorable Court in seeking the relief requested herein.

WHEREFORE, the forgoing considered, defendants Mark Middleton and Jalise Middleton pray this Honorable Court for a dismissal of the indictment against them, or, in the alternative, to continue the trial date until

such time as more information is learned concerning the pending grand jury proceedings.

Respectfully submitted,

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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 ___12th__ day of June, 2023.

_____/s/_____
Steven R. Kiersh

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ORDER

Upon consideration of the Motion of Mark Middleton and Jalise Middleton to Dismiss the Indictment, or, in the alternative, to grant a continuance of the trial date, and any opposition thereto, there being good demonstrated, it is by this Court on this the _____ day of _____, 2023:

ORDERED that the Motion to Dismiss is granted, or, in the alternative:

IT IS HEREBY ORDERED that trial of this matter is continued to the _____ day of _____, _____.

Honorable Randolph D. Moss
United States District Judge