

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

UNITED STATES OF AMERICA

v.

**CYNTHIA BALLENGER, and
CHRISTOPHER PRICE,**

Defendants.

Case No. 1:21-cr-00719 (JEB)

**DEFENDANTS' SECOND MOTION TO DISMISS COUNT IV OF THE
INFORMATION BASED ON A FACIAL CHALLENGE TO 40 U.S.C. §
5104(e)(2)(G) AND MOTION FOR DECLARATORY JUDGMENT UNDER 28
U.S.C § 2201 BASED ON THE FACIAL CHALLENGE**

Comes now Defendant Cynthia Ballenger (Cynthia Price) and Defendant Christopher Price, (together Defendants or the Prices) by and through undersigned counsel, and pursuant to Fed. R. Crim. P. 12(b)(3) and (5) and the First and Fifth Amendments to the U.S. Constitution seeking that the Court find that 40 U.S.C. § 5104(e)(2)(G) does not survive muster under the First and Fifth Amendments to the U.S. Constitution. Pursuant to Fed. R. Crim. P. 12(b)(3), a criminal defendant “may raise by pretrial motion any defense, objection, or request that the Court can determine without a trial on the merits.”

This Second Motion to Dismiss And Motion for Declaratory Judgment, is in addition, to a Motion to Dismiss the Superseding Information in the instant case on several and additional grounds, but that include that application of 40 U.S.C. §

5104(e)(2)(G) in the instant case would not meet the terms of the U.S. Constitution as-applied. The Prices also seek a declaration under 28 U.S.C. § 2201 that 40 U.S.C. § 5104(e)(2)(G) does not survive muster under the First and Fifth Amendments to the U.S. Constitution.

WHEREFORE, for the foregoing reasons, the Prices respectfully request that the Court that grant this motion and find that 40 U.S.C. § 5104(e)(2)(G) fails the First and Fifth Amendment of the U.S. Constitution and dismiss Count IV of the Superseding Information on that basis. The Prices also respectfully request the Court declare under 28 U.S.C. § 2201 that 40 U.S.C. § 5104(e)(2)(G) does not survive muster under the First and Fifth Amendments to the U.S. Constitution. The motion is supported by the accompanying memorandum of points and authorities in support.

Dated: July 20, 2022

Respectfully submitted,

/s/ Nandan Kenkeremath

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