UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	**CASE NO. 21-cr-454 (PLF)**
v.	:	
	:	
ANTHONY PUMA,	:	
	:	
Defendant.	:	

OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNTS ONE, TWO, AND THREE OF THE INDICTMENT

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully opposes defendant Anthony Puma's Motion to Dismiss Counts One, Two, and Three of the Indictment, which charges him in Count One with obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2), and in Counts Two and Three with entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1), and disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2). In his motion, the defendant claims that Congress's constitutionally mandated process of counting the Electoral College votes of the presidential election was not "adversarial" enough to be an "official proceeding." But nowhere does the defendant address the fact that a Joint Session of Congress—a proceeding enshrined in and prescribed by the United States Constitution and federal law—plainly constitutes "a proceeding before the Congress," 18 U.S.C. § 1515(a)(1)(B), and therefore is an "official proceeding" under § 1512(c)(2). He further argues that, in any event, the statute itself is unconstitutionally vague as applied to this case. Finally, the defendant challenges Counts Two and Three, asserting that the Indictment failed to properly allege that the Capitol grounds were a restricted area on January 6, 2021 because the United States Secret Service (Secret Service) is the sole entity that may designate an area

"restricted," and the government instead improperly relied on such designation by the United States Capitol Police (USCP). The defendant also contends that the United States Capitol was not a restricted building or grounds within the meaning of 18 U.S.C. § 1752 because no Secret Service protectee was "temporarily visiting" it on January 6, 2021.

Defendant's motion is unsupported by the law and should be denied.

PROCEDURAL HISTORY

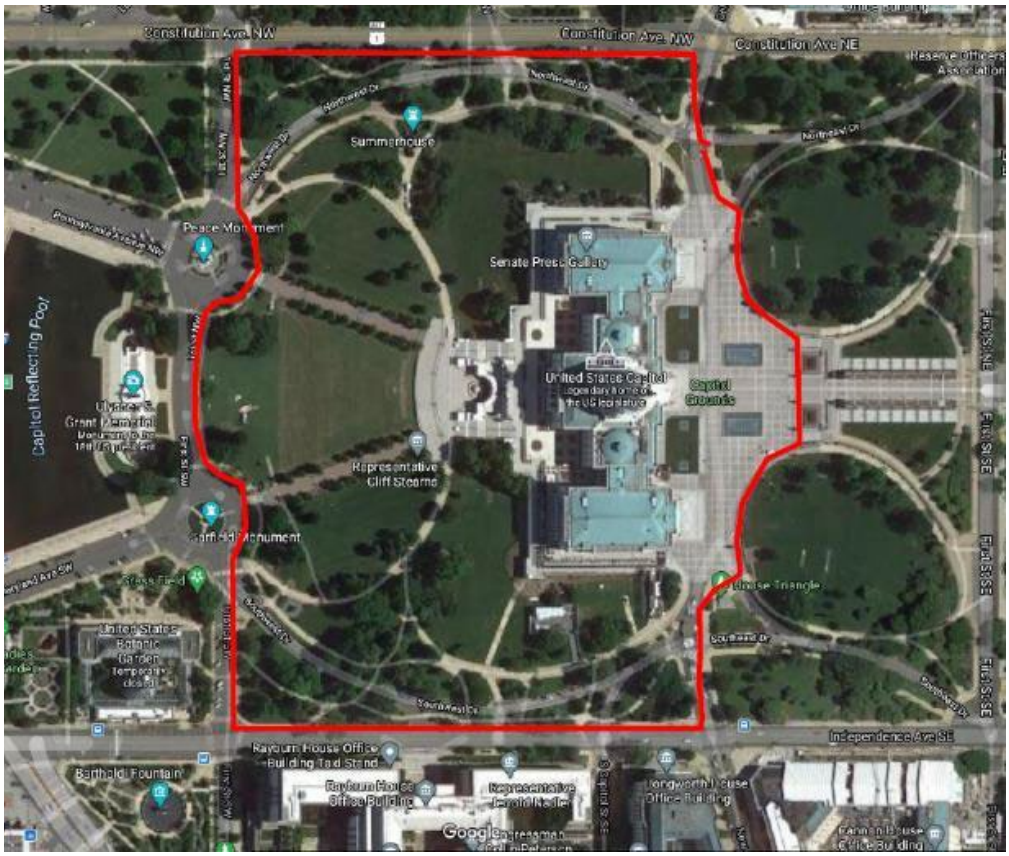
The Grand Jury returned an Indictment charging the defendant, Anthony Puma, with obstructing the Electoral College vote that took place at the United States Capitol on January 6, 2021, in violation of 18 U.S.C. § 1512(c)(2). The Grand Jury further charged him with one count of entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1); one count of disorderly and disruptive conduct, in violation of 18 U.S.C. § 1752(a)(2); and two misdemeanor offenses under 40 U.S.C. § 5104(e)(2). Doc. 11, at 1-3. These charges implicate the defendant's conduct at the U.S. Capitol on January 6, 2021.The defendant filed a motion to dismiss Counts One, Two, and Three of the Indictment, Doc. No. 20.

FACTUAL BACKGROUND

On January 6, 2021, Vice President Michael Pence and Vice President-Elect Kamala Harris, both under Secret Service protection, were present at the United States Capitol building.[1] The USCP, with sole authority over security on the Capitol grounds, set up security barriers on the Capitol grounds. On the west side of the Capitol, USCP set up metal bike rack barriers along First Street. Within the West Front of the Capitol building, USCP set up additional temporary metal

[1] Vice President Pence was present for the beginning of the joint session, and remained in U.S. Capitol until the session concluded. Vice President-Elect Harris was not present at the beginning of the joint session, but returned to the Capitol for the resumption of the proceeding. *See* 18 U.S.C. § 1752(c)(2)(B) ("other person protected by the Secret Service is or will be temporarily visiting").

barriers, green snow fencing, and signage stating, "Area Closed By Order of the United States Capitol Police Board." The Lower West Terrace on the West Front was closed to members of the public. Below is a map of the restricted area:



On January 8, 2021, the FBI National Threat Operations Center ("NTOC") received an online tip, via tips.fbi.gov. The tip contained information that the defendant was involved in the breach at the U.S. Capitol. The individual who provided the information indicated that she knew the defendant and that they were "friends" on Facebook. According to the tip, the defendant was live-streaming his activities on January 6, 2021 on Facebook. The tip indicated that the defendant entered the U.S. Capitol building during the events described above.

While a review of the publicly available information on the defendant's Facebook page revealed several photographs of the defendant in Washington D.C on January 6, 2021, the videos

show the defendant entering the Capitol building were not visible. Below is a picture showing the defendant in Washington, D.C. in January of 2021.

On January 14, 2021, FBI Agents interviewed the defendant at his home. During the interview, the defendant said that he left Michigan early on January 5, 2021, and that he traveled by car to Washington, D.C. The defendant stated that he and his friends stayed until January 7, 2021, and that they stayed at the J.W. Marriot hotel on Pennsylvania Ave. On January 6, 2021, the defendant said that he and his friends attended a rally to hear President Trump speak to his

supporters. After President Trump spoke, the defendant and his friends followed the crowd toward the U.S. Capitol Building.

According to the defendant, he arrived at the east side of the Capitol between 1:30 p.m. and 1:45 p.m. The defendant said that, when he arrived, there were no police or barricades blocking entry. The defendant said that he walked up on the mezzanine, walked inside the Capitol, and into the atrium. The defendant admitted that he noticed Capitol Police staged inside the Capitol in front of doors or hallways which the defendant thought might lead to the tunnels. He said that he saw people sitting inside offices and rooms. The defendant claimed that he did not witness any violence or looting inside the Capitol. During the interview, the defendant stated that, towards the end of the day, police started pushing the crowd back away from the Capitol. The defendant said that he was close enough to feel the effects of tear gas on one occasion. The defendant said that he noticed some citizens wearing body armor and helmets. According to the defendant, when the police pushed the crowd away from the Capitol, he saw a few unknown individuals fighting the police officers, using chairs and pieces of railing.

According to the defendant, he was wearing a GoPro camera on January 6, 2021 and he was live-streaming the footage on Facebook. The defendant said that his Facebook account went "offline" that day. The defendant believed that Facebook disabled his account because he live-streamed the events at the Capitol.

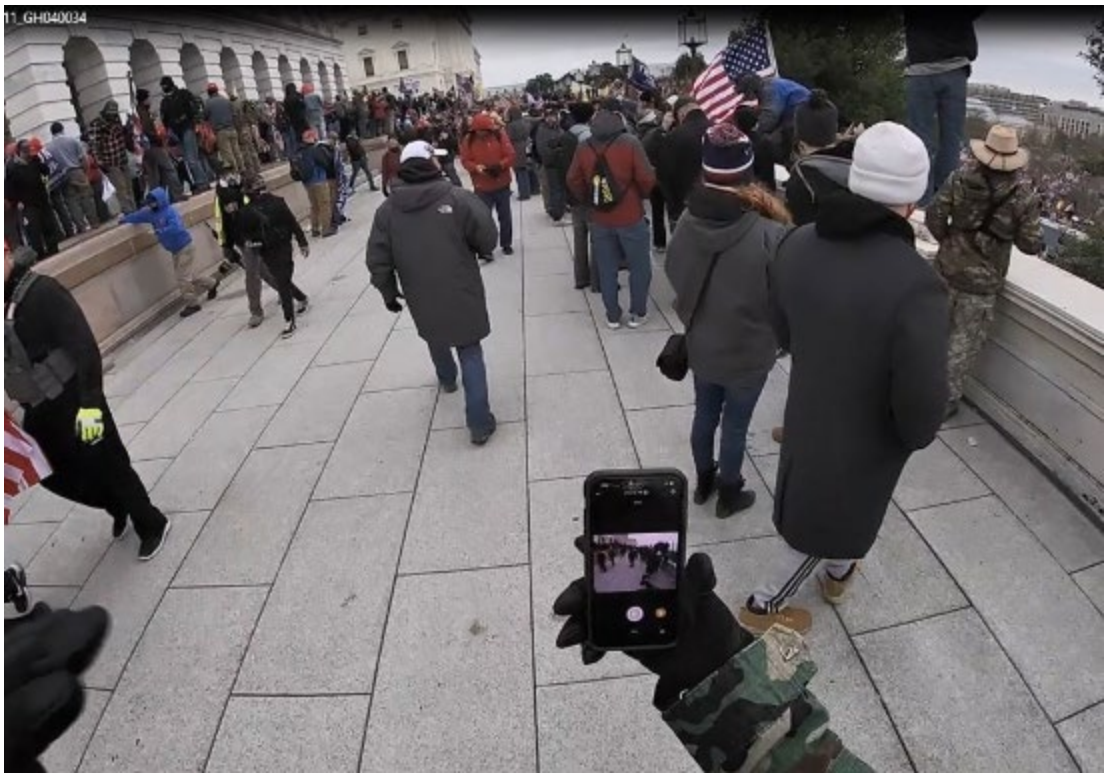
On January 17, 2021, the defendant gave FBI Agents a 16GB SanDisk SD card containing footage he captured on his GoPro camera on January 6, 2021. The SD card contained eight separate video files. Below is a brief description of the content of some of these video files:

Video file 5_GH020034: At 41 seconds into the video, someone can be seen riding on a motorized cart. The person can be heard stating, "We are inside, they need help, we've breached the Capitol." Below is a screen capture from this video:

At minute 7:29 of this same video, as the defendant is approaching the Capitol, five individuals can be seen, moving in a line. These individuals appear to be wearing helmets, goggles and/or respirators, and are marked by green tape. Below is a screen capture of this portion of the video:

Video 3_GH030034: At 3:10 into this video, the defendant can be heard encouraging others in front of him to move forward and clear the way for others trying to scale the wall of the Capitol. At 10:34 into this video, the defendant is shown looking at his cellular phone. The defendant is shown wearing black gloves and appears to be wearing a woodland camouflage jacket.

Video 11_GH040034: 17 seconds into this video, PUMA's cellular phone can be seen recording or live-streaming the defendant's approach to the Capitol. Below is a screen capture from this video:



At 2:08 into the video, the defendant can be heard telling someone that he just scaled the wall. The defendant can also be heard mocking the D.C.'s issuance of a curfew. Notably, this video captures the defendant's entrance into the Capitol. The defendant did not "calmly" walk into the Capitol Building. *See* Doc. 20 at page 2. Instead, the video shows the defendant climbing through a broken window next to the west entrance. Below is a screen capture from this portion of the video:

On April 23, 2021 a federal search warrant for the Facebook account belonging to the defendant was issued out of the United States District Court for the District of Columbia. Law enforcement reviewed the records provided by Facebook pursuant to the warrant, and observed the following:

On December 31, 2020, the defendant posted the following comment on Facebook, "On the 6th when we are all there in the capital and he is givin his second term the people will see. Then you never know we might have to start killing some commie bastards. #stopthesteal."

On January 5, 2021, the defendant posted a picture to his Facebook account of a crowd of people carrying Trump signs or flags. Later that day, in a response to a friend's comment saying that he/she was proud of him, the defendant wrote, "Thank you. Tomorrow is the big day. Rig for Red. War is coming". The defendant also posted the following comment to his Facebook account on January 5, 2021, "We are here. What time do we storm the House of Representatives?" An hour later, the defendant posted, "Hopefully we are storming the House of Representatives tomorrow

at 100pm". On January 10, 2021, the defendant wrote about the hours of video he captured at the U.S. Capitol on January 6, 2021. In one comment, the defendant wrote, "Those were after my go pro died. I only went live after my battery died. That was hours after all the start of the day. But they were assholes. The stormtroopers flash banged us and shot rubber bullets into the crowd".

LEGAL STANDARD

A defendant may move to dismiss an indictment or count for failure to state a claim prior to trial. *See* Fed. R. Crim. P. 12(b)(3)(B)(v). "An indictment must be viewed as a whole and the allegations must be accepted as true in determining if an offense has been properly alleged." *United States v. Bowdin*, 770 F. Supp. 2d 142, 146 (D.D.C. 2011). The operative question is whether the allegations, if proven, would be sufficient to permit a jury to find that the crimes charged were committed. *Id.*

Federal Rule of Criminal Procedure 7(c)(1) governs the "Nature and Contents" of an indictment. The rule states, in relevant part, that "[t]he indictment … must be a plain, concise, and definite written statement of the essential facts constituting the offense charged," and that "[f]or each count, the indictment or information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated." Fed. R. Crim. P. 7(c)(1).

ARGUMENT

A. The certification of the Electoral College vote is an "official proceeding."

In his motion, the defendant argues that as a matter of law, the Joint Session of Congress convened for the Electoral College vote certification is not an "official proceeding" under § 1512(c) and therefore the indictment does not state a cognizable offense. Yet he fails to grapple with the plain language of § 1515(a)(1)(B), which defines "official proceeding" as a "proceeding before the Congress," which is precisely what he is charged with obstructing.

1. Background

The Constitution and federal statutory law require that both Houses of Congress meet to certify the results of the Electoral College vote. Two separate provisions in the Constitution mandate that the Vice President, while acting as the President of the Senate, "shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted." U.S. Const. art. II, § 1, cl. 3; U.S. Const amend. XII. Under the Electoral Count Act of 1887, a Joint Session of the Senate and the House of Representatives must meet at "the hour of 1 o'clock in the afternoon" on "the sixth day of January succeeding every meeting of the electors." 3 U.S.C. § 15. Section 15 details the steps to be followed: The President of the Senate opens the votes, hands them to two tellers from each House, ensures the votes are properly counted, and then opens the floor for written objections, which must be signed "by at least one Senator and one Member of the House of Representatives." *Id.* The President of the Senate is empowered to "preserve order" during the Joint Session. 3 U.S.C. § 18. Upon a properly made objection, the Senate and House of Representatives withdraw to consider the objection; each Senator and Representative "may speak to such objection . . . five minutes, and not more than once." 3 U.S.C. § 17. The Electoral Act, which specifies where within the chamber Members of Congress are to sit, requires that the Joint Session "not be dissolved until the count of electoral votes shall be completed and the result declared." 3 U.S.C. § 16.

The obstruction statute with which the defendant is charged prohibits corruptly obstructing, influencing, or impeding any official proceeding. 18 U.S.C. § 1512(c)(2). An official proceeding for purposes of § 1512(c)(2) is defined as:

> (A) a proceeding before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a judge of the United States Tax Court, a special trial judge of the Tax Court, a judge of the United States Court of Federal Claims, or a Federal grand jury;

> (B) *a proceeding before the Congress*;
>
> (C) a proceeding before a Federal Government agency which is authorized by law; or
>
> (D) a proceeding involving the business of insurance whose activities affect interstate commerce before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of any person engaged in the business of insurance whose activities affect interstate commerce[.]

18 U.S.C. § 1515(a)(1) (emphasis added).

2. Certification of the Electoral College vote is a "proceeding before the Congress"

The certification of the Electoral College vote as set out in the Constitution and federal statute is a "proceeding before the Congress," 18 U.S.C. § 1515(a)(1)(B), and, therefore, an "official proceeding" for purposes of 18 U.S.C. § 1512(c)(2). That conclusion flows principally from the obstruction statute's plain text. Skipping past the text, the defendant argues that Congress's intent and other language in the obstruction statute import a requirement that the proceeding be "adversarial" or "adjudicative" in nature. Doc. No. 20 at pages 6-7. That argument is incorrect.

Understanding what qualifies as an official proceeding "depends heavily on the meaning of the word 'proceeding'" because "official proceeding" is defined "somewhat circularly" as, among other things, a congressional "proceeding." *See United States v. Ermoian*, 752 F.3d 1165, 1169 (9th Cir. 2013). The certification of the Electoral College vote constitutes a "proceeding" under any interpretation of that term.

In its broadest and most "general sense," a proceeding refers to "[t]he carrying on of an action or series of actions; action, course of action; conduct, behavior." *Id.* (quoting *Proceeding,* Oxford English Dictionary, *available at* http://www.oed.com). The defendant does not meaningfully contest that the certification of the Electoral College vote, which involves a

detailed "series of actions" outlining how the vote is opened, counted, potentially objected to, and ultimately certified, is a "proceeding"—and indeed an "official proceeding"—under that general definition. And there is good reason to construe "proceeding" as used in 18 U.S.C. § 1515 in this fashion. Section 1515's text encompasses not only congressional proceedings, but judicial proceedings, grand jury proceedings, any legally authorized proceedings before federal government agencies, and proceedings "involving the business of insurance." 18 U.S.C. § 1515(a)(1); *see* S. Rep. No. 97-532, at 17 (1982) (noting that the "term 'official proceeding'" in the obstruction statute is "defined broadly").

But even if the "legal—rather than the lay—understanding" of proceeding governs Section 1515's interpretation, *see Ermoian*, 752 F.3d at 1170, the Electoral College vote certification qualifies. This narrower definition includes the "business conducted by a court or other official body; a hearing." Black's Law Dictionary, "proceeding" (11th ed. 2019). Taken with its modifier "official," the term proceeding thus "connotes some type of formal hearing." *Ermoian*, 752 F.3d at 1170; *see United States v. Ramos*, 537 F.3d 439, 462 (5th Cir. 2008) (the "more formal sense" of "official proceeding" is "correct in the context of § 1512"). For example, in cases assessing whether a law enforcement investigation amounts to an "official proceeding" as defined in Section 1515 courts analyze the degree of formality involved in an investigation. *See, e.g.*, *United States v. Sutherland*, 921 F.3d 421, 426 (4th Cir. 2019) (FBI investigation not an "official proceeding" because that term "implies something more formal than a mere investigation"), *cert. denied*, 140 S. Ct. 1106 (2020); *Ermoian*, 752 F.3d at 1170-72 (same); *United States v. Perez*, 575 F.3d 164, 169 (2d Cir. 2009) (internal investigation conducted by a review panel within the Bureau of Prisons was an "official proceeding" because the review panel's "work [was] sufficiently formal"); *Ramos*, 537 F.3d at 463 (internal investigation conducted by Customs and Border Patrol not an "official

proceeding" because that term "contemplates a formal environment"); *United States v. Dunn*, 434 F. Supp. 2d 1203, 1207 (M.D. Ala. 2006) (investigation conducted by Bureau of Alcohol, Tobacco, and Firearms not an "official proceeding" because that term encompasses "events that are best thought of as hearings (or something akin to hearings)"); *see also United States v. Kelley*, 36 F.3d 1118, 1127 (D.C. Cir. 1994) (holding that a "*formal* investigation" conducted by the Officer of the Inspector General at the Agency for International Development qualified as a "proceeding" for purposes of 18 U.S.C. § 1505) (emphasis added).

The formality involved in the certification of the Electoral College vote places it "comfortably within the category" of an official proceeding. *See Perez*, 575 F.3d at 169. Few events are as solemn and formal as a Joint Session of the Congress. That is particularly true for the certification of the Electoral College vote, which is expressly mandated under the Constitution and federal statute. Required by law to begin at 1:00 p.m. on January 6 following a presidential election, the certification of the Electoral College vote is both a "hearing" and "business conducted by . . . [an] official body." *See* Black's Law Dictionary, *supra*. The Vice President, as the President of the Senate, serves as the "presiding officer" over a proceeding that counts votes cast by Electors throughout the country in a presidential election. 3 U.S.C. § 15. As in a courtroom, Members may object, which in turn causes the Senate and House of Representatives to "withdraw" to their respective chambers so each House can render "its decision" on the objection. *Id.* And just as the judge and parties occupy specific locations in a courtroom, so too do the Members within the "Hall." *See* 3 U.S.C. § 16 (President of the Senate is in the Speaker's chair; the Speaker "immediately upon his left"; the Senators "in the body of the Hall" to the right of the "presiding officer"; the Representatives "in the body of the Hall not provided for the Senators"; various other individuals "at the Clerk's desk," "in front of the Clerk's desk," or "upon each side of the Speaker's

platform"). The Electoral College vote certification, moreover, must terminate with a decision: no recess is permitted until the "the count of electoral votes" is "completed," and the "result declared." *Id.* In short, the certification of the Electoral College vote is a "proceeding before the Congress." *See* 18 U.S.C. § 1515(a)(1)(B).

3. The proceeding before Congress is not limited to purely "adversarial" proceedings

The defendant incorrectly asks this Court to limit the interpretation of "proceeding before the Congress" to encompass only proceedings that are "adversarial" or "adjudicative" in nature like a "court proceeding where there is a potential for witnesses to be influenced or documents to be destroyed." Doc. No. 20 at pages 6-7. As an initial matter, it is difficult to imagine a proceeding more "official" than a constitutionally and statutorily prescribed Joint Session of Congress. Whatever the merits of the defendant's argument for other provisions in Section 1515(a)(1), it finds no textual support when applied to Section 1515(a)(1)(B), which speaks broadly of a proceeding "before the Congress." Had Congress wanted to import a definition that more closely resembled a quasi-adjudicative setting—like a court hearing—it needed to look only a few provisions away to 18 U.S.C. § 1505, which criminalizes obstruction of "the due and proper administration of the law under which any pending proceeding is being had" by a federal department or agency. Indeed, § 1505 expressly criminalizes obstruction of "any inquiry or investigation [that] is being had by" Congress, including by congressional committees and subcommittees. 18 U.S.C. § 1505; *see United States v. Bowser*, 964 F.3d 26, 31 (D.C. Cir. 2020). Section 1505 shows that Congress knew how to limit an obstruction prohibition to congressional investigations, and that it could have also done so in the text of § 1515(a)(1)(B). Congress chose not to do so. Instead, Congress enacted language- "a proceeding before the Congress"—to cover a broader range of proceedings than the "inquir[ies] and investigation[s]" envisioned in Section

1505. That broader definition includes the Electoral College vote certification. *See, e.g.*, *Russello v. United States,* 464 U.S. 16, 23 (1983) ("We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.").

Rather than engage with Section 1515's text, the defendant relies on inapposite case law and unsupported legislative history to argue that the certification of the Electoral College vote is not an "official proceeding" because it did not have "some reasonable nexus to a record, document, or tangible object", or to witness testimony." Doc. No. 20 at page 7. This approach fails for several reasons. First, it is methodologically flawed. 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)). In ordinary parlance, a gathering of the full Congress to certify the Electoral College vote is "a proceeding before the Congress." Because Section 1515(a)(1)(B)'s words "are unambiguous, the judicial inquiry is complete." *See Babb v. Wilkie*, 140 S. Ct. 1168, 1177 (2020) (internal quotation marks omitted). The defendant offers no rationale for looking past the statute's plain text to reach for other interpretive tools.

Relying principally on the Supreme Court's decision in *Yates v. United States*, 574 U.S. 528 (2015), the defendant also contends that Section 1512(c)(2) targets only "corporate malfeasance." Doc. No. 20 at page 5. That contention is flawed in several respects. The statute at issue in *Yates* was 18 U.S.C. § 1519, which prohibits altering, destroying, and concealing records, documents, and tangible objects. *See Yates*, 574 U.S. at 532 (plurality opinion). The Supreme Court in *Yates* held that the term "tangible object" as used in Section 1519 included only an object "used to record or preserve information," and thus did not encompass the undersize red

grouper that the defendant in *Yates* had discarded. *Id.* In reaching that conclusion, the plurality compared Section 1519 with Section 1512(c)(1), which similarly prohibits altering, destroying, or concealing evidence in connection with an official proceeding. Congress enacted both Sections 1519 and 1512(c) as part of the Sarbanes-Oxley Act of 2002, 116 Stat. 745, but drafted Section 1512(c)(1) to reach more broadly than Section 1519. *See Yates*, 574 at 543-45; *see also id.* at 545 n.7 ("Congress designed § 1519 to be interpreted apart from § 1512, not in lockstep with it.").

The statute with which the defendant is charged, Section 1512(c)(2), is broader still, expanding the obstruction prohibition beyond the focus on document destruction in Sections 1519 and Section 1512(c)(1). *See United States v. Ring*, 628 F. Supp. 2d 195, 225 (D.D.C. 2009) ("[Section] 1512(c)(2)'s application is not limited to the destruction of documents."). Its application to a defendant who "corruptly . . . otherwise obstructs, influences, or impedes any official proceeding," § 1512(c)(2), "operates as a catch-all to cover otherwise obstructive behavior that might not constitute a more specific offense like document destruction, which is listed in (c)(1)." *United States v. Petruk*, 781 F.3d 438, 447 (8th Cir. 2015) (affirming conviction under Section 1512(c)(2) for false statements) (quoting *United States v. Volpendesto*, 746 F.3d 273, 286 (7th Cir. 2014)). Courts have repeatedly upheld its application to obstructive acts that reach beyond the impairment of financial records. *See id.* (collecting cases concerning violations of Section § 1512(c)(2) by virtue of the use of false statements); *United States v. Phillips*, 583 F.3d 1261, 1265 (10th Cir. 2009) (upholding conviction under Section 1512(c)(2) for disclosing the identity of an undercover federal agent to thwart a grand jury investigation); *United States v. Carson*, 560 F.3d 566, 584 (6th Cir. 2009) (upholding conviction under Section 1512(c)(2) for providing false testimony to a grand jury); *United States v. Cervantes*, No. 16-10508, 2021 WL 2666684, at *6

(9th Cir. June 29, 2021) (upholding conviction under Section 1512(c)(2) for the burning of building to conceal two bodies of murder victims).

Finally, the defendant's narrowed reading of "proceeding before the Congress" in 18 U.S.C. § 1515(a)(1)(B)—importing an extra-textual "adversarial" requirement—would undercut the broad statute that Congress enacted. The defendant's interpretation fails to recognize that the certification of the Electoral College vote is an official proceeding that is "crucial to the conduct of government" and therefore "entitled to go forward free of corrupting influences that not only delay [it] but increase the chances of false and unjust outcomes." *Sutherland*, 921 F.3d at 426. Under any permissible construction of the phrase "proceeding before the Congress," the Electoral College vote certification falls squarely within it.

4. In any event, certification of the Electoral College vote is adjudicative in nature.

The defendant's challenge fails even if he is correct—and he is not—that a proceeding must be adjudicative because the certification of the Electoral College vote comprises features that resemble an adjudicative proceeding. It involves the convening of a Joint Session of Congress, a deliberative body over which a government officer, the Vice President as President of the Senate, "presid[es]." 3 U.S.C. § 15. That body convenes to render judgment on whether to certify the votes cast by Electors in the presidential election. As in an adjudicative setting, parties may lodge objections to the certification, and if any such objection is lodged, each House must consider the objection and make a "decision" whether to overrule or sustain it. *Id.* And just as a jury does not (barring a mistrial) recess until it has a reached a verdict, the Joint Session cannot "be dissolved" until it has "declared" a "result." 3 U.S.C. § 16.

5. The defendant's remaining arguments lack merit.

None of the defendant's additional arguments counsels a different result. First, the defendant implies that courts have agreed with his narrowed approach. Doc. No. 20 at page 6. As noted above, those cases, like *Ermonian*, 752 F.3d at 1165, addressed an entirely different question, namely, whether law enforcement investigations qualified as "official proceedings" under a subsection defining that term as a "proceeding before a Federal Government agency which is authorized by law." 18 U.S.C. § 1515(a)(1)(C). Specifically, those courts grappled with questions such as when an agency investigation is a proceeding, *Ramos*, 537 F.3d at 462; whether the requirement in Section 1512(f)(1) that a proceeding "need not be pending or about to be instituted at the time of the offense" as applied to agency investigations would reach "conduct that occurred even pre-criminal-investigation," *Ermoian*, at 752 F.3d at 1172; and whether the "official" modifier "implies something more formal than a mere investigation," *Sutherland*, 921 F.3d at 426. Those questions do not arise here. The certification of the Electoral College vote is a congressional proceeding, not an investigation, and involves a degree of formality distinct from any agency investigations. And, in any event, the pertinent statutory definition—a "proceeding before the Congress"—is phrased more broadly than the "official proceeding" definition at issue in those cases.

Second, the defendant suggests that the certification of the Electoral College vote is not an official proceeding but instead a mere "formal ceremony." Doc. No. 20 at pages 9-10. That suggestion is incorrect. The law review article from which the defendant cherry-picks a quotation in which a legislator indicated his hope that the Electoral Count Act of 1887 (the Act) would render the certification of the Electoral College vote nothing more than a formal ceremony describes in detail how the Act "provides a framework for Congress's consideration of the states' electoral votes, specifies the proper grounds for members of Congress who wish to object to counting any

or all votes from a state, and provides decisional rules for cases where the Senate and House of Representatives disagree about whether to count a vote." Stephen A. Siegel, *The Conscientious Congressman's Guide to the Electoral Count Act of 1887*, 56 Fla. L. Rev. 541, 651 (2004). For example, when, as occurred during the certification on January 6, 2021, legislators withdraw to separate chambers to consider objections, they face "many difficult and ambiguous questions . . . both of law and of the law's application to the situation at hand." *Id.* at 644. Far more than mere ceremonial formality, the certification of the Electoral College vote as established under the Act sets out procedural and substantive rules aimed at ensuring a peaceful "transmission of the supreme executive authority from one person to another." *Id.* at 547 (quoting statements from Senators who enacted the Act).

B. The defendant had fair notice that 18 U.S.C. § 1512(c)(2) punished his conduct.

The defendant argues that Section 1512(c) is unconstitutionally vague as applied to his case. Doc. No. 20 at pages 10, 15. He specifically alleges that the terms "corruptly" and "official proceeding" are vague. Id. at pages 11-13. This argument lacks merit.

1. Background

The Due Process Clauses of the Fifth and Fourteenth Amendments prohibit the government from "depriv[ing] any person of life, liberty, or property, without due process of law." An outgrowth of the Due Process Clause, the "void for vagueness" doctrine prevents the enforcement of a criminal statute that is "so vague that it fails to give ordinary people fair notice of the conduct it punishes" or is "so standardless that it invites arbitrary enforcement." *Johnson v. United States*, 576 U.S. 591, 595 (2015).

The void for vagueness doctrine is narrow. The challenger must overcome a strong presumption that duly enacted statutes are constitutional. *See United States v. Nat'l Dairy Products Corp.*, 372 U.S. 29, 32 (1963) ("The strong presumptive validity that attaches to an Act

of Congress has led this Court to hold many times that statutes are not automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language."). In addition, a statute is not void for vagueness simply because its applicability is unclear at the margins, *United States v. Williams*, 553 U.S. 285, 306 (2008), or because a reasonable jurist might disagree on where to draw the line between lawful and unlawful conduct in particular circumstances, *Skilling v. United States*, 561 U.S. 358, 403 (2010). Rather, a provision is impermissibly vague only if it requires proof of an "incriminating fact" that is so indeterminate as to invite arbitrary and "wholly subjective" application. *Williams*, 553 U.S. at 306; *see Smith v. Goguen*, 415 U.S. 566, 578 (1974). The "touchstone" of vagueness analysis "is whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the defendant's conduct was criminal." *United States v. Lanier*, 520 U.S. 259, 267 (1997).

> Members of this Court have recognized the doctrine's high bar for invalidation:
>
> > [N]o void for vagueness challenge is successful merely because a statute requires a person to conform his conduct to an imprecise but comprehensible normative standard, whose satisfaction may vary depending upon whom you ask. Instead, unconstitutional vagueness arises only if the statute specifies no standard of conduct at all.

United States v. Gonzalez, No. 20-cr-40 (BAH), 2020 WL 6342948, at *7 (D.D.C. Oct. 29, 2020) (internal citation and quotation omitted); *see also United States v. Harmon*, No. 19-cr-395 (BAH), 2021 WL 1518344, at *4 (D.D.C. Apr. 16, 2021) (finding that the defendant did not meet the "stringent standard" to prevail on a Rule 12 vagueness motion).

2. The word "corruptly" is not unconstitutionally vague as applied here.

Section 1512(c)(2) applies only where an individual "corruptly" performs one of the enumerated acts. The defendant first argues that the term "corruptly" is unconstitutionally vague. Doc. No. 20 at pages 11-12. That argument is without merit.

The defendant relies on *United States v. Poindexter*, 951 F.2d 369 (D.C. Cir. 1991), which addressed a separate statute, 18 U.S.C. § 1505, that prohibited "corruptly" obstructing a congressional inquiry. The D.C. Circuit held that the term "corruptly" was "vague … in the absence of some narrowing gloss." *Id*. at 378. The statute "does not at all clearly encompass lying to the Congress," *id*., and "the term 'corruptly' [was] too vague to provide constitutionally adequate notice" as to which lies it prohibited, *id*. at 379.

Poindexter is inapposite for three reasons.[2] First, the D.C. Circuit narrowly confined *Poindexter*'s analysis to Section 1505's use of "corruptly," and expressly declined to hold "that term unconstitutionally vague as applied to all conduct." 951 F.2d at 385. Five years later, in *United States v. Morrison*, 98 F.3d 619 (D.C. Cir. 1996), the D.C. Circuit rejected a *Poindexter*-based vagueness challenge to 18 U.S.C. § 1512(b) and affirmed the conviction of a defendant for "corruptly" influencing the testimony of a potential witness at trial. *Id*. at 629-630. Other courts have similarly recognized "the narrow reasoning used in *Poindexter*" and "cabined that vagueness holding to its unusual circumstances." *United States v. Edwards*, 869 F.3d 490, 502 (7th Cir. 2017); *see also, e.g*., *United States v. Kelly*, 147 F.3d 172, 176 (2d Cir. 1998) (rejecting vagueness challenge to "corruptly" in 26 U.S.C. § 7212(a)); *United States v. Shotts*, 145 F.3d 1289, 1300

[2] *Poindexter* was also superseded in significant part by the False Statements Accountability Act of 1996, Pub. L. No. 104-292, 110 Stat. 3459. As codified at 18 U.S.C. § 1515(b), that legislation provides that the term "corruptly" in § 1505 "means acting with an improper purpose, *personally or by influencing another*, including making a false or misleading statement." (Emphasis added.)

(11th Cir. 1998) (same for 18 U.S.C. § 1512(b)); *United States v. Brenson*, 104 F.3d 1267, 1280 (11th Cir. 1997) (same for 18 U.S.C. § 1503). Defendant's rote incantation of *Poindexter* accordingly fails to establish that Section 1512(c) suffers the same constitutional indeterminacy.

Second, *Poindexter* predated the Supreme Court's decision in *Arthur Andersen v. United States*, 544 U.S. 696 (2005). There, the Court explained the terms "'[c]orrupt" and 'corruptly' are normally associated with wrongful, immoral, depraved, or evil." *Id*. at 705 (citation omitted). In doing so, the Court "did not imply that the term was too vague." *Edwards*, 869 F.3d at 502.

Third, courts have encountered little difficulty when addressing Section 1512(c)'s elements following *Arthur Andersen*. *See United States v. Friske*, 640 F.3d 1288, 1291 (11th Cir. 2011); *United States v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013) (same); *United States v. Watters*, 717 F.3d 733, 735 (9th Cir. 2013) (upholding jury instruction defining "corruptly" as acting with "consciousness of wrongdoing");*United States v. Matthews*, 505 F.3d 698, 706 (7th Cir. 2007) (upholding instruction defining "corruptly" as acting "with the purpose of wrongfully impeding the due administration of justice"); Seventh Circuit Pattern Criminal Jury Instruction for § 1512 ("A person acts 'corruptly' if he or she acts with the purpose of wrongfully impeding the due administration of justice."). Such efforts demonstrate that the statute's "corruptly" element does not invite arbitrary or wholly subjective application by either courts or juries.

The defendant provides no support for his position. Nor could he. "One to whose conduct a statute clearly applies may not successfully challenge it for vagueness." *Parker v. Levy*, 417 U.S. 733, 756 (1974). In this case, the defendant entered the Capitol through a broken window alongside a mob of rioters, who then destroyed property, broke into Congressional offices, and assaulted law enforcement officers. This was all part of their effort to stop Congress from certifying the Electoral College vote. The defendant's statements on social media in the days

leading up to January 6, 2021 make clear what his intent was that day. The defendant wanted to "stopthesteal" by "storming the House of Representatives."

Whatever the "uncertainty around the edges," *Edwards*, 869 F.3d at 502, Section 1512(c)'s "corruptly" element provided ample notice to the defendant that *this conduct* was criminal. His vagueness challenge accordingly fails.

3. The term "official proceeding" is not unconstitutionally vague.

The defendant further contends that the term "official proceeding" in Section 1512(c) is vague. Doc. No. 20 at page 11. As explained above, no indeterminacy exists. The Joint Session of Congress qualifies as an "official proceeding" under both the "lay" and "legal" definitions of the term. *See* pp. 5-8, *supra*. It also contains the necessary "adjudicatory" features to satisfy the defendant's extra-textual construction. *Id*. at 10. For that reason, Section 1512(c) provided him with more than "a fair warning … of what the law intends to do if a certain line [was] passed" on January 6, 2021. *Arthur Andersen*, 544 U.S. at 703 (citation omitted).

4. The defendant's brief survey on the government's charging decisions is flawed and irrelevant

In an effort to support the defendant's claim, he highlights five Capitol riot cases, arguing that "the[ir] facts and circumstances … vary drastically," and contends that this observation reveals vagueness. Doc. No. 11 at pages 14-15. This effort is flawed.

As a threshold matter, the government's charging decisions reflect clear consistency with Section 1512(c)(2)'s offense elements. Each defendant had the intent to "corruptly"—through wrongdoing, such as violence and force—obstruct, interfere with, and impede the certification of the Electoral College vote count. Their obstructive methods varied: for instance, some defendants assaulted officers outside the Capitol; others entered the Senate Chamber and rifled through Senators' paperwork. But such factual distinctions lack salience under the statute. Each type of

conduct "corruptly" "obstruct[ed], influence[d], or impede[d]" a proceeding before Congress, accordingly, comes within the statute's scope. 18 U.S.C. § 1512(c).

Moreover, the vagueness doctrine asks whether "*the statute* … provide[s] a person of ordinary intelligence fair notice of what is prohibited." *Williams*, 553 U.S. at 304 (emphasis added). The defendant cites no authority, and the government has found none, showing that charging decisions postdating the offense conduct have any bearing on this inquiry. The relevant question turns on whether the statute fairly informed the defendant that he would face criminal sanction for his conduct on January 6, 2021. The answer is yes, for the reasons articulated above.

The defendant further states that "the government does not specify what 'influence' these defendants had or how exactly they 'impeded.'" Doc. No. 20 at page 15. But the government does not have to describe in the charging instrument how it will prove those statutory elements at trial. *See United States v. Haldeman*, 559 F.2d 31, 124 (D.C. Cir. 1976) (en banc) ("[N]either the Constitution, the Federal Rules of Criminal Procedure, nor any other authority suggests that an indictment must put the defendants on notice as to every means by which the prosecution hopes to prove that the crime was committed."). If the government fails to carry its burden on these elements at trial, the jury will say so. But that future presentation has no bearing on the question here—whether Section 1512(c)'s text provided the defendant with adequate notice of its sweep.[3]

[3] The defendant suggests in passing (Doc. 20 at 15-17) that the First Amendment shields him from prosecution. As an initial matter, the defendant's actions—penetrating the Capitol building in an effort to stop the Certification of the Electoral College vote—is not "expressive conduct" protected by the First Amendment. *See Texas v. Johnson*, 491 U.S. 397, 403 (1989). But even if it were, Section 1512(c)(2) is "related to the suppression of free expression," *id.*, and is thus constitutional under *United States v. O'Brien*, 391 U.S. 367, 377 (1968). Under *O'Brien*, a statute is constitutional if (1) "it is within the constitutional power of the Government"; (2) "it furthers an important or substantial governmental interest"; (3) "the governmental interest is unrelated to the suppression of free expression"; and (4) "the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *Id.* A prohibition on obstructing official proceedings satisfies each of those requirements. Indeed, the Supreme Court

C. The defendant's challenges to 18 U.S.C. § 1752 also lack merit.

1. 18 U.S.C. § 1752 does not require the government to prove that the restricted area was restricted at the Secret Service's direction.

The defendant argues that because the Capitol Police—not the Secret Service—barricaded the area around the Capitol, he should not be charged with violating 18 U.S.C. § 1752(a)(1) and (2). Do. No. 20 at pages 17-18. As Judge McFadden has concluded, that argument lacks merit. *See United States v. Griffin*, No. 21-CR-00092 (TNM), 2021 WL 2778557 (D.D.C. July 2, 2021).

In relevant part, 18 U.S.C. § 1752 ("Restricted building or grounds") criminalizes:

> (a) Whoever—
>
> (1) knowingly enters or remains in any restricted building or grounds without lawful authority to do so;
>
> (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;
>
> (c) In this section—
>
> (1) the term "restricted buildings or grounds" means any posted, cordoned off, or otherwise restricted area—
>
> (A) of the White House or its grounds, or the Vice President's official residence or its grounds;
>
> (B) of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting; or
>
> (C) of a building or grounds so restricted in conjunction with an event designated as a special event of national significance.

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has upheld a limitation on political demonstrations where the asserted government interest is far less significant. *See Clark v. Cmty. For Creative Non-Violence*, 468 U.S. 288, 299 (1984) (upholding a ban on overnight camping on the National Mall based on interest in "conserving park property").

> (2) the term "other person protected by the Secret Service" means any person whom the United States Secret Service is authorized to protect under section 3056 of this title or by Presidential memorandum, when such person has not declined such protection.

18 U.S.C. § 1752. In short, Section 1752 prohibits the unlawful entry into a restricted or otherwise cordoned off area 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. 2021). Section 1752 therefore "focuses on perpetrators who knowingly enter a restricted area around a protectee, not on how it is restricted or who does the restricting." *Griffin*, 2021 WL 2778557, at *6.

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)); *see also Pub. Investors Arbitration Bar Ass'n v. S.E.C.*, 930 F. Supp. 2d 55 (D.D.C. 2013) ("a reviewing court must accord first priority in statutory interpretation to the plain meaning of the provision in question"). Here, the plain text of the statute is "unambiguous," so the "judicial inquiry is complete." *Babb v. Wilkie*, 140 S. Ct. 1168, 1177 (2020). Section 1752's text is clear. It proscribes certain conduct in and around "any restricted building or grounds." *See* 18 U.S.C. § 1752(a). The statute 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 the defendant does not appear to dispute—that "person[s] protected by the Secret Service" include the Vice President and the Vice President-elect. § 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).

That straightforward analysis has a straightforward application to the facts alleged in the defendant's case. The Indictment alleges that, on January 6, 2021, a protected person was present or would be temporarily visiting the Capitol building or on the Capitol grounds, and that some portion of the Capitol building and grounds was posted, cordoned off, or otherwise restricted—making it a "restricted building or grounds" under § 1752(c)(1). The Indictment further alleges that the defendant knowingly and without lawful authority entered and remained in that restricted buildings and grounds. It also alleges that the defendant, knowingly and with the intent to impede or disrupt government business, engaged in disorderly conduct that resulted in a disruption to government business. In short, the allegations closely track the statutory language.

Looking outside Section 1752's language, the defendant urges the Court to import an extra-textual requirement that the Secret Service be required to designate the restricted area. Doc. No. 20 at page 19. That is so, the defendant claims, because (1) Section 1752(c)(B) defines "restricted building or grounds" as a "building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting"; and (2) it is the Secret Service who protects the President and others, so it is the Secret Service who must make the designation of a restricted area. Id. Those arguments fail on the merits. Section 1752 is directed not at the Secret Service, but at ensuring the protection of the President and the office of the Presidency. *See* S. Rep. 91-1252 (1970); *see also* Elizabeth Craig, *Protecting the President from Protest: Using the Secret Service's Zone of Protection to Prosecute Protesters*, 9 J. Gender Race & Just. 665, 668-69 (2006).

"Indeed, the only reference in the statute to the Secret Service is to its protectees. Section 1752 says nothing about who must do the restricting." *Griffin*, 2021 WL 2778557, at *7.

Second, Section 1752's statutory history in fact undercuts the defendant's argument. *See id.* at *4-*5 (explaining how Congress has consistently "*broadened* the scope of the statute and the potential for liability"). An earlier version of the statute explicitly incorporated regulations promulgated by the Department of the Treasury (which at the time housed the Secret Service) 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); *see* Pub. L. 91-644, Title V, Sec. 18, 84 Stat. 1891-92 (Jan. 2, 1971). Congress subsequently struck subsection (d) and did not replace it with language limiting the law enforcement agencies allowed to designate a restricted area. Pub. L. 109-177, Title VI, Sec. 602, 120 Stat. 192 (Mar. 9, 2006). Congress was clearly aware that the prohibitions in 18 U.S.C. § 1752 could turn on decisions made by the Secret Service but chose not to include that in the revised statute. But Congress's decision in 2006 to eliminate reference to regulations indicates that the statute no longer depends (if it ever did) on whether the Secret Service has defined an area as "restricted."[4]

The defendant's reading of the statute, which would require the Secret Service to "cordon off" a private residence "no matter how secure the location or how imposing the preexisting walls" leads to "pressing absurdities." *Griffin*, 2021 WL 2778557 at *6. Section 1752 sets clear limitations on where restricted areas may be established. As relevant here, the statute only criminalizes entry into a restricted area "of a building or grounds where the President or other

[4] The fact that the legislative history refers to the Secret Service does not help his argument because Section 1752 is not a "regulatory statute." *Griffin*, 2021 WL 2778557, at *4. In any event, because Section's statutory text is clear, "there is no reason to resort to legislative history." *Id.* (quoting *United States v. Gonzales*, 520 U.S. 1, 6 (1997)).

person protected by the Secret Service is or will be temporarily visiting…" The statute does not criminalize an individual who enters an area in a building or grounds separate from where a Secret Service protectee is present, regardless of restrictions placed by law enforcement or anyone asserting themselves as law enforcement.

Section 1752 prohibits the unlawful entry into a restricted or otherwise cordoned off "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(c)(1)(B). At the time the defendant entered the U.S. Capitol on January 6, 2021, three Secret Service protectees—Vice President Mike Pence and two immediate family members—were present. The defendant's conduct accordingly falls within the Section 1752's plain sweep because he unlawfully entered a restricted building while the Vice President and his family were "temporarily visiting."

2. The Vice President and Vice President-Elect were temporarily visiting the U.S. Capitol on January 6, 2021.

The defendant disputes that the Vice President and Vice President-Elect were "temporarily visiting" the U.S. Capitol, but his argument defies the statute's plain terms, purpose, and structure. Doc. No. 20 at page 21.

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."[5]

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

Either definition describes the Vice President'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. Similarly, the Vice President's family members came to the U.S. Capitol for a particular purpose: to observe these proceedings. Finally, 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).

The defendant stresses Section 1752's use of the term "temporarily": "The plain meaning of 'temporary' is 'lasting for a time only.'" Doc. No. 20 at page 21. But that definition only confirms the government's application of the statute in this case. Vice President Pence and his family had traveled to the U.S. Capitol to oversee and attend the Joint Session of Congress—a proceeding of limited duration. At the close of the proceeding, they left—confirming the "temporary" nature of their visit.

The defendant offers two further observations—both irrelevant. First, he notes that Vice President Pence and Vice President-Elect Harris "lived and worked" in the District of Columbia. *Id.* Section 1752(c)(1)(B) defines the restricted area by reference to "buildings or grounds," not municipal borders. That Vice President Pence and Vice President-Elect Harris lived and worked in Washington, D.C. does not detract from the fact that they "temporarily visit[ed]" the U.S. Capitol on January 6. Second, the defendant stresses that Vice President Pence and Vice President-Elect Harris had permanent U.S. Capitol offices. *Id.* Section 1752(c)(1)(B), however, defines the restricted area by reference to the location of the protectee—not his office. 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]."[6] The same is true for Vice President-Elect Harris, even though she was not present at the beginning of the joint session.

The defendant's contrary construction, taken to its logical end, would neuter the government's ability to deter and punish those individuals who seek unauthorized access to the President's or Vice President's location. First, the defendant's argument would restrict 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. Second, under the defendant's construction, Section 1752(c)(1)(B) would not apply where the 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." No support exists for the defendant's effort to insert such large and irrational exceptions into 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).

All told: the defendant's position 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

[6] This argument also ignores the fact that the Vice President's family did not live or work at the U.S. Capitol. Assuming, *arguendo,* the defendant's argument that the Vice President cannot "temporarily visit" a place where he maintains an office, the charges in the Superseding Indictment remain supported because these other Secret Service protectees did not work at the U.S. Capitol or have offices there.

omitted). In drafting 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 happen to be "temporarily visiting," 18 U.S.C. 1752(c)(1)(B).

All the relevant metrics—plain language, statutory structure, and congressional purpose—foreclose the defendant's crabbed reading of Section 1752(c)(1)(B). This Court should reject it. The defendant's cited cases—involving either an arrest or conviction under Section 1752—do not discuss the "temporarily visiting" language. Doc. No. 20 at page 22; *see United States v. Bursey*, 416 F.3d 301 (4th Cir. 2005); *United States v. Junot,* 1990 WL 66533 (9th Cir. May 18, 1990); *Blair v. City of Evansville, Ind.,* 361 F. Supp.2d 846 (S.D. Ind. 2005). They accordingly lack relevance to the present dispute.

CONCLUSION

For the foregoing reasons, and any additional reasons as may be cited at a hearing on this motion, the government respectfully requests that the defendant's motion be denied.

Respectfully submitted,

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