UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal Case No: **1:21-cr-496**
	)	
MARK IBRAHIM,	)	
	)	
Defendant.	)	

RESPONSE TO ECF NO. 65, GOVERNMENT'S SUPPLEMENTAL AUTHORITY *UNITED STATES V. PRITCHETT* IN SUPPORT OF OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNT THREE FOR LAWFUL AUTHORIZATION

United States v. Pritchett supports the Defendant's argument in favor of dismissal.

Contrary to the Government's mischaracterization of the application of *United States v. Pritchett* in aid of the Government's argument in ECF No. 65, the Court of Appeals for the District of Columbia Circuit ruled against the Government's interpretation and in favor of the Defendant in a case that closely resembles the matter that is before this court. *United States v. Pritchett*, 470 F.2d 455, 461 (D.C. Cir. 1972) ("Congress intended its restrictive 'when on duty' limitation to be applicable only to the antecedent group and not to others more remote.").

In *Pritchett*, as in Mr. Ibrahim's case, the Government argued for an expansive reading of a qualifying phrase that came at the end of a list of exceptions. *Id*. at 459. The Court declined to follow the Government's interpretation, explaining that "qualifying phrases are to be applied to the words or phrase immediately preceding and are not to be construed as extending to others more remote." *Id*.

Indeed, 31 years after this decision, the Supreme Court upheld this viewpoint. Under the Rule of the Last Antecedent, as explained in *Pritchett,* a limiting phrase that follows a list of terms or phrases is "read as modifying only the noun or phrase that it immediately follows," the Supreme Court explained. *Pritchett*, 470 F.2d at 459; *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003). The Supreme Court repeated this reasoning again in 2016. "The rule reflects the basic intuition that when a modifier appears at the end of a list, it is easier to apply that modifier only to the item directly before it." *Lockhart v. United States*, 136 S.Ct. 958, 963 (2016). *Accord United States v. Park*, 938 F.3d 354 (D.C. Cir. 2019); *Hays v. Sebelius*, 589 F.3d 1279 (D.C. Cir. 2009); *United States v. Loyd*, 886 F.3d 686 (8th Cir. 2018).

While the *Pritchett* decision mentions in dicta that the use of a comma could have changed their interpretation of the law *in the context of the statute at hand*, the court did not hinge its opinion on a comma or a disjunction. Instead, the Court's decision hinged on the Rule of the Last Antecedent together with considering the meaning of the words in context of the statute. *Pritchett*, 470 F.2d at 459-60.

As discussed in the defendant's Reply to Opposition, ECF No. 63, the natural reading of the exemption in Mr. Ibrahim's case, the placement and use of the comma in context, the reading of the exemption in context with other provisions — all favor Mr. Ibrahim's interpretation. The Government's reading, on the other hand, renders the exemptions nonsensical. Application of the Rule of the Last Antecedent also favors the defendant's reading of the exemption.

The Government's reliance on the mention of a comma in *Pritchett* as supportive of its position is misplaced and inconsistent with Supreme Court precedent. In *Barnhart v. Thomas*, the Supreme Court ruled that a limiting clause or phrase "should ordinarily be read as modifying

only the noun or phrase that it immediately follows." *Id*. at 26. The limiting term in *Barnhart* was not separated by a comma, and the Supreme Court made no mention of the presence of a comma potentially changing the reading of the clause as a limitation on a phrase that immediately precedes it. Instead, Judge Scalia explained that we look at the intention of the clause and the placement of the modifier. *Barnhart*, 540 U.S. at 26-7. The Supreme Court revisited this issue again in *Lockhart v. United States*— Judge Sotomayor explaining that the rule of the last antecedent "reflects the basic intuition that when a modifier appears at the end of a list, it is easier to apply that modifier only to the item directly before it." *Lockhart v. United States*, 136 S.Ct. 958, 963 (2016). "That is particularly true where it takes more than a little mental energy to process the individual entries in the list, making it a heavy lift to carry the modifier across them all." *Id*. *Lockhart,* just like *Barnhart,* made no mention of a comma with magical powers to reject the Rule of the Last Antecedent. Instead, *Lockhart* reiterated the same two basic principles outlined in *Barnhart* — applying the Rule of the Last Antecedent and reading the modifier in context.

Judge Sotomayor's characterization of a modifier that only applies to the last antecedent in *Lockhart*— "**where it takes more than a little mental energy to process the individual entries in the list, making it a heavy lift to carry the modifier across them all**" — resonates strongly in reading the exemption in the present case.

> Except as specified below, the provisions of section 6(a)(1)(A) of the Act, as amended relating to the carriage of firearms shall not apply to officers or employees of the United States authorized by law to carry firearms, duly appointed federal, state or local law enforcement officers authorized to carry firearms, and members of the Armed Forces, while engaged in the performance of their duties, or any person holding a valid permit under the laws of the District of

> Columbia to carry firearms in the course of his employment.
>
> Capitol Police Board Regulations, Section 2, in relevant part.

Both parties would likely agree that the Section 2 exemption is an example of "inartful drafting," in the words of Judge Sotomayor in *Lockhart.* But under such circumstances "do we interpret the provision by viewing it as a clear, commonsense list best construed as if conversational English? Or do we look around to see if there might be some provenance to its peculiarity?" *Lockhart*, 136 S.Ct. at 966.

The Government's reading takes the windy road to peculiarity, interpreting this sentence to read: "officers or employees of the United States" and "federal, state or local law enforcement officers" must be both — "authorized by law," for the former, and just "authorized," for the latter — and, additionally, be "engaged in the performance of their duties" — while "members of the Armed Forces" need only to be "engaged in the performance of their duties" and do not need to be authorized to possess firearms. The implication of the Government's position is that there are two conditions for law enforcement and for officers of the United States, yet only one for members of the Armed Forces. The Government's reading also implies that officers of the United States and law enforcement officers can be engaged in the performance of their duties with firearms while unauthorized to carry those firearms… something that simply doesn't make sense; and, that members of the Armed Forces, by logical deduction, can possess firearms when on duty even if *unauthorized* to do so — which also does not make sense.

As argued in the defendant's Reply to Opposition, ECF No. 63, the mental gymnastics of the Government's interpretation of the Section 2 exemption, and the nonsensical result that

follows such an interpretation — that officers or employees of the United States and duly appointed federal, state or local law enforcement officers can be engaged in the performance of their duties with firearms while not authorized to carry those firearms — yields "a heavy lift," in the words of Judge Sotomayor. Not to mention their disregard for context and Section 3 of the Capitol Police Board Regulations. See ECF No. 63.

The Rule of the Last Antecedent renders the statute at hand simple and comprehensible: the modifier "while engaged in the performance of their duties" applies only to the last antecedent — members of the Armed Forces. This natural reading renders the remainder of the sentence logical: (1) officers or employees of the United States are exempt if they are "authorized by law to carry firearms," (2) duly appointed federal, state or local law enforcement officers are exempt if they are "authorized to carry firearms," and, (3) members of the Armed Forces are exempt "while engaged in the performance of their duties."

In its Opposition, the Government adds support for its position by pointing to a record from Congress with a mention of what a legislator *expected* the Capitol Police Board to draft. This high hope from a member of the legislature, however, is irrelevant to the issue at hand because ***Congress delegated its legislative duties*** to a separate, independent, unelected, and unreviewed body — the Capitol Police Board. What the legislature may have wanted for the Capitol Police Board to draft and what the Capitol Police Board actually drafted are two very different things. Using the "expectations" of one man who isn't responsible for the final product of another is not how laws are interpreted. Courts only rely on the transcripts from Congress when it is the Congressmen who draft the laws — this gives the courts *insight into the intent of the drafters*. In the present case, Congressmen did not draft the exemption. As such, the

transcripts from Congress are irrelevant to the interpretation of the Capitol Police Board Regulations.

In conclusion, the use of the Rule of the Last Antecedent in *United States v. Pritchett,* and the Supreme Court precedent that followed, supports the defendant's reading of the exemption. The Government's arguments fail in context and in rationality. The defendant's Motion to Dismiss Count Three should be granted.

Respectfully submitted,
By Counsel:

/s/

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CERTIFICATE OF SERVICE FOR CM/ECF

I hereby certify that on December 27, 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.