

**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 FIVE AND SIX.

SPECIICALLY, MELE JOINS WARNERS ARGUMENT, REPEATED HERE IN BREVITY.

ARGUMENT

A. Standard for a Rule 12(b) motion to dismiss a criminal indictment.

Standard for a Rule 12(b) motion to dismiss a criminal indictment Rule 7 of the Federal Rules of Criminal Procedure provides that “the indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged” Fed. R. Crim. P.

7(c)(1). This rule performs three constitutionally required functions: (1) fulfilling the Sixth

Amendment right to be informed of Case 1:21-cr-00392-RCL Document 224 Filed 06/09/23 Page 9

of 26 10 the nature and cause of the accusation; (2) preventing a person from being subject to

double jeopardy, as required by the Fifth Amendment; and (3) protecting against prosecution for

crimes based on evidence not presented to the grand jury, as required by the Fifth Amendment. See,

e.g., United States v. Walsh, 194 F.3d 37, 44 (2d Cir. 1999).

DEFENDANTS REQUEST TO JOIN IN FULL DEFENDANT WARNER’S MOTION TO DISMISS COUNTS FIVE AND SIX

B. The Indictment fails to state an offense because only the USSS restricts areas under §1752

The government's legal theory in this case is that the defendant violated that statute by crossing into an area restricted by the U.S. Capitol Police, i.e., the west front of the U.S. Capitol on January 6. The government's position finds no support in the statutory text, the legislative history, or precedent. Penal statutes are strictly construed. *United States v. Moore*, 613 F.2d 1029, 198 U.S. App. D.C. 296 (D.C. Cir. 1979). As shown above, all three definitions of "restricted building or grounds" in §1752(c)(1) concern the authority and actions of the USSS and not any other federal agency. Section 3056, concerning the "powers, authorities, and duties of United States Secret Service," confirms that §1752 is a statute directed to the USSS and not any other federal agency. 18 U.S.C. § 3056(d). The legislative history of §1752 is saturated with references to the USSS and to no other federal agency.

C. If the government's interpretation of § 1752 is applied, it is unconstitutionally vague as to the defendant

The government's interpretation of § 1752(c) is unconstitutionally vague. If the Court concludes that the Indictment properly charges the defendant with violating §1752 by crossing a boundary set by an agency other than the USSS, the statute is unconstitutionally vague as applied to the defendant.

D. The rule of lenity dictates that ambiguities in §1752 be resolved in defendant's favor.

Even if § 1752 is not unconstitutionally vague as applied to the defendant, any ambiguities in the statute should be resolved in his favor under the rule of lenity. Under that principle, "where text, structure, and history fail to establish that the government's position is unambiguously correct," courts must "apply the rule of lenity and resolve the ambiguity in [the defendant's] favor." *United*

States v. Granderson, 511 U.S. 39, 54 (1994). “When interpreting a criminal statute, we do not play the part of a mind reader.” United States v. Santos, 553 U.S. 507, 515 (2008) (Scalia, J.). “In our seminal rule-of-lenity decision, Chief Justice Marshall rejected the impulse to speculate regarding a dubious congressional intent. ‘Probability is not a guide which a court, in construing a penal statute, can safely take.’” Id., quoting United States v. Wiltberger, 18 U.S. 76 (1820)).

E. The novel construction principle dictates against the government’s interpretation, which would operate as an ex post facto law

Because no court has ever construed Section 1752 to mean that agencies other than the USSS may set restricted areas under the statute, such a construction would be novel and therefore the statute did not give the defendant fair warning of what it proscribed. That is also true of §1752(a)(2)’s phrase “within such proximity to.”

F. The USCP expanded the area for First Amendment Assembly on Jan. 6

As argued above, the defendant maintains that the USSS is the only entity who may restrict the building or grounds for purposes of Title 18 United States Code Section 1752. However, following the law has never stopped the government from doing whatever they want. And evidence has been presented in several cases, and considered by other courts, in finding that the USSS worked together in “partnership” with the USCP to restrict the Capitol on January 6th. United States v. Grider --- F. Supp. 3d --- (2022), WL 3016775.

CONCLUSION

For all the foregoing reasons, Mr. Warner respectfully requests that the Court dismiss Counts five and six of the Indictment with prejudice.

DEFENDANTS REQUEST TO JOIN IN FULL DEFENDANT WARNER’S MOTION TO DISMISS COUNTS FIVE AND SIX

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 5 & 6 to be delivered to the parties of record by filing it electronically.

/s/ Steven C. Bailey

Steven C. Bailey

DEFENDANTS REQUEST TO JOIN IN FULL DEFENDANT WARNER'S MOTION TO DISMISS
COUNTS FIVE AND SIX

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

UNITED STATES OF AMERICA

v.

RONALD MELE,

Defendant.

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Criminal No. 21-cr-392 (RCL)

ORDER

Pending before the Court is the motion of the defendant to dismiss count two of the indictment. Finding the motion meritorious, it is

ORDERED that the motion is GRANTED/DENIED.

Signed this _____ day of _____, 2023.

ROYCE C. LAMBERTH
United States District Judge