UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	**CASE NO. 21-cr-00077**
v.	:	
	:	
MELODY STEELE SMITH	:	
	:	
Defendant.	:	

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

NOW INTO COURT, comes the United States of America, through the undersigned Assistant United States Attorney, who opposes the defendant's Motion to Dismiss Counts Two and Three of the Indictment. For the reasons stated herein, this Court should deny defendant's motion.

FACTUAL BACKGROUND

Smith's role in the January 6, 2021, attack on the U.S. Capitol is described in the statement of facts supporting the criminal complaint (ECF No. 1). In summary, on January 3, 2021, Smith traveled from her residence in Virginia to Washington D.C. with three friends. After missing the "Save America" rally, she walked to the U.S. Capitol, where she saw metal barricades and members of law enforcement keeping the large crowd of individuals off U.S. Capitol grounds. After climbing a wall to take pictures, Smith entered the Capitol through the Senate Wing doors. While inside the Capitol, Smith was hit in the ankle with a rubber bullet fired by law enforcement officers attempting to empty the building. Nevertheless, Smith remained inside the Capitol and entered the office suite belonging to U.S. Speaker of the House Nancy Pelosi, where she remained for five minutes and took pictures of herself. Officers ushered Smith out of the Capitol after she had been inside approximately 45 minutes.

As a result of the actions of Smith and hundreds of others, on January 6, 2021, Congress was forced to halt its proceedings and evacuate the House and Senate Chambers. After the building was secured later that day, Congress reconvened and completed counting, certifying, and declaring the Electoral College vote result.

PROCEDURAL HISTORY

On January 15, 2021, Smith was charged by complaint for her actions on January 6, 2021, when large crowds breached the U.S. Capitol Building as Congress convened a Joint Session to certify the Electoral College vote in the 2020 Presidential Election. (ECF No. 1-1). On February 3, 2021, the grand jury charged her with several federal offenses based on the same conduct. (ECF No. 8). Smith stands charged with obstruction of an official proceeding, in violation of 18 U.S.C. §§ 1512(c)(2) and 2 (Count One); entering and remaining in a restricted building or ground, in violation of 18 U.S.C. § 1752(a)(1) (Count Two); disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2) (Count Three); disorderly conduct in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Four); entering and remaining in certain rooms in the Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(C) (Count Five); and disorderly conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D). Smith has moved to dismiss Counts Two and Three of the Indictment. (ECF No. 33).

LAW AND ARGUMENT

I. The Court Should Deny Smith's Motion to Dismiss Counts Two and Three, Alleging Violations of 18 U.S.C. § 1752

Counts Two and Three allege violations of Section 1752 of Title 18, which prohibit the unlawful entry into and disruptive or disorderly conduct in a "restricted buildings or grounds." A "restricted building or grounds" is a "posted, cordoned off, or otherwise restricted area…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, the Vice President was present. The defendant's conduct accordingly falls within the Section 1752's plain sweep because she unlawfully entered a restricted building while the Vice President was "temporarily visiting," as alleged in the indictment.

A. The Vice President can "temporarily visit" the U.S. Capitol

Contrary to Section 1752's plain terms, purpose, and structure, defendant argues that Vice President Pence cannot "temporarily visit" the U.S. Capitol because he has an office there. She claims that hers is the commonsense reading of the statute, but she is wrong, as Judge Bates recently held. *McHugh,* 21-cr-453, ECF No. 51, at 42–47 (reaching "a commonsense conclusion: the Vice President was 'temporarily visiting' the Capitol").

As four judges from this district have now concluded, the Vice President was temporarily visiting the Capitol that day. *See United States v. Puma*, 21-cr-454, 2022 WL 823079, at *16-*19 (D.D.C. Mar. 19, 2022) (Friedman, J.); *United States v. Andries*, 21-cr-93, 2022 WL 768684, at *16-*17 (D.D.C. Mar. 14, 2022) (Contreras, J.); *United States v. McHugh*, --- F.Supp.3d ---, 21-cr-453, 2022 WL 296304, at *20-*22 (D.D.C. Feb. 1, 2022) (Bates, J.); Minute Entry, *United States v. Griffin,* 21-cr-92 (D.D.C. Mar. 22, 2022) (McFadden, J.) (denying motion for judgment of acquittal arguing that Vice President was not temporarily visiting the Capitol on January 6, 2021).

To determine the meaning of a statute, the Court "look[s] first to its language, giving the words used their ordinary meaning." *Levin*, 568 U.S. at 513 (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."[1]

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).

The defendant emphasizes Section 1752's use of the term "temporarily" and cites cases where either the President or Vice President were "traveling *outside* of the District of Columbia 'visiting' that area for a 'temporary' purpose." Section 1752, however, does not impose a requirement that the location being temporarily visited be outside of the District of Columbia. Second, the visit to the U.S. Capitol *was* temporary: 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. *See McHugh,* 21-cr-453, ECF No. 51, at 43 (citing various dictionary definitions of "temporary" as "for a limited time" and finding that the Vice President can "temporarily visit" the U.S. Capitol).

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

The term "temporary" means "[l]asting for a time only; existing or continuing for a limited time; transitory." *Temporary*, Black's Law Dictionary (11th ed. 2019). 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." *See* https://www.merriam-webster.com/dictionary/visit. Putting these definitions together, "someone is 'temporarily visiting' a location if they have gone there for a particular purpose, be it 'business, pleasure, or sight-seeing,' and for a limited time, which could be 'brief' or 'extended' while nonetheless remaining 'temporary.'" *McHugh*, 2022 WL 296304, at *20. People commonly go to their offices for one particular purpose (business), and for a limited time, often returning home at the end of the day. They may return the following day, but there is no reason why one cannot repeatedly "temporarily visit" the same location. One can "temporarily visit" a place where one has an office.

Simply because Vice President Pence presided over the Senate Chamber on January 6 to count the electoral votes does not mean he could not "temporarily visit" the Capitol to accomplish that task. The President or Vice President frequently "temporarily visit" various locations for work-related purposes, as they fulfill various official duties. "[O]ne can "visit" a location for the business purpose of working and meeting there." *Andries,* 2022 WL 786684, at *16. As a definitional matter, part of what it means to "temporarily visit" a location is to go there "for a particular purpose"; in this case, the Certification of the Electoral College vote. *McHugh*, 2022 WL 296304, at *20. The definitions of "visit" do not include a limitation "based on a trip's purpose," and including such a limitation "flies in the face of the ordinary usage" of the ordinary words. *Id.* at *21. Under defendant's logic, someone who travels for a business trip, including an appellate judge traveling out of town to hear an oral argument, would not be "temporarily visiting," even though describing such conduct as a temporary visit "would be perfectly natural." *Id.*; *accord*

Andries, 2022 WL 768684, at *16. That fact that Vice President Pence traveled to the Capitol for a particular purpose on January 6 in fact *strengthens* the argument that he "temporarily visited" there.

Under the plain language of Section 1752, then, the Vice President "was temporarily visiting 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." *Puma*, 2022 WL 823079, at*17; *accord McHugh*, 2022 WL 296304, at *21 ("[T]he Vice President went to the Capitol for a particular purpose—in this case, an official business purpose—and stayed there for only a brief time; his sojourn at the Capitol was 'for a period relatively short' and set to 'terminate upon the occurrence of an event having a reasonable possibility of occurring within a short period of time,' namely the completion of the certification vote."); *Andries,* 2022 WL 786684, at *16 ("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."). Defendant's argument is contrary to this "commonsense conclusion." *McHugh*, 2022 WL 296304, at *21. His conduct accordingly falls within Section 1752's plain sweep because he unlawfully entered a restricted area while the Vice President was "temporarily visiting" that area.2

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2 In the alternative, Judge Friedman proposed another "sensible interpretation" of Section 1752 that avoids having to define the term "temporarily visiting." *See Puma*, 2022 WL 823079, at*18. Under that reading, Section 1752(c)(1)(B) applies to either (1) anywhere "where the President or other person protected by Secret Service is" or (2) anywhere "where the President or other person protected by the Secret Service . . . will be temporarily visiting." 18 U.S.C. § 1752(c)(1)(B) (emphasis added). Even if the Court found that Vice President could not "temporarily visit" the Capitol on January 6, he "was" present there. As described below, that interpretation is also consistent with the statute's context and legislative history.

Moreover, even if it were "'awkward . . . to describe an ordinary commute from home to one's regular workplace as 'temporarily visiting' the office,' this case does not present such a situation." *Andries*, 2022 WL 768684, at *17 (quoting *McHugh*, 2022 WL 296304, at *22). The Capitol "is not the Vice President's regular workplace, nor was Vice President Pence's trip to the Capitol on January 6, 2021 analogous to a regular commute to the office." *McHugh*, 2022 WL 296304, at *22. At trial, the government could offer evidence that Vice President Pence had four offices within the District of Columbia: an executive office in the West Wing of the White House, a legislative office in the Dirksen Senate Office Building and ceremonial offices for functions related to his role in each branch. *See* Congressional Directory of the 116th Congress (2019 – 2020), *Officers and Officials of the Senate* at 397 (February 12, 2016) (available at https://www.govinfo.gov/app/collection/cdir/cdir_114/2016-02-12/F1); "The Vice President's Residence & Office" (available at https://www.whitehouse.gov/about-the-white-house/the-grounds/the-vice-presidents-residence-office/). Senate 212, the office set aside in the Capitol Building for the Vice President, is known as a "ceremonial office," and testimony would show that Vice President Pence visited this office at the Capitol only a handful of times during his four-year tenure. Calling this a "permanent office," as the defendant suggests, is thus "more than a little misleading." *McHugh,* 2022 WL 296304, at *22; *see also United States v. Andries*, 2022 WL 768684, at *17 ("Like a President who maintains an office at his home-state residence, and like the CEO who maintains a reserve office at her firm's satellite location, Vice President Pence held an office at the Capitol, but did not use that office as his primary, regular workspace."). Additionally, trial evidence would also show that the Secret Service considered the Vice President's trip to the Capitol on January 6 a "visit" by a Head of State. *See* Secret Service Head of State Worksheet (Redacted).

The defendant offers two further observations—both irrelevant. First, she notes that Vice President Pence "lived and worked" in the District of Columbia. But Section 1752(c)(1)(B) defines the restricted area by reference to "buildings or grounds," not municipal borders. That Vice President Pence lived and worked in Washington, D.C. does not detract from the fact that he "temporarily visit[ed]" the U.S. Capitol on January 6. "Simply being in the visitor's hometown does not mean a place cannot be 'visited.'" *McHugh,* 21-cr-453, ECF No. 51, at 44. Second, the defendant stresses that Vice President Pence had a permanent U.S. Capitol office. *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]." Moreover, the U.S. Capitol is not the Vice President's regular workplace; even if "there is some carveout in § 1752 for where a protectee normally lives or works, it does not apply to Vice President Pence's trip to the Capitol on January 6, 2021." *McHugh*, 21-cr-453, ECF No. 51, at 46.

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 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." Nor would it apply to Camp David, where there is a

presidential cabin and office. In another strange scenario, a restricted 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 does, affording a higher level of protection for the family of the elected official than to the elected official himself (or herself). 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).

The defendant'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 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 (or other protectees) happen to be "temporarily visiting," 18 U.S.C. 1752(c)(1)(B). Reading Sections 1752(c)(1)(A) and 1752(c)(1)(B) together protects the President and Vice President in their official homes and

wherever else they go. Interpreting the statute as the defendant suggests would create a gap in Section 1752's coverage by removing areas, such as the U.S. Capitol, from protection. It could expose 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." *Griffin,* 2021 WL 2778557, at *5 (D.D.C. July 2, 2021).

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 (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. Ind. 2005)). They lack relevance to the present dispute.

B. 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, she should not be charged with violating 18 U.S.C. § 1752(a)(1) and (2). Courts in this district have rightly rejected this contention. *See Griffin*, 2021 WL 2778557; *Mostofsky*, 2021 WL 6049891, at *12–*13, *Nordean,* 2021 WL 6134595, at *18; *McHugh,* 21-cr-453, ECF No. 51, at 38–40.

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.
> (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.

As previously mentioned, to determine the meaning of a statute, the Court "look[s] first to its language, giving the words used their ordinary meaning." *Levin*, 568 U.S. at 513 (quoting *Moskal*, 498 U.S. at 108); *see also Pub. Investors Arbitration Bar Ass'n v. S.E.C.*, 930 F. Supp. 2d 55 (D.D.C. 2013) (Howell, J.). Here, the plain text of the statute is "unambiguous," so the "judicial inquiry is complete." *Babb*, 140 S. Ct. at 1177. 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" includes the Vice President. § 1752(c)(2); *see* § 3056(a)(1).

That straightforward analysis has a straightforward application to the facts alleged in the defendant's case. The indictment alleges that a protected person (the Vice President) was present inside 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). In short, the allegations closely track the statutory language.

The defendant urges the Court to import an extra-textual requirement that the Secret Service be required to designate the restricted area. That is so, the defendant claims, because 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. Section 1752 is directed not at the Secret Service, however, 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; *see also Mostofsky*, 2021 WL 6049891 at *13 ("The text plainly does not require that the Secret Service be the entity to restrict or cordon off a particular area."). "If Congress intended a statute designed to safeguard the President and other Secret Service protectees to hinge on who outlined the safety perimeter around the principal, surely it would have said so." *Griffin,* 2021 WL 2778557, at *6.

Smith's reading would have the Court create a "potentially massive procedural loophole" from the statute's "silence." *McHugh,* 21-cr-453, ECF No. 51, at 40. The Court should not do so.

Statutory history also 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"). While the earlier version of Section 1752 also did not say who must restrict a building or grounds, it did incorporate regulations promulgated by the Department of the Treasury (which at the time housed the Secret Service) governing restricted areas. *Id.* Smith falsely conflates the Treasury's Department's authority to promulgate certain regulations with a requirement that the Secret Service cordon off areas; but, even so, 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). Its decision in 2006 to eliminate reference to the Treasury Department (without replacing it with the Department of Homeland Security, which currently houses the Secret Service) indicates that the statute no longer depends (if it ever did) on whether the Secret Service has defined an area as "restricted."[3] Moreover, Smith'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. Counts Two and Three are sound.

I. Statutory Context and Legislative History Support Reading Section 1752 to Include the Vice President's Visit to the Capitol on January 6, 2021

Here, the defendant's interpretation of "temporarily visit"—which urges the Court to carve out an exception for a protectee performing an official duty in a building where he or she has an office4— "is not supported by the statutory text and is out of step with the statutory context."

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4 To the extent that defendant's motion to dismiss suggests that a protectee must travel

Puma, 2022 WL 823079, at *17. Sections 1752 and 3056, which is cited in Section 1752(c)(2), are principally designed to protect certain high-level Executive Branch officials and their families. Section 1752 aims to deter attacks on these protectees by criminalizing attacks on these individuals either in their official residences, *see* 18 U.S.C. § 1752(c)(1)(A), in any "restricted building or grounds" where they are or will be temporarily visiting, 18 U.S.C. § 1752(c)(1)(B), or in any "restricted building or grounds" that is restricted for a "special event of national significance,"[5] 18 U.S.C. § 1752(c)(1)(C). The defendant's narrowed interpretation of the "temporarily visiting" prong would protect a protectee for brief visits—but not work trips—outside of Washington, D.C., but not at "any location in Washington, D.C. (other than an official residence) where the protectee maintains an office." *Puma*, 2022 WL 823079, at*17. Such an interpretation would "leave an arbitrary gap in the application of the law." *Id.*[6] "The much more sensible reading is that subsection (c)(1)(B) applies to those areas not covered by subsections (c)(1)(A) and (c)(1)(C) where a Secret Service protectee may nonetheless face security risks." *Id.* at *18.

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outside of Washington, D.C. to "temporarily visit a location," defense counsel's concession that members of the Vice President's family, who live in Washington, D.C., can "temporarily visit" the Capitol, now indicates agreement that a protectee can temporarily visit locations within Washington, D.C.

5 Although the Presidential Inauguration was designated as a "special event of national significance," the Certification proceeding on January 6, 2021, was not. *See* Congressional Research Service, *National Special Security Events: Fact Sheet* (Jan. 11, 2021), available at https://sgp.fas.org/crs/homesec/R43522.pdf.

6 At oral argument, the Court noted that the Secret Service could continue to protect a Vice President wherever he or she goes, regardless of whether Section 1752 applies. But deterring particular behavior through the criminal law is one mechanism by which the Vice President is protected. By analogy, were the Court to declare inapplicable 18 U.S.C. § 871, which criminalizes threatening the life of the Vice President (and others), the Secret Service could still protect the Vice President, but the additional deterrence provided by that criminal statute would be gone, reducing one safeguard that discourages dangerous behavior.

While the Court need not resort to legislative history to find that Vice President Pence was temporarily visiting the Capitol on January 6, the government's straightforward reading of Section 1752's context and purpose finds support in its legislative history. That history explains that Section 1752 "was designed to remedy the fact that 'there is, at the present time, no Federal statute which specifically authorizes [the Secret Service] to restrict entry to areas where the President maintains temporary residences *or offices*.'" *Andries*, 2022 WL 768684, at *17 (citing S. Rep. No. 91-1252 at 7S. Rep. No. 91-1252 at 7 (1970) (emphasis added). Indeed, Congress recognized that the Secret Service's "protective mission" encompasses "securing the buildings and grounds where those protected *work or visit*." 112 Cong. Rec. H1,373 (daily ed. Feb. 28, 2011) (emphasis added); *see Puma*, 2022 WL 823079, at*17 (noting that the relevant legislative history "suggests that Congress intended Section 1752 to apply broadly and comprehensively, reinforcing the security of Secret Service protectees at a number of locations").

CONCLUSION

For the foregoing reasons, the Court should deny the defendant's motion to dismiss Counts Two and Three of the Indictment.

Respectfully submitted,

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