UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA v. LUKE WESSLEY BENDER, *et al.* Defendants.	Criminal Action No. 21-508 (BAH) Chief Judge Beryl A. Howell

MEMORANDUM AND ORDER

Defendants Luke Wessley Bender and Landon Bryce Mitchell face a stipulated trial on December 2, 2022, on identical charges of one felony and five misdemeanors each stemming from their alleged conduct at the U.S. Capitol on January 6, 2021. Both defendants have moved pre-trial to dismiss the single felony charge in Count One accusing defendants of "corruptly obstruct[ing], influenc[ing], and imped[ing] an official proceeding," specifically, "Congress's certification of the Electoral College vote," in violation of 18 U.S.C. § 1512(c)(2). Def. Mitchell's Mot. Dismiss Count One ("Mitchell's Mot."), ECF No. 50; Def. Bender's Mot. Dismiss Count One ("Bender's Mot."), ECF No. 52; *see also* Count One Indictment ("Mitchell Indictment") at 1–2, ECF No. 7. For the sound and persuasive reasons already articulated by fourteen Judges on this Court in rejecting similar motions by other defendants charged in connection with conduct at the U.S. Capitol on January 6, 2021, this motion is denied.

I. DISCUSSION

Defendants' separate motions to dismiss advance three primary arguments. Both defendants argue that the indictment fails to allege conduct that violates Section 1512(c). Mitchell provides additional argument for this position not presented by his codefendant, namely

that: (1) the certification of the Electoral College vote does not constitute an "official proceeding," and (2) Section 1512(c)'s use of the word "corruptly" is unconstitutionally vague. *See* Mitchell's Mot. at 2–21; Bender's Mot. at 6–10. All three arguments are unavailing.

Defendants first argue that Section 1512(c)(2) only criminalizes conduct that takes some "action with respect to a document, record, or other object in order to corruptly obstruct, impede, or influence Congress's certification of the electoral vote." Mitchell's Mot. at 3 (quoting *United States v. Miller*, 589 F. Supp. 3d 60, 78 (D.D.C. 2022)); Bender's Mot. at 6–8. Defendants root this argument in the holding of *United States v. Miller*, 589 F. Supp. 3d 60 (D.D.C. 2022), currently pending on appeal before the D.C. Circuit, which interpreted Section 1512(c)(1)'s express coverage of only obstructive conduct with a nexus to a "record, document, or other object" as similarly limiting the scope of Section 1512(c)(2). This Court has repeatedly sided with nearly every other Judge in the District to reject this reading of the statute, providing extensive explanations in oral rulings. *See United States v. DeCarlo*, 21-cr-73 (BAH), Mot. Hr'g Tr. at 25–50, ECF No. 66 (D.D.C. Jan. 21, 2022); *United States v. Williams*, 21-cr-377 (BAH), Pretrial Conf. Tr. at 68–114, ECF No. 118 (D.D.C. June 10, 2022); *United States v. Bledsoe*, 21-cr-204 (BAH), Oral Ruling (D.D.C. July 15, 2022); *United States v. Herrera*, 21-cr-619 (BAH), Oral Ruling (D.D.C. Aug. 15, 2022). Defendants offer no reason to depart from this Court's prior rulings. Indeed, Mitchell, for his part, declined to submit additional briefing or authority in support of his arguments in reply to the government's opposition, and Bender's reply fails to offer any argument not already considered and rejected by this Court. *Compare* Def.'s Reply to Gov't's Opp'n to Def.'s Mot. Dismiss Count One of Indictment (Bender's Reply") at 3, ECF No. 70 (arguing that Section 1512(c)(2) must be read narrowly to avoid superfluity) *with United States v. Williams*, 21-cr-377 (BAH), ECF No. 118 at 110–111 (rejecting this argument).

Bender's argument that even a broadly construed Section 1512(c)(2) does not proscribe his alleged conduct is equally unavailing. Bender contends that he "entered the United States Capitol after the evacuation of members of Congress . . . and the suspension of the joint session to certify the vote," and that because he "walked to a totally different chamber" from the one in which the Joint Session convened, his presence on the Senate floor did not impede the Joint Session from reconvening. Bender's Mot. at 9. Further, he contends that because his entry into the Capitol building was non-violent, "if [he] had stopped one inch before the Senate floor, he would have been offered a plea offer to a petit misdemeanor parading and demonstrating charge." Bender's Mot. at 10. These factual arguments as to Bender's intent and the seriousness of his offense conduct are simply irrelevant to resolving a motion to dismiss. The indictment charges that Bender "attempted to, and did, corruptly obstruct, influence, and impede an official proceeding ... specifically, Congress's certification of the Electoral College vote." Count One Indictment ("Bender Indictment") at 1–2, 21-cr-717, ECF No. 18. Bender's arguments raise "matters outside the four corners of the indictment" and cannot be properly considered at this stage. *United States v. Puma*, 2022 WL 823079, *12 (D.D.C. March 19, 2022) (quoting *United States v. Safavian*, 429 F. Supp. 2d 156, 159 (D.D.C. 2006)).

Next, Mitchell contends that Congress's certification of the Electoral College vote on January 6, 2021, was not an "official proceeding," as this term is used in Section 1512(c). Pointing to the language of the statute, Mitchell argues this text only refers to "tribunal-like proceedings relating to adjudication, deliberation, and the administration of justice"—not an "entirely ministerial and ceremonial" event like the certification. Mitchell's Mot. at 9–12.[1] As

[1] In so arguing, Mitchell cites *United States v. Guertin*, 581 F. Supp. 3d 90 (D.D.C. 2022), which held that the security-clearance process for a Department of State employee was not a "proceeding before a Federal Government agency," under 18 U.S.C. § 1515(a)(1)(C), because such a proceeding must resemble a "formal tribunal." *Id.* at 98. *Guertin* is entirely inapposite to the interpretation of the meaning of "a proceeding before a

the government notes, the statute expressly defines "official proceeding" to include, *inter alia*, "a proceeding before the Congress." 18 U.S.C. § 1515(a)(1)(B). The certification of the Electoral College vote—a highly ceremonial joint convening mandated by the Constitution—was clearly a proceeding. *See United States v. Caldwell*, 581 F. Supp. 3d 1, 11 (D.D.C. 2021) (Mehta, J.) (citing *Proceeding*, BLACK'S LAW DICTIONARY (8th ed. 2004) (defining the term to mean, among other things, "[t]he business conducted by a court *or other official body*" (emphasis added))). The Joint Session bore all the markings of an official body conducting its business in a format similar to a hearing. As Judge Friedrich aptly summarized, "[t]here is a presiding officer, a process by which objections can be heard, debated, and ruled upon, and a decision—the certification of the results—that must be reached before the session can be adjourned." *United States v. Sandlin*, 575 F. Supp. 3d 16, 23 (D.D.C. 2021). In line with every other Judge on this Court to consider the argument, this Court declines to adopt the defendant's argument that the proceeding must be adjudicative in nature—an argument undermined by the clear text of 18 U.S.C. § 1515(a)(1)(B). *See Bates v. United States*, 522 U.S. 23, 29 (1997) ("[W]e ordinarily resist reading words or elements into a statute that do not appear on its face."); *Miller*, 589 F. Supp. 3d at 67 ("[C]ontext matters, and it makes little if any sense, in the context here, to read 'a proceeding before Congress' as invoking only the judicial sense of the 'proceeding.' After all, the only proceedings of even a quasi-judicial nature before Congress are impeachment proceedings.")

Finally, Mitchell's contention that Section 1512(c)(2)'s requirement that a defendant acted "corruptly" is unconstitutionally vague also fails. He repeats other defendants' arguments before this Court that the logic of *United States v. Poindexter*, 951 F.2d 369 (D.C. Cir. 1991),

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Congress" under 18 U.S.C. § 1515(a)(1)(B). *See United States v. Grider*, 585 F. Supp. 3d 21, 29 (D.D.C. 2022) (Kollar-Kotelly, J.) (distinguishing *Guertin*).

requires holding that "corruptly" is vague—an argument that has been thoroughly rejected by this Court in other cases. *See, e.g.*, *DeCarlo*, ECF No. 66 at 39–48; *Williams*, ECF No. 118 at 89–103 (holding that, "given the textual difference of Section 1512(c)(2) taking on the intransitive meaning, the concern about the transitive reading of 'corruptly' undergirding the court's decision in *Poindexter* has no bearing on a prosecution brought today under Section 1512(c)(2)").

As to Mitchell's second argument that "corruptly" is vague because Judges on this Court have not agreed on the exact contours of the definition of the word or "arrive[d] at their conclusion exactly the same way," he misunderstands the high bar he must clear. Mitchell points to a number of cases decided in this Court in which Judges have discussed whether the term "corruptly" encompasses only conduct undertaken with unlawful means, or whether lawful means infected with unlawful purpose suffice. *See, e.g., Sandlin*, 575 F. Supp. 3d at 34 (noting that cases involving lawful means "present closer questions" but holding that the defendant used "obvious criminal means," falling within the scope of "corruptly"); *United States v. Nordean*, 579 F. Supp. 3d 28, 50 (D.D.C. 2021) (noting that "the Court need not wade into Section 1512(c)'s application to corrupt purposes" where criminal means are present). These cases—all recognizing that "corruptly" may present difficult questions where a defendant obstructs an official proceeding via lawful means—do not contradict each other. In any case, nuanced differences in reasoning among jurists would not suffice to render a term vague. A statute is only unconstitutionally vague if "applying the rules for interpreting legal texts, its meaning specifies no standard of conduct at all." *United States v. Bronstein*, 849 F.3d 1101, 1107 (D.C. Cir. 2017) (cleaned up). Mitchell concedes that Judges on this Court have all agreed that "'corruptly' requires proof of intent to obstruct an official proceeding, and that there must be some nexus, a relationship in time, causation, or logic, between the defendant's actions and the official

proceeding in question." Mitchell's Mot. at 18. That, along with these uniform holdings, non-uniform dicta has been offered on the outer contours of the applications of "corruptly" simply does not render the statute unconstitutionally vague.

II. ORDER

For the foregoing reasons, it is hereby

ORDERED that defendants' Motions to Dismiss Count One, ECF No. 50 and ECF No. 52, are **DENIED.**

SO ORDERED.

Date: November 22, 2022

BERYL A. HOWELL
Chief Judge