

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JAMES ALLEN MELS,

Defendant.

Crim. Action No. 21CR184 (BAH)

**MR. MELS'S MOTION FOR
A BILL OF PARTICULARS REGARDING COUNTS TWO AND THREE**

James Allen Mels, through undersigned counsel, and pursuant to Rules 7(f) and (b) of the Federal Rules of Criminal Procedure (the "Rules"), respectfully requests that the Court order the government to provide him with a bill of particulars related to two counts of the four-count Information. Specifically, Mr. Mels seeks a bill of particulars as to: Count Two of the Information, charging him with disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. §1752(a)(2) and Count Three, charging him with violent entry and disorderly conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D).

I. Relevant Background

Mr. Mels is accused of entering the Capitol building on January 6, 2021. Discovery provided to date—primarily CCTV video footage from inside the Capitol and photos from Mr. Mels's phone—shows that Mr. Mels walked into the building through open doors, along with other individuals who also walked in through the

doors. He did not climb through a window or over any barriers to get inside. Once inside the building, he calmly proceeded to move out, but while also taking photos. He did not destroy property, he did not confront law enforcement, he did not assault anyone, and he did not jostle anyone or yell abusive language inside the Capitol. Later, when Mr. Mels was interviewed by law enforcement, he explained that he traveled to the District of Columbia from his home in Michigan with a fellow group of patriots. He told the agents that he entered the Capitol with the intent to present a copy of the Constitution to a police officer and to have his voice heard. During the interview, he allowed the agents to take pictures of his cell phone.

Undersigned counsel have requested a bill of particulars as to two of the four-count Information. In particular, undersigned counsel has requested that the government state, with particularity, what conduct of Mr. Mels's constitutes "disorderly and disruptive conduct," and what government business and official functions he was allegedly intending to impede. The government has declined counsel's request, instead, pointing counsel to the discovery. Yet, the discovery to date does not make clear what precisely it is that the government alleges Mr. Mels did that constitutes disorderly and disruptive conduct and what the government alleges his intent was. The pertinent Information counts read as follows¹:

Count Two: On or about January 6, 2021, in the District of Columbia, James Allen Mels did knowingly, and with intent to impede and disrupt the orderly conduct of *Government business and official functions*, engage in *disorderly and disruptive*

¹ Mr. Mels does not require a bill of particulars as to Counts One and Four, charging him with entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. §1752(a)(1), and 40 U.S.C. § 5104 (e)(2)(G), charging him with Parading, Demonstrating in a Capitol Building, respectively.

conduct in and within such proximity to, the United States Capitol, a restricted building, when and so that such conduct did in fact impede and disrupt the orderly conduct of Government business and official functions, in violation of 18 U.S.C. § 1752(a)(2).

Count Three: On or about January 6, 2021, in the District of Columbia, James Allen Mels willfully and knowingly engaged in *disorderly and disruptive conduct* in any of the Capitol Buildings with the intent to impede, disrupt, and disturb the *orderly conduct of a session of Congress* and either House of Congress, in violation of 18 U.S.C. 1752(a)(2).

Without further elaboration from the government, Mr. Mels does not know, with sufficient clarity, the exact crimes he must prepare to defend against. Accordingly, undersigned counsel moves this Court to Order the government provide a bill of particulars as to these counts.

II. Argument

A. A charging document must apprise defendants of the nature of the charges against them.

The Court of Appeals for the District of Columbia Circuit has long held that an indictment—in this case an Information—insufficiently notifies the defendant of the nature of their charges when it fails to meaningfully describe the defendant’s acts that constitute the charged offenses. In *United States v. Hillie*, a district court relied on this authority to hold that a child pornography indictment that “did not contain any facts that describe[d] the conduct of Hillie’s that the government believe[d] to constitute criminal behavior” failed to provide notice of the factual bases for the charges, and failed to provide adequate protection of the defendant’s double jeopardy rights. *Hillie*, 227 F. Supp. 3d 57, 71 (D.D.C. 2017). One case the district court relied

on to reach this conclusion was *Hunter v. District of Columbia*, 47 App. D.C. 406 (D.C. Cir. 1918).²

A description of the charges without particulars about the defendant's specific conduct is insufficient. In *Hunter*, the Court of Appeals for the District of Columbia Circuit considered an indictment charging violation of the unlawful assembly statute that alleged that the defendants had "congregate[d] and assemble[d] on Pennsylvania avenue, N.W., [and] did then and there crowd, obstruct, and incommode the free use of the sidewalk thereof on said avenue." 47 App. D.C. at 408. The court found that the indictment was fatally flawed because it was devoid of any fact "to inform defendants of the nature of the acts which [were] relied upon by the prosecution as constituting alleged obstruction of the sidewalk, or that would enable defendants to make an intelligent defense, much less to advise the court of the sufficiency of the charge in law to support a conviction." *Id.* at 410.

If an indictment's lack of particularity is not fatal, Federal Rule of Criminal Procedure 7(f) provides that the Court may nevertheless direct the filing of a bill of particulars upon the motion of a defendant. FED. R. CRIM. P. 7(f). The purpose of a bill of particulars is to apprise defendants of the nature of the charges against them so as to ensure that they: (1) understand the charges, (2) can prepare a defense, (3) can avoid prejudicial surprise at trial, and (4) can be protected against retrial for

² As the district court pointed out in *Hillie*, "at the time *Hunter* was decided, the federal appellate court we know today as the 'United States Court of Appeals for the District of Columbia Circuit' was called the 'Court of Appeals of the District of Columbia.'" *Hillie*, 227 F. Supp. 3d at 74.

the same offense. *See United States v. Butler*, 822 F.2d 1191, 1193 (D.C. Cir. 1987) (citing *United States v. Gorel*, 622 F.2d 100, 104 (5th Cir. 1979) (noting a bill of particulars can be necessary to avoid a surprise at trial).

B. A bill of particulars is necessary to inform both Mr. Mels and the Court of the government's theory.

Mr. Mels's Information contains many of the same flaws as the indictment in *Hunter*. First, it fails to notify him of what "official business" or "Government business" he allegedly had the intent to disrupt. Even if the Court concludes that the affidavit and the record provide sufficient notice that Mr. Mels is alleged to have obstructed the counting of electoral votes that took place on January 6, 2021, the government should be required to assert what portion or portions of the day-long congressional proceedings the government believes to qualify as the "official proceeding" at issue.

Second, the Information fails to allege what acts of "disorderly and disruptive" conduct Mr. Mels engaged in. *See Hunter*, 227 F. Supp. 3d at 409 (noting indictment that failed to "inform the defendants of the nature of the acts" that allegedly constituted "obstruction of the sidewalk" lacked sufficient particularity). "Disorderly and disruptive conduct" is a very broad term, encompassing innumerable specific actions. Without knowing exactly (1) what acts the government intends to prove as falling within those terms, (2) where and when they took place, and (3) what portion of the day's events were "obstructed, influenced, or impeded" by which actions, Mr. Mels does not have the required "notice of the *exact* crime which [h]e is alleged to have committed." *Id.*

CONCLUSION

For the foregoing reasons, Mr. Mels respectfully requests that the Court grant this Motion and order the Government to provide a bill of particulars that specifically details the information requested herein.

Respectfully Submitted,

A. J. KRAMER
FEDERAL PUBLIC DEFENDER

_____/s/_____
ELIZABETH A. MULLIN
Assistant Federal Public Defender
625 Indiana Avenue, N.W., Suite 550
Washington, D.C. 20004
(202) 208-7500