

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Criminal Division – Felony Branch**

**UNITED STATES OF AMERICA** : **Crim. No.: 2017 CF2 001378**  
: :  
: :  
**v.** : **Hon. Lynn Leibovitz**  
: :  
**CALY RETHERFORD** : :  
**a/k/a** : :  
**CLAY RETHERFORD** : **Arraignment Date: 03/24/2017**

**NOTICE OF FILING**

Defendant, Caly Retherford a/k/a Clay Retherford, through Counsel, files  
this Motion for severance in the aforementioned matter.

Respectfully Submitted,

*/s/ Sharon Weathers*

Sharon Weathers, Esq.  
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<b>v.</b>	:	
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**DEFENDANT’S MOTION FOR SEVERANCE**

Caly Retherford a/k/a Clay Retherford, the defendant, through undersigned counsel, moves the Court for an order severing his case from the 208 co-defendants in this case. The Indictment<sup>0</sup> charges Mr. Retherford with one count of Rioting and his case is joined with 208 co-defendants. Mr. Retherford asserts that his ability to defend in his case is prejudiced by the joinder of parties. Accordingly, Mr. Retherford requests severance from the 208 co-defendants. Mr. Retherford requests a hearing on this motion.

**I. FACTUAL BACKGROUND**

The Indictment charges Mr. Retherford with one count of Rioting, in violation of D.C. Code §22-1322 (d) (2001 ed.). Specifically, on January 20, 2017, during the Presidential Inauguration, Mr. Retherford participated in a demonstration. During the demonstration, Mr. Retherford was swept up in a mass of individuals, arrested by the Metropolitan Police Department (“MPD”), for allegedly causing a riot. According to MPD, between the hours of 10:00 a.m. to 10:30 a.m., in and

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<sup>0</sup> Counsel is aware that a superseding Indictment was filed on 02/08/17. Counsel has not reviewed the superseding indictment before filing this Motion, however, Counsel consulted with the government and was led to believe that the superseding indictment modified the indictment to add additional parties.

riot. According to MPD, between the hours of 10:00 a.m. to 10:30 a.m., in and around the intersections of 13th Street and O Street, N.W. and 12th Street and L. Street, N.W., Washington, D.C., MPD's "Special Operations Division" officers observed a group of approximately 300 individuals inciting a riot. During this time and at this location, officers observed members of the group organizing, promoting, encouraging and participating in acts of violence in furtherance of the riot.

According to the Gerstein proffer, MPD officers observed members of the group smash large plate glass windows of business entities, Starbuck Coffee, Sun-Trust Bank and Wells Fargo Bank. "One member" of the group was seen smashing the windows with a baseball bat and another [member] used a hammer. Members of the group also caused a limousine to be set on fire, which destroyed the vehicle. The damage caused by the group was in excess of \$100,000.00 dollars.

At approximately 10:28 a.m., MPD officers cordoned off the demonstrators and arrested approximately 230 individuals. Some members of the group were able to flee the cordoned off area before the officers could arrest them. MPD arrested those individuals who did not flee. When MPD officers began to arrest the individuals, several officers were allegedly assaulted; and some of those officers were injured. According to MPD, some of the demonstrators were observed throwing objects at the officers; and another individual was seen swinging a long metal pole at the officers.

Mr. Retherford was arrested with a group of approximately 230 demonstrators and charged with one count of Rioting. The Indictment names 208 co-defendants and charges that Mr. Retherford and the co-defendants:

“willfully engaged, incited and urged other people to engage in a public disturbance, involving an assemblage of 5 or more persons, that by tumultuous and violent conduct and the threat thereof, resulted in serious bodily harm or property damage in excess of \$5,000.” (Rioting, in violation of 22 D.C. Code, Section 1322 (d) (2001 ed.). (Indictment, page 5).

The indictment fails to provide any information about how the conduct of Mr. Retherford resulted in riotous behavior. Thus, any charges alleged by the Government against Mr. Retherford must be severed from the 208 co-defendants.

## II. ARGUMENT

### **SEVERANCE OF THE DEFENDANTS IS REQUIRED TO PROTECT MR. RETHERFORD’S CONSTITUTIONAL RIGHTS AND TO ENSURE A FAIR TRIAL**

Mr. Retherford’s participation in the demonstration on inauguration day does not support a criminal charge by the Government that he willfully caused a riot. During the demonstration, Mr. Retherford was swept up by MPD in a mass arrest of individuals on the scene at the time of the arrest. According to the Government, Mr. Retherford was one of 209 co-defendants who willfully; caused a riot, caused damage to property, and caused significant bodily injury to several MPD officers. In the Indictment, there is “no specific information” which links Mr. Retherford to the charge of rioting, nor is there any information in the discovery provided by the Government thus far. Accordingly, if the Government persists in its charge against Mr. Retherford, then his case should be severed from the 208 co-defendants.

In Rhone v. United States, 365 F.2d 980 (D.C. Cir. 1966), the D.C. Circuit recognized that “[p]rejudice from joinder of defendants may arise in a wide variety of circumstances ...” 365 F.2d at 981. In United States v. Sampol, 636 F.2d 621, 642-648 (D.C. Cir. 1980), this Circuit recognized that a great disparity in the weight

and quantum of the government's evidence can justify a severance. In this case, the joining of Mr. Retherford to 208 co-defendants has all the earmarks of prejudice to his defense. According to the Government's proffer of evidence, there were numerous individuals who participated in the felonious, riotous activity. However, there is no evidence presented by the Government that Mr. Retherford was an individual who participated in the riot, that he willingly incited the riot, that he caused damaged to personal property or that he caused significant bodily injury to any MPD officers. Nor, is there any information that Mr. Retherford aided and abetted in such activities, or that he participated in any manner. Accordingly, if the Government persists in its charge against Mr. Retherford, to join his case with 208 co-defendants will result in extreme prejudice to his defense. This prejudice arises because the evidence against Mr. Retherford is "dramatically disparate" from that against the parties who caused the felonious, riotous activities and there is no "substantial and independent evidence of [his] . . . involvement in the riot." United States v. Tarantino, 846 F.2d 1384, 1398-99 (D.C. Cir. 1988), cert. denied, 488 U.S. 840. Accordingly, severance is required in this case. Cf. United States v. Andrews, 754 F.Supp. 1161 (N.D. Ill. 1990) (granting severance of defendants based upon disparity of evidence).

### CONCLUSION

For the reasons stated above, and for any other reason that the Court may deem just and proper, Mr. Retherford respectfully requests that the Court sever his case from the 208 co-defendants in this case.

Respectfully Submitted,

           /s/ 

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion was delivered on February 10, 2017 to the following:

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           /s/ 

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**ORDER**

The Court, having entertained this Motion To Sever Trial Of Defendants and having considered the record in this case while sitting and finding good cause shown, it is by the Court this \_\_\_\_ day of \_\_\_\_\_, 2017,

**ORDERED**, that the Motion is GRANTED.

**IT IS SO ORDERED.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge: Lynn Leibovitz

Copies:

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