

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

UNITED STATES OF AMERICA,

v.

DEBORAH LYNN LEE

Defendant.

CRIMINAL CASE NO.

CASE NO. 21-CR-00303-ABJ

**MOTION TO DISMISS
MULTIPLICITOUS COUNTS**

NOW COMES Defendant DEBORAH LYNN LEE, by and through her counsel of record, John M. Pierce, Esq., and respectfully request this Honorable Court dismiss the *superseding indictment* filed in this action, pursuant to Fed. R. Crim. P. 12(b) on the grounds of multiplitious counts.

As grounds for this motion counsel would state:

1. The Defendant is charged by indictment with:
 - A. Count 1 - 18 U.S.C. §1512(c)(2) and 2 (Obstruction of an Official Proceeding and Aiding and Abetting Obstruction of an Official Proceeding)
 - B. Count 2 – 18 U.S.C. § 1752(a)(1) (Entering or Remaining in any Restricted Building or Grounds).
 - C. Count 3 – 18 U.S.C. §1752(a)(2) (Disorderly and Disruptive Conduct in a Restricted Building).
 - D. Count 4 - 40 U.S.C. §5104(e)(2)(D) (Disorderly Conduct in a Capitol Building)

E. Count 5 - 18 U.S.C. §5104(e)(2)(G) (Parading, Demonstrating, or Picketing in a Capitol Building)

2. There are no factual allegations to support any of these charges stated by the Government's charging documents.

3. If one may strain to guess and speculate at the factual basis for these counts, all five (5) counts are merely 5 different legal theories for the exact same conduct, actions, and sequence of events.

4. Moreover, across all January 6 cases, the Government is arguing that "disorderly" and "disruptive" is being physically present. That is, the Government draws no distinction between trespassing and disorderly or disruptive conduct because the Government maintains that trespassing is disorderly and disruptive.

5. Simultaneously and in self-contradiction, the Government also maintains that disorderly and/or disruptive conduct – i.e., the same as mere trespassing – necessarily by its nature is obstruction of an official proceeding under 18 U.S.C. 1512(c)(2).

6. Therefore, the Government itself erases all distinction between disorderly and/or disruptive conduct under 40 U.S.C. §5104(e)(2)(D) and obstruction of an official proceeding under 18 U.S.C. 1512(c)(2), by arguing that all disorderly or disruptive conduct necessarily obstructs a Congressional proceeding *vel non*.

7. Convictions for all these counts would violate the Double Jeopardy Clause of the U.S. Constitution and would deny the Defendant the right to Due Process and a fair trial.

8. Moreover, the unnecessary multiplication of counts will prejudice a jury against Defendant Lee.

9. Confusing a lay jury with 5 different ways of criticizing the exact same conduct, actions, and/or sequence of events would falsely and deceptively lead the jury to believe that the charges are in effect five (5) times more serious or more certain than presenting that conduct just once.

10. 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.

11. 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).

12. The five counts of the 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).

13. 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)).

14. The statutes charged in the Counts are:

A. COUNT I: 18 U.S.C. § 1512(c)(2)

18 U.S.C. § 1512(c)

Whoever corruptly

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object’s integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so . . .

shall be fined . . . or imprisoned. . . .

B. COUNT II: 18 U.S.C. § 1752(a)(1)

18 U.S.C. § 1752. Restricted building or grounds states:

(a) Whoever—

(1) knowingly enters or remains in any restricted building or grounds without lawful authority to do so;

(2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engages in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions

* * *

C. COUNT III: 18 U.S.C. § 1752(a)(2)

18 U.S.C. § 1752(a)(2). Restricted building or grounds states:

(a) Whoever—

* * *

(2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engages in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions

* * *

D. COUNT IV: 40 U.S. Code § 5104 - Unlawful activities

* * *

(e) CAPITOL GROUNDS AND BUILDINGS SECURITY.—

* * *

(2) VIOLENT ENTRY AND DISORDERLY CONDUCT.—An individual or group of individuals may not willfully and knowingly—

* * *

(D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a

session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress;

* * *

(G) parade, demonstrate, or picket in any of the Capitol Buildings.

E. COUNT IV: 40 U.S. Code § 5104 - Unlawful activities

* * *

(e) CAPITOL GROUNDS AND BUILDINGS SECURITY.—

* * *

(2) VIOLENT ENTRY AND DISORDERLY CONDUCT.—An individual or group of individuals may not willfully and knowingly—

* * *

(D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress;

* * *

(G) parade, demonstrate, or picket in any of the Capitol Buildings.

WHEREFORE counsel respectfully requests that the court dismiss the repetitive, overlapping, or duplicative counts of the superseding indictment.

Dated: June 9, 2023

Respectfully submitted,

/s/ John M. Pierce
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CERTIFICATE OF SERVICE

I, John M. Pierce, hereby certify that on this day, June 9, 2023, I caused a copy of the foregoing document to be served on all counsel through the Court's CM/ECF case filing system.

/s/ John M. Pierce
John M. Pierce