

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

CASE NO.: 21-CR-129

Plaintiff,

vs.

GABRIEL GARCIA,

Defendant.

**DEFENDANT’S MOTION FOR BILL OF PARTICULARS
AND MEMORANDUM OF LAW**

COME NOW the Defendant, Gabriel Garcia, who, by and through undersigned counsel and pursuant to Federal Rule of Criminal Procedure 7(f), and file this Motion for a Bill of Particulars seeking an Order directing the Government to supply the following particulars in reference to the superseding indictment filed in the above-captioned case:

1. As to Count Five charging Disorderly Conduct in a Capitol Building, the nature of all events, behavior, and actions upon which the prosecution will rely on to prove Mr. Garcia committed disorderly conduct and how such acts are separate and distinct from the alleged criminal acts charged in Counts One and Two; or, is Count Five charging the same exact conduct charged in Counts One and Two.

2. As to Count Four charging Disorderly and Disruptive Conduct in Restricted Building or Grounds, the nature of all events, behavior, and actions upon which the prosecution will rely on to prove this charge, and how such acts are separate and distinct

from the alleged criminal acts charged in Counts One and Two; or, is Count Four charging the same exact conduct charged in Counts One and Two.

3. As to Count Two charging Obstruction of an Official Proceeding, the nature of any statements (written, spoken, or adopted), events, actions, behavior, and actions upon which the prosecution will rely on to establish or prove Mr. Garcia demonstrated the heightened mens rea of “corrupt” intent. *United States v. Arthur Anderson LLP*, 125 S. Ct. 2129 (2005) (holding that “corruptly” in 18 U.S.C. § 1512 means immoral, depraved, or evil purpose).

MEMORANDUM OF LAW

Federal Rule of Criminal Procedure 7(f) provides that the Court may direct the filing of a bill of particulars upon the motion of a defendant. The purpose of a bill of particulars is to tell the defendant of the nature of the charges in such a way as to ensure that he: (1) understand the charges, (2) can prepare a defense, (3) can avoid prejudicial surprise at trial, and (4) can be protected against retrial for the same offense. *See, e.g., United States v. Butler*, 822 F. 2d 1191 (D.C. Cir. 1987); *see, e.g., United States v. Ramirez*, 602 F. Supp. 783, 793 (S.D.N.Y. 1985). The determination as to whether a bill of particulars should be provided is within the discretion of the trial court. *Butler*, 822 F. 2d at 1194.

In this case, in order to adequately prepare a defense, Mr. Garcia is entitled to know what specific acts are the bases for Counts Four and Five. Or, is the Government charging the same conduct alleged in Counts One and Two, and the two misdemeanor

offenses in Counts Four and Five are duplicitous, essentially lesser offenses that are subsumed by Counts One and Two. The Government is allowed of course to do this, but the Defense is entitled to understand the charges.

Through pleadings and discovery, Mr. Garcia is aware of the conduct that the Government is alleging was criminal in regard to Counts One and Two. In Count One, the Government is alleging his conduct in the crypt of the Capitol, where he encountered a line of the Capitol policemen, is the factual basis. And as to Count 2, this is the primary obstruction charge that alleges he corruptly tried to interfere Congress's certification of the electoral college vote. Still, the Government's pleadings and discovery provided have failed to apprise the Defense of the factual bases for the allegations in Counts Four and Five.

Further, regarding the obstruction charge in Count Two and its heightened mens rea element of corruption, the Government's pleadings and discovery also fail to apprise the Defense what actions constitute his corrupt intent. Mr. Garcia is entitled to know what separates his actions from the hundreds of January 6 defendants who were not charged with felony obstruction, but were in the Capitol too.

WHEREFORE, it is respectfully requested that the Court grant this Motion for Bill of Particulars.

RESPECTFULLY SUBMITTED,

/s/Aubrey Webb
Law Offices of Aubrey Webb

55 Merrick Way, Suite 212
Coral Gables, Florida 33134
305-461-1116
Email: aubrey@aqwattorney.com

/s/Charles R. Haskell
Law Offices of Charles R. Haskell
641 Indiana Ave. N.W.,
Washington D.C. 20004
202-888-2728
Email: Charles@CharlesHaskell.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-filed to the Office of the Clerk, United States District Court, District of Columbia, 333 Constitution Ave., N.W. Washington D.C. 20001, Room 1225 and to the Office of the United States Attorney, 555 4th St N.W., Washington D.C. 20530, on 10 January 2022.

/s/Aubrey Webb