UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA v. ANTHONY ROBERT WILLIAMS, Defendant.	Criminal Action No. 21-377 (BAH) Chief Judge Beryl A. Howell

MEMORANDUM AND ORDER

Defendant Anthony Robert Williams faces trial on June 27, 2022, on a five-count indictment and has moved pre-trial to dismiss, *inter alia*, Counts Two and Three, alleging violations of 18 U.S.C. §§ 1752(a)(1) and (a)(2), respectively. Def.'s Mot. to Dismiss Counts One, Two, and Three ("Def.'s Mot."), ECF No. 39.[1] Both challenged charges stem from defendant's alleged presence in "a restricted building and grounds" where "the Vice President was temporarily visiting" on January 6, 2021. Indictment at 2, ECF No. 13.[2] Specifically, Count Two alleges that defendant "unlawfully and knowingly enter[ed] and remain[ed] in" such "a restricted building and grounds," in violation of 18 U.S.C. § 1752(a)(1), while Count Three alleges that defendant "knowingly, and with intent to impede and disrupt the orderly conduct of Government business and official functions, engage in disorderly and disruptive conduct in and within such proximity to, a restricted building and grounds . . . when and so that such conduct

[1] Defendant also seeks to dismiss Count One, alleging violation of 18 U.S.C. § 1512(c)(2) and § 2, and resolution of that part of the pending motion is deferred until the pretrial conference scheduled on June 10, 2022.

[2] At the government's request and with defendant's consent, the indictment was amended on February 28, 2022, to strike erroneous language indicating that the "Vice President-elect" was also temporarily visiting the U.S. Capitol Building. Order, ECF No. 33.

did in fact impede and disrupt the orderly conduct of Government business and official functions," in violation of 18 U.S.C. § 1752(a)(2), Indictment at 2.

Defendant argues that Counts Two and Three should be dismissed for two reasons. First, defendant posits that for a location to be "a restricted building and grounds," the U.S. Secret Service ("USSS") must so designate the location and, absent such formal designation with respect to the Capitol on January 6, 2021, § 1752 cannot apply to defendant's offense conduct. Def.'s Mot. at 16–18. Second, defendant contends that the Capitol cannot have been "restricted buildings or grounds" on January 6, 2021, because then-Vice President Pence was not "temporarily visiting." *Id.* at 18–21. For the reasons explained below, both arguments are meritless. This Court therefore joins every other Judge on this Court to have considered—and consistently rejected—these arguments, and defendant's motion to dismiss Counts Two and Three is denied.

I. DISCUSSION

Defendant's two arguments in support of his motion to dismiss Counts Two and Three are examined in turn.

A. Designation of "Restricted Areas"

Defendant asserts that the Capitol building and grounds on January 6, 2021 did not constitute "a restricted building or grounds," a required element of both 18 U.S.C. § 1752(a)(1) (Count Two) and § 1752(a)(2) (Count Three). In support of this argument, defendant claims that "Section 1752 grants the Treasury Secretary the authority to 'designate by regulations the buildings and grounds which constitute the temporary residences of the President'" and to "'prescribe regulations governing ingress or egress to such buildings and grounds to be posted, cordoned off, or otherwise restricted areas where the President may be visiting,'" noting that

when this statute was originally enacted, the USSS was part of the Department of the Treasury. Def.'s Mot. at 16 (purportedly quoting 18 U.S.C. § 1752(d)). From this statutory construction, defendant derives two requirements that he asserts are not met: (1) for an area to be "restricted building or grounds" for purposes of § 1752, the area must be "designated" as such; and (2) only the USSS can make that designation. *See* Def.'s Mot. at 16–17. Since the USSS did not make such a designation, defendant insists, the Capitol was not a "restricted building or grounds" and these two charges must be dismissed.

The central problem with defendant's statutory interpretation argument is that the statutory language on which the argument is predicated interprets language removed from the statute in 2006. When Congress passed the USA PATRIOT Improvement and Reauthorization Act of 2005 ("Reauthorization Act"), Pub. L. No. 109-177, 120 Stat. 192 (2006), Congress removed the authority (and responsibility) of the Secretary of the Treasury, the USSS, or anyone else to "designate" the "buildings and grounds which constitute the temporary residences of the President or other person protected by the Secret Service," 18 U.S.C. § 1752(d)(1) (2004), and instead defined the locations covered by § 1752 as "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." Reauthorization Act § 602(a)(1)(A), 120 Stat. at 252 (codified at 18 U.S.C. § 1752(a)(1) (2008)).[3] The statute was further reorganized in 2012 to proscribe certain conduct simply in "any restricted building or grounds" and then separately defining "restricted buildings or grounds" as including, *inter alia*, "any posted, cordoned off, or

[3] This iteration of the statute also covered "any posted, cordoned off, or otherwise restricted area of a building or grounds so restricted in conjunction with an event designated as a special event of national significance," Reauthorization Act § 602(a)(1)(C), 120 Stat. at 252 (codified at 18 U.S.C. § 1752(a)(2) (2008)), a notion that continues in the current text, *see* 18 U.S.C. § 1752(c)(1)(C), such that there is still some role for the concept of "designat[ion]," but the government does not allege that anything happening at the Capitol on January 6, 2021 was an "event" of this type. Defendant's argument surrounding the designation of events as being a Secret Service function, therefore, is a red herring. *See* Def.'s Mot. at 16–17.

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." Federal Restricted Buildings and Grounds Improvement Act of 2011 § 2, Pub. L. No. 112-98, 126 Stat. 263, 263–64 (2012) (codified at 18 U.S.C. § 1752(a), (c)(1)(B)). That language remains in force.

The plain meaning of the current text of § 1752 contains no requirement that anyone, including the USSS, "designate the area 'restricted.'" Def.'s Mot. at 17. To be sure, the USSS is still relevant to the definition of "restricted building or grounds" given that the Vice President is not expressly named in the statute but rather is included by his indisputable status as a "person protected by the Secret Service." *See* 18 U.S.C. § 1752(c)(2) (defining such a person as "any person whom the United States Secret Service is authorized to protect under section 3056 of this title or by Presidential memorandum, when such person has not declined such protection"); *id.* § 3056(a)(1) (authorizing USSS protection of the Vice President). Nevertheless, nothing about this text or any other authority supports defendant's logical leap to the conclusion that "[s]ince it is the Secret Service who protects the President or 'other person,' it is the Secret Service who must designate the area 'restricted.'" Def.'s Mot. at 17. If anything, the statutory history recounted above demonstrates a movement away from a "designation" process to one that operates automatically by virtue of the presence of a Secret Service protectee.

Finally, while not binding on this Court, as already noted, other Judges on this Court have consistently rejected arguments similar to that of defendant. *See United States v. McHugh*, No. 21-cr-453, 2022 WL 296304, at *18–20 (D.D.C. Feb. 1, 2022) (Bates, J.); *United States v. Bozell*, No. 21-cr-216, 2022 WL 474144, at *8–9 (D.D.C. Feb. 16, 2022) (Bates, J.); *United States v. Mostofsky*, No. 21-cr-138, 2021 WL 6049891, at *12–13 (D.D.C. Dec. 21, 2021) (Boasberg, J.); *United States v. Andries*, No. 21-cr-93, 2022 WL 768684, at *14–16 (D.D.C.

Mar. 14, 2022) (Contreras, J.); *United States v. Puma*, No. 21-cr-454, 2022 WL 823079, at *13–16 (D.D.C. Mar. 19, 2022) (Friedman, J.); *United States v. Nordean*, No. 21-cr-175, 2021 WL 6134595, at *18–19 (D.D.C. Dec. 28, 2021) (Kelly, J.); *United States v. Bingert*, No. 21-cr-91, 2022 WL 1659163, at *14 (D.D.C. May 25, 2022) (Lamberth, J.); *United States v. Griffin*, 549 F. Supp. 3d 49, 53–57 (D.D.C. 2021) (McFadden, J.); Omnibus Order at 3–4, *United States v. Caldwell*, No. 21-cr-28 (D.D.C. Sept. 14 2021), ECF No. 415 (Mehta, J.).

B. "Temporarily Visiting"

Defendant also argues that § 1752 does not apply because then-Vice President Pence was not, in defendant's view, "temporarily visiting" the Capitol on January 6, 2021. *See* Def.'s Mot. at 18–21. As support for his strained reading of this fairly straightforward phrase, defendant makes three claims, asserting, first, that the Vice President was not "visiting" at all because he was there working, "carrying out his sworn official duties to [sic] by 'presiding,' over the vote count ceremony." *Id.* at 20. Second, defendant objects to the term "temporarily" because a "permanent office" for the Vice President exists in the Capitol for the Vice President's use in "his official capacity as the 'President of the Senate.'" *Id.* at 19–20. Finally, defendant notes that the Vice President's residence and ordinary workplace in the District of Columbia militates against him being deemed as "temporarily visiting" the Capitol. *Id.* Other Judges on this Court have rejected this exercise in wordsmithing, and this Court agrees with my fellow jurists.

Common sense easily resolves this debate. Despite having a limited role as President of and tiebreaker for the Senate, U.S. CONST. art. I, § 3, cl. 4, the Vice President is generally regarded as an executive branch officer, *see id.* art. II, § 1, cl. 1, and generally works in locations other than the Capitol. The fact that he has a space set aside for his occasional use—notably, not the location where he was working inside the Capitol on January 6, 2021—makes him no less a

"visitor" and no less "temporary" when he makes an appearance on the premises of the Capitol. Likewise, the Vice President's ordinary residence in the District of Columbia cannot carry the repercussions that defendant suggests: namely, that the Vice President cannot be deemed to "temporarily visit" any place within the District of Columbia. Nor does the Vice President's presence for official duties by presiding over a session of Congress—an ironic point for defendant to make given his contention that no "official proceeding" was taking place that day, *see* Def.'s Mot. at 6–8—make him any less of a temporary visitor because a government official can clearly appear somewhere temporarily and still be doing official work in the process. Defendant cites to several cases where a President or Vice President was deemed to be "temporarily visiting" at rallies or out-of-town functions, *see id.* at 20, but the fact that those situations clearly qualify does not mean that the relevant situation on January 6 cannot count as well.

Even if the words "temporarily visiting" were at all ambiguous—a view at odds with a plain reading of the words—the structure of the statute makes clear that defendant's preferred reading would produce absurd results. Under § 1752, certain conduct is criminalized in certain sensitive areas around both the President and the Vice President. The residences of both, whether the occupant is present or not, are covered at all times. 18 U.S.C. § 1752(c)(1)(A). When either official is "temporarily visiting" some other location, a *de facto* bubble follows him or her and affords similar protection. *Id.* § 1752(c)(1)(B). All of this makes sense. Defendant's interpretation, however, would inexplicably pop that bubble for an ill-defined set of destinations where the President or Vice President's presence is sufficiently "frequent" or the reason for their presence sufficiently "official." The Court declines to introduce such needless ambiguity into a simple statutory phrase.

Finally, here, too, every Judge on this Court to have considered various permutations of this argument has rejected it, and defendant neither acknowledges nor gives any reason to stray from these decisions. *See McHugh*, 2022 WL 1302880, at *20–21 (Bates, J.); *Andreis*, 2022 WL 768684, at *16–17 (Contreras, J.); *Puma*, 2022 WL 823079, at *16–18 (Friedman, J.); *Bingert*, 2022 WL 1659163, at *15 (Lamberth, J.).

II. ORDER

For the foregoing reasons, it is hereby

ORDERED that defendant's Motion to Dismiss Counts One, Two, and Three ("Def.'s Mot."), ECF No. 39, is **DENIED IN PART** with respect to Counts Two and Three.

SO ORDERED.

Date: June 8, 2022

BERYL A. HOWELL
Chief Judge