

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 21-CR-177 (CRC)
	:	
DANIEL EGTVEDT,	:	
	:	
Defendant.	:	

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS
COUNTS FIVE, SIX, AND SEVEN OF THE INDICTMENT CHARGING
VIOLATIONS OF 18 U.S.C. 1752**

The United States of America respectfully files this opposition to Defendant Daniel Egtvedt’s Motion to Dismiss Counts Five, Six, and Seven of the Indictment Charging Violations of 18 U.S.C. 1752. ECF No. 64. That motion should be denied.

FACTUAL BACKGROUND

On January 6, 2021, Vice President Pence, under United States Secret Service (USSS) protection, was present at the United States Capitol building. The United States Capitol Police (USCP), with sole authority over security on the Capitol grounds, set up security barriers on the Capitol grounds. On the west side of the Capitol, USCP set up metal bike rack barriers along First Street. Within the West Front of the Capitol building, USCP set up additional temporary metal barriers, green snow fencing, and signage stating, “Area Closed By order of the United States Capitol Police Board.” The Lower West Terrace on the West Front was closed to members of the public. Below is a map of the restricted area:

Trump’s speech and “selfie” photographs of himself with President Trump in the background. The photograph below was captured at 1:08 pm on January 6, 2021, minutes before President Trump concluded his speech:¹



The Defendant’s phone then chronicles, through photographs and videos, the march from the rally to the U.S. Capitol. One of those photographs, shown below, was taken at 2:08 pm and shows the crowd on Constitution Avenue NW, with the E. Barrett Prettyman U.S. Courthouse in the background, as they walk towards the U.S. Capitol:

¹ The metadata obtained from the photographs and videos on the defendant’s phone includes the latitude and longitude coordinates from when the videos and photographs were taken, along with the creation date and time, and the phone make and model (an Apple iPhone 7 Plus).



The Defendant's phone also contains a picture that was captured at 2:18 p.m. which shows rioters scaling the walls of the U.S. Capitol:



Another photograph on the Defendant's phone, taken at 2:20 p.m., appears to show rioters on the scaffolding on the north side of the Capitol's Lower West Terrace:



Egtvedt soon made his way to the Senate wing doorway located on the northern end of the Capitol's upper west terrace. A picture on the Defendant's phone, captured at 2:32 p.m.,

appears to show the exterior of the Senate wing doorway and shows a rioter scaling the façade of the building above the doorway:



Notably, this doorway was initially breached by rioters at approximately 2:13 p.m., but law enforcement members were able to re-secure it several minutes later. After the door was resecured, USCP fortified the doors with makeshift barricades made out of furniture that was inside the Capitol, and escorted rioters out of the building through a set of nearby windows. By approximately, 2:37 p.m., Egtvedt was standing immediately in front of this doorway, peering through the broken glass at USCP officers:



Egtvedt's phone also contains the image below, captured at 2:37 p.m., showing USCP officers standing behind the makeshift barricade:



As the rioters continued to try to force their way into the building through the Senate wing doors, one of the USCP officers sprayed Egtvedt and others with chemical spray. The rioters continued to try to force their way in until they were able to breach the building again at approximately 2:48 p.m. Egtvedt followed seconds later:



Once inside the building, Egtvedt proceeded down a hallway, heading south. In the hallway he sat down on a bench for several minutes while dozens of other rioters milled about. The government has recovered a social media, audio-video recording of Egtvedt while he was in this area of the Capitol. On this recording Egtvedt speaks to another rioter, who is apparently live streaming the events, and states:

Tell everybody that's outside, tell them to get in here now! . . . This is our country. We need to reclaim it. We're not going to let the globalists take our country. This is America. Everybody, if you're seeing this, come down here now! We're not backing away. This is our house. Congressmen, grow a spine or f***ing resign!

A few minutes later on the recording Egtvedt starts shouting: "Police are traitors! Police are traitors! Police are traitors!"

After a few more minutes, Egtvedt resumed walking southward in the building, and made his way to a room known as the Crypt. In the Crypt, he verbally berated multiple police officers,

yelling at them that they were “on the wrong f***ing side.”

A few minutes later Egtvedt exited the Crypt and resumed walking south, toward the Hall of Columns. When Egtvedt arrived in the Hall of Columns, at about 3:11 p.m., numerous law enforcement members, all in uniform, were standing along either side. As Egtvedt walked down the middle of the hall, heading in the general direction of an exit doorway, he pointed to several of them and stated, “God bless all of you.” One officer responded, “Keep going, sir.”

As Egtvedt neared the end of the hall, about 20 feet from the exit, another law enforcement member, an FBI agent dressed in tactical gear, motioned for him to continue in that direction. Egtvedt walked a few more feet toward the doorway. However, he then abruptly turned around and began walking back down the Hall of Columns toward the building’s interior. As Egtvedt passed by the same agent, that agent once again motioned for him to proceed to the doorway. Egtvedt ignored the agent and continued walking away from the doorway.

As Egtvedt, who is listed in driver’s license records from 2020 as 6’2” tall and weighing 320 pounds, continued toward the interior of the building, USCP Officer M.M.--a woman about half his size who was in full uniform--stepped in front of him to block his path. When he continued walking toward her, Officer M.M. placed her right hand on his upper left shoulder, to direct him back toward the doorway. When Egtvedt did not comply, two more uniformed USCP officers positioned themselves around Egtvedt.

Egtvedt continued to walk away from the doorway and loudly stated, “You shoot me! Shoot me! You guys are violating the Constitution of the United States of America!” He then swung his left hand around and swatted Officer M.M.’s right hand off his shoulder. Officer M.M. then raised her left hand and placed it on Egtvedt’s upper chest area. Egtvedt then rotated his body and pinned

the officer's left hand in the crook of his right elbow. Officer M.M. swung her right hand against Egtvedt's right arm in order to free her other hand.

As this was happening, the two other USCP officers were attempting to subdue Egtvedt. In addition, D.C. Metropolitan Police Department (MPD) Officer M.D., also in full uniform, positioned himself behind Egtvedt and pulled him by his jacket back toward the doorway. Egtvedt then began to yell, "You work for us! You work for us!" He then twisted around, removing first his left arm and then his right from his jacket, which fell to the floor. He continued in his effort to move forward, away from the doorway.

Two more officers, again in full uniform, surrounded and pushed against Egtvedt, as he continued struggling, still trying to move forward. With the weight of four male officers against him, including Officer M.D., Egtvedt could no longer move forward and fell backwards to the floor. As he hit the floor, the back of his head struck one of the columns. He also landed partly on top of Officer M.D.

For the next two minutes or so, Egtvedt lay on the floor. Although conscious and alert, he refused to comply with officers' demands and stated he would not leave. The officers also asked him whether he wanted medical assistance, which he declined. Finally, two male USCP officers lifted Egtvedt to his feet and half-carried, half pushed him toward and out the doorway. Egtvedt fell to the floor again, immediately outside the doorway. Officers again tried to convince him to stand up and leave. He would not. The officers again offered to get him medical assistance. He again declined.

After about two more minutes the officers helped Egtvedt to his feet. Now standing immediately outside the doorway Egtvedt promptly attempted to re-enter the building. Once again

uniformed officers, including Officer M.M., physically blocked him, and once again Egtvedt swatted at Officer M.M.'s hand as she pushed against his chest.

After a few more moments of confrontation, Egtvedt relented and, at 3:18 p.m., began walking away from the doorway. At this point Egtvedt was on a raised outdoor terrace with several sets of steps leading down to a concrete area on the south side of the building. As he walked toward the steps on the western end of the terrace, an MPD officer called up to him and told him he needed to go the opposite direction, toward the steps on the eastern end. Egtvedt ignored the officer and continued toward and then walked down the steps on the western end.

As he neared the bottom of those steps, the same officer approached him and once again told him he needed to head the opposite direction. He responded, "I don't want to go over there." The officer, a female, repeated her command. He refused and came to the bottom of the steps. The officer, joined by a male MPD officer, then physically turned Egtvedt around and began to push against Egtvedt's back, forcing him to walk toward the east. As he walked, he leaned back against them to resist, and shouted, "This is tyranny!"

When the officers reached an area just outside the southeast corner of the building, other officers opened up a set of metal barriers and Egtvedt was directed to the other side of them. Thereafter, Egtvedt remained on the grounds of the Capitol for several more hours, outside the barriers, attempting at various points to engage verbally with law enforcement members.

The government charged the Defendant by Indictment with violations of 18 U.S.C. 111(a)(1) (Counts One and Two); 18 U.S.C. 231(a)(3) (Count Three); 18 U.S.C. 1512(c)(2) and 2 (Count Four); 18 U.S.C. 1752(a)(1) (Count Five); 18 U.S.C. 1752(a)(2) (Count Six); 18 U.S.C. 1752(a)(4) (Count Seven); 40 U.S.C. 5104(e)(2)(D) (Count Eight); and 40 U.S.C. 5104(e)(2)(F)

(Count Nine). ECF No. 43.

LEGAL STANDARD

A defendant may move to dismiss an indictment or count thereof for failure to state a claim prior to trial. See Fed. R. Crim. P. 12(b)(3)(B)(v). “[A]n indictment must be viewed as a whole, and the allegations must be accepted as true in determining if an offense has been properly alleged.” *United States v. Bowdoin*, 770 F. Supp. 2d 142, 146 (D.D.C. 2011). The question is whether the allegations, if proven, would be sufficient to permit a jury to find that the crimes charged were committed. *Id.* “An indictment must contain every element of the offense charged, if any part or element is missing, the indictment is defective and must be dismissed.” *See United States v. Hillie*, 227 F. Supp. 3d 57, 70 (D.D.C. 2017).”

ARGUMENT

The Defendant principally contends that the Indictment is defective because it was required to—but did not—allege that the United States Secret Service designated the “restricted area” into which the Defendant is alleged to have unlawfully entered. That contention is incorrect because Section 1752’s plain text includes no such requirement. That straightforward interpretation does not, as the Defendant suggests, render the statute vague, ambiguous, or an impermissible *ex post facto* law.

Counts Five, Six, and Seven allege violations of Section 1752 of Title 18, which prohibit 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, who was protected by the Secret Service, was present. Indeed, four judges from this district have now concluded, the Vice President was temporarily visiting the Capitol that day. *See United States v. Puma*, 21-cr-454, 2022 WL 823079, at *16-*19 (D.D.C. Mar. 19, 2022) (Friedman, J.); *United States v. Andries*, 21-cr-93, 2022 WL 768684, at *16-*17 (D.D.C. Mar. 14, 2022) (Contreras, J.); *United States v. McHugh*, --- F.Supp.3d ---, 21-cr-453, 2022 WL 296304, at *20-*22 (D.D.C. Feb. 1, 2022) (Bates, J.); Minute Entry, *United States v. Griffin*, 21-cr-92 (D.D.C. Mar. 22, 2022) (McFadden, J.) (denying motion for judgment of acquittal arguing that Vice President was not temporarily visiting the Capitol on January 6, 2021). Egtvedt’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

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

Egtvedt 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), (2) and (4). Courts in this district have rightly rejected this contention. *See United States v. Griffin*, No. 21-cr-92 (TNM), 2021 WL 2778557 (D.D.C. July 2, 2021); *United States v. Mostofsky*, 21-cr-138 (JEB), 2021 WL 6049891 at *12-*13 (D.D.C. Dec. 21, 2021); *United States v. Nordean*, 21-cr-175 (TJK), 2021 WL 6134595 at *18 (D.D.C. Dec. 28, 2021); *United States v. McHugh*, 21-cr-453 (JDB), ECF No. 51, at 38–40 (D.D.C. Feb. 1, 2022).

Subsection 1752(c) defines the phrase “restricted buildings or grounds” as

any posted, cordoned off, or otherwise restricted area—

of the White House or its grounds, or the Vice President’s official residence or its grounds;

of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting; or

of a building or grounds so restricted in conjunction with an event designated as a special event of national significance.

18 U.S.C. § 1752(c)(1). It then defines the term “other person protected by the Secret Service” 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.”

18 U.S.C. § 1752(c)(2).

By its plain terms, then, Section 1752 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, in other words, “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. That straightforward analysis has a straightforward application here: 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). By engaging in prohibited conduct on those premises, the Defendant violated 18 U.S.C. § 1752.

The Defendant nonetheless urges the Court to import an extra-textual requirement that the Secret Service be required to designate the restricted area. That is so, the Defendant claims, because it is the Secret Service who protects the President and others, so it is the Secret Service who must make the designation of a restricted area. That theory, in addition to finding no support

in the text, fails for another obvious reason: 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. Egtvedt’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.

The statute’s history also undercuts the Defendant’s argument. *See Griffin*, 2021 WL 2778557, 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.* Egtvedt erroneously conflates the Treasury’s Department’s authority to promulgate certain regulations with a requirement that the Secret Service cordon off areas. 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). By eliminating 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.” Moreover, Egtvedt’s reading of the statute, which would require the Secret Service to “cordon off” a private residence, “no matter how secure the location or how imposing the preexisting walls,” leads to “pressing absurdities.” *Griffin*, 2021 WL 2778557 at *6.

Neither of the cases on which the Defendant relies assists his argument. In *United States v. Bursey*, 416 F.3d 301 (4th Cir. 2005), the Fourth Circuit affirmed the Defendant’s conviction under 18 U.S.C. § 1752 for entering an airport hangar that was restricted by USSS working in tandem with local law enforcement. Responding to the Defendant’s claim that he was not advised the hangar was a federally restricted zone designated by USSS, the court simply asserted that the lower court’s factual findings belie the Defendant’s claim, and he was aware that USSS coordinated security for the President at the hangar. *Bursey*, 416 F.3d at 309. The Defendant incorrectly claims that the Fourth Circuit’s effort to correct the record from the Defendant’s misstatement is evidence that only USSS may designate a restricted area. ECF No. 64, p. 19. The court did not address the issue of which law enforcement agencies may designate a restricted area, nor did it hold that only USSS is allowed to designate a restricted area.

This Court’s decision in *Wilson v. DNC Servs. Corp.*, 417 F. Supp. 3d 86 (D.D.C. 2019) is similarly inapposite to the Defendant’s case. That case concerned efforts by Dr. Wilson, a presidential candidate, to gain access to a political event in South Carolina—the Jim Clyburn World Famous Fish Fry. *Id.* at 95-96. The Defendant highlights the Court’s determination that Wilson did not offer any “evidence that [he] had a right to enter the restricted area” and lacked authorization from USSS to enter. *Id.* at 98. The Defendant’s suggestion that this determination

would be “in error if there were some reasonable possibility that an entity other than USSS restricts, and admits access to, areas under § 1752” (ECF 64, at 20) fails to account for the fact that the USSS was the only agency in charge of security at the Fish Fry. This Court therefore had no reason to consider whether USSS has the sole authority to designate a restricted area under § 1752, and did not do so.

II. 18 U.S.C. § 1752 is not unconstitutionally vague.

The Defendant contends that the straightforward interpretation described above is unconstitutionally vague. ECF No. 64, at 20-27. A statute is vague where it (1) fails to give ordinary people fair notice of the conduct it punishes or (2) is so standardless that it invites arbitrary enforcement. *Johnson v. United States* 576 U.S. 591 (2015). Neither applies to Section 1752.

As described above, Section 1752 prohibits the Defendant from knowingly engaging in certain conduct in “any posted, cordoned off, or otherwise restricted area, of...grounds where the President or other person protected by the Secret Service is or will be temporarily visiting.” § 1752(a), (c)(1)(B). Because the Capitol grounds were cordoned off by metal barricades as well as rows of USCP and MPD officers, the Defendant was on notice as soon as he approached the west front of the Capitol that the grounds and building were restricted. Moreover, the Defendant has photographs showing individuals scaling walls in an attempt to enter the Capitol. Common sense dictates that one would not have to climb up the façade of a government building to enter it if the building was open to the public.

Most notably, Egtvedt took pictures of USCP officers, in full police attire, standing behind makeshift furniture barricades that they erected at the Senate wing door in an attempt to keep the rioters out. Egtvedt then engaged in a prolonged physical push with other rioters that eventually

overran the doors, the barricades, and those USCP officers. The fact that USCP officers erected those barriers, and then resorted to physical force – which included spraying Egtvedt with chemical spray – to try to prevent Egtvedt and his fellow rioters from entering the building clearly put Egtvedt on notice that the area was restricted. Therefore, he had fair notice that his entry into the Capitol was unlawful. There is no evidence that the law is being arbitrarily enforced. Contrary to the Defendant’s contention that there were other individuals in the restricted area and “most of those people have not been charged under § 1752 like Egtvedt,” the government has charged hundreds of people with violating § 1752 for entering the grounds and the Capitol building. ECF No. 64, p. 24.

The Defendant relatedly contends that the government is relying on an ambiguous phrase—“within such proximity to”—in Section 1752(a)(2). ECF 64, at 24-27 That contention misunderstands the charged crime. The Defendant is not alleged to have engaged in unlawful disruption because he was *within proximity* to the Capitol building. Egtvedt was squarely inside the restricted area – specifically, inside the halls of the Capitol building. In his motion, Egtvedt poses speculative questions about what constitutes being “within such proximity” to the restricted area, including questioning whether protestors on the National Mall were in such proximity. Those protestors, however, are not charged with violations of Section 1752 in this case. The Defendant is charged because he is captured on video forcing his way through a police barricade into the halls of the Capitol, and then physically assaulting members of law enforcement within those halls. The charges against the Defendant do not include criminalizing “pure political speech, assembly and Egtvedt’s right to petition the government.” ECF No. 64, p. 27. Instead, the government charged the Defendant with entering an area he knew was restricted and engaging in

disruptive conduct that in fact disrupted government business, namely, the certification of the Electoral College vote.

III. The rule of lenity is inapplicable.

The Defendant also invokes the rule lenity. ECF 64, at 27-28. The rule of lenity “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); *see Shular v. United States*, 140 S. Ct. 779, 789 (2020) (Kavanaugh, J., concurring). There is no grievous ambiguity here. As noted above, Section 1752 prohibits certain knowing conduct within restricted zone established to ensure the protection of certain individuals such as the Vice President. No guess work is required.

IV. The novel construction principle does not apply.

Finally, the Defendant asserts that the “novel construction principle” requires dismissal of the Indictment. ECF 64, at 28-30. “[D]ue process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope.” *United States v. Lanier*, 520 U.S. 259, 266 (1997). As with the Defendant’s other arguments, this claim is rooted in the faulty premise that the statute requires that the USSS designate the restricted area. Because Section 1752’s plain language includes no such requirement—and encompasses the precise conduct that the Defendant is alleged to have committed—the novel construction principle has no application here.

WHEREFORE, the Government respectfully requests that the Court deny the Defendant's motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the Government's Opposition to the Defendant's Motion to Dismiss Counts Five, Six, and Seven of the Indictment Charging Violations of 18 U.S.C. 1752 was served on all counsel of record via the Court's electronic filing service.

/s/ Colleen D. Kukowski
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Date: May 9, 2022