

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

HECTOR VARGAS,

Defendant.

Case No. 1:21-cr-00047-RDM

**DEFENDANTS' MOTION TO DISMISS COUNT IV OF THE INFORMATION
BASED ON A FACIAL CHALLENGE TO 40 U.S.C. § 5104(e)(2)(G)**

Comes now Defendant Hector Vargas by and through undersigned counsel, and pursuant to Fed. R. Crim. P. 12(b)(3) and (5) and the First and Fifth Amendments to the U.S. Constitution seeking that the Court find that 40 U.S.C. § 5104(e)(2)(G) does not survive muster under the First and Fifth Amendments to the U.S. Constitution. Pursuant to Fed. R. Crim. P. 12(b)(3), a criminal defendant “may raise by pretrial motion any defense, objection, or request that the Court can determine without a trial on the merits.”

WHEREFORE, for the foregoing reasons, Hector Vargas respectfully request that the Court that grant this motion and find that 40 U.S.C. § 5104(e)(2)(G) fails the First and Fifth Amendment of the U.S. Constitution and dismiss Count IV of the Information on that basis.

Dated: December 6, 2022

Respectfully submitted,

/s/ Paul F. Enzinna

Ellerman Enzinna Levy PLLC
1050 30th Street, NW
Washington, DC 20007
202.753.5553
penzinna@eellaw.com

/s/ Nandan Kenkeremath

Nandan Kenkeremath
DC Bar 384732
USDC DC 384732
2707 Fairview Court
Alexandria, Virginia 22311
703-407-9407

Counsel for Defendants