UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
V.	)	CASE NO: 1:21-CR-496
MARK IBRAHIM,	)	Hearing: 10/27/2022 at 2:00 PM
DEFENDANT.	)	

REPLY TO GOVERNMENT'S SUPPLEMENTAL OPPOSITION TO MOTION TO DISMISS COUNT THREE OF THE INDICTMENT

Defendant argued and moved to dismiss Count Three of the Indictment in ECF No. 48 and filed supplemental case law in support of his position in ECF No. 57. The Government opposed the defendant's motion in ECF No. 54, opposed at the oral hearing on October 7, 2022, and then supplemented their opposition in ECF No. 58.

Defendant hereby replies to the Government's oppositions *and* to the Court's description of Capitol Grounds as a "sensitive place," raised at the oral hearing.

I. Section 5104(e)(1)(A) is a Felony Offense that Requires the Government to Prove Scienter

"*[M]ens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence." *United States v. United States Gypsum Co.*, 438 U. S. 422 (1978) (citing Supreme Court cases). The Defense outlined the Supreme Court's requirement of scienter for

felony statutes in ECF No. 48, pp. 6-16; incorporated herein by reference to minimize redundancy.

The Government's opposition does not contradict this requirement. Instead, the Government argues, "[Congress] made a deliberate decision to enact the prohibition without a scienter requirement." See ECF 58, p. 4. This is a false representation of the debate that took place in Congress.

The defense referenced, described, and summarized the congressional records from 1967 in ECF No. 48, pp. 10-12. Congress did not expressly state that they wish to do away with the scienter requirement. This is why the Government has no quote to reference for its bold claim. On the contrary, members of Congress discussed the requirement of scienter, some assuming that *mens rea* applies as is written in other parts of the statute. See ECF No. 48, pp 10-12. On at least five occasions, members of the House stated that no prosecutor would prosecute someone who did not commit an act without intent. *Id.* Congress never explicitly expressed the desire for the statute to act as a strict liability offense; to the contrary — they hoped it never would be. Nonetheless, it was passed, while poorly written, due to what Congressmen felt was urgency for their own personal safety and security.[1] *Id.*

In *Staples v. United States*, the Supreme Court noted that a review of early cases and common law suggests that "we should not… interpret any statute defining a felony offense as dispensing with *mens rea*." *Staples v. United States*, 511 U.S. 600, 618 (1994); see also *Morissette v. United States*, 342 U.S. 246, 263 (1952) (mere omission of a *mens rea* term will not be considered a sufficient indication of Congressional intent to dispense with the intent

[1] Congress, when passing laws that account for the personal interests of the members as opposed to the interests of the People, should be very strictly scrutinized.

requirement in a felony statue). *Staples* created a "presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct." *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72 (1994) (discussing the decision in *Staples*). On top of that, *Staples* burdened the Government with the duty of proving that Congress affirmatively intended to dispose of a scienter requirement in a felony statute silent on *mens rea* if the Government takes the position that a statute has strict liability. See *Staples,* 511 U.S. at 618.

In Mr. Ibrahim's case, the Government has taken the position that a *mens rea* requirement was intentionally discarded by Congress. The Government simply alleged these words, without submitting proof of this premise. This is because there is no proof of the disposal with *mens rea*. There is proof (as presented by the Defense) of congressional discussions and concern with respect to *mens rea*, confusion as to the applicability of the *mens rea* terms from other portions of the law, assurances that the law would not be prosecuted without intent, and a haphazard vote and passage of the incomplete law for members of Congress to protect their personal interests (Congressmen were anticipating a massive anti-war protest at the Capitol the following day and feared for their safety).

The Government has not, and cannot, meet its burden as outlined in *Staples*. As such, Section 5104(e)(1)(A) is presumed to require proof of scienter.

II. Scienter Required is Specific Intent: Proof That Defendant Acted Willfully

In ECF No. 48, pp. 14-15, and at the oral hearing, the Defense argued that specific intent was required to be read into Section 5104(e)(1)(A) because it is a statute that "run[s] the risk of

punishing seemingly innocent conduct," citing *Carter v. United States*, 530 U.S. 255, 269 (2000). In response, the prosecutor made a statement along the lines of "I don't know what is specific intent." Accordingly, a brief review of modern statutory intent elements is in order.

Broadly speaking, crimes of general intent require the Government to prove that a defendant *knowingly* committed the alleged act, while specific intent crimes require proof that the act was done *willfully*. See *United States v. Bailey*, 444 U.S. 394 (1980); *Cheek v. United States*, 498 U.S. 192 (1991); 1 W. LaFave & A. Scott, Substantive Criminal Law § 3.5, p. 315 (1986) (distinguishing general from specific intent). The term *knowingly* merely requires proof of general intent — knowledge of the facts that constitute the offense. *United States v. Dixon*, 548 U.S. 1, 5 (2006); *Bryan v. United States,* 524 U.S. 184, 193 (1998); but see *Liporata v. United States*, 471 U.S. 419 (1985) (discussed *infra*). The *mens rea* of *willfully* requires specific intent to violate the law, proof of an evil-intentioned mind — for the Government to prove that a defendant acted with the knowledge that his conduct was unlawful. *United States v. Dixon*, 548 U.S. 1, 5 (2006); *Bryan v. United States,* 524 U.S. 184, 193 (1998).

The Government stated at the oral hearing, and in its supplemental brief, that it is prepared to concede that jury instructions should state that the defendant acted *knowingly* with respect to two elements — possessing the firearm and being on Capitol Grounds. The Government believes, therefore, that an element of *general intent* will suffice to validate this statute. However, this is insufficient under *Carter v. United States,* 530 U.S. at 269, and *Liporata v. United States*, 471 U.S. 419 (1985).

Carter specifically referenced *Staples,* the same case relied upon by the Government in their opposition pleadings. See *Carter,* 530 U.S. at 269. *Carter* discussed the decision in *Staples*

as selecting the general intent element of *knowledge* after a careful review of the characteristics of a machine gun and surrounding regulations. *Id.* The Supreme Court did not hold that the term *knowing* is the *de facto* element of proof that should be inserted into all felony statutes missing a scienter element; *Carter*, instead, explained that "some situations may call for implying a specific intent requirement into statutory text." 530 U.S. at 269.

> Suppose, for example, a statute identical to § 2113(b) but without the words 'intent to steal or purloin.' Such a statute would run the risk of punishing seemingly innocent conduct in the case of a defendant who peaceably takes money believing it to be his. Reading the statute to require that the defendant possess general intent with respect to the actus reus—i. e., that he know that he is physically taking the money—would fail to protect the innocent actor. The statute therefore would need to be read to require not only general intent, but also specific intent—i. e., that the defendant take the money with "intent to steal or purloin."

Carter, 530 U.S. at 269.

In *Liporata v. United States*, the Supreme Court decided that unless the term *knowingly* required additional proof of awareness of a particular regulation the statute would criminalize "a broad range of apparently innocent conduct." 471 U.S. 419, 426 (1985). The relevant portion of the statute at issue read: "knowingly uses, transfers, acquires, alters, or possesses [food stamps] in any manner not authorized by [the statute] or the regulation." *Id.* at 421. To validate the statute, the Supreme Court changed the meaning of the term *knowingly* to encompass not only that the defendant acted with general intent, but also that the defendant "knew that his conduct was unauthorized or illegal"— specific intent. *Id.* at 433-34. The Supreme Court, therefore, altered the term *knowingly* to mean *willfully* in order to validate the statute and to avoid criminalizing innocent conduct. The harm avoided, as described by the court:

> A strict reading of the statute with no knowledge-of-illegality requirement would thus render criminal a food stamp recipient who, for example, used stamps to purchase food

> from a store that, unknown to him, charged higher than normal prices to food stamp program participants. Such a reading would also render criminal a nonrecipient of food stamps who 'possessed' stamps because he was mistakenly sent them through the mail due to administrative error, 'altered' them by tearing them up, and 'transferred' them by throwing them away.

Liporata, 471 U.S. at 426-27.

In *Carter* and *Liporata* the Supreme Court specifically discussed the importance of avoiding the criminalization of "innocent conduct" in determining the applicability and meaning of *mens rea*. Applying this analysis to Section 5104(e)(1)(A), the *mens rea* term *willfully*, or construction of the term *knowingly* with an additional requirement of specific intent as defined in *Liporata* (an equivalent to *willfully*), is required to validate the statute. The difference is separating the innocent exercise of a Second Amendment right from willfully breaking the law.

The Government's proposed addition of *knowingly* — inserted as "the defendant knew he possessed a firearm and knew that he was on Capitol grounds" — would mean that a person who didn't know that his otherwise lawful presence on Capitol Grounds is rendered unlawful by (what is independently also an otherwise lawful) possession of a firearm, he could still be found guilty. A defendant who was knowingly exercising his Second Amendment right — conduct protected by *Bruen* — would be rendered a felon even without an intent to break the law. See Section V *infra*; *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); ECF. No. 48; ECF. No. 57. Use of the term *knowingly* in the context of Section 5104(e)(1)(A) amounts to the criminalization of innocent exercise of a constitutional right. *See also Colautti v. Franklin*, 439 U.S. 379 (1979) (invalidating a criminal statute as "void on its face" because it lacked "a scienter requirement" that caused an uncertainty that had a "chilling effect on the

exercise of constitutional rights."). The Government's proposed scienter yields punishment for conduct not intended to break the law, in contradiction of both *Carter* and *Liporata*.

If, however, the intent element *willfully* is used in Section 5104(e)(1)(A), or *knowingly* as defined with the addition of specific intent as in *Liporata*, then the Government's burden would rise —"the defendant willfully possessed a firearm and was willfully on Capitol grounds" — requiring the Government to prove that a defendant knew that his possession of a firearm on Capitol Grounds was unlawful.

Considering the statute at hand, the requirement of scienter of specific intent is the only way to separate the lawful exercise of the Second Amendment from willful criminality, to comport with the Supreme Court's holdings in *Carter* and *Liporata*. This court should thus require the Government to allege and prove that the defendant acted *willfully* in both possessing the firearm and being on Capitol Grounds.

III. The Lack of Scienter Elements in Count Three of the Indictment Render the Indictment Defective and Dismissal is the Only Remedy

The Fifth Amendment guarantees that no person shall be held to answer for an "infamous crime, unless on a presentment or indictment of a Grand Jury." U.S. Const. Amend. V. In compliment, the Sixth Amendment guarantees that a person accused of a crime shall "be informed of the nature and cause of the accusation." U.S. Const. Amend. VI. A valid indictment "preserves the Fifth Amendment's protections against abusive criminal charging practice." *United States v. Hillie*, 227 F. Supp. 3d 57, 69 (D.D.C. 2017). In order to comply with the Constitution, an indictment must contain the elements of the offense charged, fairly inform the

defendant of the charge against which he must defend, and enable the defendant to plead an acquittal or conviction in bar of future prosecutions for the same offense. *Hamling v. United States*, 418 U.S. 87, 117 (1974).

The Constitution limits the Government's power of forcing individuals to trial without the approval of the charges, and their elements, by a Grand Jury. The Government in this case is asking for this Court to approve an exception to this constitutional requirement — in direct violation of Mr. Ibrahim's constitutional rights. The Government concedes that they will have to prove *mens rea* to a jury, but nonetheless *asks* that this requirement be bypassed from the constitutional gatekeeper, the Grand Jury. The Government wishes to proceed to trial on a charge that could result in entirely different burdens of proof: did the defendant know he was on Capitol Grounds and know he possessed a weapon or firearm, *versus* did the defendant willfully break the law by intentionally bringing a weapon or firearm on to Capitol Grounds. These are entirely different from the charge that the Government brought to the grand jury, which simply asked whether the defendant was present on Capitol Grounds with a weapon or firearm. An "indictment must contain the elements of the offense charged" and "fairly inform the defendant of the charge against which he must defend." *Hamling v. United States*, 418 U.S. 87, 117 (1974). Mr. Ibrahim's indictment does not comply with these two requirements. There is no precedent for the Government's request.

Even in *Staples,* the indictment charged that the defendant "knowingly received and possessed firearms"— even though the word knowingly did not appear in the statute. See *Staples v. United States*, 511 U.S. at 622 (Ginsburg, J., concurring). The Government cites to an unpublished decision from the Ninth Circuit, where the defendant did not plead constitutional

harm, as the only case to support their request to bypass the Constitution. Mr. Ibrahim has made it clear that he invokes all of his rights under the Constitution and does allege harm from a defective indictment.

Mr. Ibrahim's Indictment, therefore, is insufficient as a matter of law, and must be dismissed.

IV. Scienter Analysis Does Not Distinguish Felonies From Felonies

At the oral hearing, the Government attempted to minimize the felony penalty for a conviction under Section 5104(e)(1)(A), claiming that the jail sentence is "only five years," as if the United States Government is entitled to deprive citizens of their liberty for five years haphazardly, and mislead the Court as to the full gamut of penalties associated with this felony conviction.

To reiterate points previously made by the defendant in ECF No. 48, and to correct the record as to the actual penalties under federal law applicable to a conviction under Section 5104(e)(1)(A), the defendant submits a statutory penalty list for Section 5104(e)(1)(A), as follows:

- punished as a felony under 40 U.S.C. § 5109(a) and 18 U.S.C. § 3559, with a maximum sentence of 5 years in prison,
- followed by up to 1 year of supervised release under 18 U.S.C. § 3583,
- up to 5 years of probation under 18 U.S.C. § 3561,
- up to a $250,000.00 fine under 18 U.S.C. § 3571,
- a special assessment of $100 under 18 U.S.C. § 3013,

- and, the permanent deprivation of Second Amendment rights under 18 U.S.C. § 922(g)(1) — see *Scarborough v. United States*, 431 U.S. 563 (1977).

The Government made an audacious statement at the oral hearing and then doubled down on it in a supplemental brief — claiming that five years of federal imprisonment is akin to a misdemeanor or an infraction under federal law, arguing, "while Section 5104(e)(1)(A) is a felony offense, its five-year statutory maximum is not as 'harsh' as the ten-year felonies at issue in *Rehaif* and *Staples*." ECF No. 58, p. 4. This claim is not based in law or in fact, but is instead a desperate attempt to avoid returning to a Grand Jury. Sure, five years is shorter than ten. But that does not convert five years of federal imprisonment into a misdemeanor offense… nor dilute the imprisonment in a penitentiary… nor convert the clear Supreme Court case law distinguishing felonies from misdemeanors and infractions. See *Morissette v. United States*, 342 U.S. 246, 260 (1952) (a felony is "as bad a word as you can give to man or thing"); *Staples v. United States*, 511 U.S. 600, 616 (1994) (distinguishing felony offenses from misdemeanors and infractions that carry "light penalties," as opposed to "imprisonment in the state penitentiary"). The Supreme Court does not, and has not, distinguished *felonies from felonies* just because some require a bit less prison time. The Government's analysis is erroneous and not supported by the law.

V. Congress Does Not Have the Power to Broadly Dispose of the Second Amendment for Personal Safety

A) Response to Government's Argument

The Government argues that dispensing with "a scienter requirement [in] Section 5104(e)(1)(A) is appropriate because the provision is part of a regulatory regime that ensures the safety

of legislators and those around the Capitol… Congress was entitled to enact a strict liability prohibition on firearm possession to 'minimize' the 'danger or probability' of such injury or damage in the Capitol building and on Capitol grounds." ECF No. 58, p. 4.

The Government's argument boils down to the proposition that the Government can deprive the People of their Second Amendment rights to reduce the probability of danger on Capitol Grounds. To support their premise, the Government cites *Rehaif v. United States*, 139 S. Ct. 2191, 2197 (2019), *Morissette v. United States,* 342 U.S. 246, 256 (1952), and *United States v. Class*, 930 F.3d 460, 464 (D.C. Cir. 2019).

First, *Rehaif* does not stand for the premise the Government has cited. *Rehaif* states that scienter is not typically read into a statute when the law is punished by "only minor penalties," and cites to *Morissette* and *Staples.* As discussed *supra*, both *Morissette* and *Staples* distinguish felonies from cases with minor penalties, which the Supreme Court defines as misdemeanors and infractions. *Rehaif* also cites *United States v. Balint,* 258 U.S. 250, 254 (1922), which does the same, specifically distinguishing *mens rea* in statutes that incentivize "some social betterment" from "the punishment of the crimes as in cases of *mala in se*." None of these cases are applicable to the felony statute at issue in Mr. Ibrahim's case. See Section IV *supra*.

Second, the decision in *United States v. Class* was mentioned by the Supreme Court as improperly decided with respect to the Second Amendment. See *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (n.4); ECF. No. 48, p. 18. The Government ignores the negative treatment of *Class* in *Bruen* and ignores Second Amendment analysis entirely.

The Government's broad assertion is not supported by the law, certainly not by any case law cited by the Government, and is violative and ignorant of the Constitution.

B) Response to the Court's "Sensitive Place" Designation for Capitol Grounds

At the oral hearing, the Court indicated that Capitol Grounds are a "sensitive place" under *Heller* and that analysis under *Bruen* would not be required.

The Defense respectfully disagrees.

Bruen specifically addressed the matter of a locality arguing that an outdoor area is a "sensitive place." In *Bruen*, respondents argued that the island of Manhattan is a "sensitive place" because it is crowded and because it is protected by the New York City Police Department. *Bruen*, 142 S. Ct. 2133-34. The Supreme Court eviscerated this general characterization for outdoor areas. *Id.* Bruen also addressed the "longstanding" "laws forbidding the carrying of firearms in sensitive places such as schools and Government buildings." *Id.* at 2133; *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). Heller and Bruen indicate that prerequisites for a "sensitive place" designation would be longstanding laws, which would require a historic analysis. And, the Supreme Court noted in dicta the example of Government buildings.[2]

In the case of Section 5104(e)(1)(A), the "sensitive place" characterization is inapplicable. First, Section 5104(e)(1)(A) is not limited to Government buildings; it applies to

[2] Since the "sensitive place" designation of Government buildings is only noted in *Heller* and *Bruen* as dicta, it does not preclude constitutional analysis of the law in question. See *United States v. Quiroz*, No. PE 22-CR-00104-DC (W.D. Tex. Sept. 19, 2022) (dicta is "essentially ultra vires pronouncements about the law").

the large outdoor areas spanning multiple city blocks that surround the Capitol buildings.[3] See *Jeannette Rankin Brigade v. Chief of Capitol Police*, 342 F. Supp. 575 (D.C. 1972). Second, the prohibition on firearms in Section 5104(e)(1)(A) is not "longstanding," as is required for a "sensitive place" designation under *Heller* and *Bruen*. As discussed in depth in ECF No. 48, pp. 19-23, there was no "longstanding" firearms prohibitions on Capitol Grounds. From 1793 through 1967, the possession of firearms was permitted on Capitol Grounds. See 40 U.S.C. §193f (1946) (penalizing only the *discharge* of firearms on Capitol Grounds). As such, the "sensitive place" designation is inapplicable to Section 5104(e)(1)(A). At a minimum, a summary characterization of the outdoor Capitol Grounds area as a "sensitive place" certainly cannot take the place of full constitutional review under *Bruen*.

Section 5104(e)(1)(A) must be reviewed under the framework outlined in *Bruen.* This is the "unqualified deference" that our "Constitution demands." *Bruen*, 142 S. Ct. at 2131. "*Bruen's* first step asks a strictly textual question: does the Second Amendment's plain text cover the conduct? … Next, the Government must justify its regulation through a historical analysis. To do so, the Government's historical inquiry must show that [the relevant federal law] is consistent with the historical understanding of the Second Amendment." *United States v. Quiroz*, No. PE 22-CR-00104-DC (W.D. Tex. Sept. 19, 2022). As discussed by the Defense in ECF No. 48, pp. 16-24, and ECF No. 57, analysis of this law under *Bruen* invalidates Section 5104(e)(1)(A) as unconstitutional.

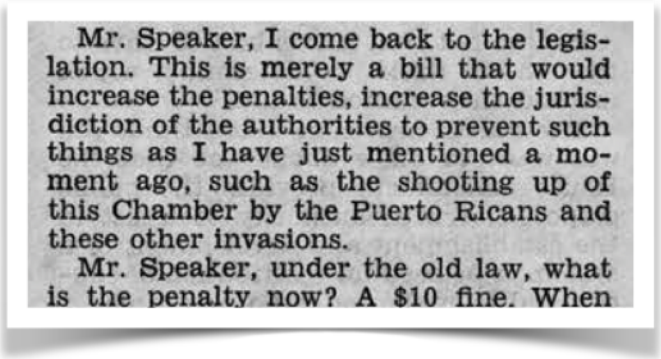
A direct comparison of Section 5104(e)(1)(A) to the laws in *Heller* and *Bruen* supports the defense position. As outlined in *Bruen*:

[3] As applied to Mr. Ibrahim, the Government buildings issue is inapplicable. Mr. Ibrahim is not accused of entering a Government building. Instead, Mr. Ibrahim is accused of standing on Capitol Grounds, an outdoor area.

> *Heller* itself exemplifies this kind of straightforward historical inquiry. One of the District's regulations challenged in *Heller* "totally ban[ned] handgun possession in the home." *Id.*, at 628, 128 S.Ct. 2783. The District in *Heller* addressed a perceived societal problem—firearm violence in densely populated communities— and it employed a regulation—a flat ban on the possession of handguns in the home—that the Founders themselves could have adopted to confront that problem. Accordingly, after considering "founding-era historical precedent," including "various restrictive laws in the colonial period," and finding that none was analogous to the District's ban, *Heller* concluded that the handgun ban was unconstitutional. *Id.*, at 631, 128 S.Ct. 2783; see also *id.*, at 634, 128 S.Ct. 2783 (describing the claim that "there were somewhat similar restrictions in the founding period" a "false proposition").
>
> New York's proper-cause requirement concerns the same alleged societal problem addressed in *Heller*: "handgun violence," primarily in "urban area[s]." *Ibid.* Following the course charted by *Heller*, we will consider whether "historical precedent" from before, during, and even after the founding evinces a comparable tradition of regulation. *Id.*, at 631, 128 S.Ct. 2783. And, as we explain below, we find no such tradition in the historical materials that respondents and their amici have brought to bear on that question.

Bruen, 142 S. Ct. at 2131-32.

In the present case, the law prohibiting the mere possession of firearms on Capitol Grounds was passed with a similar intent: to protect congressmen from handgun violence. See House Congressional Record, October 19, 1967 ("This is merely a bill that would increase the penalties, increase the jurisdiction of the authorities to prevent such things as I have just mentioned a moment ago, such as the shooting up of this Chamber by the Puerto Ricans and these other invasions. Mr. Speaker, under the old law, what is the penalty now? A $10 fine.")[4] Yet constitutional analysis of the broad


Mr. Speaker, I come back to the legislation. This is merely a bill that would increase the penalties, increase the jurisdiction of the authorities to prevent such things as I have just mentioned a moment ago, such as the shooting up of this Chamber by the Puerto Ricans and these other invasions.
Mr. Speaker, under the old law, what is the penalty now? A $10 fine. When

[4] Available at https://www.govinfo.gov/content/pkg/GPO-CRECB-1967-pt22/pdf/GPO-CRECB-1967-pt22-2-1.pdf.

prohibition, just like in *Heller* and *Bruen*, finds no historic tradition of a complete prohibition of firearms on Capitol Grounds. See ECF No. 48, pp. 10-23.

Constitutional analysis of Section 5104(e)(1)(A) renders the law void.

C) *Jeannette Rankin Brigade v. Chief of Capitol Police*

The Government entirely ignores this District's discussion of the overbreadth of the Capitol Grounds in *Jeannette Rankin Brigade v. Chief of Capitol Police*, 342 F. Supp. 575 (D.C. 1972) (holding that Capitol Grounds were defined by the Government too broadly, the definition "so extensive" that it interfered with the exercise of the First Amendment). The *Bruen* decision makes it clear that the First Amendment is not superior to the Second Amendment. *Bruen*, 142 S. Ct. at 2130 ("This Second Amendment standard accords with how we protect other constitutional rights. Take, for instance, the freedom of speech in the First Amendment…"); *United States v. Quiroz*, No. PE 22-CR-00104-DC (W.D. Tex. Sept. 19, 2022) ("The Second Amendment is not a 'second class right.' No longer can courts balance away a constitutional right."). The analysis of the overbreadth of restrictions on the exercise of a constitutional right on Capitol Grounds under *Jeannette Rankin Brigade* applies to Section 5104(e)(1)(A) as well. "While some substantial governmental interests in the Capitol Grounds may warrant protection, none have been alleged which are sufficiently substantial to override the fundamental right to petition 'in its classic form' and to justify a blanket prohibition of all assemblies, no matter how peaceful and orderly, anywhere on the Capitol Grounds." *Jeannette Rankin Brigade*, 342 F. Supp. at 585; see also ECF No. 48, pp. 22-23.

VI. Conclusion

Count Three of the Indictment is insufficient to notify Mr. Ibrahim of the elements of the charge against him and must be dismissed.

Additionally and alternatively, Count Three of the Indictment charges an unconstitutional offense and must be dismissed.

Respectfully submitted,
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/s/

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CERTIFICATE OF SERVICE FOR CM/ECF

I hereby certify that on October 20, 2022, I will electronically file the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/
Marina Medvin, Esq.