

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

UNITED STATES OF AMERICA,

v.

BRUNO JOSEPH CUA

Case No.: 21-CR-00107-RDM

Honorable Randolph D. Moss

**GOVERNMENT’S SUPPLEMENT TO ITS RESPONSE IN OPPOSITION
TO DEFENDANT’S MOTION TO DISMISS COUNT THREE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits its supplement to its Response in Opposition to Defendant’s Motion to Dismiss Count Three pursuant to the Court’s request for additional information at the January 30 motions hearing in this case.

DEFINITION OF ASSAULT

The government defines the term “assault” in Section 111 to mean the common-law definition of assault. The government submits that the following jury instruction accurately defines the term “assault” as that term is used in Section 111:

Simple assault means any intentional attempt or threat to inflict injury upon someone else, when coupled with an apparent present ability to do so. A finding that one used force (or attempted or threatened to use it) isn’t the same as a finding that he attempted or threatened to inflict injury. Thus, in addition to finding beyond a reasonable doubt that the defendant acted forcibly, you must also find that the defendant intended to inflict or intended to threaten injury.

10th Cir. Pattern Jury Instruction 2.09, at 90 (2021 ed.)

The government maintains that the other five verbs listed in Section 111 carry different definitions and serve as separate bases on which a violation of Section 111 may be based.

DEFINITION OF “BODILY INJURY”

The government submits that the term “bodily injury,” as relates to the term “assault,” has the definition given to it by the United States Sentencing Commission. Specifically, the term is defined in Application Note 1 to Guideline Section 1B1.1: “any significant injury; *e.g.*, an injury that is painful and obvious, or is of a type for which medical attention ordinarily would be sought.”

CONCLUSION

For the reasons set forth in its Response brief, as well as during oral argument, the government respectfully requests that the Court deny defendant’s Motion to Dismiss Count Three of the Second Superseding Indictment.

Dated: February 1, 2023

Respectfully submitted,

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