

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

GARRET MILLER,

Defendant.

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Crim No. 1:21-cr-00119-CJN

**GOVERNMENT’S RESPONSE TO DEFENDANT’S
MOTION DISMISS COUNT THREE OF THE THIRD SUPERSEDING INDICTMENT**

The United States of America (the “government”), files its response to the Defendant’s Motion to Dismiss Count Three of the Third Superseding Indictment (ECF No. 114) as follows:

In February 2021, the grand jury returned a twelve-count indictment against Garret Miller alleging violations of 18 U.S.C. § 231(a)(3) (Counts 1 and 2), 18 U.S.C. § 1512(c)(2) and 2 (Count 3); 18 U.S.C. § 111(a)(1) (Count 4); 18 U.S.C. § 875(c) (Counts 5 and 6); 18 U.S.C. § 1752(a)(1)-(3) (Count 7-9); 40 U.S.C. § 5104(e)(2)(D) (Count 10); 40 U.S.C. § 5104(e)(2)(E) (Count 11); and 40 U.S.C. § 5104(e)(2)(G) (Count 12).¹

In June 2021, Miller filed a Motion to Dismiss Count Three of the Indictment, charging a violation of 18 U.S.C. § 1512(c)(2) and 2. ECF No. 34. Following briefing from both parties, the Court Granted Miller’s Motion and issued a Memorandum Opinion on March 7, 2022. ECF No. 72. The Court denied the government’s Motion for Reconsideration, and the government filed an interlocutory appeal. ECF No. 88.

¹ Miller was subsequently charged in two Superseding Indictments, but those indictments do not affect the analysis for the count alleging a violation of § 1512(c)(2). See ECF Nos. 61.

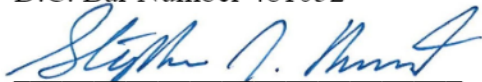
The Court set Miller’s remaining counts for trial on December 8, 2022. *See* Scheduling Order, ECF No. 109, at 1. On November 2, 2022, the grand jury returned a third superseding indictment, adding an additional violation of 18 U.S.C. § 231(a)(3). ECF No. 111. The new indictment contained the exact same Count Three charge and language—the violation 18 U.S.C. § 1512(c)(2) and 2—as the prior Count Three dismissed by this Court. Compare ECF Nos. 61 and 111. “Out of an abundance of caution,” Miller has renewed his motion to dismiss Count Three. Defendant’s Motion at 1.

The Court’s prior ruling on this issue serves as law of the case. Nevertheless, the government opposes Miller’s dismissal motion for the reasons already given in prior briefing and argument, which we ask the Court to incorporate for purposes of this response. *See* ECF Nos. 35, 60, 63, 74, 75, 82-85; *see also* 11/22/2022 Minute Entry.

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney
D.C. Bar Number 481052

By:



Stephen J. Rancourt
Texas Bar No. 24079181
Assistant United States Attorney, Detailee
601 D Street, NW
Washington, D.C. 20530
(806) 472-7398
stephen.rancourt@usdoj.gov

Certificate of Service

I, Stephen J. Rancourt, certify that on November 10, 2022, I caused a copy of the to be served on counsel of record via electronic filing.

A handwritten signature in blue ink, reading "Stephen J. Rancourt", is written over a horizontal line.

Stephen J. Rancourt
Assistant United States Attorney