

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

UNITED STATES

v.

YOUNG

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Case No. 1:23-cr-241

MOTION TO DISMISS ALL CHARGES FOR SELECTIVE PROSECUTION

CINDY YOUNG, by and through counsel, moves to dismiss all charges against her for selective prosecution.

INTRODUCTION

As January 6 prosecutions enter their fourth year, the Government is still actively arresting peaceful protestors who were merely present on January 6 and charging them with multiple misdemeanors and in some cases felonies. On the third anniversary of January 6, Attorney General Merrick Garland vowed that “the Justice Department will hold all January 6 perpetrators, *at any level*, accountable under the law — whether they were present that day or were otherwise criminally responsible for the assault on our democracy.”¹ On the other hand, the Government has not shown the same zeal in prosecuting protestors and rioters for Black Lives Matter or pro-Palestinian causes who engaged in similar or worse conduct than January 6 defendants. With each passing day that the Government continues its unprecedented crusade to identify and prosecute every individual caught on camera in the vicinity of the Capitol on January 6,² while at the same

¹ Office of Public Affairs | Attorney General Merrick B. Garland Delivers Remarks on Combating Violent Crime | United States Department of Justice, <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-combating-violent-crime> (emphasis added).

² On January 4, 2024, United States Attorney for the District of Columbia Matthew Graves indicated that every individual in the restricted area, even those who did not engage in violence, is guilty of a crime and that the Government will continue to hunt them down at least until the statute of limitation of January 6, 2026. *See* U.S. Attorney Matthew Graves on 3rd Anniversary of January

time turning a blind eye to protestors at other events who expressed different political viewpoints, the specter of selective prosecution of the January 6 defendants based on their viewpoints rather than their individual conduct becomes harder to ignore.

Defendant Cindy Young is an example that verges on parody. Ms. Young is a grandmother in her late sixties with no criminal record who peacefully walked through the Capitol for a few minutes with the stated intention “that her voice might be heard.” For that crime, she was designated a domestic terrorist, surveilled for months by the FBI, arrested two and a half years after the fact,³ placed in shackles, thrown in jail, charged with four crimes, and faces a lengthy prison sentence.

At least one member of the Metropolitan Police Department has expressed that, in his opinion, the Government is targeting January 6 defendants for political reasons and has turned a blind eye to Black Lives Matter rioters who committed life-threatening assaults on police that caused serious bodily harm. *See Exhibit A* (filed under seal). On April 12, 2024, Justices Thomas, Alito, and Gorsuch all expressed suspicion during oral argument that the Government has selectively applied felony charges to January 6 defendants where similarly situated defendants were not charged. On March 26, 2024, Judge Trevor McFadden of this Court admonished the Government for selectively targeting January 6 defendants “as a class.” *United States v. Seefried*, 1:21-cr-00287 (TNM), 2024 WL 1299371, at *7 (D.D.C. Mar. 26, 2024). In that case, the Government openly admitted that it believes January 6 defendants should be treated more harshly than other similarly situated defendants because of their alleged views regarding a “fiercely

6th Attack | C-SPAN.org <https://www.c-span.org/video/?532675-1/us-attorney-matthew-graves-3rd-anniversary-january-6th-attack>. The statute of limitations has not run for the George Floyd riots, yet no similar effort has been made to identify and arrest rioters and peaceful protestors captured on camera during those events.

³ Ms. Young was arrested on June 26, 2023.

contested presidential election” and a “political maelstrom.” *Id.* Judge McFadden rightly rejected this “fact-free approach.” *Id.*

In over sixty years prior to January 6, 2021, Ms. Young was a law-abiding citizen who respected and revered law enforcement. She only asks that the law be applied equally and that the same standard that is applied to others be applied to her. It is undeniable that those who protested in 2020 for Black Lives Matter and those that are protesting today for Palestine are held to a different standard than those, like Ms. Young, who *peacefully* protested on January 6, 2021. This is illegal, un-American, and erodes the public’s confidence in a fair system. In this motion, Ms. Young appeals to the Court to put an end to this madness by dismissing the charges against Ms. Young and send a message to the Government that selective prosecution of one political group while providing another political group a free pass will not be tolerated.

Cindy Young was a peaceful protestor.

It is undisputed that Cindy Young was a peaceful protestor on January 6, 2021. She is only charged with the standard boilerplate template of four misdemeanors that uniquely characterizes nonviolent January 6 defendants.⁴ She is not accused of any violence against law enforcement or others; she is not accused of any acts of vandalism or destruction of property; she is not accused of seditious conspiracy, insurrection, or coordinating with others; she is not even accused of any specific disorderly or disruptive conduct, other than her mere presence in a restricted area.

The worst allegation in the criminal complaint’s Statement of Facts (ECF No. 1-1) is that she is seen in an open-source video of unknown origin standing with a crowd that is allegedly

⁴ On January 4, 2024, U.S. Attorney Graves stated that “there was a range of criminal conduct among those who were in the mob,” and the January 6 defendants can be grouped into two categories: those who engaged in violence and those who did not. Despite an extensive investigation, the Government has not accused Ms. Young of anything other than being present in a restricted area. She is therefore undeniably in the category of those who did not engage in violence, and at the lowest end of the spectrum of the Government’s “range of criminal conduct.”

chanting “break it down.” But this accusation cuts against the Government because while the crowd is chanting, Ms. Young is clearly seen NOT chanting, with a look on her face that clearly indicates disapproval (see image below).



While the Government often includes incendiary statements made by January 6 defendants to inflame the passions of the jury and to show criminal intent, the worst the Government could come up with for Ms. Young was a picture of her on January 5, smiling while “holding a Trump ‘NO MORE BULLSHIT’ flag” (see image below),⁵ and a three second out of context media clip from January 5, 2021, where she said “I think our country is at a crossroad.”⁶



⁵ As the image shows, it is difficult to read the words on the flag, but the FBI special agent assigned to her case gratuitously made a point to spell out the message on the flag in the indictment, even though the message serves no probative value and would only serve to inflame the passions of a D.C. jury comprised from a jury pool that voted overwhelmingly – 92 percent – for Joe Biden in the 2020 election. *General Election 2020: Certified Results*, DC Board of Elections (Dec. 2, 2020), https://electionresults.dcboc.org/election_results/2020-General-Election.

⁶ https://www.facebook.com/watch/live/?ref=watch_permalink&v=420955879108590. Ms. Young appears for 3 seconds at the tail end of the 40-minute news segment, at 40:33-40:36.

According to the FBI special agent who interrogated Ms. Young, she admitted that “her stated goal was to get to the hearing room so that her voice might be heard.”

It is undisputed that Ms. Young has no criminal record, she was over 60 years old on January 6, 2021, and she is not a threat to anyone. Yet the FBI has designated Ms. Young as a terrorist. See **Exhibit B** (filed under seal). This terrorist designation affects her ability to travel and will have adverse ramifications on Ms. Young if she is convicted and sentenced to time in prison.⁷ The Government’s sole basis for the terrorist designation is that she had the misfortune of peacefully protesting on January 6, 2021, and not during a protest expressing a different viewpoint.

The routine charge for people arrested for protesting on Capitol Hill is a \$50 fine.

Had she engaged in the exact same conduct during the Justice Kavanaugh confirmation hearing or when a group of pro-Palestinian protestors stormed the Cannon Office Building on October 18, 2023, she would not have been charged with four misdemeanors, she would not be designated a terrorist, and she would not be forced to go to trial. During the Kavanaugh hearing, hundreds of protestors engaged in conduct similar to Ms. Young’s, but those protestors were sentenced to \$50 dollars fines.⁸ According to an official statement from the Capitol Police, reported by the New York Times, “[t]his is a routine charge on Capitol Hill. People who illegally demonstrate/disrupt Congress typically are released after they pay a \$50 fine, so the misdemeanor charge is resolved without going to court.” See **Exhibit C**.⁹

⁷ See, e.g., Officer of Inspector General, Audit of Federal Bureau of Prisons’ Monitoring of Inmate Communications to Prevent Radicalization, at 5, <https://oig.justice.gov/sites/default/files/reports/a20042.pdf>.

⁸ Here’s the Penalty Amy Schumer and Emily Ratajkowski Will Face for Arrest at Anti-Kavanaugh Protest (yahoo.com), <https://www.yahoo.com/entertainment/penalty-amy-schumer-emily-ratajkowski-004137475.html>.

⁹ Father of Marine Killed in Afghanistan Arrested After Yelling During Biden’s Speech - The New York Times (nytimes.com), <https://www.nytimes.com/2024/03/08/us/politics/abbey-gate-yelling-state-of-union.html>.

According to Pacer, the Government never brought charges against Ana Maria Anchila and Maria Gallagher, two protestors who famously obstructed United States Senator Jeff Flake inside the United States Capitol during the Kavanaugh hearing, and never brought charges against Huwaida Arraf, a Palestinian protestor who obstructed an official proceeding on October 18, 2023, while the Cannon Building was being stormed. Anchila, Gallagher, Arraf, and the hundreds of other protestors who were only subject to a \$50 fine or were not charged at all, are all similarly situated comparators. The only difference between their conduct and Ms. Young's conduct was that they had the good fortune to participate in a protest expressing a viewpoint favored by the Government, while Ms. Young had the misfortune of protesting on January 6, 2021.

The Frederick Douglass standard for selective prosecution.

Since January 6, 2021, the Court of Appeals for the District of Columbia recognized a plausible allegation of selective prosecution of political protestors when compared with Black Lives Matter protestors who engaged in similar or worse conduct. *Frederick Douglass Found. v. Dist. of Columbia*, 82 F.4th 1122 (D.C. Cir. 2023). The court held that a “selective enforcement claim has two elements: a plaintiff must demonstrate (1) he was similarly situated in material respects to other individuals against whom the law was not enforced, and (2) the selective enforcement infringed a constitutional right.” *Id.*, at 1136. “A defendant may demonstrate that the administration of a criminal law is ‘directed so exclusively against a particular class of persons . . . with a mind so unequal and oppressive’ that the system of prosecution amounts to ‘a practical denial’ of equal protection of the law.” *United States v. Armstrong*, 517 U.S. 456, 464-65 (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886)) (emphasis added). As Judge McFadden stated, the Government considers January 6 defendants like Ms. Young to be a particular class deserving of harsher enforcement of the criminal law based on their viewpoints regarding the upcoming

election. *Seefried*, 2024 WL 1299371, at *7. This is quintessential viewpoint discrimination under the *Frederick Douglass* standard. *Id.*, at 1142.

When considering the similarly situated element, courts must assess relevant prosecutorial factors, including but not limited to, “the strength of the case, the prosecution’s general deterrence value, the Government’s enforcement priorities, and the case’s relationship to the Government’s overall enforcement plan.” *Id.*, at 1137. This non-exhaustive list of factors weighs heavily in Ms. Young’s favor when she is compared to the Black Lives Matter and Palestinian protestors below.

When considering the strength of her case, her case is only strong because the Government engaged in the single largest investigation in the history of this country, the unprecedented collection and reviewing of tens of thousands of hours of video footage of the event, which seems to have included the use of artificial intelligence and facial recognition technology, and the collection of social media and private text messages. The Government also used confidential human sources and continuously solicits “tips,” even setting up a special hotline for citizens to call if they suspect that their neighbor or a stranger that they saw on social media may have traveled to D.C. on January 6. Had the Government engaged in the same investigation of the Black Lives Matter protests, the strength of those cases would be equal or greater to the case against Ms. Young.

This goes directly to the factors regarding “the Government’s enforcement priorities, and the case’s relationship to the Government’s overall enforcement plan.” The Government has prioritized Ms. Young’s case as if it were a terrorist threat, equal to or more serious than violent crime, sex and drug trafficking, border enforcement, immigration, and other ongoing and persistent problems plaguing the Nation. Several Government law enforcement agents, lawyers, and independent contractors have spent hours working on Ms. Young’s case - just reviewing this motion and drafting a response will take at least several hours – but her case could have been

adequately handled by a single person making a phone call to her and issuing her a \$50 ticket. The Government does not have unlimited resources, though the way it zealously pursues January 6 defendants, it seems as if it does. Every hour spent on Ms. Young's case is an hour that could be and should be spent pursuing a criminal who poses an actual threat to the community. The time, resources, and energy spent prosecuting Ms. Young given the lack of threat she poses, especially when compared to other criminals, shows that the Government's priorities and overall enforcement plan is warped and designed to selectively prosecute a certain group, including Ms. Young, based on their viewpoint.¹⁰

When considering the deterrence factor, deterrence obviously was and remains far more necessary for Black Lives Matter and Palestinian protests than it is for January 6 defendants. Black Lives Matter riots were characterized by violence, vandalism, assault on police, burning buildings and police cars, looting, and hateful chants and threats against police. By contrast, it is widely known that supporters of President Trump are generally associated with movements like Back the Blue and Blue Lives Matter that support law enforcement. January 6 was a one-time event that lasted several hours. Black Lives Matter riots persisted for weeks. As this motion is being filed, the Nation is grappling with how to deter the ongoing unlawful activity by Palestinian protestors including threats of violence directed at Jewish students, and in direct response, the House of Representatives overwhelmingly passed new legislation to combat antisemitism, in the hopes that the Government can use the new laws to deter these types of protests.

¹⁰ According to data from the United States Attorneys' Office, in fiscal year 2022, the same prosecutors that are prosecuting Ms. Young declined to prosecute 10,261, or 67 percent of 15,315 arrests made in D.C. That figure includes 8,238 declined misdemeanor arrests (72 percent) and 2,023 declined felony arrests (53 percent). *See* United States Attorneys' Annual Statistical Report: Fiscal Year 2022, at page 65, <https://www.justice.gov/usao/file/1574596/dl?inline>.

By the time Ms. Young was arrested, hundreds of January 6 protestors had been arrested and many had received sentences of years in prison. Supporters of President Trump get the point. But the Government has not taken measures to similarly deter Black Lives Matter and Palestinian protestors, as is evidenced, for example, by the fact that hundreds of Palestinian protestors stormed the Cannon Office Building on October 18, 2023, and somehow knew that they would not be subject to the same treatment as the January 6 defendants – who were still being rounded up at the time. In the wake of January 6, it is impossible to imagine hundreds of Trump supporters storming a building in Washington, D.C, or anywhere in the country, and in fact, nothing of the kind has occurred. The fact that Trump supporters are chilled and deterred from engaging in protests while those who have other viewpoints are not, demonstrates that the general public perceives the Government’s policy of selective prosecution of certain viewpoints. After over three years and well over 1,000 January 6 prosecutions, the “prosecutorial deterrence value” of Ms. Young’s case is zero, whereas the Government has failed to exercise its prosecutorial discretion to deter others who have been given the impression that protestors for other viewpoints enjoy a free pass.

Moreover, when considering whether Ms. Young is a similarly situated comparator, the comparison is not only between the events at the Capitol on January 6 and “the large Black Lives Matter protests that occurred over weeks.” Rather, the Court must consider whether Ms. Young was similarly situated to “any individual” against whom the Government did not enforce the law. *Frederick Douglass*, 82 F.4th, at 1139. Accordingly, the Government cannot avoid the issue by simply asserting that January 6 was a unique event in history, because the comparison is between “individual” conduct, not between the surrounding circumstances.

Similarly situated comparators during the George Floyd riots of 2020.

There are thousands of similarly situated comparators that demonstrate the Government's selective prosecution of Ms. Young and other January 6 defendants when compared with other political protests. As an example, the Government has charged hundreds of January 6 defendants, including many peaceful protestors, with 18 U.S.C. § 231(a)(3), which according to the language of the statute can be brought against a person for committing or attempting to commit "any act" that obstructs, interferes, or impedes with a law enforcement officer responding to a "civil disorder." Outside the District of Columbia, during the George Floyd riots the Government only charged a total of 65 protestors with the same charge, only one charge in Minneapolis and 19 in Portland where the riots were the worst. *United States v. Mehaffie*, 1:21-cr-40, ECF Nos. 538-1, 538-2

During the riots in Minneapolis, CNN provided live coverage as the cheering mob gathered and hurled fireworks at the Third Precinct Police Station as it burned in flames. CNN's law enforcement expert reported:

Police had made a calculated decision that they are not going to enforce what we are seeing behind us. There is fire being set to the police department as you can hear what's going on behind us, there are fireworks going off, people climbing up the side of the building. They made the calculated decision that they are not going to stop people from doing that. I think the reason is they know that any type of police presence here is going to be met with aggression and agitation by this crowd that is clearly unhappy. We were just three blocks away at a financial institution that was on fire. The fire department was there but they were keeping a distance, they were not moving in to fight this fire, not wanting to put themselves in jeopardy or danger from this crowd that was clearly agitated . . . They are going to let this building burn . . . They know the decision right now is you lose a building, or you lose lives, potentially.¹¹

¹¹ CNN reporter says 'zero' police presence as Minneapolis precinct burns - YouTube, www.youtube.com/watch?v=5051AvIGCj0.

The video shows that the Police were obstructed, impeded, and interfered with while responding to the civil disorder. If the January 6 standard of prosecution was applied equally, the Government would still be hunting down and arresting every individual in that crowd and charging them with 18 U.S.C. § 231(a)(3). But instead, two different standards were applied, and the Government did not treat the participants in that riot in the same manner as they treated Ms. Young and other January 6 defendants. Had Ms. Young stood with that crowd and actually cheered as the police station burned, she would not have been arrested.¹²

In each and every city where George Floyd/Black Lives Matter riots occurred, there were literally thousands of similarly situated comparators who were not arrested or charged at all and were not investigated or surveilled. Those riots were among the worst in United States history, causing an estimated \$2 billion in damage¹³ and claiming the lives of at least 17 people, law enforcement personnel including a federal officer,¹⁴ and retired Police Officer David Dorn who was shot dead at point blank range.

While certain individuals were arrested for especially violent conduct at the time of the riots, there are no reports of peaceful protestors like Ms. Young being arrested and charged with

¹² See also Violent George Floyd protests at CNN Center unfold live on TV (youtube.com) <https://www.youtube.com/watch?v=Yve9DhT8Nt4>. Dozens of protestors are seen on camera committing violence and threatening the lives of police and others outside of CNN's office in Atlanta, yet the Government only brought 7 cases of 18 U.S.C. § 231(a)(3) in the Northern District of Georgia. If the January 6 standard had been applied, each of the people easily identified on camera would have been charged with federal crimes. Every individual caught on camera in that scene who was not arrested is a similarly situated comparator to Ms. Young. As the MPD officer stated in his interview (Exhibit A), the Government showed no interest in pursuing those protestors, yet Ms. Young was designated a terrorist, surveilled, arrested, shackled, thrown in jail, and charged with multiple crimes.

¹³ Vandalism, looting following Floyd death sparks at least \$1B in damages nationwide: report | The Hill, <https://thehill.com/homenews/news/516742-vandalism-looting-after-floyd-death-sparks-at-least-1-billion-in-damages-report/>.

¹⁴ Authorities identify federal officer killed in Oakland during George Floyd protest (nbcnews.com) <https://www.nbcnews.com/news/us-news/authorities-identify-federal-officer-killed-oakland-during-george-floyd-protest-n1220516>.

multiple crimes for peacefully protesting in the vicinity of the violent acts, and there certainly was not a manhunt to find peaceful protestors for years after the riots. The Government cannot point to a single individual with no prior criminal record who peacefully protested during a George Floyd riot that was subsequently designated a domestic terrorist, surveilled by the FBI, arrested, placed in shackles, thrown in jail, charged with multiple misdemeanors, and justifiably feared conviction and a sentence of months or years in prison. That is the standard that is being applied to Ms. Young but was not applied to the thousands of similarly situated comparators during the George Floyd riots.

Attorney Merrick Garland described January 6, at its worst, as a “sustained barrage of repeated, violent attacks” on law enforcement at the Capitol, that lasted “several hours.” The Black Lives Matter/George Floyd riots constituted a “sustained barrage of repeated, violent attacks” on entire cities, police departments, federal buildings, small businesses, and residential neighborhoods across the country that lasted several weeks. Yet, according to AG Garland, only January 6 necessitated the Government to engage “in what has become one of the largest and most complex and resource-intensive investigations in our history.”¹⁵ The FBI and DOJ have diverted resources that are normally allocated to combatting actual terrorism, organized crime, drug and sex trafficking, and other serious matters to pursue January 6 defendants like Ms. Young who could have been released with a \$50 fine.

Similarly situated comparators during the ongoing Palestinian protests since October 7, 2023.

Since October 7, 2023, a wave of coordinated Palestinian protests across the country has turned disorderly and violent, from Capitol Hill to colleges campuses. These protests have affected

¹⁵ Office of Public Affairs | Attorney General Merrick B. Garland Delivers Remarks on Combating Violent Crime | United States Department of Justice, <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-combating-violent-crime>

interstate commerce by shutting down airport highways and key bridges into U.S. cities,¹⁶ and have involved assaults on Capitol Police officers, destruction of federal property, trespassing on federal restricted areas, threats of violence directed at Congressional lawmakers, and threats of violence directed at Jews.

On October 18, 2023, Capitol Police arrested hundreds of pro-Palestinian protesters who stormed and flooded the Cannon House Office Building, ignoring Capitol Police's express alerts that protestors were not allowed inside the restricted area, and resisting Capitol Police for hours as they worked to clear the crowd from the Rotunda.¹⁷ This all occurred while Capitol Police told members of Congress to shelter in place after officers received intelligence that lawmakers could be targeted during a pro-Palestinian protest in Washington, D.C.¹⁸ The peaceful protestors were subject to the George Floyd standard and were issued \$50 fines and released.¹⁹

On November 4, 2023, "tens of thousands" of pro-Palestinian protestors demonstrated in Washington D.C., "vandalizing the White House fence and wrenching at the gate," and at least one protestor attempted to "scale [the] White House Fence."²⁰ The protest also included acts of

¹⁶ Pro-Palestinian demonstrators block roads to Chicago airport, Golden Gate Bridge and more | AP News, <https://apnews.com/article/protests-chicago-ohare-palestinian-war-traffic-30da0602309a1645a5c59e10bce83b9c>.

¹⁷ Hundreds arrested after Pro-Palestinian demonstrators flood Cannon Rotunda, Capitol complex (fox5dc.com), <https://www.fox5dc.com/news/pro-palestinian-protest-underway-at-capitol-rotunda-uscp-detains-some-demonstrators-israel-hamas-war-capitol-hill-jewish-voices-for-peace>

¹⁸ Marjorie Taylor Greene Told to 'Stay Inside' During Pro-Palestinian Protest (msn.com) <https://www.msn.com/en-us/news/world/marjorie-taylor-greene-told-to-stay-inside-during-pro-palestinian-protest/ar-AA1irJQa?ocid=msedgntp&cvid=7efa38c96bed43a79b7b36e49183047d&ei=16>.

¹⁹ Hamilton rabbi among protesters arrested in pro-Palestinian demo on Capitol Hill, given fine and released | CBC News, <https://www.cbc.ca/news/canada/hamilton/hamilton-david-mivasair-arrested-capitol-hill-1.7001386>.

²⁰ Just 1 arrest after pro-Palestinian DC protest spurs acts of vandalism, bid to scale White House fence | Fox News, <https://www.foxnews.com/politics/pro-palestinian-dc-protest-yields-just-1-arrest-vandalism-protesters-trying-scale-white-house-fence>, (last visited Jan. 16, 2024). *See also*, Thousands at Washington pro-Palestinian protest, with some chanting 'Intifada' and rushing White House fence - Jewish Telegraphic Agency (jta.org),

vandalism, antisemitic threats, and damage to the McPherson Square Metro Station and several police vehicles. *Id.* Despite this widespread trespassing on restricted areas in violation of federal law, only a single arrest was made by the Metro Police, and no arrests were made by the Federal Government. *Id.*

On November 15, 2023, a group expressing the same political views violently stormed the DNC headquarters, injuring six police officers. According to U.S. Capitol Police, officers had worked “to keep back approximately 150 people who [were] illegally and violently protesting” in the area.²¹ Leading democratic lawmakers had to be evacuated, while “protestors moved dumpsters in front of the exits and pepper sprayed police officers.” *Id.* The Capitol Police described the actions as “illegal” and “not peaceful,” yet “one person was arrested for allegedly punching a female officer.” *Id.*

On January 13, 2024, a group expressing the same political views returned as “Anti-Israel protesters and rioters gathered outside the White House on Saturday night, with some demonstrators damaging security fencing and hurling objects at police.”²² According to news reports, “some fences were damaged outside the White House, and . . . staff members and journalists were ‘relocated’ as a result.” *Id.* Police described the actions of the protestors as “violence, destructive behavior, and criminal activity,” but “[t]he Secret Service made no arrests associated with the march.” *Id.*

<https://www.jta.org/2023/11/05/politics/thousands-at-washington-pro-palestinian-protest-with-some-chanting-intifada-and-rushing-white-house-fence>, (last visited Jan. 16, 2024).

²¹ Top House Democrats evacuated from DNC headquarters as police clash with protesters calling for Gaza ceasefire | CNN Politics, <https://www.cnn.com/2023/11/15/politics/dnc-headquarters-violent-protest-democrats-evacuated/index.html>, (last visited Jan. 16, 2024).

²² White House staff ‘relocated’ after pro-Palestinian rioters damage anti-scale fencing, hurl objects at cops (yahoo.com), https://news.yahoo.com/white-house-staff-relocated-pro-025040630.html?fr=sycsrp_catchall, (last visited Jan. 16, 2024).

The selective enforcement infringes on Ms. Young's Constitutional right.

The second element of selective prosecution is “the infringement of a constitutional right.” *Frederick Douglass*, 82 F.4th, at 1140. “Selective enforcement of a neutral and facially constitutional law may run afoul of the First Amendment if the government’s prosecutorial choices turn on the *content or viewpoint* of speech.” *Id.* at 1141 (emphasis added). Applying this legal framework, it is undeniable that the Government permitted individuals expressing the Black Lives Matter and Palestinian message to commit numerous misdemeanors and felonies, as evidenced by the widespread unlawful activity set forth above. By making no arrests of peaceful protestors, or else releasing them with only \$50 fines, the Government “effectively exempted advocates of the ‘Black Lives Matter’ message from the requirements of the [laws].” *Id.* at 1142. In contrast, the Government has designated Ms. Young as a terrorist, surveilled her, arrested her after two-and-a-half years, shackled her, threw her in jail, and is prosecuting her to the fullest extent of the law.

The uniquely harsh and persistent prosecution of peaceful protestors on January 6, to the exclusion of peaceful protestors during the multitude of Black Lives Matter riots during the same period is clear evidence that the Government’s selective prosecution turns on viewpoint or at least content of speech. Ms. Young expressed that her stated goal in protesting on January 6 was so that “her voice may be heard.” The Government has so far presented no evidence that she had any other motive. The Government has openly expressed antipathy towards so-called “MAGA Republicans,” and openly announced that the millions of Americans who support President Trump constitute a “threat[to] the very foundations of our republic.”²³ On the other hand, the Government has openly expressed sympathy with the Black Lives Matter/George Floyd and Palestinian

²³ See, e.g., Biden attacks Trump and MAGA Republicans as threat to American democracy - ABC News (go.com), <https://abcnews.go.com/Politics/biden-attacks-trump-maga-republicans-threat-american-democracy/story?id=89121094>.

protestors.²⁴ It is clear and beyond dispute by reasonable minds that the Government has favored other viewpoints above the perceived viewpoint of the January 6 defendants.

Regardless, as this is a First Amendment selective enforcement claim, Ms. Young is not required to show discriminatory intent, only discriminatory effect when compared with similarly situated comparators. *Frederick Douglass*, 82 F. 4th, at 1145-46. The standard of selective prosecution that requires clear evidence that the selective prosecution “was motivated by a discriminatory purpose” set forth in *United States v. Armstrong*, 517 U.S. 456 (1996), is only applicable to selective prosecution claims under the Fifth and Fourteenth Amendments’ equal protection, and not applicable here.²⁵

CONCLUSION

The Government wants to make every January 6 case about January 6, but as Judge McFadden stated, that is a “fact free approach.” The Government’s targeting of January 6, defendants “as a class” for harsher punishment, as opposed to assessing the individual conduct of each defendant, meets the standard for selective prosecution set forth in *Frederick Douglass*.

²⁴ 'We have to act': Biden meets with George Floyd's family on anniversary of his murder (nbcnews.com), <https://www.nbcnews.com/politics/white-house/biden-meet-george-floyd-s-family-anniversary-his-murder-n1268467>. *See also* Three Former Officers Convicted of Violating George Floyd’s Rights - The New York Times (nytimes.com), <https://www.nytimes.com/2022/02/24/us/guilty-verdict-george-floyds-rights.html> (“‘The Justice Department will continue to seek accountability for law enforcement officers whose actions, or failure to act, violate their constitutional duty to protect the civil rights of our citizens,’ Mr. Garland said in a statement. ‘George Floyd should be alive today.’”).

²⁵ In other January 6 cases the Court only reviewed selective prosecution under the Fifth Amendment analysis. These motions were decided prior to *Frederick Douglass* where the Court clarified the law with respect to selective prosecution and distinguished between First and Fifth Amendment claims. *See, e.g., United States v. Padilla*, 1:21-cr-214 (JDB), at *8 (D.D.C. Feb. 13, 2023). Undersigned counsel is not aware of any January 6 cases that have addressed the issue of selective prosecution under the First Amendment since the Court’s ruling in *Frederick Douglass* on August 15, 2023.

It is undisputed that Cindy Young was a peaceful protestor, and the Government cannot dispute that it applied a different standard to thousands, perhaps millions, of similarly situated peaceful protestors who engaged in similar or worse conduct during protests that expressed different viewpoints than the viewpoints expressed on January 6. The George Floyd riots were more deadly and destructive than the event of January 6 by every conceivable metric. The damage and casualties on January 6 were less than or equal to the damage and casualties suffered by small businesses, law enforcement, and ordinary American citizens in at least a dozen of the George Floyd riots in cities across the country.

The Government often argues that peaceful protestors like Ms. Young deserve harsher punishments and deserve to be labeled as domestic terrorists because peaceful protestors on January 6 participated in an “attack on the cornerstone of our system of government.”²⁶ But that argument cuts directly against the Government. In essence, the Government argues that certain peaceful protestors who engaged in identical conduct during devastating riots should be given a free pass because those protestors opposed racial injustice while Ms. Young should be collectively punished as a J6er solely because she opposed something else. In *Frederick Douglass*, the court found selective prosecution because the Government strictly enforced the law against a group with a certain viewpoint, while giving a free pass to Black Lives. Ms. Young is a victim of the very same selective prosecution.

There is no evidence or accusation that Ms. Young had any involvement or even knowledge of the violent and destructive acts that occurred on January 6. The Criminal Complaint against her contains no allegations or evidence suggesting that she should have been issued anything more

²⁶ Office of Public Affairs | Attorney General Merrick B. Garland Delivers Remarks on Combating Violent Crime | United States Department of Justice, <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-combating-violent-crime>.

than a \$50 fine. Yet the Government is seeking to punish her based purely on guilt by association, “a principle repugnant to our society.” *Adler v. Board of Education*, 342 U.S. 485, 508 (1952) (J. Douglas, dissenting). The Government has already expended inordinate resources investigating, surveilling, arresting, and prosecuting a senior citizen with no criminal record who is only charged with four misdemeanors that can all be essentially boiled down to trespassing. These resources would not have been expended on her if she had protested in the same manner at a different time and location with a different viewpoint.

By dismissing this case, the Court will force the Government to reflect on its unprecedented, misguided, and quixotic quest to prosecute every last grandmother who protested on January 6, and spare the public and the Court from further wasteful expenditure of time and resources prosecuting the thousands of additional January 6 cases that the Government plans to bring before this Court over the next two years.

For those reasons, and for the reasons stated herein, the Defendant respectfully requests that the Court dismiss the charges against her based on selective prosecution.

Dated: May 20, 2024

Respectfully submitted,

/s/ Jonathan Gross
Jonathan Gross, Esq.
BAR ID: MD 0126
2833 Smith Ave, Suite 331
Baltimore, MD 21209
(443) 813-0141
jonathansgross@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being served on opposing counsel via email on

May 20, 2024

/s/ Jonathan Gross