

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 21-cr-53 (CJN)
	:	
EDWARD JACOB LANG,	:	
	:	
Defendant.	:	

**UNITED STATES' MOTION IN LIMINE TO PRECLUDE IMPROPER
ARGUMENTS THAT THE FIRST AMENDMENT JUSTIFIED OR IMMUNIZED
THE DEFENDANT'S OFFENSE CONDUCT**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby requests that the Court issue an order precluding defendant Edward Jacob Lang from arguing in defense of the charges against him that the First Amendment to the United States Constitution provided any excuse, immunity, or justification that prevents a finding of guilt for his alleged offenses arising from the January 6, 2021 attack on the United States Capitol. In Lang's own words about that day, "It was war. This was no protest." As explained below, the protections of the First Amendment offer no defense to the conduct charged against Lang. Accordingly, any argument that First Amendment guarantees justified Lang's "war" is improper and should be excluded from argument during trial.

Procedural History

On January 15, 2021, United States Magistrate Judge G. Michael Harvey issued a sealed warrant for Lang's arrest for crimes he committed during the January 6, 2021, attack on the United States Capitol. ECF Nos. 1, 27. Lang was arrested in Newburgh, New York, the next day. ECF No. 27. On January 19, 2021, Lang made his initial appearance in the Southern District of New York, where United States Magistrate Judge Andrew E. Krause committed Lang to the custody of

7 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA UNITED STATES OF AMERICA:: v.: Case No. 21-cr-53 (CJN): EDWARD JACOB LANG,:: Defendant.: UNITED STATES' MOTION IN LIMINE TO PRECLUDE IMPROPER ARGUMENTS THAT THE FIRST AMENDMENT JUSTIFIED OR IMMUNIZED THE DEFENDANT'S OFFENSE CONDUCT

the Court has ordered that he be transported to the District of Columbia, Id. at 7. Lang made his first appearance in this jurisdiction on February 9, 2021. February 9, 2021 Minute Order. At that time, the United States Constitution provided any excuse, immunity, or justification that prevents a finding of guilt for his alleged offenses arising from the January 6, 2021 attack on the United States Capitol. In Lang's own words about that day, it was war and his was no protest. As explained below, the protections of the First Amendment offer no defense to the conduct charged against Lang. Accordingly, any argument that First Amendment guarantees justified Lang's "war" is improper and should be excluded from argument during trial. Procedural History On January 15, 2021, United States Magistrate Judge G. Michael Harvey issued a sealed warrant for Lang's arrest for crimes he committed during the January 6, 2021, attack on the United States Capitol. ECF Nos. 1, 27. Lang was arrested in Newburgh, New York, the next day. ECF No. 27. On January 19, 2021, Lang made his initial appearance in the Southern District of New York, where United States Magistrate Judge Andrew E. Krause committed Lang to the custody of 7 this Court and ordered that he be transported to the District of Columbia, Id. at 7. Lang made his first appearance in this jurisdiction on February 9, 2021. February 9, 2021 Minute Order. At that hearing, with no objection from Lang, United States Magistrate Judge Zia Faruqi ordered Lang to remain detained pending trial. Id. On August 23, 2021, Lang moved for release into the High-Intensity Supervision Program with GPS monitoring. ECF No. 29. After receiving a response in opposition from the United States, ECF 39, this Court denied Lang's motion at a September 20, 2021, hearing, September 20, 2021 Minute Order, finding, among other things, "the particular circumstances" of Lang's crimes to be "even more troubling" than the statutes under which the crimes were charged. Lang "was at times at the very front of a large mob seeking to enter the Capitol. Mr. Lang appears to have been one of the leaders. . . and instigators of the violence." Transcript of Arraignment Status Conference Hearing, United States v. Lang, 21-cr-53-CJN (D.C. Sept. 21, 2021) ("Tr.") at 71. Lang appealed this Court's denial of his motion for pretrial release. See United States v. Lang, No. 21-3066 (D.C. Cir.). On January 12, 2022, the D.C. Circuit affirmed this Court's order denying Lang's motion for pretrial release in a per curiam judgment. Lang is now charged in a superseding indictment, ECF 56, for violating 18 U.S.C. § 111(a) and (b); 18 U.S.C. § 111(a); 18 U.S.C. § 231(a)(3); 18 U.S.C. § 1752(a)(2) and (b)(1) and (b)(2); 18 U.S.C. § 1752(a)(4); and (b)(1)(A) and (b)(1)(B) and 40 U.S.C. § 5104(e)(2)(F). This Court has set a trial date of January 9, 2023. ECF 60. That scheduling order also set a deadline of September 16, 2022 for filing motions in limine. Pursuant to that order, the United States now files the above-captioned motion. 1 This Court has granted a motion from Lang, ECF 54, to dismiss a count charging a violation of 18 U.S.C. § 1512(c)(2). June 7, 2022 Minute Order. The United States is pursuing an appeal of the Court's dismissal of that count, ECF 65, and filed its opening brief in that appeal, which was consolidated with others addressing the same issue, on August 8, 2022. 2 7 Factual Background The January 6, 2021 Attack on the Capitol To avoid unnecessary exposition, the government refers to the general summary of the attack on the U.S. Capitol. See ECF 1:2-5; ECF Lang 7; see also Trump v. Thompson, 20 F.3d 1218 (D.C. Cir. 2021). That attack included the responses of a riotous and violent mob that breached barriers and assaulted police officers in an effort to breach the U.S. Capitol and obstruct the certification of the 2020 presidential election; Lang was a part of that mob. Defendant Lang's Role in the January 6, 2021 Attack on the Capitol Lang attended the Save America rally near the Ellipse and remained there long enough to hear the former president speak. From the rally, he proceeded to the Capitol, approaching the building from the west and making his way to the Capitol's West Front. As he progressed towards the building, Lang made a recording from behind a crowd, exclaiming that "they're breaking through" and "we will take the Capitol building." The recording shows, from a distance, tears in material that covered scaffolding on the northwest side of the Capitol erected in preparation for the inauguration. The screenshot below shows Lang's vantage point as he exclaimed that "we will take the Capitol building." 3 7 Figure 1 Lang went through the crowd and climbed the scaffolding, recording his ascent as he announced that "1776 will commence." He made several recordings from the top of the scaffolding, which provided Lang with access to the location for the inaugural stage on the Capitol's lower west terrace. In one recording, Lang identified areas where rioters were storming the Capitol, he stated again, "we'll take the whole building." The scaffolding provided Lang with a view from above of the West Plaza, where police clashed with rioters, and where, as 4 7 Lang recorded, rioters finally breached that police line. As the line was being breached, Lang joined others shouting "Go!" Figure 2 The screenshot above shows Lang's view as he exhorted rioters to "go" and breach the line police officers struggled to hold. As the source recording for the screenshot continues to play, it shows what appears to be an object thrown at officers, while the area where they stand is littered with debris from projectiles rioters had previously thrown at police. The recording ends as the police are overrun. 5 7 7 Officers from the West Plaza regrouped on the lower west terrace, where Lang recorded a line of uniformed officers in riot gear filing through the inaugural archway. 2 Figure 4 2 The archway is the location typically used on inauguration day for the President's entrance onto the inaugural stage. The rounded arch is a feature constructed for the inauguration and fixed to a normal set of doors. To access the archway on January 6, at a minimum, rioters needed to walk, climb, or scale up to the lower West Terrace landing and climb a set of stairs. The archway and doorways are narrow and no more than 10 feet across. The archway leads to a narrow hallway and a set of double doors. 7 7 The officers assembled past a set of double doors which they closed and locked; then they braced for the arrival of the mob. Figure 5: Officers close the outer doors, which completely shut at 2:41:05 p.m. Figure 6: Officers close the second set of doors, which are completely shut by 2:41:21 p.m. 8 7 Figure 7: Officers after rioters have breached the outer doors. Lang was among the first group of rioters to enter the archway. He recorded his own approach and initial entry at approximately 2:41 p.m. See Exhibit B for ECF 3. 3 Nearing the archway, Lang mistakenly exclaimed, "we're in the m***** White House." Id. at 03 seconds. Lang approached the archway to shouts of "Push!" (id. at 4-11 seconds and entered while both sets of doors remained shut with officers behind them. Id. at 12 seconds. While most of the crowd pushed inside, at least two rioters turned and exited. Id. at 19-

28 seconds. One rioter called for "space real quick" and Lang appeared to back out of the archway, id. at 29-32 seconds, while another rioter stated "we need space to break the door down," id. at 37 seconds, and stated again, "back up, back up, back up, we need to break that door down," id. at 39-42 seconds. Another voice in Lang's recording stated "get the big boys up front." Id. at 45-47 seconds. Lang then started to return into the archway. The crowd started to cheer, and Lang's recording captures a 3 This and other lettered exhibits referenced herein were provided to this Court and to defense counsel as part of the government's opposition to Lang's motion for release; for ease of reference, the United States is prepared to resubmit these exhibits if helpful. 9 7 voice warning, "Oh, they're coming in, they're spraying with [unintelligible] pepper spray." Id. at 103-05 seconds. Lang's recording shows his approach to the first set of double doors, which, although just broken by rioters, still bore signs as shown below, limiting entry. Figure 8 As he recorded, Lang made his way to the front of the crowd and the police line, where he remained despite police efforts to force rioters back with tear gas and baton strikes. The recording depicted a chaotic assault, with one rioter behind Lang shouting that there was "a man down" while one voice other than Lang's shouted "go to hunt the police." 10 7 Lang then entered the archway several times over the course of several hours. His conduct is described in detail in the government's opposition to his release, ECF 31-9-7; however, it is worth reviewing in the context of this motion. LANG remained at the forefront near the line of officers guarding the doors and filmed another video (Exhibit D covering around 2:51 to 2:57 p.m.). In Exhibit D, LANG can be seen up against the line of officers and continuing to yell a variety of things, such as: "We are getting squished to death, the cops are squishing us to death," (Ex. D at 10 seconds); "This is socialism, we are the last free country in the world." (Ex. D at 59 seconds); "Back up, this is our house." (Ex. D at 3 minutes 26 seconds); "Lock your shields and push." (Ex. D at 4 minutes 16 seconds); "Get the women out of the way." (Ex. D at 5 minutes 5 seconds); "If you are not going to fight, move." (Ex. D at 5 minutes 10 seconds); and "Let us in. This is our house. We paid for this f***ing building." (Ex. D. at 5 minutes 46 seconds); and "This is our country." (Ex. D. at 6 minutes 10 seconds). Around 2:57 p.m. LANG and another rioter violently pushed a door against an officer's head and LANG simultaneously kicked at that officer. Specifically, as captured in Exhibit E, which is a clip from YouTube Video 1, a publicly available video filmed by a photojournalist, that corresponds to around 2:57 p.m. with an added red box around LANG, LANG and another rioter repeatedly shove the door against Sgt. J.M., who is in a bent forward position and has his head pressed up against the door. (LANG can be seen with the red arrow above him and Sgt. J.M.'s head can be seen below the yellow arrow in the still below from Exhibit E.) Still from Exhibit E 11 7 As shown in Exhibit F (the body-worn camera (BWC) footage from Sgt. J.M. from the same time of around 2:57 p.m.), LANG can be seen repeatedly kicking at the officer as he is stuck up against the door. As Sgt. J.M. is bent forward trying to hold onto his shield at the time, his BWC faces downward. The first kick is visible at 2:57.17; the second kick at 2:57.32; the third kick at 2:57.38; the fourth kick at 2:57.40; and the fifth kick at 2:57.52. (Although the top half of the person kicking is not visible in the BWC footage, the pants and shoes match those worn by LANG as shown in Exhibit G, a photo of LANG on January 6 recovered from his phone (with an added red box around LANG). Moreover, the position of the kicker corresponds with where LANG can be seen standing, as shown in EXHIBIT B. Shortly thereafter, as shown in Exhibit F 1-4, stills from surveillance camera footage, around 3:02 p.m., LANG left the tunnel, only to come back again around 3:03 p.m., scream and push his way to the front, and then exit through it and "we will take the Capitol building." The recording shows, from a distance, tears in

material that covered scaffolding on the northwest side of the Capitol erected in preparation for the inauguration. The screenshot below shows Lang's vantage point as he exclaimed that "we will take the Capitol building."



Figure 1

Lang went through the crowd and climbed the scaffolding, recording his ascent as he announced that “1776 will commence.” He made several recordings from the top of the scaffolding, which provided Lang with access to the location for the inaugural stage on the Capitol’s lower west terrace. In one recording, Lang identified areas where rioters were “storming” the Capitol; he stated again, “we’ll take the whole building.” The scaffolding provided Lang with a view from above of the West Plaza, where police clashed with rioters, and where, as

Lang recorded, rioters finally breached that police line. As the line was being breached, Lang joined others shouting “Go!”

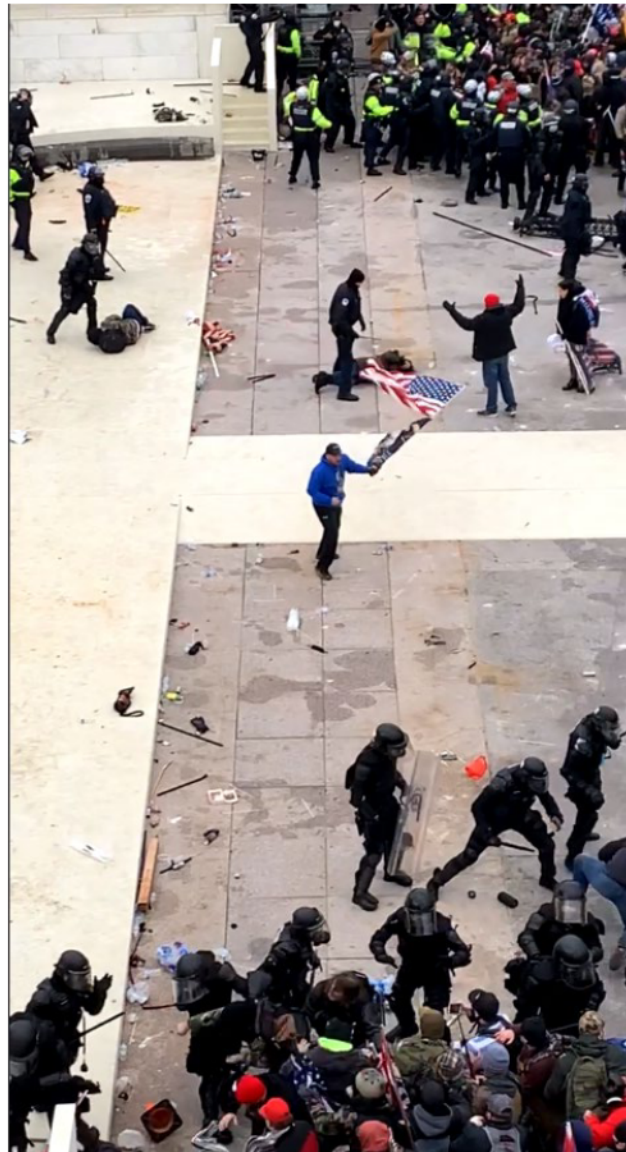


Figure 2

The screenshot above shows Lang’s view as he exhorted rioters to “go” and breach the line police officers struggled to hold. As the source recording for the screenshot continues to play, it shows what appears to be an object thrown at officers, while the area where they stand is littered with debris from projectiles rioters had previously thrown at police. The recording ends as the police are overrun.

In the recording that follows, the crowd has surged past the police and Lang continues to shout “go” and also “go my patriots, go!” In this recording, which clearly shows a pole that is thrown at police, Lang decries the officers under attack for “hurting our own people.” A screenshot from that recording presents another example of the violence visible to Lang.



Figure 3 (with red arrow indicating pole)

Officers from the West Plaza regrouped on the lower west terrace, where Lang recorded a line of uniformed officers in riot gear filing through the inaugural archway.²



Figure 4

² The archway is the location typically used on inauguration day for the President's entrance onto the inaugural stage. The rounded arch is a feature constructed for the inauguration and fixed to a normal set of doors. To access the archway on January 6, at a minimum, rioters needed to walk, climb, or scale up to the Lower West Terrace landing and climb a set of stairs. The archway and doorway are narrow and no more than 10 feet across. The archway leads to a narrow hallway and a set of double doors.

The officers assembled past a set of double doors which they closed and locked; then they braced for the arrival of the mob.



Figure 5: Officers close the outer doors, which completely shut at 2:41:05 p.m.



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Figure 7: Officers after rioters have breached the outer doors.

Lang was among the first group of rioters to enter the archway. He recorded his own approach and initial entry at approximately 2:41 p.m. *See* Exhibit B for ECF 3.³ Nearing the archway, Lang mistakenly exclaimed, “we’re in the m*****f***** White House.” *Id.* at 03 seconds. Lang approached the archway to shouts of “Push!” (*id.* at 4-11 seconds and entered while both sets of doors remained shut with officers behind them. *Id.* at 12 seconds. While most of the crowd pushed inside, at least two rioters turned and exited. *Id.* at 19-28 seconds. One rioter called for “space real quick” and Lang appeared to back out of the archway, *id.* at 29-32 seconds, while another rioter stated “we need space to break the door down,” *id.* at 37 seconds, and stated again, “back up, back up, back up, we need to break that door down,” *id.* at 39-42 seconds. Another voice in Lang’s recording stated “get the big boys up front.” *Id.* at 45-47 seconds. Lang then started to return into the archway. The crowd started to cheer, and Lang’s recording captures a

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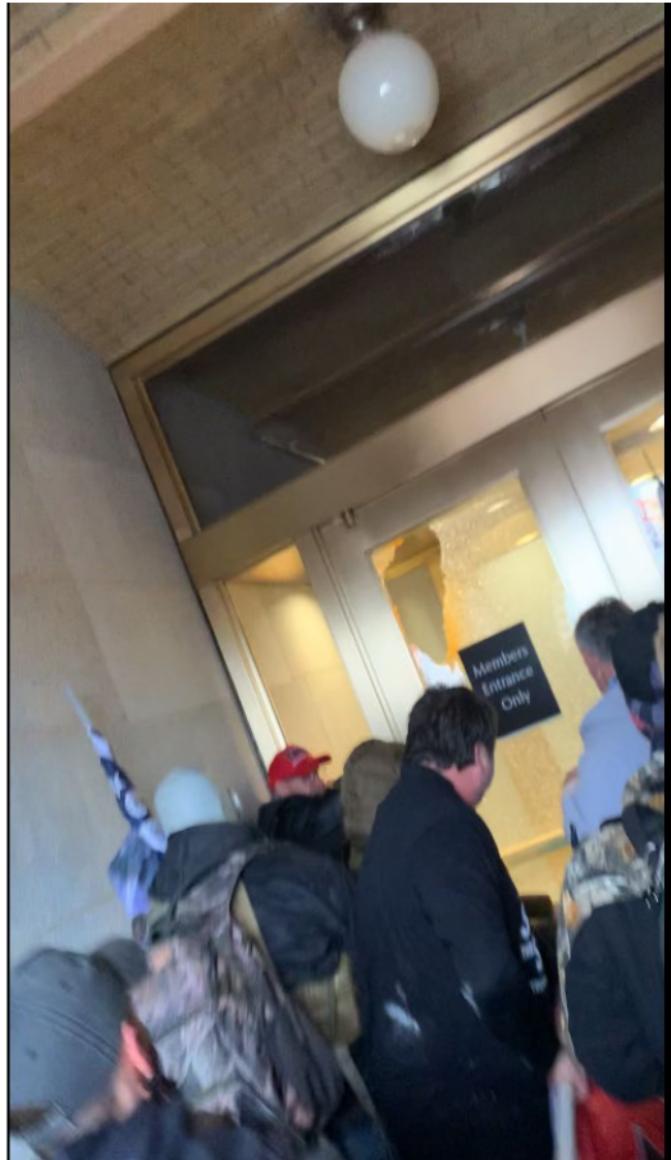


Figure 8

As he recorded, Lang made his way to the front of the crowd and the police line, where he remained despite police efforts to force rioters back with tear gas and baton strikes. The recording depicted a chaotic assault, with one rioter behind Lang shouting that there was “a man down” while one voice other than Lang’s shouted not to hurt the police.

Lang exited and re-entered the archway several times over the course of several hours. His conduct is described in detail in the government's opposition to his release, ECF 31:9-7; however, it is worth reviewing in the context of this motion. LANG remained at the forefront near the line of officers guarding the doors and filmed another video (Exhibit D covering around 2:51 to 2:57 p.m.). In Exhibit D, LANG can be seen up against the line of officers and continuing to yell a variety of things, such as: "We are getting squished to death, the cops are squishing us to death." (Ex. D at 10 seconds); "This is socialism, we are the last free country in the world." (Ex. D at 59 seconds); "Back up, this is our house." (Ex. D at 3 minutes 26 seconds); "Lock your shields and push." (Ex. D at 4 minutes 16 seconds); "Get the women out of the way." (Ex. D at 5 minutes 5 seconds); "If you are not going to fight, move" (Ex. D at 5 minutes 10 seconds); and "Let us in. This is our house. We paid for this f***ing building." (Ex. D. at 5 minutes 46 seconds); and "This is our country." (Ex. D. at 6 minutes 10 seconds).

Around 2:57 p.m., LANG and another rioter violently pushed a door against an officer's head and LANG simultaneously kicked at that officer. Specifically, as captured in Exhibit E, which is a clip from YouTube Video 1, a publicly available video filmed by a photojournalist, that corresponds to around 2:57 p.m. with an added a white box around LANG, LANG and another rioter repeatedly shove the door against Sgt. J.M., who is in a bent forward position and has his head pressed up against the door. (LANG can be seen with the red arrow above him and Sgt. J.M.'s head can be seen below the yellow arrow in the still below from Exhibit E.)

Still from Exhibit E



As shown in Exhibit F (the body-worn camera (BWC) footage from Sgt. J.M. from the same time of around 2:57 p.m.), LANG can be seen repeatedly kicking at the officer as he is stuck up against the door. As Sgt. J.M. is bent forward trying to hold onto his shield at the time, his BWC faces downward. The first kick is visible at 2:57.17; the second kick at 2:57.32; the third kick at 2:57.38; the fourth kick at 2:57.40; and the fifth kick at 2:57.52. (Although the top half of the person kicking is not visible in the BWC footage, the pants and shoes match those worn by LANG, as shown in Exhibit G, a photo of LANG on January 6 recovered from his phone (with an added red box around LANG). Moreover, the position of the kicker corresponds with where LANG can be seen standing, as shown in EXHIBIT B.

Shortly thereafter, as shown in Exhibit H-1-4, stills from surveillance camera footage, around 3:02 p.m., LANG left the tunnel, only to come back again around 3:03 p.m., scream and push his way to the front, and then exit once more. This roughly corresponds with Exhibit I, a clip from YouTube Video 1, where LANG can be heard screaming “Come on, what the f**k are we doing? I can’t even see.” Lang then left the tunnel, only to return shortly afterwards while making guttural screams. (A red box has been added around LANG.)

Around 3:05 p.m., LANG appears to have recorded himself, as shown in Exhibit J which was recovered from his phone. He can be seen outside the arch entrance to the tunnel yelling “we are the real men, we are the real men, get in there.” (LANG later posted a photo from this video to his Facebook account with the words “I was the leader of Liberty today. Arrest me. You are on the wrong side of history.” Exhibit J-1.)

Around 3:08 p.m., LANG re-entered the tunnel and joined a group effort by the rioters trying to push past the officers guarding the doors. Specifically, as shown in Exhibit K-1, surveillance camera footage from 3:08 – 3:10 p.m. with an added red box around LANG, LANG walked toward the front of the tunnel bracing both arms on the back of the person directly in front of him and began pushing forward on the rioter directly in front of him. LANG then pushed with the crowd in unison attempting to break past the officers guarding the Lower West Terrace doors, who were located below the camera recording this footage. LANG then stopped pushing and went to the side to wipe his eyes. He then once again walked forward, braced both arms and joined the group effort to push past the officers guarding the doors, until he and others got pushed back out by the rioters leaving the tunnel. He then re-entered the tunnel and once again joined the group pushing effort, as shown in Exhibit K-2, surveillance camera footage from 3:12 – 3:13 p.m. with an added red box around LANG.

As captured in Exhibit L, a clip from YouTube Video 1 that corresponds to around 3:08 p.m. to 3:13 p.m., during this time frame as LANG and other rioters violently pushed up against officers guarding the doors, the group of rioters all yelled “heave ho” to coordinate their force. As captured in Exhibit L, it was during this time that a Metropolitan Police Department (MPD) officer was being violently crushed against the first set of doors with a shield held by another rioter.

After being pushed out of the tunnel shortly after 3:13 p.m., LANG once again re-entered the tunnel around 3:15 p.m. As shown in Exhibits M-1 through M-5, he pushed his way forward

into the tunnel once again, grabbed an abandoned gas mask from the ground and put it on, and then rushed forward with other rioters towards the line of law enforcement guarding the doors. As captured in YouTube Video 1 and other videos, the rioters once again engaged in a joint heave-ho effort, pushing against the officers trying to guard the doors. However, because LANG's position by the far wall and below the USCP camera obstructs view of him, it is unclear whether he participated in this additional joint-pushing effort. As shown in Exhibits M-6 through M-7, from 3:18 p.m. to 3:19 p.m., LANG and all the remaining rioters in the tunnel were finally pushed out of the tunnel by law enforcement officers.

After officers pushed rioters out of the tunnel around 3:20 p.m., and after those officers that had been violently dragged into the crowd and assaulted during this effort finally reached safety, the rioters near the arch entrance to the tunnel remained relatively calm and the violence subsided for a time. During this time, LANG can be seen recording himself near the edge of the second terrace. Specifically, around 3:30 p.m., as captured in Exhibit N, another video recovered from his phone that he appears to have filmed, LANG can be seen smiling widely and saying: "a little pepper spray in the morning!" (LANG later posted this video to his Instagram account, as shown in Exhibit N-1, a still from that post.)

Around 3:50 p.m., rioters once again began to engage in violence, including another group pushing effort and more extreme violence. LANG was one of the leaders in this effort and repeatedly escalated his violent attacks over the following hour.

Around 4:01 p.m., LANG can be seen crowd-surfing over the heads of rioters standing in front of the police line at the arch and then grabbing and hitting one of the officers repeatedly. Specifically, as captured in Exhibit O, a clip from YouTube Video 2, a video posted to YouTube by another defendant, right before this happened, another rioter instructed the rioters to pull the police out. Then rioters directly pressed up against the officers under the arch and those rioters on

the steps behind them started to collectively heave against the officers to try to break past them once again. At this point, LANG climbed on top of the heads and shoulders of the other rioters towards the line of law enforcement officers under the arch and attacked them. Essentially, he crowd-surfed to commit violence. Once he reached the officers at the arch, as captured in stills from surveillance camera footage, Exhibits P-1 through P-4, LANG hit an officer in the face.

Then, around 4:11 p.m., as captured in Exhibit Q (BWC footage from an officer on the side of the arch), after Detective P.N. fell to the ground, LANG repeatedly kicked the detective as he was down, as shown in Exhibit Q with a red box around LANG.

Around 4:20 p.m., LANG took a break from the violence to record himself again, as shown in Exhibit R, another video recovered from his phone. (LANG later posted this video to his Instagram account, as shown in Exhibit R-1, a still from that post.)

Around 4:26 p.m., as visible on surveillance camera footage, LANG tried to get the attention of law enforcement to get assistance for a woman that was unconscious in the crowd of rioters being pushed out of the tunnel. He also appears to have helped drag another individual out from underneath other rioters that had been pushed out of the tunnel. (Unfortunately, as officers tried to help the woman and bring her inside the building to try to resuscitate her, other rioters, not including LANG, began violently attacking the officers with a variety of sticks and weapons.)

Around 4:37 p.m. LANG again took time to record himself, this time against the line of officers in the arch as he pointed at them, as shown in Exhibit S, another video recovered from his phone. (LANG later posted this video to his Instagram account, as shown in Exhibit S-1, a still from that post.)

Around 4:43 p.m., a woman in the crowd appeared to try to get LANG and the others committing violence to stop, only to be shut down and ignored by LANG. Specifically, as shown in Exhibit T (BWC from Officer T.C., whom LANG then repeatedly hit with a stolen shield),

around 4:43 p.m. a woman told LANG and other rioters: “you guys are better than that.” LANG then appeared to state: “This is how our country was founded woman!” She replied by stating: “First of all I am a f***ing veteran, let me talk to them.” LANG responded by hitting Officer T.C. with the stolen shield, first at 4:43.36 p.m., then again at 4:43.39 p.m., then again at 4:43.51 p.m., then again at 4:43.53 p.m., and then again at 4:43.56 p.m. LANG then came at the officer with the shield at an angle at 4:44.31 p.m., hit him again at 4:44.33 p.m., then again at 4:44.51 p.m., and then again at 4:44.57 p.m. At 4:45.07 p.m., LANG told the officer: “You work for us,” then hit him again at 4:45.42 p.m., and then hit the officer beside him at 4:46.37 p.m. (Exhibit U, which is a clip of BWC from the same timeframe from an officer up on the ledge in the arch, captures much of the same conduct, with an added red marking to show LANG.)

The rioters, and LANG in particular, then escalated things even further. As shown in Exhibit V, an additional BWC clip from the officer on the ledge, around 4:48 p.m., another individual tried to get the violent rioters to stop, putting up both hands and screaming “we have to stop,” only to be pulled to the side by another rioter. After that individual was pulled aside, at 4:49.22 p.m., a rioter screamed “You are going to die tonight!” at the officers. Then at 4:50 p.m., a series of violent assaults began by those standing near LANG, including a rioter attacking with a bat and a rioter attacking with a helmet. (These assaults are captured from the perspective of the officers in Exhibit V and from the perspective of the crowd in Exhibit W, a video filmed by another individual in the crowd, but found on LANG’s phone, that corresponds to approximately 4:50-4:56 p.m.) These two attacks lasted around 30 seconds.

Around 4:50.42 p.m., after these attacks are done, LANG reached forward to take one of the fallen shields, which he passed back to rioters behind him. At 4:50.57 p.m., LANG then reached forward to grab the MPD helmet that had just been used to bludgeon the officers by another rioter. (This is captured more clearly on Exhibit X, another clip from BWC of an officer

on the front line.) LANG then placed the helmet on his head and waved his stolen shield triumphantly in the air, as captured in Exhibit W. (LANG later posted a clip from what appears to be this same video with the words “this is me” and “Look at the patriots inspired by me chanting!!” above himself as he hoisted the shield up in the air triumphantly, as shown in the still from that posting in Exhibit W-1.)

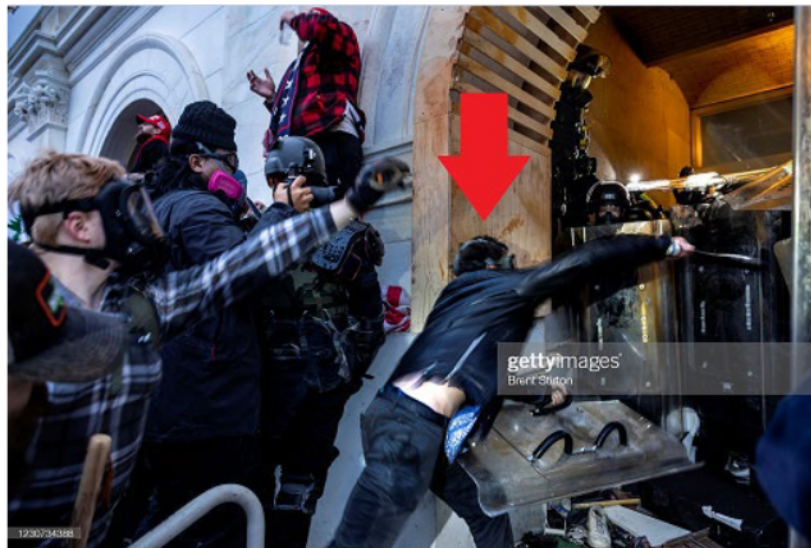
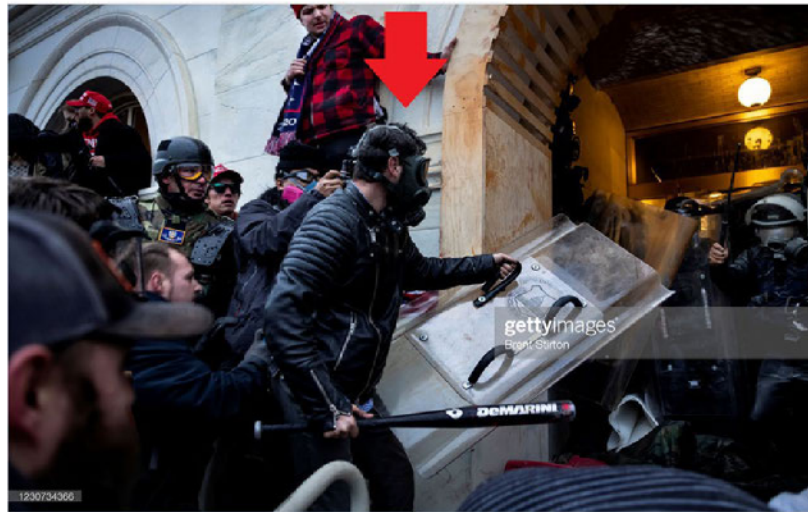
At 4:51.31 p.m., as seen on Exhibit V, LANG taunted the officers (or perhaps simply tried to rile up the crowd) by slamming the stolen shield down in front of the officers. Shortly thereafter, at 4:52 p.m., someone close to the same area where LANG was standing yelled “Are you motherfuckers ready to die? Are you motherfuckers ready to die?” at the officers. At the same time, rioters threw a variety of objects – poles, plastic cones, desk drawers, and sticks at the officers. Around the same time, the crowd yelled “traitors” at the officers. At 4:53 p.m., a different rioter came forward with the same bat used previously and attacked the officers for a few seconds. At 4:54 p.m., LANG once again taunted the officers (and/or riled up the crowd) by slamming the stolen shield down in front of the officers repeatedly. He then waived other rioters forward (although none joined him) and once again slammed the shield on the ground.

As captured best on Exhibit W, around 4:55 p.m., another rioter handed LANG the bat that had been used by other rioters at least twice before to attack the officers.

Over the next five minutes, from 4:55 p.m. to 5 p.m., LANG repeatedly, and strategically, attacked the officers guarding the Capitol with that bat. Specifically, he can be seen striking the officers with the bat at the following times: 4:54.58 p.m.; 4:56.30 p.m.; 4:56.44 p.m.; 4:57.13 p.m.; 4:57.15 p.m.; 4:57.21 p.m.; 4:57.26 p.m.; 4:57.32 p.m.; 4:58.06 p.m.; 4:58.29 p.m.; 4:59.10 p.m.; 4:59.32 p.m.; 4:59.49 p.m.; 4:59.51 p.m.; 4:59.54 p.m.; and 4:59.58 p.m. These are captured on Exhibit V and Exhibit Y (BWC footage from an officer standing behind one of the officers

repeatedly hit with the bat). LANG only stopped after he was shot with a rubber bullet that hit him in the foot.

His attack with the bat is also captured by videos and photos taken by news media in the area on January 6, 2021, including, for example, the two photos below showing Lang attacking officers with the black and red bat (a red arrow has been added above the Lang's head in each photo).



While attacking the officers with the bat, LANG was strategic about his approach, switching from simple swings to a more complex approach where he varied between low swings, overhead swings, and thrusts. (These low swings towards the officers' legs can best be seen in Exhibit Z, a clip from the BWC of an officer behind the frontline officers.) As one of his victims, Officer H.S., noted when interviewed, these varying strikes were more effective. Indeed, Officer H.S. was injured by LANG's hits to his leg and had trouble standing after he finally got off the front line that night. Officer H.S. limped for days after and the swelling took a month to subside.

Examples of Lang's Statements in the Aftermath of the January 6 Attack

Lang texted his mother on January 6, saying that she would have been "so proud" of him and describing his "three hours" of wrestling, dragging, and taking "metal" to the heads of law enforcement officers. Exhibit C. A Twitter account holder posted a video of a conversation with Lang where, in response to a question about what would come after January 6, Lang responded, "Guns...That's it. One word. The First Amendment didn't work, we pull out the Second. ..." As detailed in the government's opposition to Lang's release, ECF 31:18-20, Lang's remarks from a live public interview posted on Instagram on January 7, 2021 included the following about his role on January 6:

- "It was war. This was no protest.";
- "We gave them not an inch. We tried getting in through the front, but we couldn't. Other people got access through a couple of windows, stuff like that and slowly funneled in but we were trying to get through the main gates.";
- "You know I had a gas mask on for the first two, three hours. I was fighting them face to face but eventually they started using the stuff that goes right through the gas mask.";
- "Six, seven times at least I got hit. Kept getting whatever the eyewash spray out, waiting 5 or 10 minutes, get back in there. You know and I even had a gas mask on. I got a gas mask with me, it is full of blood from the top, my head just leaked down into it."; and

- “A lot of people were thinking it was a game, for like their snapchat or to be a part of history, then they started getting hit with batons, and people started coming out with blood and people were getting trampled. And I am like straight up get the women and children out of this little corridor right here. We are talking war. We need men up there, men who are going to pull cops down and out of there. Men who are going to take a bullet if need be, you know. This was tyrants versus freedom fighters. At the end of the day painting us as insurrectionists, a mob. This was no mob. A mob is a bunch of people like attacking each other. This was an organized unit of patriots trying to take on tyrants. You know what I mean. A mob has no goal. A mob is just, uh, just screaming and shit. This was patriots on a goal, on a mission to have the Capitol building. To stop this presidential election from being stolen so that we at least have one presidential veto left from all of these bullshit laws and restrictions.”

Additional statements and details are included in the government’s opposition to Lang’s motion for release, *see* ECF 31:18-20; however, his statements quoted above establish Lang’s violent intentions from January 6. As explained below, Lang apparently intends to defend against the evidence described above by invoking the First Amendment.

*Defendant Lang’s Intention To Present Improper
Argument Concerning First Amendment Protections*

During a hearing before this Court on Lang’s motion for release, his counsel portrayed Lang in the following way:

You want to speak out about the government; that’s your First Amendment rights. And what are you met with? You are met with officers, tear gas, flash bangs ...”

Tr. at 14.

Lang was permitted to address this Court during the hearing. According to Lang:

The first ten minutes I was in that tunnel, I had my camera up and hands down, just filming, being peaceful. Then I started witnessing disgusting police brutality, and things moved on from there.

Tr. at 58. After this Court interjected with a warning about Lang discussing the facts of his case, Lang added, “I was there to film.” *Id.* at 59.

Since that hearing, Lang has made numerous public statements claiming he was at the Capitol on January 6, 2021 to peacefully protest, seek redress of his grievances, and exercise his First Amendment rights. For example, in a podcast that aired on May 28, 2022, Lang claimed that he “stood up for free and fair elections on January 6, 2021” and “I did that with my First Amendment to stand there and to protest and to have a redress of our grievances ...” <https://www.victoriataft.com/this-is-me-jake-lang-in-his-own-words/> at about 30:29, last checked on September 11, 2022. In this podcast, Lang also claimed:

I was there journalistically videotaping, I have a social media company ...where I’m constantly talking about libertarian issues and stuff, so I’m just there videotaping, using my First Amendment rights, protest the government, and that’s where the crowd was going ... so I went into the tunnel to get good footage and make my voice heard ...

[*Id.*]

In a broadcast that aired on June 9, 2022, Lang maintained that during what according to him was now only “a two hour disturbance at the Capitol,” *see* <https://www.mediamatters.org/media/3989524>, last checked 9/10/2022 at 2:25:

that’s what we were all there for, uh, January 6, 2021, to defend our country, to defend American liberty, nobody brought weapons, we were there to peacefully protest, and to make stand [*sic*] up for our republic, I mean, that’s what, our, uh, y’know, our whole entire goal was, to make our voices known, to redress our grievances with our elected officials, and they totally overshadowed us, they didn’t care that millions of people gathered ...

Id. at 3:31.

In a podcast recorded on July 22 and aired on July 25, 2022, Lang maintained that he and others were at the Capitol to protest, explaining to a foreign audience that “We have a right in our constitution, our First Amendment right, to have a proper redress of our grievance and our grievance that day was a rigged election and we were there patriotically and peacefully protesting

...”. <https://player.fm/series/hearts-of-oak-podcast/jake-lang-jan-6th-political-prisoner-no-trial-no-visitors-no-justice> at 3:49, last checked September 11, 2022.

In a July 27, 2022 broadcast, Lang contended that the crowd at the Capitol was there to stand up, peacefully assemble, and “have a redress of our grievances;” when police formed lines and “beat protesters back, we just had to defend ourselves.” https://www.theepochtimes.com/exclusive-interview-with-j6-prisoner-currently-held-in-solitary-confinement-for-18-months-pending-trial-facts-matter_4623774.html, last checked September 11, 2022.

In a podcast that aired on September 5, 2022, Lang described his role and that of others on January 6 as follows:

in my experience at the Capitol that day, it was a bunch of pissed off patriots standing up um as our forefathers did against tyranny and that’s uh, I mean lock, stock and barrel that is exactly what happened that day. Um, now were we improperly abused and police brutalized, a bunch of unarmed Americans, and were we peacefully assembled um, y’know, protesting and airing our grievances out against the government, yes, that’s what we were doing, um but once we started to be attacked and murdered and maimed, um, we didn’t turn tail and run, we defended ourselves ... it’s our right to protest ...

<https://www.onenewspage.com/video/20220905/14876471/Interview-with-J6-Prisoner-Jake-Lang-from-the.htm>, last checked September 11, 2022.

The preceding examples of Lang’s First Amendment claims represent a sampling rather than a complete collection of his public statements invoking free expression in defense of his transgressions on January 6. In addition, his attorney has broadcast at least one similar statement recorded outside this federal courthouse after a February 23, 2022 status conference in the instant case. *See* <https://rumble.com/vvy2nl-main-press-conference-outside-dc-district-courthouse-2.23.22.html>. In his recording, counsel for Lang praised the defendant and explained that Lang was the reason he became involved with January 6 cases. He encouraged onlookers to “think of

one important thing: the First Amendment,” *id.* at 9:14, adding, “that’s what makes this, right here, so beautiful; that’s what makes this country beautiful, and that is [*sic*] just been completely lost with regards to January 6.” *Id.* at 9:17. He added, “those beautiful [First Amendment] principles that this country was founded on are just somehow being lost and forgotten about.” *Id.* at 9:45. He continued:

if you walk away from this with nothing else, I want you to think about the importance of the First Amendment and what the First Amendment truly does mean with regards to January 6. ...I’m here to talk about the violence that happened that day. You have a bunch of people on January 6 who want to redress their government [*sic*] they want to speak about the issues that were going on; they wanted their voices to be heard. What does it take for the average citizen to say ‘enough is enough,’ or, ‘I need to do something to have my voice actually get heard’. ... Some of our words and some of our actions may not be listened to, but they’re definitely makin’ some noise. And it’s a beautiful thing. And that’s the point of what we’re all trying to do. Spread awareness. Talk about the violence that these people were met with. If a man’s gonna be charged with isolated incidences [*sic*] where he’s alleged to have been violent, then, the circumstances surrounding it all have to be looked into and considered as well.

Id. at 10:10.

In fact, circumstances relating to the exercise of the protections guaranteed by the First Amendment should not be used as justification for Lang’s conduct his trial. When asked in a discussion about motions in limine if Lang would attempt to argue a justification under the First Amendment, his counsel expressed uncertainty but stated that “it can’t hurt to assume” that Lang will attempt to pursue such a defense. Lang has also stated publicly in an interview that aired on July 27, 2022 that he will defend himself “by any means necessary” including “jury nullification or a bench trial.” *See* https://www.theepochtimes.com/exclusive-interview-with-j6-prisoner-currently-held-in-solitary-confinement-for-18-months-pending-trial-facts-matter_4623774.html. Therefore, the United States is filing this motion in limine in light of the foregoing facts and the authorities below.

Legal Analysis

Lang’s contention that he was at the Capitol on January 6, 2021 exercising his First Amendment rights cannot provide an affirmative justification for the charged offense conduct in his case. As one judge on this Court has stated, “I don’t think any plausible argument can be made defending what happened in the Capitol on January 6th as the exercise of First Amendment rights.” *United States v. Hodgkins*, 21-cr-188-RDM, (D.D.C. July 19, 2021), Transcript of Sentencing at 46.

More than half of the counts in the Superseding Indictment charge crimes involving violent conduct. Counts One through Four of the Superseding Indictment charge violations of 18 U.S.C. § 111(a)(1) for assaults on federal officers involving physical contact and the intent to commit another felony. Counts Five and Six charge violations of 18 U.S.C. § 111(a)(1) and (b) for such assaults on federal officers using a deadly or dangerous weapon. Count Seven charges the violation of 18 U.S.C. § 111(a)(1) and (b) for such an assault against a federal officer using a deadly and dangerous weapon with infliction of serious bodily injury. Count Eleven charges the violation of 18 U.S.C. § 1752(a)(4) for engaging in any act of physical violence in a restricted building or grounds. Count Thirteen charges violation of 18 U.S.C. § 5104(e)(2)(F) for engaging in an act of physical violence within the United States Capitol grounds or any of its buildings.

“[A] physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment.... ‘[V]iolence or other types of potentially expressive activities that produce special harms distinct from their communicative impact ... are entitled to no constitutional protection.’” *Wisconsin v. Mitchell*, 508 U.S. 476, 484–85, (1993) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 628 (1984)). Accordingly, even for demonstrations that would be protected under the First Amendment (which the breach of the Capitol and its grounds was not), when those demonstrations turn violent, “they lose their protected quality as expression under the First Amendment.” *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972); *United States v.*

Bingert, No. 21-cr-91-RCL, ---F.Supp.3d---, 2022 WL 1659163 (D.D.C. May 25, 2022) (rejecting First Amendment challenge to 18 U.S.C. § 1752(a)(1) on this ground); *see also United States v. Nordean*, 579 F.Supp.3d 28, 53 (D.D.C. 2021) (describing conduct the First Amendment does not protect despite any political message).

All of the assault counts charged against Lang involved violent physical contact with police officers.⁴ He punched and kicked officers, slammed a door into one officer's head, and hit officers with a shield and a baseball bat. The First Amendment did not protect these assaults or violent activity in a restricted area or the Capitol grounds. It does not insulate Lang from criminal liability now. Regardless of any message Lang may claim his conduct was meant to convey, the First Amendment provides no justification or excuse for conduct charged in any count with an element of violence or assault. Such argument should be precluded.

Other counts in the indictment involve interference with or obstruction of law enforcement or the disruption of governmental business and official functions. Count Eight charges the violation of 18 U.S.C. § 231(a) for commission of civil disorder involving acts to obstruct or interfere with law enforcement officers with adverse impacts on commerce and the performance of any federally protected function. Count Ten charges the violation of 18 U.S.C. § 1752(a)(2) for disorderly and disruptive conduct (with a deadly and dangerous weapon) in a restricted area that impeded and disrupted Government business and official functions. Count Twelve charges the violation of 40 U.S.C. § 5104(e)(2)(D) for engaging in disorderly and disruptive conduct within the Capitol grounds or any of its buildings with the intent to impede, disrupt or disturb the orderly conduct of specified proceedings before Congress or either House of Congress.

⁴ During the hearing on Lang's motion for release, the defense did not dispute the conduct charged in certain assault counts. Tr. at 18 (conceding that "Lang was on camera swinging a baseball bat at the officers") and at 19 (stating "No, I do not contest that" with respect to proffered evidence of Lang hitting an officer with a riot shield).

None of the prohibited conduct covered in these charges receives First Amendment protection. Activities that injure, threaten or obstruct do not receive such protection, whether or not that conduct communicates a message. *United States v. Gregg*, 226 F.3d 253, 267-68 (3d Cir. 2000); *United States v. Grider*, No. 21-cr-22-CKK, 2022 WL 3016775 at *7 (D.D.C. July 29, 2022); *Nordean*, 579 F.Supp.3d at 53; *see generally United States v. Giampietro*, 475 F. Supp. 3d 779, 792 (M.D. Tenn. 2020) (rejecting First Amendment challenge to 18 U.S.C. § 1519; the statute “regulates conduct, not speech, and the conduct it regulates – destruction of documents with the intent to obstruct a federal investigation – is not expressive”). Lang’s protests that he sought to exercise his First Amendment rights on January 6 do not excuse the conduct charged in Counts Eight, Ten and Twelve.⁵ Accordingly, argument concerning Lang’s exercise of any First Amendment rights should not be presented as an excuse for the conduct charged in Counts Eight, Ten and Twelve as well.⁶

To avoid criminal liability on the basis of justified conduct, a defendant must show, among other factors, that there was no reasonable alternative to breaking the law or chance to refuse to do

⁵ If the United States is able to secure a favorable result in its appeal from the dismissal of Count Nine, charging obstruction in violation of 18 U.S.C. § 1512(c)(2), the same reasoning applies. The First Amendment does not protect obstruction and therefore cannot provide a justification for to this charge, making it irrelevant and inadmissible as well.

⁶ Even if Lang’s purpose for being at the Capitol included the exercise of First Amendment rights, it is not necessary for conduct to have an exclusively illegal intent to be in violation of criminal laws. *United States v. Woodward*, 149 F.3d 46, 71 (1st Cir. 1998) (ruling that a defendant could be prosecuted for the deprivation of honest services if he had both a lawful and unlawful purpose for committing the charged conduct); *United States v. Brown*, 934 F.3d 1278, 1307 (11th Cir. 2019) (remanding to ensure district court’s decision declining to apply sentencing enhancement was free from legally erroneous “single intent” theory; officer prosecuted for excessive force could have possessed both intent to gain control of suspect along with intent to inflict bodily injury); *United States v. Coyne*, 4 F.3d 100, 113 (2d Cir. 1993) (“a valid purpose that partially motivates a transaction does not insulate participants in an unlawful transaction from criminal liability”); *see also United States v. Herrera*, 21-cr-619-BAH (D.D.C. Aug. 18, 2022) (ECF 65 at 6: jury instruction in Capitol riot prosecution stating “A defendant’s unlawful intent to obstruct justice is not negated by the simultaneous presence of another purpose for his conduct”).

the criminal act or avoid the threatened harm. *E.g., United States v. Montgomery*, 772 F.733, 736 (11th Cir. 1985). Federal courts have uniformly rejected justification claims in civil disobedience cases where criminal defendants contended that their illegal activity was justified because normal political processes were ineffective. *See United States v. Greenpeace*, 314 F.Supp.2d 1252, 1265-66 (S.D. Fla. 2004)(collecting cases). Any argument by Lang that the First Amendment somehow justified his offense conduct falls far short of meeting the requirements of courts that recognize a justification defense. Accordingly, arguments such as those made in public statements by Lang or his counsel should not be permitted in his trial.

CONCLUSION

For all of the reasons above, this Court should preclude arguments that Lang's charged conduct was protected by the First Amendment or that the exercise of First Amendment rights provided justification for his actions.

Respectfully submitted,

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