

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :

:

v.

:

CRIMINAL NO. 21-CR-244 (CKK)

:

:

ANTHONY GRIFFITH :

:

DEFENDANT GRIFFITH'S REPLY TO THE GOVERNMENT'S RESPONSE TO  
DEFENDANT'S MOTION TO DISMISS COUNTS TWO AND THREE OF THE  
INDICTMENT

Defendant Griffith, through his counsel, filed a motion to dismiss Counts Two and Three of the Indictment, pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure, because they fail to state valid offenses and violate several constitutional protections. The government filed a response, and herein defendant files his reply with additional explanation. First, Griffith argues that the Secret Service is the only government agency that can restrict Capitol grounds for purposes of 1752. The Secret Service unlawfully delegated its authority on January 6<sup>th</sup> to Capitol police which then allowed the Capitol Police to discern the boundaries for First Amendment assembly and free speech on the Capitol grounds. In doing so, the Capitol police changed boundaries first put in place in agreement with the Secret Service, thus opening the Capitol grounds to a larger area of protected assembly on Capitol grounds. After the initial breeches the Capitol police made decisions that allowed protesters that were protesting in a legally defined area to access grounds that were no longer restricted.

## **I. INTRODUCTION**

Count two of Indictment charges that, on January 6, 2021, Mr. Griffith “did knowingly enter and remain in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President and Vice President-elect were temporarily visiting, without lawful authority to do so,” in violation of 18 U.S.C. § 1752(a)(1). *See* Indictment, ECF No. 12. Count Three of the indictment charges under §1752(a)(2), that Mr. Griffith “did knowingly, and with intent to impede and disrupt the orderly conduct of Government business and official functions, engage in disorderly and disruptive conduct in and within such proximity to, a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President and Vice President-elect were temporarily

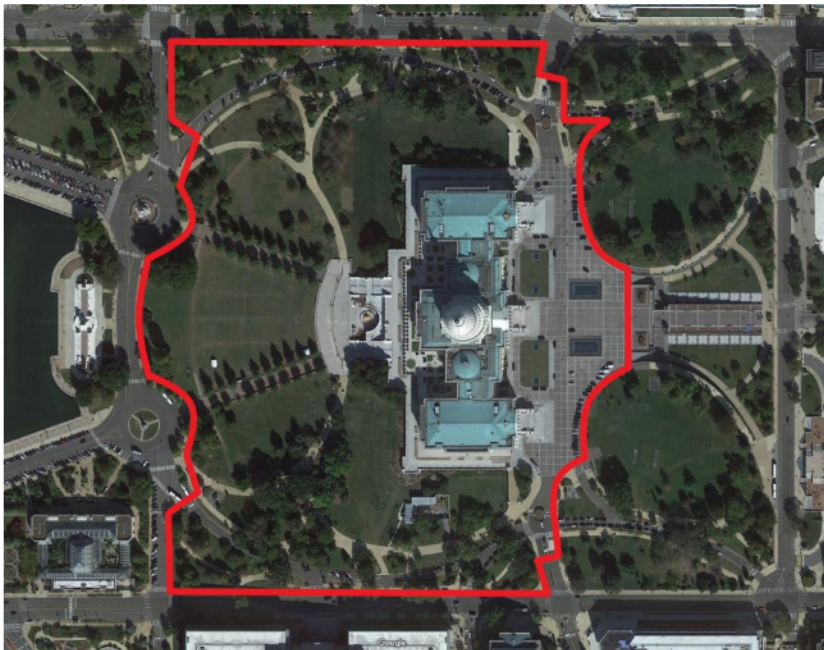
visiting, when and so that such conduct did in fact impede and disrupt the orderly conduct of Government business and official functions” in violation of Title 18 United States Code, Section 1752(a)(2). *Id.*

As Mr. Griffith argued in his initial motion, since its enactment in 1970, Section 1752 has criminalized the unlawful entry into areas restricted for the protection of U.S. Secret Service (USSS) protectees. Indeed, the statute defines the areas that are restricted as “a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting” or “a building or grounds so restricted in conjunction with an event designated as a special event of national significance.” Title 18 U.S.C. Section 1752. Mr. Griffith continues to assert that the United States Secret Service is the entity with the singular power to restrict the Capitol on January 6, 2021 under the statute. This position is laid out in defendant’s original motion to dismiss. Other cases heard in other courts establish that the United States Secret Service ( hereinafter “SS”) delegated this power to the United States Capitol Police (hereinafter “USCP”) for the restriction of the “building or grounds” for the events on January 6, 2021. *See United States v. Egtvedt*, 21-cr-177 (CRC)(witness Monique Moore) and *United States v. Dennis*, 21-CR-678(JEB)(Tia Summers). Mr. Griffith contends that the SS could not legally delegate this authority to USCP. However that is what happened on January 6<sup>th</sup> and Mr. Griffith argues in delegating this authority, It is in understanding this delegated authority, whether permissible or not under the law, that gives rise to Mr. Griffith’s claims.

In addressing this Court’s ruling in *United States v. Grider* --- F. Supp. 3d --- (2022), WL 3016775, Mr. Griffith asks this court to consider not just whether the Secret Service was able to delegate the authority to restrict, but whether when doing so, they also delegated the authority to lift the restriction for First Amendment assembly. Mr. Griffith concedes that the USCP worked to establish a perimeter for January 6, 2021 using bicycle racks, snow fencing and signs. This

plan to restrict the building was done in conjunction with the Vice President's visit to the United States Capitol on January 6, 2021 and has been charged as such. As this Court noted, the Capitol Police, in partnership with the Secret Service, set up a protective perimeter around the entire grounds of the United States Capitol. *United States v. Rivera*, ---F. Supp. 3d ----, ---- 2022 WL 2187851, at \*2 (D.D.C. June 17, 2022).

Mr. Griffith does not disagree that there was an initial restricted perimeter set around the Capitol in advance of January 6, 2021. The map here in figure 1 below shows in red the perimeter that the government has introduced in many, if not all, January 6<sup>th</sup> cases through the testimony of various witnesses including Ms. Hawa as the Court noted in *Grider*.



*Figure 1*

The USCP used bicycle racks and snow fencing rather than more permanent or heavier types of barricades for the security perimeter. The record has not been developed here as to whether this decision was cleared by the SS or otherwise signed off on by authorized individuals with authority to make these decisions. Given the readily available information leading up to January 6<sup>th</sup> that agitators and large crowds might try to protest at the Capitol, Mr. Griffith asserts



that the USCP chose poorly and that the relatively poor execution of perimeter security was what lead to the overwhelming numbers of protesters who went on Capitol grounds that day. The choice to use easily moveable structures as the perimeter is one reason the perimeter did not last past 1pm that day. In fact, after 1pm on January 6<sup>th</sup> the map with the red lined perimeter was as good as garbage because barricades and signs were no longer in places that match any resemblance to the government exhibit due to an initial line of unknown protestors who overran the barricades within minutes. These barricades were never put back in place.

Testimony from officers of the USCP, as well as CCTV video evidence, establishes that the red perimeter was breached at various spots as early as 12:57pm on January 6<sup>th</sup>. The Figure below, a screenshot from CCTV camera 0514 at 12:57pm, shows the newly breached walkway at the Peace Circle area and people freely moving towards the Capitol, some removing signs and carrying them away as they go. Anyone arriving after the initial breach encountered an open and unencumbered pathway to the west side of the Capitol.



Figure 2

The barricades that had been breached were carried away to various locations around the grounds or pushed to the side. Signs and fencing were trampled or strewn around the capitol grounds. A steady stream of people flowed on to the Capitol grounds with no restricted warnings, signs or cordoned off areas in sight. The pathway up to the west side of the Capitol leading to the West Terrace area was one such area that was visually and physically unrestricted after the initial breach. It was cleared of all barricades, signs, and fencing. No officers stood by and informed the people passing by that they were entering a restricted area. In fact, to the contrary, officers stood by and watched even as late as 2:10 pm as people filed in to the Peace Circle area from Constitution Avenue. No attempt was made by any law enforcement agency to direct protesters to one side or the other of any barricades. They were also not telling people to relocate to the permitted First Amendment assembly areas set aside for that day. Figure 3 below is a screenshot from camera 0600 at approximately 2:10pm showing the barricades to the side of the pathway where protestors are being allowed to move on both sides. Officers circled in figure



3 say nothing and do nothing to warn or otherwise instruct passersby about any restriction of Capitol grounds.



Figure 3

The USCP used radios on January 6<sup>th</sup> to communicate with the officers on the Capitol grounds. In fact, the government has used some of these radio calls as back ground to CCTV footage in a Montage exhibit in many trials. While the officers on the ground saw the events unfold in real time, USCP operated a command center on January 6<sup>th</sup> that also monitored in real time the CCTV footage. USCP officers manning this command center were able to see the initial breaches of the perimeter in real time on their television monitors. Once they saw these events unfold, they were also responsible for alerting other law enforcement partners about the need for assistance at the Capitol. (Testimony of Tia Summers and Monique Moore, *Dennis & Egtvedt supra*). Once the initial breaches happened, however, there is no evidence that anyone at that command center ever called for help to re-establish the perimeter even though Ms. Moore called five agencies for help. No one called to tell the people still at the Ellipse not to walk down to the

Capitol. No barricades or police presence was established down Pennsylvania Avenue to turn people back or restrict them from going forward. No police cars were parked to block the people from walking down the middle of Pennsylvania avenue all the way to the Capitol that day. No bull horns were used by law enforcement to tell people to turn around or that the Capitol was experiencing a civil disorder or was on lockdown. The USCP allowed the area to be unrestricted for purposes of Section 1752 violations by failing to maintain a perimeter and protect citizens or warn them as they wandered down to the Capitol that the Capitol was not open for First Amendment assembly beyond permitted areas. The people walking down to the Capitol nearly an hour later had no knowledge of what had transpired before them or that barricades had been established previously, and therefore believed that their forward progress towards the Capitol and their subsequent presence on the grounds was lawful.

Mr. Griffith asserts that failure of the USCP to reestablish the security perimeter after the initial breaches freed that area from restriction for purposes of 1752. Since this Court has agreed that nothing in the statutory text required “the Secret Service to be the entity to restrict or cordon off a particular area,” *Mostofsky*, 579 F. Supp.3d at 29, then similarly it should stand that nothing in the text says that the Secret Service is the only agency that can take away the restriction. On January 6<sup>th</sup> the USCP removed the restricted area and created a larger First Amendment assembly zone. Anyone who arrived at the grounds after those initial breaches, and after the President’s invitation, were allowed to lawfully assemble for First Amendment activity by virtue of this failure by USCP to maintain an adequate boundary.

As have been noted in other cases, there were demonstration permits issues for numerous areas around the Capitol that day. (Exhibit A, six demonstration permits). These demonstration permits show that the USCP had the authority to determine where permitted First Amendment Assembly could take place on January 6<sup>th</sup>. The permitted First Amendment assembly areas were



directly adjacent to the original restricted area on the red lined map. The demonstration permits expressly stated that one of the restrictions for permitted assembly was that “barricade access is not permitted.” Clearly only the USCP would be able to enforce this restriction. Yet they did not. The figure below with highlights shows that the barricades were necessary to delineate between the permitted (lawful assembly) areas and the restricted areas. When the USCP failed to maintain those barricades after 1pm on January 6<sup>th</sup> they created a larger area for lawful First Amendment assembly and allowed lawfully permitted demonstrators access to the Capitol grounds without restriction.

**The spokesperson has been advised of the following:**

- ❖ “Items cannot be tied [nailed, stapled or affixed] to any trees/fixtures. Non-breathable material (i.e., plastic, plywood, etc.) is prohibited from directly covering turf or other living landscape assets. Post and stakes must be no more than ½” in diameter, inserted no deeper than 9” into the ground, and approved by U.S. Capitol Police Special Events with final review by the Architect of the Capitol.”
- ❖ Per the Architect of the Capitol, only natural burlap sandbags are allowed for use on the turf to protect the grounds from any damage. No synthetic or plastic woven sandbags are allowed.
- ❖ Height Restriction: No single prop, piece of equipment or combination thereof may exceed fifteen (15) feet in height.
- ❖ Stages, Risers and Platforms: No stage, riser or platform may exceed two (2) feet in height.
- ❖ Music – In accordance with the Traffic Regulations for the United States Capitol Grounds, Section 12.1.30 (e) “Ceremonial Events & Entertainment” musicals are not considered demonstrations and require Capitol Police Board Approval.
- ❖ The volume of the sound will be kept to a minimum and directed away from Congressional Office Buildings.
- ❖ Tripods and lighting equipment are authorized on grassy areas only and must not impede pedestrian or vehicular traffic. Photos / film taken must not be used for any commercial purposes.
- ❖ Tents, cabanas, canopies or any other covered structures are expressly prohibited.
- ❖ Solicitation, commercialization, and /or advertisement of any kind are expressly prohibited.
- ❖ Delivery vehicle(s) must report to USCP Off-Site Delivery, 4700 Shepherd Parkway, SW, for initial screening (Monday through Friday during operational hours 0430-1300 hours). Then –
- ❖ Delivery vehicle(s) must report to New Jersey and C Street, NW for secondary screening (Arrival after 1300 hours and on the holidays and weekends, delivery vehicle(s) will respond to this location for initial screening only).
- ❖ Delivery vehicle(s) must unload and reload equipment along the west curb of First Street, NE (niched / cut out area) between Constitution Avenue and East Capitol Street, NE.
- ❖ Upon unloading, delivery vehicle(s) must depart Capitol Grounds and not return until conclusion of the event.
- ❖ DELIVERY VEHICLE(S) MUST NOT BE LEFT UNATTENDED AT ANY TIME.
- ❖ EQUIPMENT MUST BE HAND-CARRIED OR HAND-CARTED TO THE EVENT SITE.
- ❖ **BARRICADE ACCESS IS NOT PERMITTED.**
- ❖ FIRST RESPONDERS PERSONNEL WILL INSPECT ALL PROPS AND EQUIPMENT, AND MONITOR THE EVENT.

The participants will arrive and depart via public and private transportation. The spokesperson has been advised that **no parking or staging is authorized on Capitol Grounds.**

The Capitol Police Board has issued a permit for this event.

Figure 4

**IV. CONCLUSION**

For all the foregoing reasons, Griffith respectfully requests that the Court dismiss Counts Two and Three of the Indictment with prejudice.

Respectfully submitted,

Kira Anne West

/s/  
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**Certificate of Service**

I certify that a copy of the forgoing was filed electronically and served on all parties of record on this 20th day of January, 2023.

/s/  
Kira Anne West  
Attorney for Anthony Griffith