UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	**CASE NO.: 1:21-CR-599 (RBW)**
v.	:	
	:	
THOMAS HARLEN SMITH	:	
	:	
Defendant.	:	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT SMITH'S MOTION TO DISMISS COUNTS TEN, ELEVEN AND TWELVE

Defendant Smith seeks dismissal of Counts Ten, Eleven and Twelve of the Superseding Indictment. ECF 61. These counts charge violations of 18 U.S.C. § 1752. *See* ECF 51. Smith argues "these counts fail to state an offense and fail to give proper notice to the defendant" … and "are multiplicitous." His arguments defy the plain text and statutory history of 18 U.S.C. § 1752 and his motion should be denied.

FACTUAL BACKGROUND

On January 6, 2021, a Joint Session of the United States House of Representatives and the United States Senate convened to certify the vote of the Electoral College of the 2020 U.S. Presidential Election. While the certification process was underway, a large crowd gathered outside the United States Capitol building, entered the restricted grounds, and forcibly breached the Capitol building. As a result, the Joint Session and the entire official proceeding of the Congress were halted until law enforcement was able to clear the Capitol of hundreds of unlawful occupants and ensure the safety of elected officials.

Defendants Thomas Smith and Donnie Wren, cousins, traveled together to Washington, D.C. to attend former President Trump's rally on January 6, 2021. After the rally, Smith and Wren

walked from the rally to the United States Capitol. They entered Capitol grounds and joined in the riot.

Wren and Smith were in the Lower West Terrace Tunnel area at around 3:00 p.m. They made their way to the Tunnel entrance. Wren remained at the mouth of the Tunnel while Smith, carrying a flag attached to a flagpole, entered the Tunnel and approached the police line standing guard at the doors leading into the Capitol building. Moments later, Smith jammed the flagpole like a spear trying to stab at one of the glass windowpanes within the first set of Tunnel doors.

Less than an hour later, at approximately 3:50 p.m., Smith and Wren made their way to the Upper West Terrace, where they stood directly in front of the police line, walking back and forth and waving flags for approximately 10 minutes. A physical conflict began between the police and the crowd of rioters at approximately 4:21 p.m. Defendants Smith and Wren participated in this conflict, pushing back against the officers' riot shields for approximately 25 seconds. Smith turned his back to the officers then used his body weight to push into a police riot shield. Wren leaned into one of the officer's shields, using the weight of his body and his hands to push into the shield.

Following the physical confrontation with the police line, Smith charged into a crowd of rioters to kick an officer's backside, then darted out of the crowd. Moments later, Smith threw a metal stick or pole at the police line. The metal stick/pole hit an officer in the head, causing the officer to stagger backwards. Smith then retreated into the crowd of rioters.

Smith and Wren left the Upper West Terrace area at approximately 4:30 p.m. and began their departure from the Capitol grounds.

ARGUMENT

Smith's arguments have been raised and rejected in numerous other cases arising from the January 6, 2021, attack on the U.S. Capitol. For the following reasons, this Court should likewise deny Smith's motion.

I. The indictment is sufficient as written.

Smith alleges that Counts Ten, Eleven and Twelve must be dismissed because the Superseding Indictment "fail[s] to give proper notice to the defendant." ECF 61 at 1. The Superseding Indictment is sufficient under the Constitution and Rule 7 of the Federal Rules of Criminal Procedure because it "contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend." *Hamling v. United States*, 418 U.S. 87, 117 (1974). The Superseding Indictment accomplishes this task by "echo[ing] the operative statutory text while also specifying the time and place of the offense." *United States v. Mitchellon*, 903 F.3d 124, 130 (D.C. Cir. 2018). "[T]he validity of an indictment 'is not a question of whether it could have been more definite and certain.'" *United States v. Verrasio*, 762 F.3d 1, 13 (D.C. Cir. 2014) (quoting *United States v. Debrow*, 346 U.S. 374, 378 (1953)). And an indictment need not inform a defendant "as to every means by which the prosecution hopes to prove that the crime was committed." *United States v. Handelman*, 559 F.2d 31, 124 (D.C. Cir. 1976).

Rule 12 permits a party to raise in a pretrial motion "any defense, objection, or request that the court can determine *without a trial on the merits*." Fed. R. Crim. P. 12(b)(1) (emphasis added). It follows that Rule 12 "does not explicitly authorize the pretrial dismissal of an indictment on sufficiency-of-the-evidence grounds" unless the government "has made a *full* proffer of evidence" or the parties have agreed to a "stipulated record," *United States v. Yakou*, 428 F.3d 241, 246-47 (D.C. Cir. 2005) (emphasis added)—neither of which has occurred here.

Indeed, "[i]f contested facts surrounding the commission of the offense would be of *any* assistance in determining the validity of the motion, Rule 12 doesn't authorize its disposition before trial." *United States v. Pope*, 613 F.3d 1255, 1259 (10th Cir. 2010) (Gorsuch, J.). Criminal cases have no mechanism equivalent to the civil rule for summary judgment. *United States v. Bailey*, 444 U.S. 394, 413 n.9 (1980) (motions for summary judgment are creatures of civil, not criminal trials); *Yakou*, 428 F.2d at 246-47 ("There is no federal criminal procedural mechanism that resembles a motion for summary judgment in the civil context"); *United States v. Oseguera Gonzalez*, No. 20-cr-40 (BAH), 2020 WL 6342940, at *5 (D.D.C. Oct. 29, 2020) (collecting cases explaining that there is no summary judgment procedure in criminal cases or on that permits pretrial determination of the sufficiency of the evidence). Accordingly, dismissal of a charge does not depend on forecasts of what the government can prove. Instead, a criminal defendant may move for dismissal based on a defect in the indictment, such as failure to state an offense. *United States v. Knowles*, 197 F. Supp. 3d 143, 148 (D.D.C. 2016). Whether an indictment fails to state an offense because an essential element is absent calls for a legal determination.

"[T]he Court has a limited and narrow role in considering a motion to dismiss an indictment." *United States v. Williams*, No. 21-cr-377 (BAH), ECF No. 118 at 79-80. Thus, when ruling on a motion to dismiss for failure to state an offense, a district court may only review the face of the indictment and more specifically, the language used to charge the crimes. *Id.*; *see also United States v. Bingert*, No. 21-cr-91 (RCL), 2022 WL 1659163, at *11 (D.D.C. May 25, 2022) (a motion to dismiss challenges the adequacy of an indictment on its face and the relevant inquiry is whether its allegations permit a jury to find that the crimes charged were committed); *United States v. McHugh*, 583 F. Supp. 3d 1, 32-35 (D.D.C. 2022) (a motion to dismiss involves the Court's determination of the legal sufficiency of the indictment, not the sufficiency of the

evidence); *United States v. Puma*, No. 21-cr-454 (PLF), 2020 WL 823079, at *4 (D.D.C. Mar. 19, 2022) (quoting *United States v. Sunia*, 643 F. Supp. 2d 51, 60 (D.D.C. 2009)). "When considering a motion to dismiss an indictment, a court assumes the truth of those factual allegations." *United States v. Ballestas*, 795 F.3d 138, 149 (D.C. Cir. 2015), citing *Boyce Motor Lines v. United States*, 342 U.S. 337, 343 n.16 (1952).

Here, Counts Ten, Eleven and Twelve are sufficient because they provide the operative statutory text of Section 1752 and specify the time and place of the offenses.[1] *United States v. Williamson*, 903 F.3d 124, 130 (D.C. Cir. 2018). Thus, Smith has ample notice of "the precise offense of which he is accused so that he may prepare his defense and plead double jeopardy in any further prosecution for the same offense." *Id*. (quoting *United States v. Verrusio*, 762 F.3d 1, 13 (D.C. Cir. 2014); *see also United States v. Resendiz-Ponce*, 549 U.S. 102, 108 (2007).

II. Section 1752 Does Not Require the Government to Prove that the Restricted Area was Restricted at the Secret Service's Direction.

Smith argues that Counts Ten, Eleven and Twelve should be dismissed for failure to state an offense because the U.S. Capitol Police, and not the Secret Service, designated the "restricted area" around the U.S. Capitol on January 6, 2021. ECF 61 at 2-4. However, nothing in the express language of Section 1752 requires that the U.S. Secret Service ("USSS") designate the "restricted area," and Smith's attempt to read such a requirement as implied in the statutory language goes against the common sense reading of the text and its legislative history. *See e.g.*, *United States v. Griffin*, 549 F. Supp. 3d 49, 57 (D.D.C. 2021); *United States v. Mostofsky*, 579 F. Supp. 3d 9, 28

[1] Each of these counts also charges that Smith, during and in relation to the offense, did use and carry a deadly and dangerous weapon, that is, a flagpole and pole-like metal object, in violation of 18 U.S.C. § 1752(b)(1)(A).

(D.D.C. 2021); *United States v. Nordean*, 579 F. Supp. 3d 28, 59 (D.D.C. 2021). And this argument has been repeatedly rejected in this District.[2]

Section 1752 provides in relevant part:

(a) Whoever—

(1) knowingly enters or remains in any restricted building or grounds without lawful authority to do so; [or]

(2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engages in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; [or]

(4) knowingly engages in any act of physical violence against any person or property in any restricted building or grounds;

(c) In this section—

(1) [T]he term "restricted buildings or grounds" means any posted, cordoned off, or otherwise restricted area—

(B) of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting; […].

18 U.S.C. § 1752. Section 1752 also defines "restricted building or grounds" to include any posted,

[2] *See, e.g., United States v. Puma*, 596 F. Supp. 3d 90, 109-112 (D.D.C. 2022); *United States v. Andries*, No. 21-cr-93 (RC), 2022 WL 768684, at *14 (D.D.C. Mar. 14, 2022); *United States v. Bozell*, No. 21-cr-216 (JDB), 2022 WL 474144, at *8 (D.D.C. Feb. 16, 2022); *United States v. McHugh*, 583 F. Supp. 3d 1, 29-31 (D.D.C. 2022); *United States v. Nordean*, 579 F. Supp. 3d 28, 59-60 (D.D.C. 2021); *United States v. Mostofsky*, 579 F. Supp. 3d 9, 28 (D.D.C. 2021); *United States v. Griffin*, 549 F. Supp. 3d 49, 53-56 (D.D.C. 2021).

cordoned off, or otherwise restricted area "of the White House or its grounds, or the Vice President's official residence or its grounds" or "of a building or grounds so restricted in conjunction with an event designated as a special event of national significance." 18 U.S.C. §§ 1752(c)(1)(A), (C).

The language of Section 1752 contains no express requirement that the "restricted buildings or grounds" must be restricted by USSS for there to be a violation of Section 1752. Nonetheless, defendant argues that such a requirement is implicit in the statutory language and legislative history. ECF 61 at 3. However, because the plain language of the statute is clear and unambiguous, reading the implied requirement provided by Defendant is unwarranted. Even if one were to look beyond this plain language, the legislative history of Section 1752 also weighs against Smith's interpretation.

There is no ambiguity in the text of Section 1752 as to the meaning of "restricted building or grounds." Namely, Section 1752 proscribes certain conduct in and around "any restricted building or grounds," *see* 18 U.S.C. § 1752(a), and it provides three definitions for the term "restricted buildings and grounds," *see* § 1752(c)(1), including "any posted, cordoned off, or otherwise restricted area . . . of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting," § 1752(c)(1)(B). Through a cross-reference, Section 1752 makes clear—and Smith does not appear to dispute—that "person[s] protected by the Secret Service" include the Vice President. § 1752(c)(2); *see* § 3056(a)(1). The proscribed conduct within a "restricted building or grounds" includes, as relevant here, knowingly and unlawfully entering or remaining, § 1752(a)(1), and knowingly and with intent to impede or disrupt government business, engaging in "disorderly or disruptive conduct" that "in fact, impedes

or disrupts" "government business," § 1752(a)(2); and knowingly engaging in any act of physical violence against any person or property, § 1752(a)(4).

In short, Section 1752 "prohibits persons from knowingly entering without lawful authority to do so in any posted, cordoned off, or otherwise restricted area of a building or grounds where a person protected by the Secret Service is or will be temporarily visiting." *Wilson v. DNC Servs. Corp.*, 417 F. Supp. 3d 86, 98 (D.D.C. 2019), *aff'd*, 831 F. App'x 513 (D.C. Cir. 2020). Where, as here, the words of the statute are unambiguous, "the judicial inquiry is complete." *See Babb v. Wilkie*, 140 S. Ct. 1168, 1177 (2020) (internal quotation marks omitted). However, under defendant's interpretation of Section 1752, there is an additional, implied, requirement unstated in the statutory language that any restricted area must be designated by USSS. There is no such requirement, nor is there any credible rationale why one should be inferred.

And while looking beyond the plain language is unwarranted here, *see United States v. American Trucking Associations*, 310 U.S. 534, 543 (1940) (stating that looking beyond clear statutory text is appropriate where the results would be absurd or demonstrably at odds with clearly expressed Congressional intent), the legislative history of Section 1752 in fact affirms the plain reading of the text that defendant resists. As defendant acknowledges, when Section 1752 was first enacted in 1970, USSS was part of the Treasury Department, and this original version of the statute explicitly incorporated regulations promulgated by the Treasury Department governing restricted areas. *See United States v. Bursey*, 416 F.3d 301, 306-07 (4th Cir. 2005) (noting that definition of restricted area required interpreting Treasury regulations). Specifically, subsection (d) of Section 1752 gave authority to Treasury, which oversaw USSS, to "prescribe regulations governing ingress or egress to such buildings and grounds and to posted, cordoned off, or otherwise restricted areas where the President is or will be temporarily visiting." Pub. L. 91-644, Title V, Sec. 18, 84 Stat.

1891-92 (Jan. 2, 1971). However, when Congress revised Section 1752 in 2006, it struck subsection (d) from the statute, eliminating the requirement that "restricted building or grounds" be necessarily defined or designated by USSS or any other particular law enforcement agency. Pub. L. 109-177, Title VI, Sec. 602, 120 Stat. 192 (Mar. 9, 2006). In 2012, Congress further reinforced this interpretation by adding the definitional subsection (c) cited above, which provides the current definition of "restricted building or grounds." Pub. L 112-98, Title I, Sec. 2, 126 Stat 263 (March 8, 2012). Contrary to defendant's reading, the legislative history shows that Congress deliberately excised any requirement that a restricted area depend on any definition or determination by USSS.

Both the plain language and legislative history of Section 1752 show that there is no requirement, express or implied, that an area be restricted by a particular law enforcement agency, as courts in this district have unanimously held. *United States v. Grider*, --- F.Supp.3d ---, 2022 WL 3016775, at *7 (D.D.C. July 29, 2022) (collecting cases) (internal quotations omitted) ("[N]othing in the statutory text requires the Secret Service to be the entity to restrict or cordon off a particular area, nor does Grider point to any provision in the statute in support of such a proposition."); *United States v. Bingert*, --- F.Supp.3d ---, 2022 WL 1659163, at *14 (D.D.C. May 25, 2022) ("[D]efendants fashion a bizarre requirement, seemingly out of thin air: that only the Secret Service can designate an area as restricted [for the purposes of 18 U.S.C. § 1752]."). Smith's contention that Counts Ten, Eleven, and Twelve are defective for this reason should be likewise rejected.

III. The Vice President Can "Temporarily Visit" the U.S. Capitol.

Smith's argument that a Vice President cannot "temporarily visit" the U.S. Capitol Building—because he or she has an office there—is contrary to Section 1752's plain terms,

purpose, and structure. The same argument has been rejected by every Judge in this District to have considered Smith's "strained reading of this fairly straightforward phrase."[3] *United States v. Williams*, No. 21-cr-377 (BAH), ECF No. 88 at 5-7. As the Court has explained, "[c]ommon sense easily resolves this debate." *Id.* at 5. Smith's "strained interpretation is inconsistent with both the text and the structure of the statute … This definition [of 'temporarily visiting'] obviously encompasses Vice President Pence's actions on January 6, 2021. He went to the Capitol with a discrete purpose: to certify the Electoral College votes, a process that by law is contemplated to take one day." *See United States v. Williams*, No. 21-cr-168 (ABJ), 2022 WL 2237301, at *19 (D.D.C. June 22, 2022) (citing 3 U.S.C. § 15); *McHugh*, 583 F. Supp. 3d at 33-34 (reaching "a commonsense conclusion: the Vice President was 'temporarily visiting' the Capitol"); *see also United States v. Andries*, No. 21-cr-93 (RC), 2022 WL 768684, at *16 (D.D.C. Mar. 14, 2022) ("Vice President Pence was 'temporarily visiting' the Capitol on January 6, 2021 if he went to the Capitol for a particular purpose, including a business purpose, and for a limited time only. Plainly he did. He went to the Capitol for the business purpose of carrying out his constitutionally assigned role in the electoral count proceeding; he intended to and did stay there only for a limited time."); *United States v. Puma*, No. 21-cr-454 (PLF), 2022 WL 823079, at *17 (D.D.C. Mar. 19, 2022) (stating that under the plain language of Section 1752, the Vice President "was temporarily visiting

[3] *See, e.g., United States v. Williams,* No. 21-cr-377 (BAH), ECF No. 88 at 5-7; *United States v. Griffin*, 549 F. Supp. 3d 49, 52-58 (D.D.C. 2021) (18 U.S.C. § 1752(a)(1)); *United States v. Mostofsky*, No. 21-cr-138 (JEB), 2021 WL 6049891, at *8-*13 (D.D.C. Dec. 21, 2021) (18 U.S.C. § 1752(a)(1)); *United States v. Nordean*, No. 21-cr-175 (TJK), 2021 WL 6134595, at *4-*12, *14-*19 (D.D.C. Dec. 28, 2021) (18 U.S.C. § 1752(a)(1); (2)); *United States v. Andries*, No. 21-cr-93 (RC), 2022 WL 768684, at *3-*17 (D.D.C. Mar. 14, 2022) (18 U.S.C. § 1752(a)(1); 18 U.S.C. § 1752(a)(2)); *United States v. Puma*, No. 21-cr-454 (PLF), 2022 WL 823079, at *4-*19 (D.D.C. Mar. 19, 2022) (18 U.S.C. § 1752(a)(1); 18 U.S.C. § 1752(a)(2)); *United States v. Bingert*, No. 21-cr-91 (RCL), 2022 WL 1659163, at *3-*11, *12-*15 (D.D.C. May 25, 2022) (18 U.S.C. § 1752(a)(1)).

the Capitol on January 6, 2021: he was there for a limited time only in order to preside over and participate in the Electoral College vote certification.").

To determine the meaning of a statute, the Court "look[s] first to its language, giving the words used their ordinary meaning." *Levin v. United States*, 568 U.S. 503, 513 (2013) (quoting *Moskal v. United States*, 498 U.S. 103, 108 (1990)). The verb "visit" means, *inter alia*, "to go to see or stay at (a place) for a particular purpose (such as business or sightseeing)" or "to go or come officially to inspect or oversee."[4] Either definition describes the Secret Service protectee's activities on January 6. Vice President Pence was physically present at the U.S. Capitol for a particular purpose: he presided over Congress's certification of the 2020 Presidential Election, first in the joint session, and then in the Senate chamber. While not specifically alleged in the indictment, two other Secret Service protectees (members of the Vice President's immediate family) also came to the U.S. Capitol that day for a particular purpose: to observe these proceedings. Furthermore, as President of the Senate, Vice President Pence oversaw the vote certification. Given the presence of the Vice President (and his family members), the U.S. Capitol plainly qualified as a building where "[a] person protected by the Secret Service [was] … temporarily visiting." 18 U.S.C. § 1752(c)(1)(B).

Smith argues that the United States Capitol is "a federal government building in the District of Columbia, where [the former Vice President] lived and worked." ECF 61 at 7. Further, he argues that the Capitol was the Vice President's "place of employment" because he had a "permanent office" there in his official capacity as "President of the Senate." *Id*. Smith's conclusion—the Vice President cannot temporarily visit his own office. But numerous judges have "rejected this exercise in wordsmithing," *Williams*, No. 21-cr-377 (BAH), ECF No. 88 at 5,

[4] https://www.merriam-webster.com/dictionary/visit.

and for good reason: Section 1752(c)(1)(B) defines the restricted area by reference to the location of the protectee—not his home or workplace. When Vice President Pence traveled to the U.S. Capitol on January 6 to oversee the Joint Session of Congress, he was "visiting" the building. And because Vice President Pence intended to leave at the close of the session, this visit was "temporar[y]." Moreover, the United States Capitol is not the Vice President's regular workplace; even if "there is some carveout in § 1752 for where a protectee normally lives and works, it does not apply to Vice President Pence's trip to the Capitol on January 6, 2021." *See, e.g., McHugh*, 583 F. Supp. 3d at 33-34 (citing various dictionary definitions of "temporary" as "for a limited time" and finding that the Vice President can "temporarily visit" the U.S. Capitol); *Williams*, 2022 WL 2237301, at *20 (emphasis in original) ("Defendant insists that the Vice President could not have been 'temporarily *visiting*' the Capitol on January 6th because he regularly *works* there, and because he was in fact working there on January 6th. But defendant's simplistic assertion ignores not only the ordinary meaning of the statutory language, but also the structure of the definition in question … The language in 18 U.S.C. § 1752(a)(1) and (a)(2) is plain and unambiguous: the term 'restricted building or grounds' encompasses the United States Capitol, which the Vice President was 'temporarily visiting' on January 6, 2021.") (citations omitted).

As the Court has explained, "even if the words 'temporarily visiting' were at all ambiguous—a view at odds with a plain reading of the words—the structure of the statute makes clear that defendant's preferred reading would produce absurd results." *Williams*, no. 21-cr-377 (BAH), ECF No. 88 at 6. Such a "carveout," taken to its logical end, would undermine the government's ability to protect the President and Vice President by deterring and punishing individuals who seek unauthorized access to the President's or Vice President's location. It would restriction Section 1752(c)(1)(B)'s application to only locations outside the District of Columbia—

on the view that any visit by the President or Vice President to a location within municipal limits cannot be "temporary" because they reside in the District of Columbia. It would provide more protection for Secret Service protectees in an airplane hangar or a park than in the Capitol Building.

In addition, under Smith's construction, Section 1752(c)(1)(B) would not apply where the current President or Vice President temporarily stayed at their permanent residences in Delaware or California—on the view that such a trip would not qualify as "visiting." Nor would it apply to Camp David, where there is a presidential cabin and office. In another strange scenario, a restrict area could exist when, as here, the Vice President's family visits the Capitol (because they are Secret Service protectees without an office there), but not when the Vice President herself does. It therefore would afford a higher level of protection for the family of the elected official than to the elected official herself. No support exists for creating such large and irrational exceptions to the statute's sweep. *See Lovitky v. Trump*, 949 F.3d 753, 760 (D.C. Cir. 2020) (noting that courts will avoid a "statutory outcome … if it defies rationality by rendering a statute nonsensical or superfluous or if it creates an outcome so contrary to perceived social values that Congress could not have intended it") (citation omitted).

Smith's position also defies Section 1752's clear purpose. *Cf. Genus Med. Techs. LLC v. United States Food & Drug Admin.*, 994 F.3d 631, 637 (D.C. Cir. 2021) ("[I]f the text alone is insufficient to end the inquiry, we may turn to other customary statutory interpretation tools, including structure, purpose, and legislative history.") (internal quotation marks and citation omitted). In enacting Section 1752, Congress sought to protect "not merely the safety of one man, but also the ability of the executive branch to function in an orderly fashion and the capacity of the United States to respond to threats and crises affecting the entire free world." *United States v. Caputo*, 201 F. Supp. 3d 65, 70 (D.D.C. 2016) (quoting *White House Vigil for ERA Comm. V.*

Clark, 746 F.2d 1518, 1528 (D.C. Cir. 1984). To that end, the statute comprehensively deters and punishes individuals who seek unauthorized access to the White House grounds and the Vice President's residence—fixed locations where the President and Vice President live and work, 18 U.S.C. § 1752(c)(1)(A); and also any other "building or grounds" where they (or other protectees) happen to be "temporarily visiting," 18 U.S.C. § 1752(c)(1)(B). Construing the statutory provisions together, Section 1752(c)(1)(A) and (c)(1)(B) protect the President and Vice President in their official homes and wherever else they go. Interpreting the statute as Smith suggests would create a gap in Section 1752's coverage by removing areas, such as the U.S. Capitol, from protection. It could endanger the leaders of the Executive Branch even as they perform their official duties. That gap is both illogical and contrary to the statutory history of Section 1752, where, "at every turn," Congress has "*broadened* the scope of the statute and the potential for liability." *United States v. Griffin*, 549 F. Supp. 3d 49, 56 (D.D.C. 2021) (emphasis in original).

The cases cited by Smith—which involve either an arrest or conviction under Section 1752 at a place other than the U.S. Capitol Building—do not discuss the "temporarily visiting" language. *See* ECF 61 at 7 (citing *United States v. Bursey*, 416 F.3d 301 (4th Cir. 2005); *United States v. Junot*, 1990 WL 66533 (9th Cir. May 18, 1990) (unpublished); *Blair v. City of Evansville, Ind.*, 361 F. Supp. 2d 846 (S.D. Indiana 2005). But "the fact that those situations clearly qualify does not mean that the relevant situation on January 6 cannot count as well." *Williams*, No. 21-cr-377 (BAH), ECF No. 88 at 6. All the relevant considerations—plain language, statutory structure, and congressional purpose—foreclose Smith's reading of Section 1752(c)(1)(B). Therefore, this Court should reject it.

CONCLUSION

Counts Ten, Eleven and Twelve, which track the language of 18 U.S.C. § 1752(a)(1), (a)(2), and (a)(4), properly accuse Smith of unlawful entry into, disruptive or disorderly conduct in, and engaging in any act of physical violence, in "a restricted building and grounds," where the Vice President was temporarily visiting. Smith's motion should be denied.

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney
D.C. Bar No. 481052

By: /s/ *Melanie L. Alsworth*
Melanie L. Alsworth
Ark. Bar No. 2002095
Trial Attorney
On detail to the USAO-DC
601 D Street, N.W.
Washington, DC 20530
Phone: (202) 598-2285
Email: melanie.alsworth2@usdoj.gov

/s/ *Tighe Beach*
Tighe Beach
Assistant United States Attorney
601 D. Street, N.W.
Washington, DC 20530
Phone: 202-252-1788
Email: tighe.beach@usdoj.gov