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7 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
8 CRIMINAL DIVISION – FELONY BRANCH

9 UNITED STATES OF AMERICA,

Crim No.: 2017-CF2-001256

10 vs.

HON. LYNN LEIBOVITZ

11 BRITTNE LAWSON,

MOTION FOR SEVERANCE

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17 **NOTICE OF FILING**

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19 COMES NOW Defendant Brittne Lawson who by and through Counsel, files this Motion for
20 Severance in the aforementioned matter.
21

22 Respectfully submitted,

23 S/Jason Flores-Williams

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14 **MOTION FOR SEVERANCE**

15
16 COMES NOW Brittne Lawson who by and through counsel moves this Honorable Court for an
17 order severing her trial from all co-defendants pursuant to SCR Crim. 8 & 14. Ms. Lawson, a
18 registered nurse, attended several protests in Washington D.C. on the weekend of January 20,
19 2017 to provide medical services for those assembled in peaceful dissent. For her to be mis-
20 joined with defendants accused of property destruction would result in prejudicial spillover in
21 violation of her V and VIX Amdt. U.S. Const. rights to due process and VI Amdt. U.S. Const.
22 right to fair trial.
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26 **I. FACTUAL BACKGROUND**

27 On January 19th 2017, Ms. Lawson, a registered nurse, traveled to Washington D.C. to provide
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1 medical support for those engaging in the constitutionally-protected activity of protesting then
2 President-elect Donald Trump. Similar to volunteer legal observers who attend protest to ensure
3 and protect civil rights, Ms. Lawson is part of a volunteer medical group that regularly provides
4 basic health care at protests. *While wearing a logo and armband identifying her as a medic*, she
5 attended several protests that weekend, assisting individuals with a range of injuries common to
6 when large groups of people assemble.¹
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8
9 At the protest resulting in this mass prosecution—see the government’s “superseding
10 indictment” charging 212 persons with a range of felonies and conspiracy²—Ms. Lawson
11 provided medical assistance to those being teargassed by the D.C. Metro Police Department.³
12

13 Ms. Lawson was not wearing any type of covering, but due to the extensive amount of teargas in
14 the air, did put on a yellow hospital mask to cover her mouth and nose so that she could continue
15 to treat persons suffering from exposure to chemical agents. Along with 240 other persons, she
16 was herded into a cordoned area, detained and arrested four hours later. The nature of her arrest
17 was so arbitrary, that if she had been offering medical assistance a few feet to the left, or a few
18 feet to the right, then she would not be facing these charges today.
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20 21 **II. LAW & ARGUMENT**

22 SCR Crim. 8(b) states:
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26 ¹Dehydration, ankle sprains, injuries from falling, etc. The same sort of care is provided by volunteer nurses at
27 outdoor concerts. The one unique aspect of care provided by Ms. Lawson’s group would be treatment for tear gas
and other chemical agents that are used by police at large protests with increasing frequency.

² The superseding indictment states that the grand jury was sworn April 3, 2017.

³ The wide use of chemical agents by Metro Police at this protest has been well documented and is currently the
subject of a civil rights law suit.

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3 Joinder of Defendants. The indictment or information may charge 2 or more defendants if
4 they are alleged to have participated in the same act or transaction, or in the same series
5 of acts or transactions, constituting an offense or offenses.

6 As stated, Ms. Lawson did not travel to Washington D.C. on inauguration weekend to engage in
7 the alleged activities that serve as the cause and basis for the government’s wide-ranging
8 superseding indictment. She went to provide medical services.⁴ As of this date, the government
9 has failed to produce any specific or direct evidence against Ms. Lawson showing her engaged in
10 what they are calling a “riot” or any of the illegal activity alleged. She may have been present at
11 the protest in the same capacity that she has been present at many protests, but again her role
12 there was to provide medical services. Rule 8(b) requires the defendants to have “participated in
13 the same act or transaction” to be charged together in the same indictment. Mere presence is not
14 tantamount to participation or everyone who is within sight and sound of any criminal activity
15 could be charged in an indictment along with the direct perpetrators, which would give the rules
16 of criminal procedure and the constitutional due process upon which they are founded no
17 meaning. See *Chambers v. Mississippi*, 410 US 284 (1973) (holding that depriving a defendant
18 of the fair opportunity to defend against the government’s accusations violates basic standards of
19 due process.) Ms. Lawson was not part of the alleged “rioting” activity or transaction, so that
20 pursuant to R.8(b), she is mis-joined.
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28 ⁴ During her arrest, the government seized from her a medical bag with medical equipment.
MOTION FOR SEVERANCE - 4

1 SCR Crim. 14(a) states:
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3 If the if the joinder of offenses or defendants in an indictment, an information, or a
4 consolidation for trial appears to prejudice a defendant or the government, the court
5 may order separate trial....”

6 People were present at this protest for many different reasons and purposes. (Example, some
7 were journalists and the charges against them have been dismissed.) To join Ms. Lawson, who
8 was there to provide medical assistance, with defendants who were there to damage property,
9 would result in prejudicial spillover that could not be cured by any form of instruction or
10 limitation. This prejudice could come from co-defendant admissions, communications, physical
11 evidence or a disparity in physical evidence. In *Rhone v. United States*, 365 F. 2d 980 (D.C. Cir.
12 1966), the D.C. Circuit Court recognized that prejudice from joinder of Defendants may arise in
13 a wide variety of circumstances, 365 F.2d at 981. In *United States v. Sampol*, 636 F. 2d 621, 642-
14 648, (D.C. Cir. 1980) this circuit recognized that a great disparity in the weight of evidence can
15 justify a severance. See also *United States v. Tarantino*, 846 F. 2d 1384, 1398-99 (D.C Cir.
16 1988) holding that a gross disparity in evidence is inherently prejudicial.
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20 It is beyond the pale to think that an alleged instrument of property destruction—a hammer—
21 seized from a co-defendant that she has never met could be admitted into Ms. Lawson’s trial. Or
22 that communications between defendants she has never met could be admitted at her trial and
23 imputed to her.⁵
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28 ⁵ One recoils thinking about communications between Defendants A and Z – people Ms. Lawson has never met—
being used to tar her. There is no limitation or instruction that could cure this prejudice.

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2 The government seized the cell phones of the 240 persons that it arrested. If these seized
3 communications are ruled admissible against co-defendants who choose not to testify in accord
4 with their Fifth Amendment right, then Ms. Lawson’s Sixth Amendment confrontation rights
5 could be implicated pursuant to *Bruton v. United States*, 391 U.S. 123 (1968) (holding that the
6 right of confrontation is violated when a codefendants’ admissions are admitted and imputed
7 against Defendant without being given the opportunity to cross examine them and that no
8 limiting instruction can overcome this prejudice.) The government may represent to the court
9 that it can predict which evidence it intends to admit at trial, but trial is inherently unpredictable
10 and some Courts have suggested that when the confession of the co-defendant comes in as a
11 surprise at trial, it may be error to deny a motion for a mistrial. See *Belvin v. United States*, 273
12 F.2d 583 (5th Cir. 1960). In other words, judicial efficiency would be served by providing Ms.
13 Lawson with a separate and reliable trial, rather than run the risk of mistrial in a proceeding
14 where neither the lawyers nor defendants know each other.⁶
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19 Not only would a mis-joined trial result in prejudice in violation of SCR Crim. 14, but would
20 violate Ms. Lawson’s fundamental rights to due process and fair trial. See *Zafiro v. United*
21 *States*, 506 U.S. 534, 539 (1993) (holding that severance is mandated when there is a serious risk
22 that a joint trial would...prevent the jury from making a reliable judgment about guilt or
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27 ⁶ For purposes of judicial efficiency, Ms. Lawson and Ms. Emily Horstman, (2017-CF2-001284) – both represented
28 by the undersigned attorney—would be open to being tried together as they traveled to D.C. together as medics and
the facts and evidence of their respective cases are highly similar. Ms. Horstman will be filing a similar Motion to
Sever into her case shortly.

1 innocence.) Here, mis-joinder carries the near certainty of prejudicial spillover, jury confusion
2 and the erroneous cumulation of evidence that would call into question the very reliability of the
3 verdict.
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6 In sum, it's common sense, if the government is alleging that there was an "intentional riot,"
7 which itself is a confusing concept, and Ms. Lawson was there to provide medical services, then
8 she should not be tried with co-defendants whom the government alleges participated in the
9 "intentional riot."
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12 For the above grounds, Ms. Lawson respectfully moves that this Court grant her motion to sever
13 and requests a hearing before this Honorable Court.
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16 Respectfully submitted,

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I hereby certify that the within motion for severance was filed 5/19/17 via the DC Superior Court e-filing so that a true copy was served on opposing counsel.

s/Jason Flores-Williams