

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

UNITED STATES OF AMERICA,

v.

ELIAS COSTIANES,

Defendant.

Case No.: 1:21-cr-00180-RJL-1

MOTION TO DISMISS COUNT ONE

COMES NOW Elias Costianes, by and through undersigned counsel, and, pursuant to Rules 7(c)(1) and 12(b)(3)(B) of the Federal Rules of Criminal Procedure, the Fifth and Sixth Amendments to the United States Constitution, and moves this Court to enter an order dismissing Count One of the indictment in this case. In support thereof, he would state the following.

1. Court One of the indictment against Mr. Costianes alleges that on or about January 6, 2021, he “attempted to, and did, corruptly obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, by entering and remaining in the United States Capitol without authority and engaging in disorderly and disruptive conduct” in violation of 18 U.S.C. §§ 1512(c)(2) and 2.

2. Count One must be dismissed as this allegation fails to state an offense, fails to provide Mr. Costianes with adequate notice of what he is charged

<i>United States v. Elias Costianes</i> Case No. 1:21-cr-00180-RJL-1 Motion to Dismiss Count One Page -1- DISMISS COUNT ONE21/10/28 16:27:33		Joseph R. Conte Law Office of J.R. Conte 400 Seventh St., N.W., #206 Washington, D.C. 20004 Phone: 202.638.4100 Email: dcgunlaw@gmail.com
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with, and does not ensure that a grand jury has found sufficient evidence of the necessary elements of the offense in violation of Rule 7(c)(1) of the Federal Rules of Criminal Procedure, and the Fifth and Sixth Amendments to the United States Constitution. More specifically, the indictment fails to state what “official proceeding” and, even more specifically, what “proceeding before Congress” Mr. Costianes allegedly obstructed. This is a critical issue in this case because 18 U.S.C. § 1512(c) only prohibits obstruction of an “official proceeding” related to the *administration of justice* before a tribunal and not any and all governmental functions such as legislative action by Congress. *See United States v. Ermoian*, 752 F.3d 1165, 1172 (9th Cir. 2013).

WHEREFORE, counsel respectfully requests this Honorable Court dismiss Count One of the indictment against him and permit him leave to amend and supplement this motion at a later date, if needed.

Dated: October 28, 2021

Joseph R. Conte
 Digitally signed by Joseph R. Conte
 Date: 2021.10.28 16:28:01 -04'00'

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<p><i>United States v. Elias Costianes</i> Case No. 1:21-cr-00180-RJL-1</p> <p>Motion to Dismiss Count One Page -2-</p> <p>DISMISS COUNT ONE21/10/28 16:27:33</p>		<p>Joseph R. Conte Law Office of J.R. Conte 400 Seventh St., N.W., #206 Washington, D.C. 20004 Phone: 202.638.4100 Email: dcgunlaw@gmail.com</p>
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ORDER

This matter is before the Court on the Defendant's Motion to Dismiss Count One and the Court having considered the motion, the Government's response thereto and after a hearing on the motion it is this _____ day of _____, 2021,

ORDERED that the defendant's motion should be and hereby is **GRANTED**

SO ORDERED

Richard J. Leon
United States District Judge