

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

UNITED STATES OF AMERICA,	:	
	:	
	:	
v.	:	
	:	No. 1:21-cr-00447-CJN-03
	:	
JOSHUA CHRISTOPHER DOOLIN,	:	
	:	
Defendant.	:	

**DEFENDANT'S REPLY TO THE GOVERNMENT'S OPPOSITION
TO DEFENDANT'S MOTION TO DISMISS
COUNT EIGHTEEN OF THE SUPERSEDING INDICTMENT**

COMES NOW Defendant, Joshua Christopher Doolin, by and through undersigned counsel, hereby respectfully submits this reply to the Government's Opposition to Defendant's Motion to Dismiss Count Eighteen of the Superseding Indictment. (Doc. 132)

1. Count Eighteen over-broadly burdens a substantial amount of protected speech. 18 U.S. Code §231(a)(3) contains many undefined and extremely broad terms. The Government argues in their opposition that Section 231(a)(3) focuses "mainly on conduct" and requires an over-breadth challenge to "face a steep uphill climb." Doc. 132 at 12. However, the question is not whether the terms of Section 231(a)(3) apply to conduct rather than speech. Instead, the relevant over-breadth inquiry is whether a substantial amount of the activities prohibited under Section 231(a)(3) are "sufficiently imbued with the elements of communication" to warrant First Amendment protection." *Spence v. Washington*, 418 U.S. 405, 409 (1974).

“Expressive conduct is characterized by two requirements: (1) ‘an intent to convey a particularized message’ and (2) a ‘great’ ‘likelihood ... that the message would be understood by those who viewed it.’” *Edge v. City of Everett*, 929 F.3d 657, 668 (9th Cir. 2019) (quoting *Texas v. Johnson*, 491 U.S. 387, 404 (1989)). Accordingly, so long as Section 231(a)(3) burdens a substantial amount of activities intended to convey a message to an audience who would understand it, the provision is facially over-broad under the First Amendment.

Section 231(a)(3) burdens a substantial amount of speech and conduct imbued with communicative elements. The provision criminalizes “any act” that could “interfere with” the “duties” of police and firefighters incident to a civil disorder involving three or more people. 18 U.S.C. § 231(a)(3). The terms “interfere,” “impede,” and obstruct” are all left undefined, permitting an application to any form of expression that tends to interfere with, that is, to interrupt a police officer’s duties during a civil disorder. For these reasons, Section 231(a)(3) should be found facially over-broad under the First Amendment.

The Government also argues that Section 231(a)(3)’s scope narrowed due to a reading in of an intent requirement. Doc. 132 at 10. In arguing this point, they cite *United States v. Williams*, a United States Supreme Court case that focused on a child pornography statute that expressly lists a scienter requirement in the plain language of the said statute; as well as to other unpublished or out of circuit decisions that have read in a scienter requirement to §231(a)(3). *Id.* In *Williams*, the Court upheld the statute only after its predecessor statute had been invalidated as unconstitutional and

after Congress had exercised its appropriate powers in rewriting the statute to cure its constitutional defects. Section 231(a)(3) is directly analogous to that invalidated statute.

Prior to *Williams*, the Court in *Ashcroft v. Free Speech Coal.*, found that the Child Pornography Prevention Act of 1996 (“CPPA”) violated the First Amendment due to over-broad reach, holding:

“The Government may not suppress lawful speech as the means to suppress unlawful speech. Protected speech does not become unprotected merely because it resembles the latter. The Constitution requires the reverse. “[T]he possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted” *Broadrick v. Oklahoma*, 413 U.S. [601, 612 (1973)]. The overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process.”

Ashcroft v. Free Speech Coal., 535 U.S. 234, 258 (2002). The Court held that the provisions banning depictions of sexually explicit conduct that are “advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct” is substantially overbroad in violation of the First Amendment and it would require a “more precise restriction.” *Id.*

The over-broad “conveys the impression” language suffers the same defect as Section 231(a)(3), which places the officer or prosecutor in the position of deciding whether the subjective standard of the statute – “obstruct, impede, or interfere with”

the officer or prosecutor who decides whether “any act” has done those things – has been met.

As discussed above, the Court faced and upheld the “more precise” replacement statute in *Williams*. In that opinion, the Court described how adding more specificity prevented this statute from falling to vagueness or over-breadth again. *Williams*, 553 U.S. at 294-97, (discussing the addition of a definitional section and the “commonsense cannon of noscitur a sociis”). Section 231(a)(3) does not contain any necessary narrowing or tailoring and is therefore facially over-broad.

2. 18 U.S. Code §231(a)(3) terms fail to provide required notice because this Section contains no requirement that a defendant’s actions implicate interstate commerce or a federally protected function to any degree. Instead, the civil disorder, and not the defendant’s offensive conduct, must be shown. “Civil disorders,” as Section 232(1) defines them, can occur in any situation, in any place, at any time, so long as three individuals are engaged in actions of violence threatening danger to property. The law has vast potential to sweep up individuals who, while interfering with the duties of police, are utterly lacking in culpability concerning the civil disorder that affected commerce. Nothing in the language of Section 231(a)(3) can safeguard such individuals from liability for a federal felony conviction because the statutory language simply cannot be contorted to require that any commercial or impediment effect result from a defendant’s actual acts.

Mr. Doolin was swept up under this statute due to the lack of a safeguard resulting from its vagueness. He arrived at the Capitol to exercise his recognized First Amendment protections and believed that Former President Trump had

authorized the crowd's presence. Once there, he was pushed to the front while trying to assist others in the crowd. If not for the vagueness of this statute, Mr. Doolin would have been adequately informed of the potential of violating it.

WHEREFORE, for the foregoing reasons and such other reasons that may appear just and proper, Mr. Joshua Christopher Doolin requests this Court to dismiss Count Eighteen of the Superseding Indictment. (Doc. 129)

Respectfully Submitted,

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Dated: August 13, 2022