

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

UNITED STATES OF AMERICA	:	
	:	CASE NO. 21-CR-377 (BAH)
v.	:	
	:	
ANTHONY ROBERT WILLIAMS,	:	
	:	
Defendant.	:	

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS
COUNTS ONE THROUGH THREE OF THE INDICTMENT**

Williams asks this Court to dismiss Count One of the Indictment, charging him with 18 U.S.C. § 1512(c)(2) because he contends that he could not have known his actions were illegal. Williams’s arguments – with respect to the Section 1512 count, and the Section 1752 counts which he also seeks to dismiss – fly in the face of reason and precedent, and this Court should deny his motion.

Counts One through Three of the Indictment charge Williams with obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2) (Count 1), entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1) (Count 2), and disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2) (Count 3).

With respect Count One, Williams argues that Congress’s certification of the Electoral College vote on January 6, 2021, was not an “official proceeding” within the meaning of the statute, that the statute is unconstitutionally vague and vague as applied to Williams’s conduct, and that the statute only applies to destruction of documents or records. However, Williams fails to recognize that at 11 judges of this Court, including this Court, have considered, in other cases arising out of the events at the Capitol on January 6, 2021, one or more of the arguments raised by

Williams. Every district judge to have reached the issue has concluded that Congress’s certification of the Electoral College is an “official proceeding” within the meaning of 18 U.S.C. 1512(c)(2) and that Section 1512(c)(2) is not unconstitutionally vague. In addition, every reported court of appeals decision to have considered the scope of Section 1512(c)(2), and all but one of the district judges of this Court to have considered the issue in cases involving January 6, 2021, have concluded that Section 1512(c)(2) prohibits obstruction regardless of its connection to documentary or tangible evidence. And, in any event, even if a nexus to documentary or tangible evidence were required, the allegations in the Indictment, which track the statutory language, more than adequately informed Williams about the charge against him; nothing more was or is required. *See, e.g., United States v. Williamson*, 903 F.3d 124, 130-131 (D.C. Cir. 2018).

With respect to the Section 1752 charges – Counts 2 and 3 – Williams argues that these charges fail to state an offense because the statute requires that the U.S. Secret Service designate the restricted area and that the government conceded in *United States v. Griffin* (21-cr-92) (TNM)) that the Capitol Police had designated the restricted area. The latter assertion is erroneous but ultimately irrelevant because the statute does not require that the Secret Service establish the restricted area and at least four district judges of this Court have agreed. Williams also argues that the Vice President cannot “temporarily visit” the U.S. Capitol. This argument too defies the plain text and history of the statute. *See, e.g., United States v. McHugh*, No. 21-cr-453, 2022 WL 296304, at *18-20 (D.D.C. Feb. 1, 2022) (Bates, J.).

This Court should deny Williams’s motion to dismiss.

PROCEDURAL BACKGROUND

On March 24, 2021, Williams was charged by complaint for his actions on January 6, 2021, when large crowds breached the U.S. Capitol Building as Congress convened a Joint Session to

certify the Electoral College vote in the 2020 Presidential Election. (ECF No. 1). On May 26, 2021, the grand jury charged Williams with obstruction of an official proceeding, in violation of 18 U.S.C. §§ 1512(c)(2) and 2 (Count One); entering and remaining in a restricted building or ground, in violation of 18 U.S.C. § 1752(a)(1) (Count Two); disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2) (Count Three); disorderly conduct in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Four); and parading, demonstrating, or picketing in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(G) (Count Five). (ECF No. 13).¹

FACTUAL BACKGROUND²

At 1:00 p.m., on January 6, 2021, a Joint Session of the United States Congress, consisting of the House of Representatives and the Senate, convened in the Capitol Building. The Joint Session assembled to debate and certify the vote of the Electoral College of the 2020 Presidential Election. With the Joint Session underway and with Vice President Mike Pence presiding, a large crowd gathered outside the U.S. Capitol. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows. Shortly thereafter, at approximately 2:20 p.m., members of the United States House of

¹ On February 28, 2022, this Court granted the government’s unopposed motion to strike portions of the indictment, specifically to amend the reference in Counts Two and Three from “where the Vice President and Vice President-elect were temporarily visiting” to “where the Vice President was temporarily visiting.”

² The facts in this section are derived from the Statement of Facts supporting the Criminal Complaint against Williams (ECF No. 1).

Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to – and did – evacuate the chambers.

Anthony Robert Williams, of Southgate Michigan, was initially identified as being in the Capitol Building by an online tip provided to the FBI. The tipster identified Williams by name, stated he lived in Michigan, and attached screenshots of Williams’s Facebook posts. The FBI was then able to locate a Facebook profile under the name of Anthony R. Williams with posts matching those provided by the tipster. Facebook records for Williams’s account include photographs and videos of Williams taken inside the Capitol Building. In the videos, Williams discussed his success in entering the building, saying “desperate times call for desperate measures,” and proudly asserts that he and the rioters “Just stormed the stairs of the Capitol. Pushed the cops back...mase and pepper stray... fuck that, we took this fucking building.”

LEGAL STANDRD

A defendant may move before trial to dismiss an indictment, or a count thereof, for “failure to state an offense.” See Fed. R. Crim. P. 12(b)(3)(B)(v). An indictment’s main purpose is to inform the defendant of the nature of the accusation. *United States v. Ballestas*, 795 F.3d 138, 148-49 (D.C. Cir. 2015). Thus, an indictment need “only contain ‘a plain, concise, and definite written statement of the essential facts constituting the offense charged.’” *Id.* at 149 (quoting Fed. R. Crim. P. 7(c)). “When testing the sufficiency of the charges in an indictment, ‘the indictment must be viewed as a whole and the allegations [therein] must be accepted as true.’” *United States v. Hillie*, 227 F. Supp. 3d 57, 71 (D.D.C. 2017) (quoting *United States v. Bowdoin*, 770 F. Supp. 2d 142, 145 (D.D.C. 2011)). The “key question” is whether “the allegations in the indictment, if proven, are sufficient to permit a petit jury to conclude that the defendant committed the criminal offense as charged.” *Id.* Additionally, this Court has cited to *Ballestas* for the premise that the court’s

power to dismiss an indictment “directly encroaches upon the fundamental role of the grand jury.” *United States v. DeCarlo et al.* (21-cr-73) (BAH), ECF No. 66, at 31.

ARGUMENT

I. Section 1512(c)(2) Applies To The Conduct Alleged In The Indictment

Williams appears to advance three distinct statutory arguments for the notion that Section 1512(c)(2) does not reach the conduct alleged in the indictment: (A) that Congress’s certification of the Electoral College vote is not an “official proceeding” for purposes of 18 U.S.C. § 1512(c)(2); (B) that 18 U.S.C. § 1512(c)(2) is unconstitutionally vague and vague as applied to Williams’s conduct; and (C) that Section 1512(c)(2) is limited to obstruction tied to documentary or tangible evidence. None of these claims has merit, as other judges on this Court have overwhelmingly concluded.

A. The Certification Of The Electoral College Vote Is An Official Proceeding

Contrary to the Williams’s claim, Congress’s Joint Session on January 6, 2021, to review, count, and certify the Electoral College constitutes “a proceeding before the Congress,” 18 U.S.C. § 1515(a)(1)(B), and, therefore, an “official proceeding” under 18 U.S.C. § 1512(c)(2).

Background

The Constitution and federal statutory law require that both Houses of Congress meet to certify the results of the Electoral College vote. Two provisions in the Constitution mandate that the Vice President while acting as the President of Senate “shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted.” U.S. Const. art. II, § 1, cl. 3; U.S. Const amend. XII. Under the Electoral Act of 1887, a Joint Session of the Senate and the House of Representatives must meet at “the hour of 1 o’clock in the afternoon” on “the sixth day of January succeeding every meeting of the electors.” 3 U.S.C. § 15.

Section 15 details the steps to be followed: the President of the Senate opens the votes, hands them to two tellers from each House, ensures the votes are properly counted, and then opens the floor for written objections, which must be signed “by at least one Senator and one Member of the House of Representatives.” *Id.* The President of the Senate is empowered to “preserve order” during the Joint Session. 3 U.S.C. § 18. Upon a properly made objection, the Senate and House of Representatives withdraw to consider the objection; each Senator and Representative “may speak to such objection ... five minutes, and not more than once.” 3 U.S.C. § 17. The Electoral Act, which specifies where within the chamber Members of Congress are to sit, requires that the Joint Session “not be dissolved until the count of electoral votes shall be completed and the result declared.” 3 U.S.C. § 16.

1. Congress’s Joint Session to certify the Electoral College vote is a “proceeding before the Congress” under Section 1515(a)(1)(B) and, therefore, an “official proceeding” under Section 1512(c)(2)

a) The plain text of the statute establishes that the Joint Session is an “official proceeding”

To determine the meaning of a statute, a court “look[s] first to its language, giving the words used their ordinary meaning.” *Levin v. United States*, 568 U.S. 503, 513 (2013) (internal quotation omitted). Section 1515(a)(1)(B), as noted, defines “official proceeding” as a “proceeding before the Congress.” In ordinary parlance, a gathering of the full Congress to certify the Electoral College vote is a congressional proceeding, or “a proceeding before the Congress.” Because Section 1515(a)(1)(B)’s words “are unambiguous, the judicial inquiry is complete.” *Babb v. Wilkie*, 140 S. Ct. 1168, 1177 (2020) (internal quotation omitted).

Congress’s Joint Session to certify the Electoral College vote constitutes a “proceeding” under any interpretation of that term. In its broadest and most “general sense,” a “proceeding” refers to “[t]he carrying on of an action or series of actions; action, course of action; conduct,

behavior.” *United States v. Ermoian*, 752 F.3d 1165, 1169 (9th Cir. 2013) (quoting *Proceeding*, Oxford English Dictionary, available at <http://www.oed.com>). Williams does not meaningfully contend that Congress’s Joint Session to certify the Electoral College vote, which involves a detailed “series of actions” outlining how the vote is opened, counted, potentially objected to, and ultimately certified, is not a proceeding – and indeed an official proceeding – under that broad definition. *Id.*

A narrower definition of the term “proceeding” would look to the “legal – rather than the lay – understanding” of the term. *Ermoian*, 752 F.3d at 1170. This narrower definition includes the “business conducted by a court or other official body; a hearing.” Black’s Law Dictionary, “Proceeding” (11th ed. 2019). Taken with its modifier “official,” the term “proceeding” thus “connotes some type of formal hearing.” *Ermoian*, 752 F.3d at 1170. But even under this narrower definition, Congress’s Joint Session to certify the Electoral College vote – business conducted by an official body, in a formal session – would easily qualify.

The formality involved in the certification of the Electoral College vote places it well within the category of an official proceeding, even under the narrower legal definition of the term “proceeding.” Few events are as solemn and formal as a Joint Session of the Congress. That is particularly true for Congress’s certification of the Electoral College vote, which is expressly mandated under the Constitution and federal statute. Required by law to begin at 1:00 pm on the January 6 following a presidential election, Congress’s meeting to certify the Electoral College vote is both a “hearing” and “business conducted by ... [an] official body.” *See* Black’s Law Dictionary, “Proceeding.” The Vice President, as the President of the Senate, serves as the “presiding officer” over a proceeding that counts votes cast by Electors throughout the country in presidential election. 3 U.S.C. § 15. As in a courtroom, Members may object, which in turn causes

the Senate and House of Representatives to “withdraw” to their respective chambers so each House can render “its decision” on the objection. *Id.* And just as the judge and parties occupy specific locations in a courtroom, so too do the Members within the “Hall.” *See* 3 U.S.C. § 16 (President of the Senate is in the Speaker’s chair; the Speaker “immediately upon his left”; the Senators “in the body of the Hall” to the right of the “presiding officer”; the Representatives “in the body of the Hall not provided for the Senators”; various other individuals “at the Clerk’s desk,” “in front of the Clerk’s desk,” or “upon each side of the Speaker’s platform”). Congress’s certification of the Electoral College vote, moreover, must terminate with a decision: Congress may not recess until “the count of electoral votes” is “completed,” and the “result declared.” *Id.*

In short, under the plain meaning of Sections 1512(c)(2) and 1515(a)(1)(B), Congress’s Joint Session to certify the Electoral College vote is a “proceeding before the Congress.” That alone disposes of Williams’s contention.

b) The legislative history of the Electoral Count Act does not render the certification of the electoral college votes any less official

Williams also claims (ECF No. 39, at 6-8) that the legislative history of the Electoral Count Act weighs in favor of interpreting the electoral count as “ceremonial and administrative” rather than an official proceeding within the meaning of Section 1512(c)(2). Citing to only one historical source, Williams argues that the sponsors of the act intended that the states would address any disputes in advance of Congress’s count, rendering the count “little more than a formal ceremony.” (ECF No. 39, at 7, *quoting* Stephen A. Siegel, *The Conscientious Congressman’s Guide to the Electoral Count Act of 1887*, 56 FLLR 541, 585 (2004)). This feeble argument is belied not only by the fact that the act itself accounts for objections, as outlined in the above section, but also by the fact that there was an objection lodged during the proceedings on January 6, 2021, which

caused the House and Senate to adjourn to separate chambers at approximately 1:30 p.m. *See* ECF No. 1; 3 U.S.C. §§ 15 and 17. As this Court stated in *DeCarlo*, it is “just common sense that when the Constitution, in two different parts, requires the Congress to perform a task, and the federal statute details how this task is to be done by Congress, that the proceeding in which this task is actually performed is very official.” *DeCarlo*, ECF No. 66, at 33.

Williams nevertheless argues that the phrase “official proceeding” in Section 1512 applies only to proceedings that are “adversarial in nature” or at least “quasi-adjudicative.” (ECF No. 39, at 5-6). But this narrow reading of the statute finds no textual support when applied to Section 1515(a)(1)(B), which speaks broadly of a proceeding “before the Congress.” As this Court has pointed out, Sections 1512(c)(2) and 1515(a)(1)(B) contain “no language injecting the limitation...that only certain types of congressional proceedings involving testimony, fact-finding, or investigations are protected from obstruction under Section 1512(c)(2).” *DeCarlo*, ECF No. 66, at 36; *see also Sandlin*, 2021 WL 5865006, at *4; *Caldwell*, 2021 WL 6062718, at *5; *Nordean*, 2021 WL 6134595, at *5; *Montgomery*, 2021 WL 6134591, at *6; *United States v. Miller*, No. 1:21-cr-119, 2022 WL 823070, at *5-6 (D.D.C. Mar. 7, 2022) (Nichols, J.). Had Congress wanted to impose a definition that more closely resembled a quasi-adjudicative setting (as Williams contends), it needed look only a few provisions away to 18 U.S.C. § 1505, which criminalizes, among other things, the obstruction of (i) “the due and proper administration of the law under which any pending proceeding is being had” by a federal department or agency; and (ii) “the due and proper exercise of the power of inquiry under which any inquiry or investigation [that] is being had by” Congress, including by congressional committees and subcommittees. 18 U.S.C. § 1505; *see United States v. Bowser*, 964 F.3d 26, 31 (D.C. Cir. 2020). If Congress wished to similarly limit the obstruction prohibition under § 1512(c)(2) to congressional investigations and the like, it

could have enacted language similar to Section 1505. Instead, Congress chose different terms, with different meanings. See *Russello v. United States*, 464 U.S. 16, 23 (1983) (“We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.”). Congress enacted broader language (“a proceeding before the Congress”) that covers a broader range of proceedings than only the “inquir[ies] and investigation[s]” envisioned in Section 1505. That broader definition includes the Electoral College vote certification that Williams obstructed on January 6, 2021. In sum, as this Court stated, “[i]f Congress intended to limit the congressional proceedings protected under Section 1512(c) to proceedings convened only for investigative, fact-finding, legislative, or other enumerated purposes, it easily could have done so. *DeCarlo*, ECF No. 66, at 36.

Additionally, Williams places reliance (ECF No. 39, at 5-6) on the Ninth Circuit’s decision in *Ermoian*, 752 F.3d 1165. But *Ermoian* involved a different statutory definition, 18 U.S.C. § 1515(a)(1)(C), and an entirely different issue: whether an FBI investigation counts as “a proceeding before a Federal Government agency which is authorized by law” under Section 1515(a)(1)(C). In *Ermoian*, the Ninth Circuit reasoned at the outset that the term “proceeding” did not “conclusively resolve whether an FBI investigation qualifies” because narrower definitions of the term “would exclude criminal investigations in the field.” 752 F.3d at 1170. This case, which involves a proceeding before Congress and implicates Section 1515(a)(1)(B) (and not (C)), presents no such question. And, in any event, the Joint Session of Congress to certify the Electoral College vote would satisfy even the narrower formulations of “proceeding” cited in *Ermoian*. The Joint Session plainly constitute “*business conducted by a court or other official body; a hearing,*” or “[a] legal ... process.” *Id.* at 1169 (emphasis added). And there can be no serious dispute that

the Joint Session is a “proceeding ... authorized *by law*” or that it has the “sense of formality” that the Ninth Circuit found absent from mere criminal investigations. *Id.* at 1170 (emphasis added). *Ermoian* therefore provides no support for Williams’s theory.

Putting aside that the “best evidence of [a statute’s purpose] is the statutory text adopted by both Houses of Congress and submitted to the President,” *West Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 98 (1991), the obstruction statute’s legislative history confirms that Congress intended “official proceeding” to reach broadly. Although Congress enacted Section 1512(c) as part of the Sarbanes-Oxley Act of 2002, Section 1512(c) adopted – but did not modify – the pre-existing definition of “official proceeding” in Section 1515(a)(1), which had been in place since 1982. *See* Victim and Witness Protection Act of 1982 (“VWPA”), Pub. Law 97-291, § 4(a), 96 Stat. 1252. And, tellingly, in considering the VWPA in 2002, the Senate Judiciary Committee urged the inclusion of a “broad residual clause” – in a provision that was ultimately omitted from the 1982 enactment, but that resembles the current iteration of Section 1512(c)(2) – precisely because the “purpose of preventing an obstruction or miscarriage of justice cannot be fully carried out by a simple enumeration of the commonly prosecuted obstruction offenses. There must also be protection against the rare type of conduct that is the product of the inventive criminal mind and which also thwarts justice.” S. Rep. 97-532, at 18 (1982). The upshot is clear: when it enacted the operative definition of “official proceeding,” Congress intended that term to be construed broadly, not narrowly. And this case underscores Congress’s foresight in doing so: Williams sought to thwart justice in an unprecedented and inventive manner, by literally driving Congress out of the chamber. His criminal actions fit squarely within the legislative history of the statute.

Since the events of January 6, 2021, 11 judges on this Court, including this Court, have considered whether Congress’s certification of the Electoral College vote constitutes an “official

proceeding” for purposes of Section 1512(c)(2). All 11 have ruled that it does, largely adopting the government’s rationale and rejecting the arguments that Williams presses in this case. *See DeCarlo* ECF No. 66, at 32-36; *United States v. Sandlin*, No. 21-cr-88, 2021 WL 5865006, at *4 (D.D.C. Dec. 10, 2021) (Friedrich, J.); *United States v. Caldwell*, No. 21-cr-28, 2021 WL 6062718, at *7 (D.D.C. Dec. 20, 2021) (Mehta, J.); *United States v. Mostofsky*, No. 21-cr-138, 2021 WL 6049891, at *10 (D.D.C. Dec. 21, 2021) (Boasberg, J.); *United States v. Montgomery*, No. 21-cr-46, 2021 WL 6134591, at *4-10 (D.D.C. Dec. 28, 2021) (Moss, J.); *United States v. Nordean*, No. 21-cr-175, 2021 WL 6134595, at *4-6 (D.D.C. Dec. 28, 2021) (Kelly, J.); *United States v. McHugh*, No. 21-cr-453, 2022 WL 296304, at *5-9 (D.D.C. Feb. 1, 2022) (Bates, J.); *United States v. Grider*, No. 21-cr-22, 2022 WL 392307 (D.D.C. Feb. 9, 2022) (Kollar-Kotelly, J.); *United States v. Miller*, No. 1:21-cr-119, 2022 WL 823070, at *5 (D.D.C. Mar. 7, 2022) (Nichols, J.); *United States v. Andries*, No. 21-cr-93, 2022 WL 768684, at *3-7 (D.D.C. Mar. 14, 2022) (Contreras, J.); *United States v. Puma*, No. 21-cr-454, 2022 WL 823079, at *4-9 (D.D.C. Mar. 19, 2022) (Friedman, J.). Williams’s cursory briefing of the issue supplies no sound basis to depart from that well-reasoned line of decisions.

c) In the alternative, Congress’s certification of the Electoral College vote would qualify as an adjudicatory proceeding

In any event, even if the statute required the adjudicative gloss urged by Williams, Congress’s certification of the Electoral College vote as set out in the Electoral Count Act of 1887 would satisfy it. The certification of the Electoral College vote involves the convening of a Joint Session of Congress, a deliberative body over which a government officer, the Vice President as President of the Senate, “presid[es].” 3 U.S.C. § 15. That Joint Session renders judgment on whether to certify the votes cast by Electors in the presidential election. Under the Constitution, the Electors create “lists” of the presidential and vice-presidential candidates, which they “sign”

and “certify” before sending to Congress. U.S. Const. amend. XII. Congress then decides whether to count those certified lists, or certificates in conformity with the Electoral Count Act. 3 U.S.C. § 15. As in an adjudicative setting, parties may lodge objections to the certification, and if any such objection is lodged, each House must consider the objection and make a “decision” whether to overrule or sustain it. 3 U.S.C. § 15. And just as a jury does not (barring a mistrial) recess until it has reached a verdict, the Joint Session cannot “be dissolved” until it has “declared” a “result.” 3 U.S.C. § 16. Even under Williams’s theory, Congress’s certification of the Electoral College vote possesses sufficient adjudicative characteristics to qualify as an “official proceeding,” as several judges of this Court have already concluded. *See Caldwell*, 2021 WL 6062718, at *11 (Mehta, J.); *Nordean*, 2021 WL 6134595, at *6; *McHugh*, 2022 WL 296304, at *9. As this Court noted, “Congress’s certification of the Electoral College vote easily falls within the definition of a ‘proceeding before Congress’ ...the joint session has all the markers of an official body conducting its business in a format similar to a hearing.” *DeCarlo*, ECF No. 66, at 34-35.

B. Section 1512(c)(2) Is Not Unconstitutionally Vague

Williams contends, in the alternative, that Section 1512(c)(2) is unconstitutionally vague. (ECF No. 39, at 8-12). He is again incorrect, as every judge on this Court to have considered the issue has concluded.

The Due Process Clauses of the Fifth and Fourteenth Amendments prohibit the government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. amends. V. An outgrowth of the Due Process Clause, the “void for vagueness” doctrine prevents the enforcement of a criminal statute that is “so vague that it fails to give ordinary people fair notice of the conduct it punishes” or is “so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015). To ensure fair notice, “[g]enerally, a

legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply.” *United States v. Bronstein*, 849 F.3d 1101, 1107 (D.C. Cir. 2017) (quoting *Texaco, Inc. v. Short*, 454 U.S. 516, 532 (1982)). To avoid arbitrary enforcement, the law must not “vest[] virtually complete discretion” in the government “to determine whether the suspect has [violated] the statute.” *Kolender v. Lawson*, 461 U.S. 352, 358 (1983).

A statute is not unconstitutionally vague simply because its applicability is unclear at the margins, *United States v. Williams*, 553 U.S. 285, 306 (2008), or because a reasonable jurist might disagree on where to draw the line between lawful and unlawful conduct in particular circumstances, *Skilling v. United States*, 561 U.S. 358, 403 (2010). “Even trained lawyers may find it necessary to consult legal dictionaries, treatises, and judicial opinions before they may say with any certainty what some statutes may compel or forbid.” *Bronstein*, 849 F.3d at 1107 (quoting *Rose v. Locke*, 423 U.S. 48, 50 (1975) (per curiam)). A provision is impermissibly vague only if it requires proof of an “incriminating fact” that is so indeterminate as to invite arbitrary and “wholly subjective” application. *Williams*, 553 U.S. at 306; see *Smith v. Goguen*, 415 U.S. 566, 578 (1974). The “touchstone” of vagueness analysis “is whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the defendant’s conduct was criminal.” *United States v. Lanier*, 520 U.S. 259, 267 (1997).

Williams fails to overcome the “strong presumpti[on]” that Section 1512(c)(2) is constitutional. See *United States v. Nat’l Dairy Products Corp.*, 372 U.S. 29, 32 (1963). Section 1512(c)(2) does not tie criminal culpability to “wholly subjective” terms such as “annoying” or “indecent” that are bereft of “narrowing context” or “settled legal meanings,” *Williams*, 553 U.S. at 306, nor does it require application of a legal standard to an “idealized ordinary case of the

crime,” *Johnson*, 576 U.S. at 604. Section 1512(c)(2)’s prohibition on “corruptly ... obstruct[ing], influenc[ing], or impeded[ing]” an “official proceeding” gives rise to “no such indeterminacy.” *Williams*, 553 U.S. at 306. The statute requires that a defendant, acting with consciousness of wrongdoing and intent to obstruct, attempts to or does undermine or interfere with a statutorily defined official proceeding. While “it may be difficult in some cases to determine whether these clear requirements have been met,” “‘courts and juries every day pass upon knowledge, belief and intent – the state of men’s minds – having before them no more than evidence of their words and conduct, from which, in ordinary human experience, mental condition may be inferred.’” *Id.* (quoting *American Communications Ass’n, CIO v. Douds*, 339 U.S. 382, 411 (1950)).

Williams’s more targeted attack on “corruptly,” relying on *United States v. Poindexter*, *supra*, is also unavailing. As Judge Friedman observed, “[j]udges in this district have construed ‘corruptly’ to require ‘a showing of “dishonesty” or an ‘improper purpose’[;], ‘consciousness of wrongdoing’[;] or conduct that is ‘independently criminal,’ ‘inherently malign, and committed with the intent to obstruct an official proceeding.’” *Puma*, 2022 WL 823079, at *10 (quoting *Montgomery*, 2021 WL 6134591, at *19; *Bozell*, 2022 WL 474144, at *6; *Caldwell*, 2021 WL 6062718, at *11; and *Sandlin*, 2021 WL 5865006, at *13) (alterations omitted). Under any of these common-sense constructions, the term “corruptly” “not only clearly identifies the conduct it punishes; it also ‘acts to shield those who engage in lawful, innocent conduct – even when done with the intent to obstruct, impede, or influence the official proceeding.’” *Id.* (quoting *Sandlin*, 2021 WL 5865006, at *13). It therefore presents no vagueness concern.

Williams’s reliance on *Poindexter* is unavailing. The D.C. Circuit in *Poindexter* held that the term “corruptly” was “vague ... in the absence of some narrowing gloss.” 951 F.2d at 378. *Poindexter* is inapposite for multiple reasons, as this Court and several judges of the District Court

for the District of Columbia have explained. *See, e.g., DeCarlo*, ECF No. 66, at 41-43; *Sandlin*, 2021 WL 5865006, at *10-11 (Friedrich, J.); *Caldwell*, 2021 WL 6062718, at *8-10 (Mehta, J.); *Montgomery*, 2021 WL 6134591, at *18 (Moss, J.); *Nordean*, 2021 WL 6134595, at *9-12 (Kelly, J.); *Andries*, 2022 WL 768684, at *10-12 (Contreras, J.); *McHugh*, 2022 WL 296304, at *10-11 (Bates, J.); *Grider*, 2022 WL 392307, at *6-7 (Kollar-Kotelly, J.).³

First, the D.C. Circuit narrowly confined *Poindexter*'s analysis to Section 1505's use of "corruptly," and expressly declined to hold "that term unconstitutionally vague as applied to all conduct." 951 F.2d at 385. Five years later, in *United States v. Morrison*, 98 F.3d 619 (D.C. Cir. 1996), the D.C. Circuit rejected a *Poindexter*-based vagueness challenge to 18 U.S.C. § 1512(b) and affirmed the conviction of a defendant for "corruptly" influencing the testimony of a potential witness at trial. *Id.* at 629-630. Other courts have similarly recognized "the narrow reasoning used in *Poindexter*" and "cabined that vagueness holding to its unusual circumstances." *United States v. Edwards*, 869 F.3d 490, 502 (7th Cir. 2017); *see also, e.g., United States v. Kelly*, 147 F.3d 172, 176 (2d Cir. 1998) (rejecting vagueness challenge to "corruptly" in 26 U.S.C. § 7212(a)); *United States v. Shotts*, 145 F.3d 1289, 1300 (11th Cir. 1998) (same for 18 U.S.C. § 1512(b)); *United States v. Brenson*, 104 F.3d 1267, 1280 (11th Cir. 1997) (same for 18 U.S.C. § 1503). Williams's invocation of *Poindexter* accordingly fails to establish that Section 1512(c) suffers the same constitutional indeterminacy.

Second, *Poindexter* predated the Supreme Court's decision in *Arthur Andersen LLP v. United States*, 544 U.S. 696 (2005). There, the Court explained the terms "[c]orrupt" and

³ *Poindexter* was also superseded in significant part by the False Statements Accountability Act of 1996, Pub. L. No. 104-292, 110 Stat. 3459. As codified at 18 U.S.C. § 1515(b), the Act provides that the term "corruptly" in § 1505 "means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement."

‘corruptly’ are normally associated with wrongful, immoral, depraved, or evil.” *Id.* at 705 (citation omitted). In doing so, the Court “did not imply that the term was too vague.” *Edwards*, 869 F.3d at 502.

Third, courts have encountered little difficulty when addressing “corruptly” in Section 1512(c)(2) following *Arthur Andersen*. *See, e.g., See United States v. Friske*, 640 F.3d 1288, 1291 (11th Cir. 2011) (to act “corruptly” is to act “with an improper purpose” and “with the specific intent to subvert, impede or obstruct”) (quoting *United States v. Mintmire*, 507 F.3d 1273, 1289 (11th Cir. 2007)); *United States v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013) (same); *United States v. Watters*, 717 F.3d 733, 735 (9th Cir. 2013) (upholding jury instruction defining “corruptly” as acting with “consciousness of wrongdoing”) (internal quotation marks omitted); *United States v. Matthews*, 505 F.3d 698, 705 (7th Cir. 2007) (upholding instruction defining “[c]orruptly” as acting “with the purpose of wrongfully impeding the due administration of justice”). That history demonstrates that the statute’s “corruptly” element does not invite arbitrary or wholly subjective application by either courts or juries.

Williams, for his part, provides no sound support for his position. Nor could he. “One to whose conduct a statute clearly applies may not successfully challenge it for vagueness.” *Parker v. Levy*, 417 U.S. 733, 756 (1974). In this case, Williams is alleged to have entered the Capitol wearing a camouflage sweatshirt and green backpack, through a door that had been broken open by other rioters, and which was next to window that had been shattered by rioters. He filmed himself inside the Capitol Building saying, “desperate times call for desperate measures.” He also took a video of himself alongside other rioters stating, he “stormed” the Capitol and “pushed back the cops.” He talked about the police using pepper spray and stated, “we took this fucking building.” Before he arrived in Washington, D.C., Williams posted to Facebook indicating his

intent to travel to Washington, D.C. and to “Congress” in particular. For instance, on December 28, 2020, Williams posted, “yep, we pissed and we comin to Congress. #MidnightRiders #Storm the Swamp in DC Jan 5-7” and called on his Facebook friends to join, stating on December 30, 2020, “Hitting DC in the 5-7th..you should pop thru! We gonna Storm the Swamp.” This was all part of his effort to stop Congress from certifying the Electoral College vote. Whatever the “uncertainty around the edges,” *Edwards*, 869 F.3d at 502, Section 1512(c)’s “corruptly” element provided ample notice to Williams that *his conduct* was criminal.

Williams further contends that the term “official proceeding” in Section 1512(c) is vague. (ECF No. 39, at 9-10). As explained above, however, no indeterminacy exists. The Joint Session of Congress qualifies as an “official proceeding” under both the “lay” and “legal” definitions of the term. It also contains the necessary “adjudicatory” features to satisfy even Williams’s counter-textual construction. Section 1512(c) therefore provided Williams with more than “a fair warning ... of what the law intends to do if a certain line [was] passed” on January 6, 2021. *Arthur Andersen*, 544 U.S. at 703 (citation omitted).

Williams also contends that because the Supreme Court in *United States v. Johnson*, 576 U.S. 591 (2015), found that the “residual clause” of the Armed Career Criminal Act (“ACCA”) violated due process, the same must be true of the “residual clause” in Section 1512(c)(2). (ECF No. 39, at 9). That contention fails for at least two reasons, as Judge Friedman recently explained. First, “*Johnson* does not stand for the proposition that any criminal provision with a residual clause is necessarily vague.” *Puma*, 2022 WL 823079, at *12; *cf. United States v. Davis*, 129 S. Ct. 2319, 2327 (2019) (explaining that if the ACCA’s residual clause required “a case-specific approach,” “there would be no vagueness problem”). And second, “unlike the residual clause of ACCA at issue in *Johnson*, Section 1512(c)(2) does not require the Court to ‘imagine the kind of conduct

typically involved in a crime’ in order to determine whether that crime, in the abstract, met the statutory criteria.” *Puma*, 2022 WL 823079, at *12. “Rather, a defendant violates Section 1512(c)(2) if his own conduct ‘obstructs, influences, or impedes any official proceeding.’” *Id.*

1. The exercise of prosecutorial discretion does not render a statute vague

Williams singles out five January 6 defendants charged with violations of Section 1512 (out of hundreds) and argues that their cases “illustrate[] how vague and arbitrary the enforcement of the statute can be.” (ECF No. 39, at 12). Williams’s effort is flawed, and several courts in this district including this one have recently rebuffed similar invitations to compare charging decisions as part of the vagueness inquiry. *See DeCarlo*, ECF No. 66, at 48-49; *Montgomery*, 2021 WL 6134591, at *22; *Caldwell*, 2021 WL 6062718, at *8; *Nordean*, 2021 WL 6134595 at *12; *Sandlin*, 2021 WL 5865006, at *9. “Discretionary prosecutorial decisions cannot render vague as applied a statute that by its plain terms provides fair notice.” *Caldwell*, 2021 WL 6062718 at *8; *see also Montgomery*, 2021 WL 6134591, at *22 (“the presence of enforcement discretion alone does not render a statutory scheme unconstitutionally vague”) (quoting *Kincaid v. District of Columbia*, 854 F.3d 721, 729 (D.C. Cir. 2017) (Kavanaugh, J.)). The vagueness doctrine asks whether “*the statute ... provide[s] a person of ordinary intelligence fair notice of what is prohibited.*” *Williams*, 553 U.S. at 304 (emphasis added). Williams cites no authority, and the government has found none, showing that charging decisions postdating the offense have any bearing on this inquiry. While the Court need not delve into the specifics of Williams’s five citations, they do not suggest that 1512(c)(2) is arbitrary. There is no indication that any of the defendants lacked the intent to “corruptly”—through wrongdoing, whether by violence, force, or other means—obstruct, interfere with, and impede the certification of the Electoral College vote count. Their obstructive methods varied: some defendants assaulted officers outside the Capitol while others entered the Senate

Chamber and rifled through Senators' paperwork. But such factual distinctions lack salience under the statute. Each type of conduct "corruptly" "obstruct[ed], influence[d], or impede[d]" a proceeding before Congress, and accordingly, comes within the statute's scope. 18 U.S.C. § 1512(c). The fact that a criminal statute could encompass varied fact patterns is hardly unusual: take the wire and mail fraud statutes, for example.

Williams further states, "the government does not specify what 'influence' these defendants had or how exactly they 'impeded.'" (ECF No. 39, at 12). But the government does not have to describe in the charging instrument how it will prove the elements at trial. *See United States v. Haldeman*, 559 F.2d 31, 124 (D.C. Cir. 1976) (*en banc*) ("[N]either the Constitution, the Federal Rules of Criminal Procedure, nor any other authority suggests that an indictment must put the defendants on notice as to every means by which the prosecution hopes to prove that the crime was committed."). The question here is whether Section 1512(c)'s text provided Williams with adequate notice.

2. Section 1512(c)(2) Is Not Unconstitutionally Vague As Applied to Williams's Conduct

The Court should reject Williams's contention that the indictment is vague as applied to him because, whatever the "uncertainty around the edges," *Edwards*, 869 F.3d at 502, Section 1512(c)'s "corruptly" element provided ample notice to Williams that *this conduct* was criminal. "One to whose conduct a statute clearly applies may not successfully challenge it for vagueness." *Parker v. Levy*, 417 U.S. 733, 756 (1974). In addition to the Section 1512 charge, Williams is accused of four other crimes in relation to his conduct on January 6th, all of which contributed to his obstruction of an official proceeding. As Judges Bates noted, "whatever gray area may exist at the outskirts of 'corrupt' obstruction, it is clear that independently unlawful action is at its center." *McHugh*, 21-cr-453, ECF No. 51, at 26 (citing Sandlin, 2021 WL 5865006, at *13 and *Nordean*,

2021 WL 6134595, at *11).⁴ Williams’s “conduct on January 6th was just as independently unlawful and thus just as obviously covered by § 1512(c)(2).” *McHugh*, 21-cr-453, ECF No. 51, at 26; *see also Sandlin*, 2021 WL 5865006, at *13 n.14 (“[Although] difficult questions arise when lawful means are used with a corrupt purpose,” a case “which allegedly involves unlawful means engaged in with the intent to obstruct[] does not raise these challenging questions”).

C. Section 1512(c)(2)’s Prohibition On Obstructive Conduct Does Not Require A Nexus To Documentary Or Tangible Evidence

Williams also contends that Section 1512(c)(2)’s prohibition is limited to obstruction tied to documentary or tangible evidence. (ECF No. 39, at 12-15). He is incorrect, as at least eight judges of this Court have concluded in rejecting analogous claims by other defendants charged in connection with the events of January 6, 2021. *See Sandlin*, 2021 WL 5865006, at *5-6 (Friedrich, J.); *Caldwell*, 2021 WL 6062718, at *11 (Mehta, J.); *Mostofsky*, 2021 WL 6049891, at *11 (Boasberg, J.); *Nordean*, 2021 WL 6134595, at *6-9 (Kelly, J.); *Montgomery*, 2021 WL 6134591, at *10-18 (Moss, J.); *United States v. Bozell*, 21-cr-216, 2022 WL 474144, at *5 (D.D.C. Feb. 16, 2022) (Bates, J.); *Grider*, 2022 WL 392307, at *5-*6 (Kollar-Kotelly, J.); *Puma*, 2022 WL 823079, at *12 & n.4 (Friedman, J.).

1. Section 1512(c)(2)’s text, structure, and history demonstrate that the statute’s prohibition is not limited to obstruction tied to documentary or tangible evidence

In Section 1512(c)(2), Congress comprehensively prohibited conduct that intentionally and wrongfully obstructs official proceedings. The ordinary meaning of “obstruct[], influence[], or impede[]” encompasses a wide range of conduct designed to frustrate an official proceeding. That

⁴ The indictment at issue in *McHugh*, like the indictment here, was not a speaking indictment. Judge Bates nevertheless concluded that *McHugh*’s conduct was “squarely within the core coverage of ‘corruptly’ as used in 18 U.S.C. § 1512(c)(2).” *McHugh*, 21-cr-453, ECF No. 51, at 26 (citation omitted).

conduct can include lying to a grand jury or in civil proceedings, exposing the identity of an undercover agent, and burning a building to conceal the bodies of murder victims. It also includes storming into the Capitol to derail a congressional proceeding. A defendant who, acting with the necessary *mens rea*, obstructs (or attempts to obstruct) Congress’s certification of the Electoral College vote, commits a crime under Section 1512(c)(2).

Section 1512(c)(2)’s text and structure demonstrate that it serves as a comprehensive prohibition on corrupt conduct that intentionally obstructs or impedes an official proceeding. When interpreting a statute, courts look first to the statutory language, “giving the words used their ordinary meaning.” *Lawson v. FMR LLC*, 571 U.S. 429, 440 (2014) (internal quotation marks omitted). If the statutory language is plain and unambiguous, this Court’s “inquiry begins with the statutory text, and ends there as well.” *National Ass’n of Mfrs. v. Department of Defense*, 138 S. Ct. 617, 631 (2018) (internal quotation marks omitted). Here, the meaning of “obstruct[], influence[], or impede[]” is controlled by the ordinary meaning of those words.

The verbs Congress selected in Section 1512(c)(2) reach broadly. For example, the words “obstruct” and “impede” can “refer to anything that ‘blocks,’ ‘makes difficult,’ or ‘hinders.’” *Marinello v. United States*, 138 S. Ct. 1101, 1106 (2018) (brackets omitted) (citing dictionaries). Similarly, “influence” includes “affect[ing] the condition of” or “hav[ing] an effect on.” *Influence*, *Oxford English Dictionary*, available at <http://www.oed.com>. By their plain meaning, therefore, the string of verbs in Section 1512(c)(2) are properly viewed as “expansive” in their coverage. *See United States v. Burge*, 711 F.3d 803, 809 (7th Cir. 2013).

Section 1512(c)’s structure confirms that straightforward interpretation. Section 1512(c) consists of two provisions, which both require the defendant to act “corruptly.” First, Section 1512(c)(1) criminalizes “alter[ing], destroy[ing], mutilat[ing], or conceal[ing] a record, document,

or other object ... with the intent to impair the object's integrity or availability for use in an official proceeding." Section 1512(c)(2), by contrast, applies more generally to any acts that "otherwise obstruct[], influence[], or impede[]" an official proceeding. The term "otherwise," consistent with its ordinary meaning, conveys that Section 1512(c)(2) encompasses misconduct that threatens an official proceeding "beyond [the] simple document destruction" that Section 1512(c)(1) proscribes. *Burge*, 711 F.3d at 809; *United States v. Petruk*, 781 F.3d 438, 446-447 (8th Cir. 2015) (noting that "otherwise" in Section 1512(c)(2), understood to mean "in another manner" or "differently," implies that the obstruction prohibition in that statute applies "without regard to whether the action relates to documents or records") (internal quotation marks omitted); *see also United States v. Ring*, 628 F. Supp. 2d 195, 224 n.17 (D.D.C. 2009) (noting that Section 1512(c)(2) is "plainly separate and independent of" Section 1512(c)(1), and declining to read "otherwise" in Section 1512(c)(2) "as limited by § 1512(c)(1)'s separate and independent prohibition on evidence-tampering"); Otherwise, *Oxford English Dictionary*, available at <http://www.oed.com> (defining "otherwise" as "in another way" or "in any other way"); *see also Gooch v. United States*, 297 U.S. 124, 127-128 (1936) (characterizing "otherwise" as a "broad term" and holding that a statutory prohibition on kidnapping "for ransom or reward or otherwise" is not limited by the words "ransom" and "reward" to kidnappings for pecuniary benefit); *Collazos v. United States*, 368 F.3d 190, 200 (2d Cir. 2004) (construing "otherwise" in 28 U.S.C. § 2466(1)(C) to reach beyond the "specific examples" listed in prior subsections, thereby covering the "myriad means that human ingenuity might devise to permit a person to avoid the jurisdiction of a court").

In this way, Section 1512(c)(2) criminalizes the same result prohibited by Section 1512(c)(1) – obstruction of an official proceeding – when that result is accomplished by a different means, *i.e.*, by conduct other than destruction of a document, record, or other object. *Cf. United*

States v. Howard, 569 F.2d 1331, 1333 (5th Cir. 1978) (explaining that 18 U.S.C. § 1503, which criminalizes the result of obstructing the due administration of justice, provides specific means of accomplishing that result and then a separate catch-all clause designed to capture other means). Section 1512(c)(2), in other words, “operates as a catch-all to cover otherwise obstructive behavior that might not constitute a more specific” obstruction offense involving documents or records under Section 1512(c)(1). *Petruk*, 781 F.3d at 447 (quoting *United States v. Volpendesto*, 746 F.3d 273, 286 (7th Cir. 2014)); cf. *United States v. Aguilar*, 515 U.S. 593, 598 (1995) (describing similar “[o]mnibus” clause in 18 U.S.C. § 1503 as a catchall that is “far more general in scope than the earlier clauses of the statute”).

Consistent with that interpretation, courts have upheld convictions under Section 1512(c)(2) for defendants who attempted to secure a false alibi witness while in jail for having stolen a vehicle, *Petruk*, 781 F.3d at 440, 447; disclosed the identity of an undercover federal agent to thwart a grand jury investigation, *United States v. Phillips*, 583 F.3d 1261, 1265 (10th Cir. 2009); lied in written responses to civil interrogatory questions about past misconduct while a police officer, *Burge*, 711 F.3d at 808-809; testified falsely before a grand jury, *United States v. Carson*, 560 F.3d 566, 584 (6th Cir. 2009); solicited information about a grand jury investigation from corrupt “local police officers,” *Volpendesto*, 746 F.3d at 286; and burned an apartment to conceal the bodies of two murder victims, *United States v. Cervantes*, No. 16-10508, 2021 WL 2666684, at *6 (9th Cir. June 29, 2021) (unpublished); see also *United States v. Martinez*, 862 F.3d 223, 238 (2d Cir. 2017) (police officer tipped off suspects before issuance or execution of search warrants), *vacated on other grounds*, 139 S. Ct. 2772 (2019); *United States v. Ahrensfield*, 698 F.3d 1310, 1324-1326 (10th Cir. 2012) (law enforcement officer disclosed existence of undercover investigation to target).

Section 1512(c)(2) also applies to defendants, including Williams, who trespassed into the restricted Capitol area on January 6, 2021, to prevent a Joint Session of Congress from certifying the results of the 2020 Presidential election. As at least 8 judges of this Court have concluded, in so doing, those defendants hindered and delayed the certification of the Electoral College vote, an “official proceeding” as that term is defined in the obstruction statute. *See* 18 U.S.C. § 1515(a)(1)(B); *supra* p. 21 (listing cases). Because construing Section 1512(c)(2) to reach that conduct would neither “frustrate Congress’s clear intention” nor “yield patent absurdity,” this Court’s “obligation is to apply the statute as Congress wrote it.” *Hubbard v. United States*, 514 U.S. 695, 703 (1995) (internal quotation marks omitted).

In contrast, limiting Section 1512(c)(2) to obstructive acts akin to the document destruction or evidence tampering captured in Section 1512(c)(1) suffers at least three flaws. First, it would give rise to unnecessarily complex questions about what sort of conduct qualifies as “similar to but different from” the proscribed conduct “described in [Section 1512](c)(1).” *United States v. Singleton*, No. 06-CR-80, 2006 WL 1984467, at *3 (S.D. Tex. July 14, 2006) (unpublished); *see id.* (concluding that Section 1512(c)(2) “require[s] some nexus to tangible evidence, though not necessarily tangible evidence already in existence”); *see also United States v. Hutcherson*, No. 05-CR-39, 2006 WL 270019, at *2 (W.D. Va. Feb. 3, 2006) (unpublished) (concluding that a violation of Section 1512(c)(2) requires proof that “an individual corruptly obstructs an official proceedings [sic] through his conduct in relation to a tangible object”). So construed, for example, Section 1512(c)(2) may not encompass false statements made to obstruct a proceeding – though courts have widely upheld convictions for such conduct. *See Petruk*, 781 F.3d at 447 (collecting cases).

Second, limiting Section 1512(c)(2) in that way would effectively render that provision superfluous in light of the comprehensive prohibitions against document and evidence destruction

in both Sections 1512(c)(1) and 1519. *See Yates*, 574 U.S. at 541 n.4 (plurality opinion) (Section 1512(c)(1) provides a “broad ban on evidence-spoliation”) (internal quotation marks omitted). By contrast, the straightforward interpretation that treats Section 1512(c)(2) as a catch-all for corrupt obstructive conduct not covered by Section 1512(c)(1) would “give effect to every clause and word” of Section 1512(c). *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013); *cf. United States v. Poindexter*, 951 F.2d 369, 385 (D.C. Cir. 1991) (explaining that limiting the catch-all provision in Section 1503’s omnibus clause to obstructive acts “directed against individuals” would render that catch-all superfluous because “earlier, specific[] prohibitions” in Section 1503 “pretty well exhaust such possibilities”) (internal quotation marks omitted); *United States v. Watt*, 911 F. Supp. 538, 546 (D.D.C. 1995) (rejecting interpretation of Section 1503’s omnibus clause that would “serve no other purpose than to prohibit acts already prohibited in the first part of the statute” because that reading would “reduce[] the omnibus clause to mere redundancy”).

Nor does the fact that Congress adopted a more general catch-all in Section 1512(c)(2) render superfluous other obstruction prohibitions found in Chapter 73, the criminal code’s chapter on obstruction of justice. *See, e.g., Montgomery*, 2021 WL 6134591, at *13 (“[T]he Court is also unpersuaded by Defendants’ more general superfluity argument, which posits that, unless Section 1512(c)(2) is narrowly construed, much of Chapter 73 would be rendered superfluous.”). Instead, the catch-all in Section 1512(c)(2) serves to capture “known unknowns.” *Yates*, 574 U.S. at 551 (Alito, J., concurring) (quoting *Republic of Iraq v. Beaty*, 556 U.S. 848, 860 (2009)). Indeed, “the whole value of a generally phrased residual clause ... is that it serves as a catchall” to ensure that the full range of conduct Congress sought to regulate comes within the statute, including “matters not specifically contemplated” by more specific provisions. *Beaty*, 556 U.S. at 860. In any event, “[r]edundancies across statutes are not unusual events in drafting,” *Connecticut Nat’l Bank v.*

Germain, 503 U.S. 249, 253 (1992), and the “rule[] of thumb” that statutes should be interpreted to avoid superfluity necessarily yields to the “cardinal canon” that Congress “says in a statute what it means and means in a statute what it says there,” *id.* at 253-54.

Judicial treatment of the nearby omnibus clause in Section 1503, which prohibits “corruptly ... influenc[ing], obstruct[ing], or imped[ing], or endeavor[ing] to influence, obstruct, or impede, the due administration of justice,” 18 U.S.C. § 1503, is instructive. Drafted in “very broad language,” the omnibus clause or “catchall provision,” see *Aguilar*, 515 U.S. at 599, principally operates to criminalize obstructive conduct that falls outside the narrower prohibitions within Section 1503 and neighboring provisions. See, e.g., *United States v. Sussman*, 709 F.3d 155, 168-170 (3d Cir. 2013) (removing gold coins from safe-deposit box); *United States v. Frank*, 354 F.3d 910, 916-919 (8th Cir. 2004) (removing car to avoid seizure); *United States v. Lefkowitz*, 125 F.3d 608, 619-620 (8th Cir. 1997) (instructing employee to remove documents from a house); *United States v. Lester*, 749 F.2d 1288, 1295 (9th Cir. 1984) (hiding a witness); *United States v. Brown*, 688 F.2d 596, 597-598 (9th Cir. 1982) (warning suspect about impending search warrant to prevent discovery of heroin); *Howard*, 569 F.2d at 1333-1334 (attempting to sell grand jury transcripts). No court has held that the omnibus clause’s broad language should be given an artificially narrow scope to avoid any overlap with Section 1503’s other, more specific provisions. Cf. *Pasquantino v. United States*, 544 U.S. 349, 358 n.4 (2005) (“The mere fact that two federal criminal statutes criminalize similar conduct says little about the scope of either.”). The same is true for the catchall provision in Section 1512(c)(2).

Similarly, Section 1512(c)(2)’s partial overlap with other obstruction statutes does not render those other provisions superfluous. For example, the omnibus clause in 1503 and the congressional obstruction provision in 1505 both reach an “endeavor[] to influence, obstruct, or

impede” the proceedings – a broader test for inchoate violations than Section 1512(c)(2)’s “attempt” standard. *See United States v. Sampson*, 898 F.3d 287, 301 (2d Cir. 2018) (“[E]fforts to witness tamper that rise to the level of an ‘endeavor’ yet fall short of an ‘attempt’ cannot be prosecuted under § 1512.”); *United States v. Leisure*, 844 F.2d 1347, 1366-1367 (8th Cir. 1988) (collecting cases recognizing the difference between “endeavor” and “attempt” standards). Section 1519, which covers destruction of documents and records in contemplation of an investigation or agency proceeding, does not require a “nexus” between the obstructive act and the investigation or proceeding – but Section 1512(c)(2) does. Again, the existence of even “substantial” overlap is not “uncommon” in criminal statutes. *Loughrin v. United States*, 573 U.S. 351, 358 n.4 (2014). But given that Sections 1503, 1505, and 1519 each reach conduct that Section 1512(c)(2) does not, the overlap provides no reason to impose an artificially limited construction on the latter provision. *See, e.g., Sandlin*, 2021 WL 5865006, at *8 (“[T]he fact that there is overlap between § 1512(c)(2) and the rest of § 1512, or other provisions in Chapter 73, is hardly remarkable.”).

Third, importing into Section 1512(c)(2) a nexus-to-tangible-evidence-or-documents requirement would require inserting an extratextual gloss that would render the verbs in Section 1512(c)(2) nonsensical. *See Dean v. United States*, 556 U.S. 568, 572 (2009) (courts “ordinarily resist reading words or elements into a statute that do not appear on its face”) (internal quotation marks omitted). The actus reus that those verbs encompass is obstructing, influencing, and impeding; a defendant cannot “obstruct” a document or “impede” a financial record. *Cf. Yates*, 574 U.S. at 551 (Alito, J., concurring) (rejecting interpretation of “tangible object” in Section 1519 that would include a fish in part because of a mismatch between that potential object and the statutory verbs: “How does one make a false entry in a fish?”); *id.* at 544 (plurality opinion) (“It

would be unnatural, for example, to describe a killer’s act of wiping his fingerprints from a gun as ‘falsifying’ the murder weapon.”).

Because “the statutory language provides a clear answer,” the construction of Section 1512(c)(2) “ends there” and resort to legislative history is unnecessary. *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999); *see also Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 599 (2011) (“Congress’s authoritative statement is the statutory text, not the legislative history.”) (internal quotation marks omitted). Regardless, the legislative history of Section 1512(c)(2) – particularly when considered alongside the history of Section 1512 more generally – provides no support for a contrary conclusion. *See, e.g., Montgomery*, 2021 WL 6134591, at *15-17 (thoroughly analyzing Section 1512(c)(2)’s legislative history and concluding that it does not support a narrow interpretation).

When Congress in 1982 originally enacted Section 1512, that legislation did not include what is now Section 1512(c). *See* VWPA, Pub. L. No. 97-291, § 4(a), 96 Stat. 1248, 1249-1250. Its title then, as now, was “Tampering with a witness, victim, or an informant.” *Id.*; 18 U.S.C. § 1512. As that title suggested, Section 1512 as originally enacted targeted conduct such as using intimidation, threats, or corrupt persuasion to prevent testimony or hinder, delay, or prevent communication of information to law enforcement or the courts as well as intentionally harassing another person to hinder, delay, or prevent that person from taking certain actions. *See* Pub. L. No. 97-291, § 4(a) (now codified as Section 1512(b) and Section 1512(d)). For example, Section 1512 as enacted in 1982 included a prohibition on using intimidation, physical force, or threats, with the intent to “cause or induce any person to ... alter, destroy, mutilate, or conceal an object with intent to impair that object’s integrity or availability for use in an official proceeding.” *Id.* § 4(a) (originally § 1512(a)(2)(B); now codified at § 1512(b)(2)(B)).

Twenty years later, following the collapse of the Enron Corporation, Congress passed the Sarbanes-Oxley Act of 2002. Pub. L. No. 107-204, 116 Stat. 745; *see Yates*, 574 U.S. at 535 (plurality opinion). That legislation, which principally aimed to “prevent and punish corporate fraud, protect the victims of such fraud, preserve evidence of such fraud, and hold wrongdoers accountable for their actions,” S. Rep. No. 107-146, at 2 (2002), included several different provisions, *id.* at 11 (describing different components of the law); *see also* 148 Cong. Rec. H4683-84 (daily ed. July 16, 2002) (outlining new provisions). Foremost among them were two new criminal statutes, 18 U.S.C. § 1519 and 18 U.S.C. § 1520, which were intended to “clarify and close loopholes in the existing criminal laws relating to the destruction or fabrication of evidence and the preservation of financial and audit records.” S. Rep. No. 107-146, at 14. The Senate Judiciary Committee Report on the Sarbanes-Oxley Act discussed those two provisions in detail. *See id.* at 14-16.

By contrast, the Sarbanes-Oxley Act’s legislative history provides limited explanation of Congress’s objective in enacting Section 1512(c). The only discussion of Section 1512 in the Senate Judiciary Committee Report noted that the pre-existing prohibition in Section 1512(b) made it a crime to induce “another person to destroy documents, but not a crime for a person to destroy the same documents personally” – a limitation that “forced” prosecutors to “proceed under the legal fiction that the defendants [in then-pending *United States v. Arthur Andersen*] are being prosecuted for telling other people to shred documents, not simply for destroying evidence themselves.” S. Rep. No. 107-146, at 6-7. Similarly, Senator Hatch observed that the legislation “broaden[ed]” Section 1512 by permitting prosecution of “an individual who acts alone in destroying evidence.” 148 Cong. Rec. S6550 (daily ed. July 10, 2002) (statement of Sen. Hatch).

Nothing in these passing references casts doubt on the plain meaning of Section 1512(c)(2), which is reflected in the interpretation described above.

Section 1512(c) also differed from the newly enacted Sections 1519 and 1520 in that Congress added the former to an existing statutory section: Section 1512. *See Yates*, 574 U.S. at 541 (plurality opinion) (noting that, unlike Section 1519, Section 1512(c)(2) was placed among the “broad proscriptions” in the “pre-existing” Section 1512). Moreover, although Section 1512(c) as enacted in the Sarbanes-Oxley Act recognized two distinct prohibitions, *see* Pub. L. No. 107-204, § 1102, 116 Stat. 807 (“Tampering with a record or otherwise impeding an official proceeding”) (emphasis added; capitalization altered), Congress did not amend Section 1512’s title. That title, “Tampering with a witness, victim, or an informant,” 18 U.S.C. § 1512, thus encompassed the pre-existing provisions aimed at a defendant’s obstructive conduct directed toward another person, but did not expressly reflect the newly enacted prohibitions in Section 1512(c) that criminalized a defendant’s own obstructive act, either through destroying documents (§ 1512(c)(1)) or otherwise impeding a proceeding (§ 1512(c)(2)). *See Yates*, 574 U.S. at 541 n.4 (plurality opinion) (noting that Congress added Section 1512(c)(1), which covered evidence-spoliation, to Section 1512 “even though § 1512’s preexisting title and provisions all related to witness-tampering”).

Section 1512(c)’s legislative and statutory history thus offers two reasons to interpret Section 1512(c)(2) consistently with its plain text and structure. First, Section 1512(c) aimed at closing a perceived “loophole” in Section 1512: the existing prohibitions did not adequately criminalize a defendant’s personal obstructive conduct not aimed at another person. *See* 148 Cong. Rec. S6550 (daily ed. July 10, 2002) (statement of Sen. Hatch). Read together in this light, Section 1512(c)(1) criminalizes a defendant’s firsthand destruction of evidence (without having to prove

that the defendant induced another person to destroy evidence) in relation to an official proceeding, and Section 1512(c)(2) criminalizes a defendant's firsthand obstructive conduct that otherwise impedes or influences an official proceeding (though not necessarily through another person). *See Burge*, 711 F.3d at 809-810. Second, no substantive inference is reasonably drawn from the fact that the title of Section 1512 does not precisely match the "broad proscription" it in fact contains, given that the Sarbanes-Oxley Act unequivocally and broadly entitled the new provisions now codified in Section 1512(c), "Tampering with a record or otherwise impeding an official proceeding." Pub. L. No. 107-204, § 1102, 116 Stat. 807 (emphasis added; capitalization altered). Section 1512's title is more limited simply because Congress did not amend the pre-existing title when it added the two prohibitions in Section 1512(c) in 2002. *Cf. Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528-29 (1947) (describing "the wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text").

2. This Court should not adopt the outlier construction reflected in *United States v. Miller*

Williams largely ignores the authorities discussed above, which are analyzed in the many decisions of this Court's judges adopting the government's reading of the statute. *See supra* p. 21 (citing cases). Instead, he urges this Court to adopt the reasoning of *United States v. Miller*, No. 21-cr-119, 2022 WL 823070 (D.D.C. Mar. 7, 2022) (Nichols, J.), the sole decision in which a judge of this Court has construed Section 1512(c)(2) to require proof that "the defendant ha[s] taken some action with respect to a document, record, or other object in order to corruptly obstruct, impede or influence an official proceeding." *Id.* at *15.⁵ *Miller*'s outlier reasoning is unpersuasive for several reasons.

⁵ The government has moved for reconsideration in *Miller*. That motion remains pending.

Focusing on the word “otherwise” in Section 1512(c)(2), Judge Nichols in *Miller* identified “three possible readings” of Section 1512(c)(2). *Miller*, 2022 WL 823070, at *6. First, Section 1512(c)(2) could serve as a “clean break” from Section 1512(c)(1), *id.* at *6, a reading that “certain courts of appeals have adopted,” *id.* at *7. *Miller*, however, identified multiple “problems” with that interpretation, all rooted in the interpretation of the term “otherwise.” It stated that reading “otherwise” in Section 1512(c)(2) to mean “in a different way or manner” is “inconsistent” with *Begay v. United States*, 553 U.S. 137 (2008), which considered whether driving under the influence qualified as a “violent felony” under the now-defunct residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(1). *Id.* at *7. Second, *Miller* hypothesized that Section 1512(c)(1) could “provide[] examples of conduct that violates” Section 1512(c)(2). *Id.* at *8. Third, *Miller* stated that Section 1512(c)(2) could be interpreted as a “residual clause” for Section 1512(c)(1), such that both provisions are linked by the document-destruction and evidence-tampering “conduct pr[o]scribed by” Section 1512(c)(1). *Id.* at *9. After considering Section 1512(c)’s structure, “historical development,” and legislative history, *Miller* found “serious ambiguity” as to which of the two “plausible” readings – the second and third readings identified above – Congress intended. *Id.* at *15. Applying what it described as principles of “restraint,” *Miller* then interpreted Section 1512(c)(2) to mean that a defendant violates the statute only when he or she “take[s] some action with respect to a document, record, or other object in order to corruptly obstruct, impede, or influence an official proceeding” (the third reading). *Id.*

Miller’s reasoning is unpersuasive. *Miller* ultimately turned on the court’s determination that no “single obvious interpretation of the statute” controlled and that the rule of lenity was applicable and was dispositive. *Id.* at *15. The rule of lenity, however, “only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty

in the statute, such that the Court must simply guess as to what Congress intended.” *Barber v. Thomas*, 560 U.S. 474, 488 (2010) (citation and internal quotation marks omitted); *Muscarello v. United States*, 524 U.S. 125, 138-39 (1998); *Young v. United States*, 943 F.3d 460, 464 (D.C. Cir. 2019). Some ambiguity is insufficient to trigger the rule of lenity; instead, a court must find “grievous ambiguity” that would otherwise compel guesswork. *See Ocasio v. United States*, 578 U.S. 282, 295 n.8 (2016) (internal quotation marks omitted). “Properly applied,” then, “the rule of lenity therefore rarely if ever plays a role because, as in other contexts, ‘hard interpretive conundrums, even relating to complex rules, can often be solved.’” *Wooden*, 142 S. Ct. at 1074 (Kavanaugh, J., concurring).

Under these standards, the rule of lenity is plainly “inapplicable” here. *Puma*, 2022 WL 823079, at *12 n.4. For the reasons set forth above, Congress made clear in Section 1512(c)(2) that it sought to protect the integrity of official proceedings – regardless of whether a defendant threatens such a proceeding by trying to interfere with the evidence before that tribunal or threatens the tribunal itself. Any such distinction produces the absurd result that a defendant who attempts to destroy a document being used or considered by a tribunal violates Section 1512(c) but a defendant who threatens to use force against the officers conducting that proceeding escapes criminal liability under the statute. Not only does the rule of lenity not require such an outcome, but such an application loses sight of a core value that animates the lenity rule: that defendants should be put on notice that their conduct is criminal and not be surprised when prosecuted. *See Wooden*, 142 S. Ct. at 1082 (Gorsuch, J., concurring) (“Lenity works to enforce the fair notice requirement by ensuring that an individual’s liberty always prevails over ambiguous laws.”). It would strain credulity for any defendant who was focused on stopping an official proceeding from taking place to profess surprise that his conduct could fall within a statute that makes it a crime to

“obstruct[], influence[], or impede[] [any] official proceeding or attempt[] to do so.” 18 U.S.C. § 1512(c)(2). Confirming the absence of ambiguity – serious, grievous, or otherwise – is that despite Section 1512(c)(2)’s nearly 20-year existence, no other judge has found ambiguity in Section 1512(c)(2), including, again, numerous judges on this Court considering the same law and materially identical facts. *See supra* p. 21.

None of the grounds identified by Judge Nichols in *Miller* for finding “serious ambiguity” – grounds which Williams reprises in his motion – withstands scrutiny. *Miller*, 2022 WL 823070, at *15. *Miller* stated that the government’s reading either “ignores” that the word “otherwise” is defined with reference to “something else” (namely Section 1512(c)(1)) or fails to “give meaning” to the term “otherwise.” 2022 WL 823079, at *7. That is incorrect. Far from suggesting that Section 1512(c)(2) is “wholly untethered to” Section 1512(c)(1), *id.*, under the government’s reading discussed above, the word “otherwise” in Section 1512(c)(2) indicates that Section 1512(c)(2) targets obstructive conduct in a manner “other” than the evidence tampering or document destruction that is covered in Section 1512(c)(1). That understanding of “otherwise” is both fully consistent with the definitions of the term surveyed in *Miller*, 2022 WL 823070, at *6 (noting that “otherwise” in Section 1512(c)(2) may be read as “in a different way or manner; differently”; “in different circumstances: under other conditions”; or “in other respects”) (internal quotation marks omitted), and ensures that the term is not rendered “pure surplusage,” *id.* at *7. In other words, “otherwise” makes clear that Section 1512(c)(1)’s scope encompasses document destruction or evidence tampering that corruptly obstructs an official proceeding, while Section 1512(c)(2)’s ambit includes “other” conduct that corruptly obstructs an official proceeding.

Miller also stated that, without a nexus to a document, record, or other object, Section 1512(c)(2) “would have the same scope and effect ... [as] if Congress had instead omitted the

word ‘otherwise.’” 2022 WL 823079, at *7. But, as already noted, overlap is “not uncommon in criminal statutes,” *Loughrin* 573 U.S. at 358 n.4, and Section 1512(c)(2)’s broader language effectuates its design as a backstop in the same way that a “generally phrased residual clause ... serves as a catchall for matters not specifically contemplated.” *Beatty*, 556 U.S. at 860. And, in any event, interpreting the interplay of Sections 1512(c)(1) and 1512(c)(2) in this way does not foreclose a defendant from arguing that his conduct falls outside Section 1512(c)(2)’s scope because his document destruction or evidence concealment is prohibited and punishable only under Section 1512(c)(1). A defendant prevailing on such a theory may be securing a Pyrrhic victory – where success leads to reindictment under Section 1512(c)(1) – but those practical considerations provide no reason to depart from the plain meaning of Section 1512(c). And, in any event, the “mere fact that two federal criminal statutes criminalize similar conduct says little about the scope of either.” *Pasquantino*, 544 U.S. at 358 n.4.

The *Miller* court and Williams (ECF No. 39, at 13-14) also posit that the government’s reading is inconsistent with *Begay*. That conclusion is flawed in several respects. First, in considering whether driving under the influence was a “violent felony” for purposes of the ACCA’s residual clause – which defines a “violent felony” as a felony that “is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury,” 18 U.S.C. § 924(e)(2)(B)(ii) – the Supreme Court in *Begay* addressed a statutory provision that has an entirely different structure from Section 1512(c)(2). *See, e.g., Sandlin*, 2021 WL 5865006, at *6 (distinguishing *Begay* on the ground that, unlike the ACCA residual clause, the “otherwise” in Section 1512(c)(2) is “set off by both a semicolon and a line break”); *United States v. Ring*, 628 F. Supp. 2d 195, 224 n.17 (D.D.C. 2009). Differently from the ACCA residual clause, the “otherwise” phrase in Section 1512(c)(2) “stands alone,

unaccompanied by any limiting examples.” *Ring*, 628 F.Supp.2d at 224 n.17. In other words, the “key feature” in Section 924(e)(2)(B)(ii) at issue in *Begay* – “namely, the four example crimes,” 553 U.S. at 147 – is “absent” in Section 1512(c)(2). *Caldwell*, 2021 WL 6062718, at *14.

Second, *Miller*’s assertion that the meaning of “otherwise” was “[c]rucial” to the Supreme Court’s decision in *Begay* misapprehends *Begay*’s express analysis. The majority in *Begay* noted first that the “listed examples” in Section 924(e)(2)(B)(ii) – burglary, arson, extortion, or crimes involving explosives – indicated that the ACCA residual clause covered only similar crimes. *Begay*, 553 U.S. at 142. The majority next drew support from Section 924(e)(2)(B)(ii)’s history, which showed that Congress both opted for the specific examples in lieu of a “broad proposal” and described Section 924(e)(2)(B)(ii) as intending to encompass crimes “similar” to the examples. *Id.* at 143-144. Only in the final paragraph of that section of the opinion did the majority address the word “otherwise,” noting that the majority “[could] not agree” with the government’s argument that “otherwise” is “sufficient to demonstrate that the examples do not limit the scope of the clause” because “the word ‘otherwise’ can (we do not say must, cf. post at [150-52] (Scalia, J. concurring in judgment)) refer to a crime that is similar to the listed examples in some respects but different in others.” *Id.* at 144. A tertiary rationale responding to a party’s argument where the majority refrains from adopting a definitive view of “otherwise” cannot plausibly be described as “crucial.” Rather, the majority’s “remarkably agnostic” discussion of “otherwise” in *Begay* explicitly noted that the word may carry a different meaning where (as here) the statutory text and context suggests otherwise. *Montgomery*, 2021 WL 6134591, at *11; *see also Caldwell*, 2021 WL 6062718, at *14 (declining to depart from the “natural reading” of “otherwise” as “‘in a different way or manner’” based on the discussion in *Begay*). In short, the majority in *Begay* actually “placed little or no weight on the word ‘otherwise’ in resolving the case.” *Montgomery*, 2021 WL 6134591, at *11.

Third, whatever the significance of the majority’s interpretation of “otherwise” in *Begay*, *Begay*’s ultimate holding demonstrates why this Court should not embark on imposing an extra-textual requirement within Section 1512(c)(2). The Supreme Court held in *Begay* that Section 924(e)(2)(B)(ii) encompassed only crimes that, similar to the listed examples, involve “purposeful, violent, and aggressive conduct.” 553 U.S. at 144-145. But “*Begay* did not succeed in bringing clarity to the meaning of the [ACCA’s] residual clause.” *Johnson v. United States*, 576 U.S. 591, 600 (2015). Whatever the merits of grafting an atextual (and ultimately unsuccessful) requirement in the context of the ACCA, that approach is unwarranted in the context of Section 1512(c)(2). In the nearly 20 years between Congress’s enactment of Section 1512(c)(2) and *Miller*, no reported cases adopted the document-only requirement urged by Williams, and for good reason. That interpretation would just give rise to unnecessarily complex questions about what sort of conduct qualifies as “taking some action with respect to a document” in order to obstruct an official proceeding. It would give rise to more ambiguity than it purports to avoid.

3. Even it agrees with *Miller*, this Court should not dismiss Count One of the Indictment, which merely tracks Section 1512(c)(2)’s operative statutory text

In any event, even under Williams’s theory, Count One sufficiently alleges a violation of Section 1512(c)(2) by tracking the provision’s “operative statutory text.” *Williamson*, 903 F.3d at 130. It is well-settled that it is “generally sufficient that an indictment set forth the offense in the words of the statute itself, as long as those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence intended to be punished.” *Id.* (quoting *Hamling v. United States*, 418 U.S. 87, 117 (1974)). The indictment in this case therefore did not need to more specifically allege that the obstruction took the form of taking some action with respect to a document. *Id.*; see also *United States v. Resendiz-*

Ponce, 549 U.S. 102, 108-109 (2007) (reaffirming that “an indictment parroting the language of a federal criminal statute is often sufficient” and finding it sufficient that the indictment at issue tracked the statutory language of the offense charged and specified the time and place of the defendant’s conduct). In other words, the indictment’s allegations, by charging the operative statutory text, permissibly embrace two theories: (1) that Williams obstructed an official proceeding by taking some action with respect to a document; and (2) that Williams obstructed an official proceeding without taking some action with respect to a document. Even a ruling finding the second theory invalid would leave the first theory intact. For that reason alone, at this stage in the proceedings, dismissal of Count One would be unwarranted even if the Court agreed with Williams’s reading of the statute.

II. The Court Should Deny Williams’s Motion to Dismiss Counts Two and Three, Alleging Violations of 18 U.S.C. § 1752

Counts Two and Three allege violations of Section 1752 of Title 18, which prohibits the unlawful entry into and disruptive or disorderly conduct in a “restricted buildings or grounds.” A “restricted building or grounds” is a “posted, cordoned off, or otherwise restricted area...where the President or other person protected by the Secret Service is or will be temporarily visiting.” 18 U.S.C. § 1752(c)(1)(B). At the time the defendant entered the U.S. Capitol on January 6, 2021, the Vice President was present. Williams’s conduct accordingly falls within the Section 1752’s plain sweep because he unlawfully entered a restricted building while the Vice President was “temporarily visiting,” as alleged in the indictment.

A. 18 U.S.C. § 1752 does not require the government to prove that the restricted area was restricted at the Secret Service’s direction

Williams argues that because the Capitol Police, not the Secret Service, barricaded the area around the Capitol, he should not be charged with violating 18 U.S.C. § 1752(a)(1) and (2). (ECF

No. 39, at 16-18). Courts in this district have rightly rejected this contention. *See Griffin*, 2021 WL 2778557; *Mostofsky*, 2021 WL 6049891, at *12–*13, *Nordean*, 2021 WL 6134595, at *18; *McHugh*, 21-cr-453, ECF No. 51, at 38–40.

In relevant part, 18 U.S.C. § 1752 (“Restricted building or grounds”) prohibits the unlawful entry into a restricted or otherwise cordoned off area where “a person protected by the Secret Service is or will be temporarily visiting.” *Wilson v. DNC Servs. Corp.*, 417 F. Supp. 3d 86, 98 (D.D.C. 2019), *aff’d* 831 F. App’x 513 (D.C. Cir. 2021). Section 1752 therefore “focuses on perpetrators who knowingly enter a restricted area around a protectee, not on how it is restricted or who does the restricting.” *Griffin*, 2021 WL 2778557, at *6.

To determine the meaning of a statute, the Court “look[s] first to its language, giving the words used their ordinary meaning.” *Levin*, 568 U.S. at 513 (quoting *Moskal*, 498 U.S. at 108); *see also Pub. Investors Arbitration Bar Ass’n v. S.E.C.*, 930 F. Supp. 2d 55 (D.D.C. 2013) (Howell, J.). Here, the plain text of the statute is “unambiguous,” so the “judicial inquiry is complete.” *Babb*, 140 S. Ct. at 1177. Section 1752’s text is clear. It proscribes certain conduct in and around “any restricted building or grounds.” *See* 18 U.S.C. § 1752(a). The statute provides three definitions for the term “restricted buildings and grounds,” *see* § 1752(c)(1), including “any posted, cordoned off, or otherwise restricted area . . . of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting,” § 1752(c)(1)(B). Through a cross-reference, Section 1752 makes clear—and Williams does not appear to dispute—that “person[s] protected by the Secret Service” includes the Vice President. § 1752(c)(2); *see* § 3056(a)(1).

That straightforward analysis has a straightforward application to the facts alleged in the defendant’s case. The indictment alleges that a protected person (the Vice President) was present

inside the Capitol building or on the Capitol grounds, and that some portion of the Capitol building and grounds was posted, cordoned off, or otherwise restricted—making it a “restricted building or grounds” under § 1752(c)(1). In short, the allegations closely track the statutory language.

Williams urges the Court to import an extra-textual requirement that the Secret Service be required to designate the restricted area. (ECF No. 39, at 16). However, there is nothing in the statute itself that addresses who must do the restricting. This makes perfect sense when considering that Section 1752 is directed not at the Secret Service, but at ensuring the protection of the President and the office of the Presidency. *See* S. Rep. 91-1252 (1970); *see also* Elizabeth Craig, *Protecting the President from Protest: Using the Secret Service’s Zone of Protection to Prosecute Protesters*, 9 J. Gender Race & Just. 665, 668–69 (2006). “Indeed, the only reference in the statute to the Secret Service is to its protectees. Section 1752 says nothing about who must do the restricting.” *Griffin*, 2021 WL 2778557, at *7; *see also Mostofsky*, 2021 WL 6049891 at *13 (“The text plainly does not require that the Secret Service be the entity to restrict or cordon off a particular area.”). “If Congress intended a statute designed to safeguard the President and other Secret Service protectees to hinge on who outlined the safety perimeter around the principal, surely it would have said so.” *Griffin*, 2021 WL 2778557, at *6. Williams’s reading would have the Court create a “potentially massive procedural loophole” from the statute’s “silence.” *McHugh*, 21-cr-453, ECF No. 51, at 40. The Court should not do so.

Statutory history also undercuts the defendant’s argument. *See id.*, at *4–*5 (explaining how Congress has consistently “*broadened* the scope of the statute and the potential for liability”). While the earlier version of Section 1752 also did not say who must restrict a building or grounds, it did incorporate regulations promulgated by the Department of the Treasury (which at the time housed the Secret Service) governing restricted areas. *Id.* Williams falsely conflates the Treasury’s

Department's authority to promulgate certain regulations with a requirement that the Secret Service cordon off areas; but, even so, Congress subsequently struck subsection (d) and did not replace it with language limiting the law enforcement agencies allowed to designate a restricted area. Pub. L. 109-177, Title VI, Sec. 602, 120 Stat. 192 (Mar. 9, 2006). Its decision in 2006 to eliminate reference to the Treasury Department (without replacing it with the Department of Homeland Security, which currently houses the Secret Service) indicates that the statute no longer depends (if it ever did) on whether the Secret Service has defined an area as "restricted."

Williams also erroneously argues that the government conceded in *United States v. Griffin* (21-cr-92) (TNM)) that the U.S. Capitol Police designated the restricted area. (ECF No. 39, at 17). On the contrary, in *Griffin*, government witnesses testified that the Capitol Police established the restricted area in communication with the Secret Service, and that the Secret Service had the power to institute changes. But in any case, Williams's argument is ultimately irrelevant because, as stated above, the statute does not require that the Secret Service establish the restricted area and at least four district judges of this Court have agreed. Counts Two and Three are sound.

B. The Vice President can "temporarily visit" the U.S. Capitol

Contrary to Section 1752's plain terms, purpose, and structure, Williams argues that Vice President Pence cannot "temporarily visit" the U.S. Capitol because he has an office there. (ECF No. 39, at 20). He claims that his is the commonsense reading of the statute, but he is wrong, as Judge Bates recently held. *McHugh*, 21-cr-453, ECF No. 51, at 42–47 (reaching "a commonsense conclusion: the Vice President was 'temporarily visiting' the Capitol"). *See also see also United States v. Andries*, 2022 WL 768684, at *16 (D.D.C. Mar. 14, 2022) (Contreras, J.) ("Vice President Pence was 'temporarily visiting' the Capitol on January 6, 2021 if he went to the Capitol for a particular purpose, including a business purpose, and for a limited time only. Plainly he did. He

went to the Capitol for the business purpose of carrying out his constitutionally assigned role in the electoral count proceeding; he intended to and did stay there only for a limited time.”) and *United States v. Puma*, 21-cr-454, 2022 WL 823079, at *17 (D.D.C. Mar. 19, 2022) (Friedman, J.) (stating that under the plain language of Section 1752, the Vice President “was temporarily visiting the Capitol on January 6, 2021: he was there for a limited time only in order to preside over and participate in the Electoral College vote certification.”).

As noted above, to determine the meaning of a statute, the Court “look[s] first to its language, giving the words used their ordinary meaning.” *Levin*, 568 U.S. at 513 (quoting *Moskal v. United States*, 498 U.S. 103, 108 (1990)). The verb “visit” means, *inter alia*, “to go to see or stay at (a place) for a particular purpose (such as business or sightseeing)” or “to go or come officially to inspect or oversee.”⁶

Either definition describes the Secret Service protectee’s activities on January 6. Vice President Pence was physically present at the U.S. Capitol for a particular purpose: he presided over Congress’s certification of the 2020 Presidential Election, first in the joint session, and then in the Senate chamber. While not specifically alleged in the indictment, two other Secret Service protectees (members of the Vice President’s immediate family), also came to the U.S. Capitol that day for a particular purpose: to observe these proceedings. Furthermore, as President of the Senate, Vice President Pence oversaw the vote certification. Given the presence of the Vice President (and his family members), the U.S. Capitol plainly qualified as a building where “[a] person protected by the Secret Service [was] ... temporarily visiting.” 18 U.S.C. § 1752(c)(1)(B).

Williams emphasizes Section 1752’s use of the term “temporarily” and cites cases where either the President or Vice President were “traveling *outside* of the District of Columbia ‘visiting’

⁶ <https://www.merriam-webster.com/dictionary/visit>

that area for a ‘temporary’ purpose.” (ECF No. 39, at 20). Section 1752, however, does not impose a requirement that the location being temporarily visited be outside of the District of Columbia. Second, the visit to the U.S. Capitol *was* temporary: Vice President Pence (and his family) had traveled to the U.S. Capitol to oversee and attend the Joint Session of Congress—a proceeding of limited duration. At the close of the proceeding, they left—confirming the “temporary” nature of their visit. *See McHugh*, 21-cr-453, ECF No. 51, at 43 (citing various dictionary definitions of “temporary” as “for a limited time” and finding that the Vice President can “temporarily visit” the U.S. Capitol).

Williams offers two further observations—both irrelevant. First, he notes that Vice President Pence “lived and worked” in the District of Columbia. (ECF No. 39, at 20). But Section 1752(c)(1)(B) defines the restricted area by reference to “buildings or grounds,” not municipal borders. That Vice President Pence lived and worked in Washington, D.C. does not detract from the fact that he “temporarily visit[ed]” the U.S. Capitol on January 6. “Simply being in the visitor’s hometown does not mean a place cannot be ‘visited.’” *McHugh*, 21-cr-453, ECF No. 51, at 44. Second, the defendant stresses that Vice President Pence had a permanent U.S. Capitol office. *Id.* Section 1752(c)(1)(B), however, defines the restricted area by reference to the location of the protectee—not his office. When Vice President Pence traveled to the U.S. Capitol on January 6 to oversee the Joint Session of Congress, he was “visiting” the building. And because Vice President Pence intended to leave at the close of the session, this visit was “temporar[y].” Moreover, the U.S. Capitol is not the Vice President’s regular workplace; even if “there is some carveout in § 1752 for where a protectee normally lives or works, it does not apply to Vice President Pence’s trip to the Capitol on January 6, 2021.” *McHugh*, 21-cr-453, ECF No. 51, at 46.

Such a “carveout,” taken to its logical end, would undermine the government’s ability to protect the President and Vice President by deterring and punishing individuals who seek unauthorized access to the President’s or Vice President’s location. It would restrict Section 1752(c)(1)(B)’s application to only locations outside the District of Columbia—on the view that any visit by the President or Vice President to a location within municipal limits cannot be “temporary” because they reside in the District of Columbia. Second, under the defendant’s construction, Section 1752(c)(1)(B) would not apply where the President or Vice President temporarily stayed at their permanent residences in Delaware or California—on the view that such a trip would not qualify as “visiting.” Nor would it apply to Camp David, where there is a presidential cabin and office. In another strange scenario, a restricted area could exist when, as here, the Vice President’s family visits the Capitol (because they are Secret Service protectees without an office there), but not when the Vice President does, affording a higher level of protection for the family of the elected official than to the elected official himself (or herself). No support exists for Williams’s effort to insert such large and irrational exceptions into the statute’s sweep. *See Lovitky v. Trump*, 949 F.3d 753, 760 (D.C. Cir. 2020) (noting that courts will avoid a “statutory outcome ... if it defies rationality by rendering a statute nonsensical or superfluous or if it creates an outcome so contrary to perceived social values that Congress could not have intended it”) (citation omitted).

Williams’s position also defies Section 1752’s clear purpose. *Cf. Genus Med. Techs. LLC v. United States Food & Drug Admin.*, 994 F.3d 631, 637 (D.C. Cir. 2021) (“[I]f the text alone is insufficient to end the inquiry, we may turn to other customary statutory interpretation tools, including structure, purpose, and legislative history.”) (internal quotation marks and citation omitted). In drafting Section 1752, Congress sought to protect “not merely the safety of one man,

but also the ability of the executive branch to function in an orderly fashion and the capacity of the United States to respond to threats and crises affecting the entire free world.” *United States v. Caputo*, 201 F. Supp. 3d 65, 70 (D.D.C. 2016) (quoting *White House Vigil for ERA Comm. v. Clark*, 746 F.2d 1518, 1528 (D.C. Cir. 1984)). To that end, the statute comprehensively deters and punishes individuals who seek unauthorized access to the White House grounds and the Vice President’s residence—fixed locations where the President and Vice President live and work, 18 U.S.C. 1752(c)(1)(A); and also any other “building or grounds” where they (or other protectees) happen to be “temporarily visiting,” 18 U.S.C. 1752(c)(1)(B). Reading Sections 1752(c)(1)(A) and 1752(c)(1)(B) together protects the President and Vice President in their official homes and wherever else they go. Interpreting the statute as the defendant suggests would create a gap in Section 1752’s coverage by removing areas, such as the U.S. Capitol, from protection. It could expose the leaders of the Executive Branch even as they perform their official duties. That gap is both illogical and contrary to the statutory history of Section 1752, where, “at every turn,” Congress has “*broadened* the scope of the statute and the potential for liability.” *Griffin*, 2021 WL 2778557, at *5 (D.D.C. July 2, 2021).

All the relevant metrics—plain language, statutory structure, and congressional purpose—foreclose the defendant’s crabbed reading of Section 1752(c)(1)(B). This Court should reject it. Williams’s cited cases—involving either an arrest or conviction under Section 1752—do not discuss the “temporarily visiting” language. Mot. at 29–30 (citing *United States v. Bursey*, 416 F.3d 301 (4th Cir. 2005); *United States v. Junot*, 1990 WL 66533 (9th Cir. May 18, 1990) (unpublished); *Blair v. City of Evansville, Ind.*, 361 F. Supp.2d 846 (S.D. Ind. 2005)). They lack relevance to the present dispute.

CONCLUSION

The Court should deny Williams's motion to dismiss Counts One through Three of the Indictment for the reasons stated above.

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CERTIFICATE OF SERVICE

On April 29, 2022, a copy of the foregoing was served on counsel of record for the defendants via the Court's Electronic Filing System.

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