

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

	)	
UNITED STATES OF AMERICA,	)	
	)	
v.	)	Case No. 1:21-cr-138-JEB
	)	
AARON MOSTOFSKY,	)	
	)	
Defendant.	)	
	)	

**DEFENDANT MOSTOFSKY’S NOTICE OF BRIEFING ON THE MEANING OF THE TERM “CORRUPTLY” IN THE CONTEXT OF OBSTRUCTION OF CONGRESS**

In the January 6 cases, the government takes the position that one violates 18 U.S.C. § 1512(c)(2) by corruptly obstructing, influencing or impeding Congress whether or not the legislature is conducting an investigation; that subsection (c)(2) is the only part of § 1512 that criminalizes acts that have no connection to the integrity or availability of evidence, such as the act of appearing in the Capitol without permission or of protesting outside it; and that § 1512’s term “corruptly” means “wrongfully.” Before January 6, the government had never attempted to direct a court to any of these interpretations. Its obstruction charges against over 250 protesters now depend on the Court applying them all retroactively.

The government’s argument that one commits obstruction of justice, punishable by up to 20 years in prison, by any act that influences Congress wrongfully would criminalize a large part of ordinary legislative business. So, at least two judges in the Court have ordered the government to provide supplemental briefing on what the government means by “acting wrongfully.” *U.S. v. Nordean*, 21-cr-175-TJK (D.D.C. 2021), Minute Order, 11/3/21; *U.S. v. Reffitt*, 21-cr-32-DLF (D.D.C. 2021), Minute Order, 11/19/21.

Mostofsky submits the defendant’s supplemental brief on the issue in *Nordean*. Exh. 1.

He would be grateful if the Court would consider the submission in evaluating Mostofsky's Motion to Dismiss Counts One, Two, Five and Six of the Superseding Indictment. If there is some realistic prospect of the Court sustaining the government's theory that § 1512(c)(2) criminalizes any act that influences Congress wrongfully, Mostofsky requests an opportunity to hold oral argument before a decision.

Dated: November 22, 2021

Respectfully submitted,

/s/ David B. Smith

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**Certificate of Service**

I hereby certify that on the 22nd day of November, 2021, I filed the foregoing notice with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following CM/ECF user(s):

Graciela Lindberg  
Assistant United States Attorney  
555 4th Street, N.W., Room 4408  
Washington, D.C. 20530  
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And I hereby certify that I have mailed the document by United States mail, first class postage prepaid, to the following non-CM/ECF participant(s), addressed as follows: [none].

/s/ David B. Smith

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