

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

UNITED STATES OF AMERICA	:	
	:	CASE NO. 23-cr-241-GMH
v.	:	
	:	
CINDY YOUNG,	:	
Defendant.	:	
	:	

**GOVERNMENT’S OPPOSITION
TO DEFENDANT’S MOTION TO DISMISS COUNT ONE FOR SELECTIVE
PROSECUTION**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully files this Opposition to Defendant Cindy Young’s Motion to Dismiss for Selective Prosecution. ECF No. 33. Young echoes similar motions denied by courts in this jurisdiction, with one key exception: Young has been charged only with misdemeanor violations, violations which depend on her conduct having taken place in a Capitol Building or in an area where a Secret Service protectee was or would be visiting. Young does not – and cannot – explain how these charges were even an option for “George Floyd/Black Lives Matter” rioters in cities like Minneapolis, Atlanta, or Portland, whom she claims have been treated differently.¹

¹ Courts in this district have uniformly denied selective prosecutions brought by January 6 defendants; to the government’s knowledge, the defendants filing these losing motions – which make similar or identical arguments as Young – were charged more severely than Young, with felonies. . See e.g., *United States v. DaSilva*, 21-cr-564 (CJN) (July, 12, 2023)); Order, *United States v. Miller*, 21-cr-119 (CJN), ECF No. 67 (Dec. 21, 2021); *United States v. Bennet*, 21-cr-312 (JEB), ECF No. 145, 2023 WL 6847013 (D.D.C. Oct. 17, 2023); *United States v. McHugh*, 21-cr-453 (JDB), ECF No. 92, 2023 WL 2384444, at *13 (D.D.C. Mar. 6, 2023); *United States v. Padilla*, 21-cr-214 (JDB), ECF No. 67, 2023 WL 1964214, at *4-6 (D.D.C. Feb. 13, 2023); and *United States v. Judd*, 579 F. Supp. 3d 1, 5-9 (D.D.C. 2021); *United States v. Costianes*, 21-cr-180 (RJL) (Apr. 27, 2023 Minute Order); *United States v. Groseclose*, 21-cr-311 (CRC), ECF No. 67 ((Oct 27, 2023); *United States v. Brock*, 21-cr-140 (JDB), ECF No. 57, 2022 WL 3910549, at *11-12 (D.D.C. Aug. 31, 2022); *United States v. Rhodes*, 22-cr-15 (APM), ECF No.

Even as to comparators who could be subject to liability for the same misdemeanors as Young, Young’s motion fails for the same reason as the many others brought by January 6 defendants: she fails to show that she has been treated differently than other similarly situated individuals. As Judge McFadden—the same judge whose comments Young cites—noted in denying a similar motion: January 6 rioters “endangered hundreds of federal officials in the Capitol complex. Members of Congress cowered under chairs while staffers blockaded themselves in offices, fearing physical attacks from the rioters...” *United States v. Judd*, 579 F. Supp. 3d 1, 8 (D.D.C. 2021). For this reason, none of the examples cited in *Judd* (which focused on the summer 2020 riots) or here “committed roughly the same crime under roughly the same circumstances.” *Id.* (citation omitted). Because she fails to show that any comparators are similarly situated, Young cannot meet the heightened standard required under *United States v. Armstrong*, 517 U.S. 456 (1996), to make out a selective prosecution claim. The Court should deny her motion.

FACTS

The Court is aware of the background facts regarding the January 6 riot at the U.S. Capitol, which disrupted Congress’s certification of the electoral college vote and forced it to evacuate the House and Senate Chambers. *See* ECF No. 1-1 (“Statement of Facts”).

On January 6, 2021, the defendant was among the crowd who breached the restricted perimeter and entered the U.S. Capitol Building. After entering the restricted grounds, Defendant Young immersed herself in the crowd gathering on the West Plaza, where she yelled “Our House!” along with others in the crowd. Ignoring police munitions in the area, Young, scaled the side of the Northwest staircase, helped by two other rioters who pulled her up, and reached the Upper

238, 2022 WL 3042200, at *4- 5 (D.D.C. Aug. 2, 2022); and *United States v. Griffin*, 549 F. Supp. 3d 49, 58 (D.D.C. 2021).

West Terrace. At approximately 2:22 p.m. – three minutes before the Vice President was even evacuated –she entered the U.S. Capitol Building through the Senate Wing Door, less than ten minutes after it was first breached, while chanting “USA!” Young traveled from the first floor of the U.S. Capitol Building to the second, where she passed through the Rotunda and Statuary Hall, yelling statements like “This place needs a good saging!”, “That’s right! We own it-we own you!”, and chanting “USA!” before joining the growing crowd directly outside the House of Representatives Chamber—all while carrying an American flag and what appears to be a ‘Trump’ flag. The crowd grew in size and animosity, and House members and staff had to evacuate due to the crowd’s presence. Some, however, could not evacuate right away, and remained trapped in the Chamber gallery. The crowd chanted “Stop the Steal” and “USA” before forcibly overrunning officers and pushing forward to the House Main Doors. Defendant Young was amongst the crowd as it surged forward towards the Main Doors (comprised of three sets of doors leading to the floor). Here, the crowd chanted “break it down!” while referring to the final doors, on the other side of which stood officers with guns drawn, the last line of defense. Some of the crowd, including Young, eventually left the House Main Doors and made their way to the Speaker’s Lobby where members of the crowd attempted to access the floor by smashing through the Lobby door windows. Due to the crowd’s violent breach of the Speaker Lobby doors, a rioter was shot. During subsequent interviews, the defendant admitted that: 1) the scene outside the Capitol felt like a “war zone” and 2) she had entered the U.S. Capitol Building on January 6, 2021, claiming that her intended goal was to get to the “hearing room” to have her voice heard.

On June 26, 2023, the defendant was arrested on a complaint issued by this Court. Minute Entry 06/26/2023. The complaint charged the defendant with violating 18 U.S.C. § 1752(a)(1) (Count One), 18 U.S.C. § 1752(a)(2) (Count Two), 40 U.S.C. § 5104(e)(2)(D) (Count Three), and 40 U.S.C. § 5104(e)(2)(G) (Count Four) in connection with her entry and conduct within the restricted United States Capitol Building and grounds on January 6, 2021. ECF No. 1. Young was

told of her arrest warrant over the phone, given the option to turn herself in, turn herself in without FBI presence, processed, and released all on the same day.

ARGUMENT

Young's motion is based primarily on her view that she is similarly situated to individuals who participated in riots in the summer of 2020 and individuals who disrupted confirmation hearings, all of whom she claims were treated more leniently. These are the same claims that many courts in this district have rejected, understanding that January 6 was a unique attack on the peaceful transfer of power that threatened the entire membership of Congress and the Vice President and resulted in hundreds of officer assaults. The one additional example Young cites, pro-Palestinian protestors who entered the Cannon Office Building (not the Capitol Building itself) and who gathered outside the White House but did not actually trespass (unlike Young, who breached a restricted area), suffers from the same defect. Next, Young mischaracterizes comments made by Judge McFadden in *United States v. Seefried*, 21-cr-287 (TNM), ECF No. 91, 2024 WL 1299371 (D.D.C. Mar. 26, 2024). Young completely ignores the fact Judge McFadden had denied a similar motion to dismiss for selective prosecution, and that the comments came in a different context and did not actually reflect the judge's belief that selective prosecution had occurred. Young's remaining "evidence" – a chart provided by the government in connection with a §§111 and 231 sentencing, commentary on Young's personal characteristics, the investigation into Young, the stray comments of a single Metropolitan Police Department officer and non-specific references to comments by Supreme Court justices during oral argument – all fail to make the key showing: that Young is similarly situated to groups who have been treated differently based on political affiliation. Much of Young's arguments are "personal conclusions based on anecdotal evidence" *United States v. Padilla*, 21-cr-214, ECF No. 67, 2023 WL 1964214, at *4-6 (D.D.C. Feb. 13, 2023) (citing and quoting *Armstrong*, 517 U.S. at 470), and do not advance her case.

Young’s motion thus fails to meet the threshold evidentiary showing to overcome the well-established presumption of regularity afforded prosecutorial charging decisions. No court in this district has granted a motion to dismiss based on selective prosecution in the January 6 context, and her brief provides no reason for this Court to diverge from that path.

A. Legal Framework

A “presumption of regularity supports . . . prosecutorial decisions” such that “in the absence of clear and convincing evidence to the contrary, courts presume that [the Attorney General and United States Attorneys] have properly discharged their official duties.” *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (internal quotation marks and citations omitted). This presumption exists because “the decision to prosecute is particularly ill-suited to judicial review.” *Wayte v. United States*, 470 U.S. 598, 607 (1985). “Such factors as 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 are not readily susceptible to the kind of analysis courts are competent to undertake.” *Id.*; see also *United States v. Fokker Servs. B.V.*, 818 F.3d 733, 741 (D.C. Cir. 2016) (“[J]udicial authority is . . . at its most limited when reviewing the Executive’s . . . charging determinations” because “the Judiciary . . . generally is not competent to undertake that sort of inquiry.”) (internal quotation marks and citations omitted). The presumption of regularity “also stems from a concern not to unnecessarily impair the performance of a core executive constitutional function.” *Armstrong*, 517 U.S. at 465.

A claim of selective prosecution seeks to rebut the presumption of regularity by “assert[ing] that the prosecutor has brought the charge for reasons forbidden by the Constitution,” *Armstrong*, 517 U.S. at 463, “such as race, religion, or other arbitrary classification,” *id.* at 464 (citation omitted). That standard requires proof that the prosecution “had a discriminatory effect

and that it was motivated by a discriminatory purpose.” *Wayte*, 470 U.S. at 608; *see also Armstrong*, 517 U.S. at 465. “[T]he standard is a demanding one.” *Armstrong*, 517 U.S. at 463. “[T]he D.C. Circuit has called for a two-pronged showing that: (1) the defendant was ‘singled out for prosecution from among others similarly situated’ and (2) ‘the prosecution was improperly motivated *i.e.*, based on race, religion or another arbitrary classification.’” *United States v. Stone*, 394 F. Supp. 3d 1, 30 (D.D.C. 2019) (quoting *Branch Ministries v. Rossotti*, 211 F.3d 137, 144 (D.C. Cir. 2000)); *see also Irish People, Inc.*, 684 F.2d at 946. “This is a rigorous test; ‘the conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation.’” *United States v. Mangieri*, 694 F.2d 1270, 1273 (D.C. Cir. 1982) (quoting *Oyler v. Boles*, 368 U.S. 448, 456 (1962)). More recently, in the First Amendment context, the D.C. Circuit has held that, “to make out a First Amendment selective enforcement claim, the [individual] is not required to allege discriminatory intent.” *Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122 1144-45 (D.C. Cir. 2023) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 165 (2015)) (citations omitted). Discriminatory effect—a showing that the defendant has been treated differently from similarly situated individuals—is still required. *Id.* at 1145.

A district court judge has previously explained that an individual may be similarly situated to the defendant if:

“[He] committed the same basic crime in substantially the same manner as the defendant—so that any prosecution of that individual would have the same deterrence value and would be related in the same way to the Government’s enforcement priorities and enforcement plan—and against whom the evidence was as strong or stronger than that against the defendant.”

Stone, 394 F. Supp. 3d at 31 (Berman Jackson, J.) (quoting *United States v. Smith*, 231 F.3d 800, 810 (11th Cir. 2000)); see also *United States v. Lewis*, 517 F.3d 20, 27-28 (1st Cir. 2008).² “Defendants are similarly situated when their circumstances present no distinguishable legitimate prosecutorial factors that might justify making different prosecutorial decisions with respect to them.” *Branch Ministries*, 211 F.3d at 145 (citing *United States v. Hastings*, 126 F.3d 310, 315 (4th Cir. 1997)). The phrase “similarly situated” is “narrowly” interpreted. *Judd*, 579 F. Supp. 3d at *4 (quoting *Stone*, 394 F. Supp. 3d at 31). Among the factors that must be considered when determining if defendants are “similarly situated” are “the comparability of the crimes, the similarities in the manner in which the crimes were committed, the relative efficacy of each prosecution as a deterrent, and the equivalency of the evidence against each prospective defendant.” *Lewis*, 517 F.3d at 27-28 (internal citations omitted).

B. Argument

Young alleges that the government has selectively targeted her for prosecution based on her political beliefs but fails to adduce any credible evidence—as *Armstrong* demands—supporting an inference that (1) the government has treated her differently than other similarly situated defendants, or (2) any such disparity implicates her political association. From its opening lines, which falsely characterize those who invaded the Capitol and committed crimes on January 6 as “peaceful protestors,” (Mot. at 1) Young’s motion betrays her own bias, not the government’s.

² “A similarly situated offender is one outside the protected class who has committed roughly the same crime under roughly the same circumstances but against whom the law has not been enforced. [...] A multiplicity of factors legitimately may influence the government’s decision to prosecute one individual but not another. These may include, inter alia, the comparability of the crimes, the similarities in the manner in which the crimes were committed, the relative efficacy of each prosecution as a deterrent, and the equivalency of the evidence against each prospective defendant.” (internal citations omitted).

Young's primary argument is that the government has prosecuted participants in the January 6 attack more aggressively than those who created disturbances in during Congressional hearing or rioters who committed crimes during riots related to Black Lives Matter/George Floyd protests. She fails to establish that any of these individuals are similarly situated to violent members of the January 6 mob, who like her, made their way within feet of the House Chamber floor as members and staff had to evacuate and shelter in place.

i. Young is not similarly situated to other government building protesters.

First, Young's conduct is far different than the conduct she cites of protestors at Justice Kavanaugh's confirmation hearings or in a recent protest at the Cannon Building. Mot. at 5-6 and 13. Fundamentally, none of those other instances involved anywhere near the scale of violence or threats to Congress and to the peaceful transfer of power presented by the mob that Young joined—most dramatically illustrated when they angrily banged on the House Main Doors as trapped lawmakers sheltered inside, defended by only a few officers. Young's actions were not just disorderly and disruptive, they came with a threat to the safety of the Vice President, Congressional members, and staff. Every rioter, whether or not they personally engaged in violence or personally threatened violence, contributed to this harm. *See, e.g., United States v. Rivera*, 21-cr-60 (CKK), ECF No. 62 at 13 (“Just as heavy rains cause a flood in a field, each individual raindrop itself contributes to that flood. Only when all of the floodwaters subside is order restored to the field. The same idea applies in these circumstances. Many rioters collectively disrupted congressional proceedings and each individual rioters contributed to that disruption. Because [the defendant's] presence and conduct in part caused the continued interruption to Congressional proceedings, the court concludes that [the defendant] in fact impeded or disrupted the orderly conduct of Government business or official functions”).

Young's motion minimizes her own culpability significantly, mischaracterizing her as "peaceful" when all the evidence indicates that she willingly joined the violent mob, ignored warning signs telling her to turn back, and roamed throughout the Capitol to try to achieve her goal: reaching the "hearing room.". Her conduct on January 6, in fact, places her in a class of offenders worse than a protester who permissibly entered the Capitol during a committee hearing or permissibly entered the Cannon Office Building and had to be removed after being disruptive.

Young does not establish that these other individuals broke into the Capitol, as she did, scaling a staircase from the side. And despite recognizing the scene unfolding on the Capitol grounds as a "warzone", Young nonetheless joined hundreds of volatile rioters who breached the building – and not a satellite building like the Cannon Office Building, but the actual Capitol Building itself. Young entered through an emergency exit as an alarm blared and other rioters jumped through adjacent windows that had been smashed.

Inside, Young chanted and was a part of the group who, using their strength in numbers, overran the last line of officers blocking the House Main Doors. That mob then banged on the doors as members of Congress were trapped inside. Denied access to the main doors, Young and many in the mob then quickly made their way around to the back area of the House known as the Speaker's Lobby, where many members and staff were visibly in the midst of evacuating. At both locations, members of the riot smashed glass windows, causing officers to draw their guns. It was not until a rioter was shot, climbing through the Speaker's Lobby window, that Young decided to leave the Building. Young does not establish that any protesters arrested in connection with protesting events in Palestine or Justice Kavanaugh's hearing entered those buildings illegally or were part of conduct that posed any sort of comparable threat. As one article described, moreover,

unlike Young, the pro-Palestine protestors at the Cannon Office Building *entered legally* and were only arrested once they began engaging in unlawful demonstration activity.³

Additionally, Young does not establish that any of her comparators entered a “restricted area,” which requires the presence of a Secret Service protectee, a prerequisite for the charges under 18 U.S.C. § 1752(a)(1) and (2) that she faces. Despite Young’s claim the area was “restricted” (Mot. at 13), Young does nothing to prove up that statement.⁴ Young also ignores that hundreds *were* arrested, including serious charges brought against those who assaulted police during the Cannon Building protest.⁵ And, unlike Young, who was permitted to go home after participating in the riot, these individuals were arrested on the spot.⁶ Young argues that the “routine” punishment for these disruptions is a “\$50 fine” (Mot. at 5), but January 6 was nothing

³ *Addressing Claims That ‘No Arrests Were Made’ When Pro-Palestinian Protesters Clashed With Police Near White House*, available at <https://thedispatch.com/article/addressing-claims-that-no-arrests-were-made-when-pro-palestinian-protesters-clashed-with-police-near-white-house/> (last accessed June 2, 2024)

⁴ To make a different point, Young footnotes an article describing the arrest of one individual who disrupted President Biden’s State of the Union address (Mot. at 5 n.9). The individual arrested was a “vocal critic of of Mr. Biden” who was the guest of a Republican lawmaker. His alleged lenient treatment thus would not show that the government treated the defendant differently based on her political affiliation. Rather, it was the fact that she participated in a violent mob effort to storm the Capitol and interrupted the certification for hours, as contrasted with an individual who was an invited guest at the State of the Union who briefly interrupted the President’s speech.

⁵ *Protestors of Israel-Hamas War Enter Congressional Building-Leading to More than 300 Arrests.* Available at <https://www.forbes.com/sites/mollybohannon/2023/10/18/protesters-of-israel-hamas-war-enter-congressional-building---leading-to-arrests/?sh=4f6dc2f92a3c> (last accessed June 2, 2024).

⁶ In fact, some accused the Capitol Police of favoring Trump supporters by not arresting them that day. *See, e.g., “Arrested by Capitol Police at peaceful protests? You’re not alone,” The Washington Post*, available at https://www.washingtonpost.com/investigations/capitol-police-arrests-peaceful-protests/2021/01/08/b6b2489c-5141-11eb-b2e8-3339e73d9da2_story.html (last visited June 3, 2024).

but routine. Young’s examples cite no mention of a closed building, restricted area, presence of a protectee, the threat of violence, or the threat to the peaceful transfer of power.

ii. *Young is not similarly situated to the cited George Floyd/Black Lives Matter protesters or rioters.*

Next Young claims that those involved in “George Floyd/Black Lives Matter riots” (Mot. at 11) have been treated differently. When discussing these incidents, Young cites examples in Minneapolis and Atlanta, focusing, in part, on what she considers to be an insufficient number of persons charged with violating 18 U.S.C. § 231(a)(3) after incidents where rioters threw projectiles at buildings and burned a local Minneapolis police precinct. But Young is not charged with violating Section 231(a)(3) either (even though she was part of a mob that overran officers guarding the House Chamber). And none of the Minneapolis or Atlanta rioters were in Capitol Building or a “restricted” area, as defined in 18 U.S.C. § 1752, so Young does not show how the federal government even *could* have brought the same charges against them that she faces.⁷ And even assuming that comparable evidence was available to identify those rioters (who attacked at night),⁸ Young also ignores the fact that some of these rioters were charged for crimes fitting the

⁷ Young cites a spreadsheet compiled for the sentencing of David Mehaffie (a January 6 defendant and co-defendant to Judd whose selective prosecution motion was denied by J. McFadden) to support an argument that the government did not charge the same number of rioters with violating 18 U.S.C. § 231(a)(3) outside the District of Columbia as it did here. Mot. at 10, citing *United States v. Mehaffie*, 1:21-cr-40, ECF Nos. 538-1, 538-2. Simply adding up the charges brought in various locations does nothing to establish whether events elsewhere occurred that were comparable to January 6, a riot that resulted in over 140 officer assaults, caused members of Congress to hide and evacuate, and threatened the peaceful transfer of power. Young also fails to mention that many districts prosecuted officer assaults by bringing many cases under 18 U.S.C. § 111(a)(1), a statute with a higher statutory maximum, as the chart indicates.

⁸ On January 6, an attack that occurred in broad daylight, hundreds of rioters filmed the event, in addition to Metropolitan Police Department body-worn camera footage and Capitol Police security video.

conduct, such as assault or arson;⁹ crimes which may carry heavier sentences than the one-year maximum under 18 U.S.C. §§ 1752(a)(1) and (a)(2) or the six-month maximum under 40 U.S.C. § 5104. Young then argues that if she had “stood with that crowd and actually cheered as the police station burned, she would not have been arrested.” Mot. at 11. This disregards a key fact: no rioter, in those cities mention, who “peacefully protest[ed] in the vicinity of violent acts” breached a building where the Vice President was present to certify the 2020 Presidential Election and came within feet of the very room where the certification was taking place. She thus fails to show that she is similarly situated to these groups.

So too with Young’s discussion of the Portland riots. In *Judd*, Judge McFadden rejected these comparisons, observing that “[a]lthough both Portland and January 6 rioters attacked federal buildings, . . . the Portland defendants primarily attacked at night, meaning that they raged against a largely vacant courthouse.” *Judd*, 579 F. Supp. at 7. “In contrast,” Judge McFadden explained that “the January 6 rioters attacked the Capitol in broad daylight,” as “[t]housands of congressional staffers,” “hundreds of legislators and the Vice President” were inside. *Id.* Because “the[se] actions endangered hundreds of federal officials in the Capitol complex,” *id.*, Judge McFadden held that the defendant in that case “failed to make a credible showing of different treatment of similarly situated persons”—as *Armstrong* demands. *Id.* at *6 (internal quotation marks omitted). *See also Miller*, 21-cr-119 (CJN), ECF No. 67 at 3 (also observing that “The Portland rioters’ conduct, while obviously serious, did not target a proceeding prescribed by the Constitution and established to ensure a peaceful transition of power. Nor did the Portland rioters, unlike those who assailed

⁹*See, e.g., Man sentenced to four years for police station fire*, available at <https://www.police1.com/george-floyd-protest/articles/man-sentenced-to-4-years-for-minneapolis-police-station-fire-nKd5RboPPFKRy53f/> (last visited May 27, 2024).

America’s Capitol in 2021, make it past the buildings’ outer defenses.”). And again, Young does not show that the Portland rioters were in a restricted area or engaged in disorderly conduct *in a Capitol Building*, as 18 U.S.C. § 1752 and 40 U.S.C. § 5104(e)(2) require. For the same reasons, Young’s comparison to rioters from summer 2020 all fail. As Judge Nichols remarked (distinguishing the circumstance between the Portland riots and January 6): “the uprising[s] in the Nation’s capital differ in kind and degree.” *Miller*, 21-cr-119 (CJN), ECF No. 67 at 3.

Yet still, Young points to incidents in other cities where “George Floyd/Black Lives Matter riots occurred.” Mot. at 11. Young insists that “literally thousands” there “were not arrested or charged at all.” *Id.* However, the events she specifically identifies—involving the murder of federal officer David Patrick Underwood (committed in May 2020 in Oakland, California,¹⁰ and the murder of police officer David Dorn in June 2020, in St. Louis, Missouri¹¹—did in fact result in criminal prosecutions and significant periods of incarceration for the murderers. *Id.* at 11. Such cases offer no support for Young’s claim that “if those defendants had committed the same acts on January 6, they would have been treated differently.” *Id.* Nor does Young show that even all of her handpicked examples differ from her based on “the content or viewpoint of speech.” *Id.* Underwood’s killer, for example, was associated with the far-right Boogaloo movement, not “Black Lives Matter/George Floyd protestors.” *Id.*

¹⁰ *Alleged ‘boogaloo’ extremist sentenced to 41 years in murder of federal officer*, available at www.nbcnews.com/news/us-news/alleged-boogaloo-extremist-sentenced-41-years-murder-federal-officer-rcna31942 (last checked on May 20, 2024).

¹¹ *Man Convicted in David Dorn’s Death Sentenced to Life*, available at www.firstalert4.com/2022/10/05/man-convicted-david-dorns-death-be-sentenced-today (last checked on May 20, 2024).

iii. Young and The Pro-Palestine Protesters Outside the White House and Democratic National Committee Are Not Similarly Situated.

Young references three protests that have occurred in the past six months in Washington, D.C.: two protests outside the White House (November 4, 2023 and January 13, 2024), and one that passed the Democratic National Committee headquarters (November 15, 2023), and which resulted in destruction of property and instances of assault. These claims fail for the same reasons as those in the above sections: Young does not show how those involved in outdoor protests¹² are similarly situated to the violent January 6 breach in that forced the evacuation in Congress, in which she participated. Young makes sweeping claims that these protests took place in “restricted areas” without any support for explaining how those areas were restricted within the statutory definition, as necessary for two of the four counts (the 18 U.S.C. § 1752 counts) brought against her. Even the news articles she cites do not suggest, for example, that anyone actually succeeded in breaching the White House fence. Nor does she show that these protests took place in a Capitol Building, taking the other two counts against her (under 40 U.S.C. § 5104(e)(2)) off the table. Young’s non-specific references to a “wave of coordinated Palestinian protests across the country” appears to suffer from the same defects to the extent any additional specific comparators can be discerned.

iv. Young’s Reliance on Anecdotal Evidence is Improper and Misplaced.

Young’s reliance on Judge McFadden’s comments in another January 6 case, *Seefried*, also does not advance her claims. Judge McFadden’s comments did not come in the context of a selective prosecution motion – and Young fails to disclose that Judge McFadden had actually

¹² *Minor Incidents Reported During First Amendment Activity*, available at <https://mpdc.dc.gov/release/minor-incidents-reported-during-first-amendment-activity> (last checked June 2, 2024).

denied a January 6 selective prosecution motion similar to Young's. *Judd*, 579 F. Supp. 3d 1. Young misstates the court's findings in *Seefried*, 21-cr-287 (TNM), ECF No. 91. Young claims that Judge McFadden "admonished" the government for "selectively targeting" January 6 defendants while the government "openly admitted" to believing January 6 "defendants should be treated more harshly than other similarly situated defendants." Mot. at 2. Neither of these statements are true.

First, the comments at issue came during a motion for release pending an appeal challenging the application of 18 U.S.C. § 1512(c)(2) (the issue currently pending before the Supreme Court) and did not relate to a selective prosecution motion or claim. *Seefried*, 21-cr-287 (TNM), ECF No. 91, 2024 WL 1299371. In opposing the defendant's release, the government pointed out, among other arguments, the potential danger of releasing an individual who obstructed the election during another contentious election year. *Id.* at *2-3. Judge McFadden found that the government did not present adequate defendant-specific evidence that the individual would reoffend, and thereby rejected the government's generalized argument of dangerousness. *Id.* He did not find that the government's decisions to *prosecute* these types of cases was selective, targeted, or reflected a "fact-free" approach. *Id.* at *2. She merely found that the government needed individualized evidence that a particular defendant posed a danger and could not rely on arguments about all "people who have already gone to prison" or "January 6 defendants." *Id.* at *3. And she again noted the uniqueness of January 6 – a "never-before-seen – confluence of events": a uniqueness that, in *Judd*, he found distinguished January 6 defendants from others who rioted in different circumstances. *Id.* at 2.

Nor does Young's reference to unspecified comments allegedly made by four Supreme Court justices during argument in the pending *Fischer v. United States* case, where selective

prosecution is not at issue. Young's citation to a single MPD officer's view of the January 6 and summer 2020 prosecutions is similarly unpersuasive. Young does not establish why this one officer's opinion should be credited, nor the scope of the officer's knowledge of the facts underlying prosecutorial decisions made across the country in summer 2020 or on January 6. And, again, the officer's view does not change the fact that, as explained above, the summer 2020 protests in D.C. were not comparable to the violent attack on Congress on January 6. Nor is the officer's opinion as clear as Young suggests: the officer did recognize that "there were those who did break the law, assaulting officers and destroying property, and did deserve to be prosecuted." Any claim that the government "turned a blind eye" to "life-threatening assaults on police that caused serious bodily harm" or is failing to divert resources to other crime is incorrect. Indeed, several rioters or culprits during the summer of 2020 were prosecuted federally in D.C. for their respective serious criminal offenses. *See, e.g., United States v. Jerritt Pace*, 20-cr-104-RC (Molotov cocktail lit outside of a police station); *United States v. Micah Avery*, 20-cr-109-ABJ (spray painting of the Lincoln Memorial); *United States v. Josue Rodas*, 20-cr-148-BAH (bank burglary); *United States v. Jason Charter*, 20-cr-135-DLF (attempted statue destruction); *United States v. Cody Tarner*, 20-cr-183-RCL (arson at the Supreme Court); *United States v. Dominique Maxey*, 20-cr-152-ABJ (bank robbery).

Finally, Young's repeated references to her age, the investigation,¹³ her arrest,¹⁴ and potential penalty also do not establish a claim of selective prosecution. Young's age, lack of

¹³ Young claims that the "FBI has designated Ms. Young as a terrorist." Mot. at 5. This claim is irrelevant but, in any event, the document she attaches establishes no such point.

¹⁴ Young states, no less than four times, that she was "shackled" and thrown in jail." This is a gross misrepresentation of the standard process Ms. Young experienced. Young was given the opportunity to turn herself (which not all defendants are extended), processed, and released, at the recommendation of the government, all in the same day.

criminal history, and the risk of potential penalty did not stop her from breaching the Capitol and accessing areas just outside the House floor; they are not reasons to prosecute her. Young treats her own behavior and the siege of the nation’s Capital Building, during which she ignored numerous signals telling her she was part of a violent riot and should not go further, as not “serious,” and she suggests deterrence has been achieved without needing to hold those, clearly caught on camera committing crimes, accountable. Mot. at 7. Her own editorial views about when the government has achieved deterrence, when she incorrectly sees herself as a “peaceful protestor,” should carry no weight.

In summary, these vague references to opinions of unclear scope and context do not help Young meet her burden to establish that she has been treated differently than others who are similarly situated, and because of her political viewpoint.

CONCLUSION

Young breached a restricted area in the Capitol and nearly accessed the seat of democracy – the House of Representatives Chamber – in the middle of a riot, where she overran a police line guarding lawmakers and staff in the U.S. Capitol. Now charged with misdemeanors, she is not being selectively prosecuted based on her political beliefs. The Court should deny her motion.

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney
D.C. Bar No. 481052

By: /s/ Rebekah E. Lederer
Assistant United States Attorney
Pennsylvania State Bar No. 320922
601 D St., NW
Washington, D.C. 20530
(202) 252-7012
rebekah.lederer@usdoj.gov