UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
v.	)	CRIMINAL CASE NO: 1:21-CR-00564
MATTHEW DASILVA	)	TRIAL: JULY 17, 2023
DEFENDANTS.	)	

SUPPLEMENT TO DEFENDANT'S REPLY, ECF NO. 60

While both parties notified this court that the Government had not previously prosecuted a defendant for pushing against a police shield during a protest, a case that is tangentially on point has come to the attention of the defense and is being submitted for the court's consideration in support of defendant's Motion to Dismiss for Selective Prosecution.

In *United States v. Thomas Johnson*, 3:20-mj-170, ECF No. 1 (D. Or. July 27, 2020), the defendant was arrested during a left-wing riot in front of the federal Portland Courthouse in the District of Oregon. [Defense Exhibit 1.] While the defendant in this case did not exactly push against an officer's shield, the defendant did worse— he used his homemade shield as a weapon with which to attack an officer during a riot, striking the officer in the face with the shield as the officer approached him. *Id.* at *5. Moreover, this defendant was found to be in possession of an array of additional riot tools: "asp extendable baton, OC spray, steel plated body armor, helmet, individual first aid kit, shin guards, gas mask, goggles, phone, and miscellaneous clothing." *Id.* at *6. For conduct actually constituting a felony assault, conduct much more serious than that of

Mr. DaSilva, and with a concerning array of riot tools on hand, the Government decided to conclude this case with a full dismissal of the felony charge. *United States v. Thomas Johnson*, 3:20-mj-170, ECF No. 9 (D. Or. October 22, 2020). [Defense Exhibit 2.]

7. Specifically, on July 26, 2020, federal law enforcement officers attempted to disperse a crowd in front of the U.S. Hatfield Courthouse in Portland, OR. The crowd was part of a protest that was declared an unlawful assembly by the Federal Protective Service and a riot by the Portland Police Bureau. This occurred after violent opportunists destroyed the security fence in front of the Mark Hatfield Federal Courthouse, and attacked law enforcement officers by throwing hard objects, throwing explosive devices, and physically attacking them. During the dispersal Deputy United States Marshal (DUSM) Victim 1 was dressed in a clearly marked police tactical uniform and was wearing protective equipment to include a gas mask, helmet, and body armor.

8. At approximately 0130 hours DUSM Victim 1 was walking with a group of officers attempting to clear the park across the street from the Hatfield Courthouse. A male, who later identified himself as Thomas JOHNSON, was ordered to leave the park by DUSM Victim 1. As DUSM Victim 1 approached JOHNSON used a homemade shield to strike the officer in the face. A second DUSM observed the assault and both officers restrained JOHNSON by placing him on the ground while telling him he was under arrest. JOHNSON was placed under arrest and taken to the U.S. Marshals Cellblock.

10. On July 26, 2020, JOHNSON's belongings were searched incident to arrest and the following were found: asp extendable baton, OC spray, steel plated body armor, helmet, individual first aid kit, shin guards, gas mask, goggles, phone, and miscellaneous clothing.

Figures 1-3. Johnson's possessions

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA	**3:20-mj-00170**
v.	**MOTION TO DISMISS COMPLAINT WITHOUT PREJUDICE**
THOMAS JOHNSON,	
Defendant.	

The United States of America, by and through counsel, respectfully moves this Court, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, for an order dismissing without prejudice the Complaint filed July 27, 2020, charging defendant with Assault on a Federal Officer.

The government seeks this dismissal in the interests of justice.

Dated: October 22, 2020

Respectfully submitted,

BILLY J. WILLIAMS
United States Attorney

s/ Parakram Singh
PARAKRAM SINGH, OSB #134871
Assistant United States Attorney

In ECF No. 59, the Government has maintained its position that whatever happens in Oregon stays in Oregon. Nonetheless, this *Thomas Johnson* case is a perfect illustration of the Government's disparate treatment of defendants who engaged in conduct more egregious than that of which they accuse Mr. DaSilva, but who faced no criminal consequences due to the underlying political nature of the protest or riot with which they are associated. **Had Mr. DaSilva done the exact act he did on January 6 but in Portland, pushing against a police shield, he would not have been prosecuted**.

While the defendant's Motion concentrates on the direct comparison between two D.C. protests, the Government's prosecution and non-prosecution decisions across the country bear important context on the explanation of the Government's decision not to prosecute the individuals in D.C. in May of 2020— this was standard practice for the Government in all left-wing riot cases across the country. A prosecutorial tolerance for criminal disobedience for certain types of political unrest, if you will; a tolerance that was not extended to the only group of Trump-right-wing protesters who emerged around the same time period. In the District of Oregon, the DOJ dismissed dozens of violent assault cases stemming from left-wing political riots — if not more.

As previously stated, the political disparity in the prosecution of Mr. DaSilva and the non-prosecution of every left-wing protester doing the same, and worse, is striking and inherently suspect. A man should not face charges, nor be able to avoid charges, due solely to the political leanings of the protest that he attends. Yet that is the exact reality of the case of Mr. DaSilva.

The Defendant's motion should be granted.

Respectfully submitted,

By Counsel:

/s/
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CERTIFICATE OF SERVICE FOR CM/ECF

I hereby certify that on June 20, 2023, I will electronically file the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/
Marina Medvin, Esq.