

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :  
 :  
 v. : CASE NO. 21-CR-73-BAH  
 :  
 :  
 NICHOLAS DECARLO and :  
 NICHOLAS OCHS, :  
 :  
 :  
 Defendants. :

**UNITED STATES’ NOTICE OF RECENT AUTHORITY RELEVANT TO DEFENDANT  
DECARLO’S MOTION TO DISMISS**

The United States respectfully files this notice to alert the Court and counsel to two recent decisions in this district relevant to defendant Nicholas DeCarlo’s motion to dismiss (ECF No. 55), which defendant Nicholas Ochs has joined. Both decisions issued after the government filed its opposition to DeCarlo’s motion to dismiss, and both denied similar motions to dismiss charges under 18 U.S.C. § 1512(c)(2) relating to the January 6, 2021 breach of the U.S. Capitol.

In *United States v. Montgomery et al.*, 21-cr-46 (RDM), ECF No. 87 (D.D.C. Dec. 28, 2021), Judge Moss found, in an extensive discussion, that the Electoral College certification is an “official proceeding” for purposes of Section 1512(c)(2), *id.* at 8-21, and that Section 1512(c)(2) is not unconstitutionally vague as applied, *id.* at 39-50. As the indictment in *Montgomery* was not a speaking indictment, Judge Moss reached these conclusions without considering specific details of the defendants’ conduct on January 6 (beyond the indictment’s allegation that they corruptly obstructed, influenced, or impeded Congress’s certification of the Electoral College vote). *See id.* at 2, 3 n.1. The *Montgomery* opinion is attached as Exhibit 1.

In *United States v. Nordean et al.*, 21-cr-175 (TJK), ECF No. 264 (D.D.C. Dec. 28, 2021), Judge Kelly denied defendants’ motion to dismiss Section 1512(c)(2) charges (in addition to other charges). He also found that the Congress’s certification of the Electoral College vote is an

“official proceeding,” *id.* at 9-12, and that Section 1512(c)(2) is not vague as applied, *id.* at 18-26.

The *Nordean* opinion is attached as Exhibit 2.

Respectfully submitted,

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