

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

<b>UNITED STATES OF AMERICA</b>	:	
	:	
v.	:	<b>Case No. 1:21-cr-719 (JEB)</b>
	:	
<b>CYNTHIA BALLENGER, and</b>	:	
<b>CHRISTOPHER PRICE,</b>	:	
	:	
<b>Defendants.</b>	:	

**MOTION IN LIMINE TO PRECLUDE ADMISSION OF EVIDENCE  
AND ARGUMENTS OF OTHER CAUSES TO THE DELAY OF  
THE JOINT SPECIAL SESSION OF CONGRESS**

The government respectfully requests that the Court issue an order precluding defendants Cynthia Ballenger and Christopher Price from any of the following: (1) admitting evidence or arguing that the placement of pipe bombs near the Capitol Building delayed the Special Joint Session of Congress on January 6, 2021, and (2) admitting evidence or arguing that unidentified third parties worked in concert with law enforcement to cause the same delay. The Court should issue this order because such evidence is irrelevant under Rule 401 of the Federal Rules of Evidence. Insofar as any of the evidence is relevant, it is also more prejudicial than probative, raises a substantial danger of wasting the court’s time, and confuses the issues under Rule 403.

**I. Factual and Procedural Background**

On January 6, 2021, the United States Congress held a Special Joint Session to certify the Electoral College’s vote electing Joseph R. Biden as the 46th President of the United States. At 2:13 p.m. on that day, rioters breached the United States Capitol Building by climbing through broken windows and kicking in the locked Senate Wing Door. As a result of the breach, Congress suspended its session until the United States Capitol Police and other law enforcement agencies cleared the building of rioters, which did not occur until late into the evening on

January 6.

The defendants entered the Senate Wing Door just over an hour after the initial breach and behind hundreds of other rioters who already went into the Capitol at the same location. Throughout the defendants' time in the Capitol, law enforcement kept a partial perimeter in the area to stymie the flow of people into the building. After several minutes, the defendants left through the same door that they entered.

On March 8, 2022, the defendants were charged by superseding information for violating (1) 18 U.S.C. § 1752(a)(1) (Entering and Remaining in a Restricted Building or Grounds), (2) 18 U.S.C. § 1752(a)(2) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds), (3) 40 U.S.C. § 5104(e)(2)(D) (Disorderly Conduct in a Capitol Building, and (4) 40 U.S.C. § 5104(e)(2)(G) (Parading, Demonstrating, and Picketing in a Capitol Building).

On October 23, 2022, the defendants filed a motion to compel discovery. ECF 69. This motion sought, among other things, discovery related to “[t]he identity . . . of any party working in cooperation with [law enforcement] who encouraged any activity among the crowd” on January 6 and information about the pipe bombs placed at the Democratic and Republican Party headquarters prior to January 6. *Id.* at 19, 21. This Court denied most of the relief sought in the motion, including the above two portions, in a Minute Order issued on November 7, 2022.

As the defendants sought discovery of these topics, the government believes the defendants may seek to introduce related material that they independently collected or probe witnesses with speculative questions at trial.

The case is scheduled for a jury trial on March 13, 2023.

## DISCUSSION

### I. Evidence Related to the Pipe Bombs is Irrelevant and Should Be Excluded

The Court may only admit evidence at trial if it is relevant to the matter at hand. Fed. R. Evid. 402. Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action. Fed. R. Evid. 401. In this case, the defendants are charged, in part, with “knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engag[ing] in disorderly or disruptive conduct . . . [that] in fact, impedes or disrupts the orderly conduct of Government business or official functions.” 18 U.S.C. § 1752(a)(2). Relevant evidence to this charge would either support or detract from a conclusion that the defendants in fact impeded or disrupted government business or official functions.

Criminal statutes generally require the government to show that a defendant’s actions were the but-for cause of the harm. Courts may, however, apply a different kind of causation, so-called duplicative causation, when there are multiple sufficient causes that could independently cause the harm. *See Burrage v. United States*, 571 U.S. 204, 214–15 (2014); *Causation*, BLACK’S LAW DICTIONARY (11th ed. 2019). Duplicative causation is the relevant standard for § 1752 because of the nature of protests generally and the facts specific to the Capitol riots on January 6, 2021.

In *United States v. Rivera*, the court directly addressed the question of causation as it relates to the January 6 cases. No. 21-cr-060 (CKK), 2022 WL 2187851, at \*6 (D.D.C. June 17, 2022). At a bench trial, defendant argued that he did not “in fact” cause the certification delay “because both Houses of Congress had recessed by the time he had entered the Capitol itself.”

*Id.* The court rejected this argument and found defendant guilty because the evidence at trial showed that “even the presence of one unauthorized person in the Capitol is reason to suspend Congressional proceedings.” *Id.* The court held that the government was not required to prove that the defendant was the but for cause of the delay, because doing so would require “read[ing] terms into statutory provisions that are not there.” *Id.* Additionally, the court explained that “it is likely often the case that [§ 1752(a)(2)] would be aimed at protests involving several people who collectively disrupt proceedings but where no individual person’s presence or actions would alone disrupt proceedings.” *Id.* at \*6 n. 15.

In their motion to compel, the defendants argued that the pipe bombs placed at the Democratic and Republican Party headquarters in Washington, DC “may be, in fact, a cause of any delay” to the Special Joint Session of Congress on January 6. ECF 69 at p. 21. Evidence of the pipe bombs, however, is irrelevant. As in *Rivera*, the Government anticipates the evidence at trial in this case will show that even a single person inside the Capitol on January 6 could have caused some delay to the session. Thus, even if defendants could demonstrate that pipe bombs did delay the certification of the Electoral College’s vote, the bombs’ existence does not detract from the defendants’ independent actions that impeded government business. As the pipe bombs makes no element of the charged offenses more or less probable, evidence of them is irrelevant and should be excluded.

## **II. The Court Should Exclude Speculative Evidence of Third-Party Cooperators**

In their motion to compel, the defendants also speculated that “other parties cooperating with the government” disrupted the Special Joint Session on January 6. Before a court allows argument on this point, the moving party must proffer the evidence to the court to show that such

evidence exists. Absent such a proffer, the court should exclude admission the evidence and bar argument about it. *See, e.g., United States v. Oliveras*, No. 21-cr-738 (BAH), 2023 WL 196525, \*1 (D.D.C. January 17, 2023) (excluding an affirmative defense related to January 6 because the defendant failed to proffer any evidence supporting the defense). To date, the government has not received any discovery from the defense supporting the existence of these so-called agent provocateurs, nor are undersigned counsel independently aware of any such evidence. Further, even if the defendants could produce such evidence, the evidence would not be relevant because, as explained above, the defendants were an independent cause to the delay of Congress. Therefore, the Court should exclude any evidence and argument speculating about these “other parties.”

Respectfully submitted,

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