

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL NO. 21-CR-392 (RCL)
 :
 :
 RONALD MELE :

JOINDER

DEFENDANT JOINS IN FULL DEFENDANT WARNER’S MOTION DISMISS COUNT TWO

SPECIFICALLY, MELE JOINS WARNERS ARGUMENT, REPEATED HERE IN BREVITY

A. Standard of Review

A defendant may move to dismiss an indictment on the grounds that it fails to state an offense. Fed. R. Crim. P. 12(b)(3)(B). In considering a Rule 12 motion to dismiss, “the Court is bound to accept the facts stated in the indictment as true.” United States v. Syring, 522 F. Supp. 2d 125, 128 (D.D.C. 2007); United States v. Sampson, 371 U.S. 75, 78 (1962). Accordingly, “the Court cannot consider facts beyond the four corners of the indictment.” United States v. Ring, 628 F. Supp. 2d 195, 204 (D.D.C. 2009) (internal quotations omitted).

B. As with All Penal Statutes, § 1512 Must Be Strictly Construed.

To determine legislative intent, courts “always, [] begin with the text of the statute.” Am. Fed'n of Gov't Emps., AFL–CIO, Local 3669 v. Shinseki, 709 F.3d 29, 33

instance, be sought in the language in which the act is framed, and if that is plain...the sole function of the courts is to enforce it according to its terms.” *United States v. Hite*, 769 F.3d 1154, 1160 (D.C. Cir. 2014) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917) (internal quotes omitted)). “The search for the meaning of the statute must also include an examination of the statute's context and history.” *Hite*, 769 F.3d at 1160.

“[D]ue process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope.” *United States v. Lanier*, 520 U.S. 259, 268 (1997).

Specifically in relation to § 1512, the Supreme Court has instructed lower courts to “exercise[] restraint in assessing the reach of [the]...statute both out of deference to ...Congress...and out of concern that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed[.]” *United States v. Arthur Andersen, LLP*, 544 U.S. 696, 703 (2005) (internal citations omitted).

C. An “Official Proceeding” Under § 1512(c) is Judicial or Quasi-Judicial in Nature.

A review of the text, history, and judicial interpretation of § 1512, especially in light of the Supreme Court’s long-standing guidance to strictly construe penal statutes, demonstrates that this statute, which punishes obstruction of “official proceedings,” does *not* apply to the Electoral College certification.

D. Statutory Interpretation Support Mele’s Motion to Dismiss.

Sections 1512 and 1515 are contained in Chapter 73 of Title 18 of the United States Code. Examining the surrounding statutory provisions in Chapter 73 further support Mele’s

interpretation of the statute at issue. Each one of the statutes contained in Chapter 73 proscribe obstructive conduct for very specific subjects and settings related to the administration of justice. For instance, Section 1510 deals with obstruction of criminal investigations. Sections 1516 through 1518 criminalizes obstruction of specific types of other investigations. *See* 18 U.S.C. §§ 1516 (Obstruction of a federal audit); 1517 (Obstruction of examination of financial institution); 1518 (Obstruction of investigations of health care offenses). Section 1519 prohibits the destruction, alteration, or falsification of records during a federal investigation.

E. Department of Justice’s Own Interpretation of § 1512(c) Supports Mele’s Motion to Dismiss.

Mele’s interpretation of Section 1512(c) is even consistent with the Department of Justice’s own interpretation as reflected in their Criminal Resource Manual discussing the application of Section 1512:

Section 1512 of Title 18 constitutes a broad prohibition against tampering with a witness, victim or informant. *It proscribes conduct intended to illegitimately affect the presentation of evidence in Federal proceedings or the communication of information to Federal law enforcement officers.*

Criminal Resource Manual, CRM 1729, Department of Justice (emphasis added)⁷

F. Congress Has Used Other Terms to Describe Interference with the Electoral College Certification.

Mele submits that the government incorrectly conflated an “official proceeding” under § 1512 with a “federally protected function” under 18 U.S.C. §231(a)(3) or the “official business” of Congress under 40 U.S.C. § 5104(e)(2)(c).

⁷ Found at: <https://www.justice.gov/archives/jm/criminal-resource-manual-1729-protection-government-processes-tampering-victims-witnesses-or>

IV. CONCLUSION

Based upon the foregoing, Ronald Mele asks the Court to dismiss Count two of the Second Superseding Indictment.

Dated: June 30, 2023

Respectfully Submitted,

/s/Steven C. Bailey

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CERTIFICATE OF SERVICE

I, Steven C. Bailey, hereby certify that on June 30, 2023, I caused a copy of this Joinder Request in Defendant Warners Motion to Dismiss Count 2 to be delivered to the parties of record by filing it electronically.

/s/ Steven C. Bailey

Steven C. Bailey

