UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA **v.** **ANTHONY ROBERT WILLIAMS,** **Defendant.**	**Case No. 1:21-cr-377 BAH**

GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION FOR BOND PENDING APPEAL

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this Opposition to Defendant's Motion for Bond Pending Appeal.

BACKGROUND

Defendant Anthony Robert Williams traveled by car from his home in Southgate, Michigan and participated in the January 6, 2021 attack on the United States Capitol in Washington, D.C. Trial Tr. at 44, 6/29/22, afternoon session. Williams previewed in his social media immediately after the 2020 presidential election that he was coming to D.C. to protest the certification of the election because he was angry that Donald Trump lost. *See* Government's Trial Exhibits 9.0, 9.1, 9.3, 9.4, 9.6, 9.9, 9.10, 9.11, 9.12, 9.13, 9.14, 9.15, 9.21, 10.2, 10.3, 10.7, 10.4, 10.5, 10.8 Williams followed through and arrived at the Capitol on January 6. Trial Tr. at 52, 6/29/22, afternoon session. There, Williams joined a group of rioters on the West Front where he helped them climb bicycle racks to flank and overrun the police on the Northwest stairs. *See* Government's Trial Exhibit 3.3 and Trial Tr. p. 75, 6/29/22, afternoon session.

Williams recorded himself on those stairs and bragged, "[w]e just stormed the stairs of the

Capitol, pushed the cops back and were maced and pepper-sprayed, and hit everybody. Fuck that, we took this fucking building." *See* Government's Trial Exhibit 4.1.

He then stole water bottles United States Capitol Police (USCP) officials had stored on the Upper West Terrace of the Capitol building to be used for decontamination if USCP officers were hit with chemical irritants. *See* Government's Trial Exhibit 5.4 and Trial Tr. at 16, 25, 6/29/22, morning session.

Williams entered the Capitol through the Senate Wing doors only 6 minutes after they were initially breached. *See* Government's Trial Exhibit 2.3. He then overran the police in the Crypt with other rioters. *See* Government's Trial Exhibit 2.6. Once Williams and the crowd breached the police line, the police were forced to retreat.

Williams advanced to the Rotunda where he celebrated with other rioters and smoked marijuana. *See* Government's Trial Exhibit 5.2. At this point the Certification proceeding was halted because the rioters had breached the Capitol.

When the police tried to force Williams out of the Rotunda, he joined with other rioters and actively resisted and mocked the police. *See* Government's Exhibits, 1.0, 3.0 and Trial Tr. at 56, 6/29/22, morning session. The police eventually forced Williams out of the Rotunda at 3:13 p.m. From there he left the Capitol Building through the Rotunda doors at approximately 3:16 p.m., having spent almost a full hour in the Capitol. *See* Government's Trial Exhibit 2.19.

A federal grand jury returned an indictment charging Williams with the following: Count One: Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. § 1512(c)(2) and 2; Count Two: Entering or Remaining in any Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1); Count Three: Disorderly and Disruptive Conduct in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(2); Count Four: Disorderly

Conduct in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(D); and Count Five: Parading, Demonstrating, or Picketing in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(G). (Dkt. No. 13). A jury found Williams guilty of all charges of the indictment. (Dkt. No. 116).

This Court sentenced Williams to 60 months imprisonment, 36 months of supervised release, special assessments totaling $170.00, a fine of $5,000.00, and restitution of $2,000.00. The terms of imprisonment for each count of conviction are as follows –a term of sixty (60) months imprisonment on Count 1, a term of twelve (12) months on each of Counts 2 and 3, and a term of six (6) months on each of Counts 4 and 5, with all terms to run concurrently. With regard to supervised release, this Court ordered Defendant to serve a term of thirty-six (36) months of supervised release on Count 1 and a term of twelve (12) months on each of Counts 2 and 3, all terms to run concurrently. The Court ordered Williams to surrender for service of his sentence at the institution designated by the Bureau of Prisons (BOP) upon being notified by Probation or by the Pretrial Service Office (Dkt. No. 131).

On September 30, 2022, Defendant filed a Motion for Bond Pending Appeal stating that he has been ordered to report to serve his sentence with BOP on October 18, 2022. (Dkt. No. 135) Williams states in his Motion that he intends to raise three issues on appeal: 1) whether Section 1512(c)(2) applies to Williams's conduct at the Capitol; 2) whether adjournment of trial or change of venue was proper; and 3) whether the eight-level enhancement under U.S.S.G. § 2J1.2(b)(1)(B) for threatening physical injury should apply to his conduct. Williams contends only that the first issue, which he unsuccessfully raised in pretrial motions, raises a substantial question of law that could result in reversal. This issue does not raise a substantial question of law and will likely fail to result in reversal on that count given the number of District Judges who have disagreed with the one decision Williams references as supporting his application of § 1512(c)(2),

United States v. Miller, 1:21-CR-00119 (CJN), 2022 WL 823070 (D.D.C. Mar. 7, 2022), appeal docketed, No. 22-3041 (D.C. Cir. June 28, 2022). Therefore, the Court should deny the motion for release pending appeal.

ARGUMENT

I. The Law Presumes that a Sentenced Defendant will be Detained Pending Appeal.

Under 18 U.S.C. § 3143(b), "a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal" shall be detained pending an appeal unless the Court finds:

> (A) . . .that the person is not likely to flee or pose a danger to the safety of any person or the community if released. . . *and*
>
> (B) . . .that the appeal is not the purpose of delay and raises a substantial question of law or fact likely to result in:
>
> (i) reversal,
>
> (ii) an order for a new trial,
>
> (iii) a sentence that does not include a term of imprisonment, or
>
> (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

18 U.S.C. § 3143(b)(1) (emphasis added).

The D.C. Circuit has stated that a defendant "cannot be released unless the appeal raises a substantial question likely to result in a reversal of all counts on which imprisonment is imposed." *United States v. Perholtz*, 836 F.2d 554, 557 (D.C. Cir. 1987). In *Perholtz*, the court adopted what it described as a "more demanding" standard for bail pending appeal than that applied by other courts because it was in "better … accord with the expressed congressional intent to increase the required showing on the part of the defendant." *Id*. at 555-56. Under that standard,

"a substantial question is a close question or one that very well could be decided the other way." *Id*. at 556 (cleaned up).

The *Perholtz* Court denied the defendant's bail motion based on his claim that the recent Supreme Court decision in *United States v. McNally*, 483 U.S. 350 (1987), invalidating the "intangible rights" theory of mail fraud prosecution, created a "substantial question" on appeal from the defendants' mail fraud convictions. The court concluded that, unlike in *McNally*, the jury instructions in *Perholtz* allowed the jury to convict the defendants if they deprived the victim state of money or property. 836 F.2d at 558-59. "While appellants' contention that *McNally* requires reversal is not frivolous, we do not find that it raises a close question or one that very well could be decided the other way." *Id*. at 561. Under the *Perholtz* standard, even a case that presents novel legal issues does not necessarily present a substantial question. *See United States v. Libby*, 498 F. Supp. 2d 1, 15-21 (D.D.C. 2007) (defendant's claim— that the district court should have applied the factors set out in *Edmond v. United States*, 520 U.S. 651 (1997) rather than those in *Morrison v. Olson*, 487 U.S. 654 (1988) to determine whether the special counsel appointed by Department of Justice to investigate unauthorized disclosures by a CIA employee was an inferior or principal officer under the Appointments Clause—did not present a close question requiring bail pending appeal).

II. <u>Williams Fails to Meet the Standard for Bond Pending Appeal.</u>

Williams contends that whether his conduct on January 6 amounted to obstruction of a Congressional proceeding, in violation of Section 1512(c)(2), raises a substantial question of law that could result in reversal. Williams' Motion for Bond Pending Appeal at 2. He relies solely on Judge Nichols' decision in *United States v. Miller*, Case No. 1:21-CR-00119 (CJN), 2022 WL 823070 (D.D.C. Mar. 7, 2022) appeal docketed, No. 22-3041 (D.C. Cir. June 28,

2022). But every other judge of this Court to have considered the issue in a Capitol siege case, including this Court in this case on June 10, 2022, has rejected the reasoning of *Miller*, suggesting that the demanding standard set forth in § 3143(b)(1) is not met here. *See, e.g.*, *United States v. McCaughey et al.*, No. 21-cr-40, ECF No. 388 at 2 (D.D.C. July 20, 2022) (McFadden, J.) (rejecting defendants' argument premised on *Miller* and observing that "*Miller* has also persuaded no other judge on this question"); *United States v. Robertson*, No. 21-cr-34, 2022 WL 2438546, at *3-*5 (D.D.C. July 5, 2022) (Cooper, J.); *United States v. Williams*, No. 21-cr-618, 2022 WL 2237301, at *17 n.13 (D.D.C. June 22, 2022) (Berman Jackson, J.); *United States v. Fitzsimons*, No. 21-cr-158, 2022 WL 1698063, at *6-*12 (D.D.C. May 26, 2022) (Contreras, J.); *United States v. Bingert*, No. 21-cr-91, 2022 WL 1659163, at *7-*11 (D.D.C. May 25, 2022) (Lamberth, J.); *United States v. McHugh*, No. 21- cr-453, 2022 WL 1302880, at *2-*13 (D.D.C. May 2, 2022) (Bates, J.); *United States v. Puma*, No. 21-cr-454, 2022 WL 823079, at *12 n.4 (D.D.C. Mar. 19, 2022) (Friedman, J.); *United States v. Grider*, No. 21-cr-22, 2022 WL 392307, at *5-*6 (D.D.C. Feb. 9, 2022) (Kollar-Kotelly, J.); *United States v. Nordean*, No. 21-cr-175, 2021 WL 6134595, at *6-*8 (D.D.C. Dec. 28, 2021) (Kelly, J.); *United States v. Montgomery*, No. 21- cr-46, 2021 WL 6134591, at *10-*18 (D.D.C. Dec. 28, 2021) (Moss, J.); *United States v. Mostofsky*, No. 21-cr-138, 2021 WL 6049891, at *11 (D.D.C. Dec. 21, 2021) (Boasberg, J.); *United States v. Caldwell*, No. 21- cr-28, 2021 WL 6062718, at *11-*21 (D.D.C. Dec. 20, 2021) (Mehta, J.); *United States v. Sandlin*, No. 21-cr-88, 2021 WL 5865006, at *5-*9 (D.D.C. Dec. 10, 2021) (Friedrich, J.)

Even if Williams prevailed on his argument that § 1512(c)(2) does not apply to his conduct, he would not obtain a reduced sentence of imprisonment less than the total time that he has already served plus the expected duration of the appeal process, which is unlikely to last

more than a year. Regardless of the Circuit Court's resolution of the Section 1512(c)(2) issue, Williams must serve the one-year sentences that this Court ordered on his convictions under 18 U.S.C. § 1752. Williams has yet to serve any of his prison sentence, and would be eligible to receive credit towards that sentence for only the single day he was in custody following his arrest on March 26, 2021.

The issues that Williams intends to raise on appeal regarding the scope of Section 1512(c)(2) are already pending before the Court of Appeals for the District of Columbia Circuit in *United States v. Fischer et al.*, Nos. 22-3038. 22-3039, and 22-3041. The issue that Williams raises in his appeal is therefore likely to be resolved by the D.C. Circuit before he serves the one-year term of imprisonment for his convictions under Section 1752.

WHEREFORE, for all the foregoing reasons, the United States respectfully requests that the Court deny Williams' Motion for Bond Pending Appeal.

Respectfully submitted,

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