

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

<b>UNITED STATES OF AMERICA</b>	:	
	:	
v.	:	<b>CRIMINAL NO. 21-cr-213 (RJL)</b>
	:	
<b>CHAD BARRETT JONES,</b>	:	
	:	
<b>Defendant.</b>	:	
	:	

**GOVERNMENT’S OPPOSITION TO  
DEFENDANT’S MOTION TO DISMISS COUNT THREE OF THE INDICTMENT**

Defendant, Chad Barrett Jones, has filed a motion to dismiss count three of the superseding indictment (ECF 34). ECF No. 67. Defendant argues that “the certification of an Electoral College vote is [] outside of the reach of Section 1512(c).” *Id.* at 1. The D.C. Circuit recently rejected this exact argument in *United States v. Fischer*, 64 F.4th 329 (D.C. Cir. 2023), and the Defendant’s argument should meet the same fate.

**PROCEDURAL BACKGROUND**

On November 10, 2021, a grand jury returned the First Superseding Indictment, charging the Defendant with: (1) in count one, civil disorder and aiding and abetting, in violation of 18 U.S.C. § 231(a)(3); (2) in count two, destruction of government property, in violation of 18 U.S.C. § 1361; (3) in count three, obstruction of an official proceeding and aiding and abetting, in violation of 18 U.S.C. §§ 1512(c)(2), 2; (4) in count four, entering and remaining in a restricted building with a deadly or dangerous weapon, in violation of 18 U.S.C. § 1752(a)(1) and (b)(1)(A); (5) in count five, committing disorderly and disruptive conduct in a restricted building with a deadly or dangerous weapon, in violation of 18 U.S.C. § 1752(a)(2) and (b)(1)(A); (6) in count six, engaging in physical violence in a restricted building with a deadly or dangerous weapon, in violation of 18

U.S.C. § 1751(a)(4) and (b)(1)(A); (7) in count seven, committing disorderly conduct in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(D); (8) in count eight, committing an act of physical violence in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(F); and (9) in count nine, parading, demonstrating, or picketing in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(G).

On June 13, 2023, the Defendant filed a motion to dismiss count three in the Superseding Indictment. ECF No. 67.

### **FACTUAL BACKGROUND**

For the purposes of providing the Court with context as to the charges in the Superseding Indictment, the following facts are based on those alleged in the Statement of Facts filed with the underlying criminal complaint on January 15, 2021 (ECF 1), and additional information learned in the course of the investigation.

At 1:00 p.m., on January 6, 2021, a Joint Session of the United States Congress, consisting of the House of Representatives and the Senate, convened in the United States Capitol building. They assembled to debate and certify the Electoral College certification vote of the 2020 U.S. presidential election, which resulted in Joseph R. Biden amassing more electoral votes than President Donald J. Trump, and thus winning the election. The Capitol Police had erected barricades around the Capitol to protect the grounds, the building itself, and the people inside doing their jobs.

As the proceedings continued in both the House and the Senate, and with Vice President Michael R. Pence present and presiding over the Senate, a large crowd gathered outside of the Capitol. Between 1:00 and 2:00 p.m., certain individuals forced their way through, up, and over

the barricades and Capitol Police officers, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by Capitol Police officers or other authorized security officials.

With respect to the Defendant, he traveled from his home in Kentucky to Washington, D.C. to attend the protests on January 5, 2021. After attending the “Stop the Steal” rally on the morning of January 6, 2021, Defendant made his way to the Capitol building and unlawfully entered the restricted grounds. Defendant climbed the scaffolding on the Lower West Terrace and waved a blue Trump/Pence flag at the crowd.

Several Capitol Police officers who were in uniform attempted to block the rioters who were on the Lower West Plaza from continuing up the stairs that led directly to the Capitol, using both riot shields and metal barricades. When rioters began surging forward, the officers retreated up the stairs and quickly repositioned themselves at the top of the stairs standing with shields and metal barricades. Ultimately, rioters successfully breached the police line, and made their way to the Capitol building, where they stormed inside.

Defendant entered the Capitol building through the Upper West Terrace door at approximately 2:34 p.m. Once inside the building, Defendant made his way through the Crypt, Statuary Hall, and the main door hallway to the House Chamber before joining a crowd near the Speaker’s Lobby, a hallway that connects to the House of Representatives Chamber in the U.S. Capitol Building. Defendant was part of a large crowd that tried to breach a barricaded door to the Speaker’s Lobby. The doorway, with the words “Speaker’s Lobby” visible at the top, was being guarded by three Capitol Police officers. Chairs were among the items visible through the

door's glass panels as being used to barricade the door from the inside. Members of the crowd shouted and gesticulated aggressively at the officers. The three officers moved to the adjacent wall as other officers in tactical gear arrived. Seconds after the officers began moving away from the doorway, Defendant began striking the doorway's glass panels with the wooden flagpole of his rolled-up Trump flag. Defendant forcefully struck the door several times with the flagpole while members of the crowd shouted "break it down." Defendant was standing near the door when a woman was shot climbing through a glass panel that had been smashed out by another member of the crowd.

As a result of the actions of the Defendants and hundreds of others, Congress was forced to halt its proceedings and evacuate. Vice President Pence was taken by Secret Service to a secure location within the Capitol for his own protection. After the building was secured later that evening, Congress reconvened and completed counting, certifying, and declaring the Electoral College vote result.

Chad Barrett Jones was arrested on January 15, 2021.

## **ARGUMENT**

### **I. LEGAL STANDARD**

A defendant may move to dismiss an indictment or count prior to trial. *See* Fed. R. Crim. P. 12(b)(3)(B). A pretrial motion may challenge "a defect in the indictment or information" if "the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits." *Id.* Although a court's supervisory powers provide the authority to dismiss an indictment, "dismissal is granted only in unusual circumstances." *United States v. Ballestas*, 795 F.3d 138, 148 (D.C. Cir. 2015).

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. Bowdoin*, 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.*

## **II. COUNT THREE (OBSTRUCTION OF AN OFFICIAL PROCEEDING) SHOULD NOT BE DISMISSED**

Defendant claims that the term “official proceeding” narrowly includes only those proceedings that are judicial or quasi-judicial in nature, and therefore excludes “the Electoral College certification.” ECF No. 67 at 4. Acknowledging that the D.C. Circuit directly addressed and rejected this argument in its decision in *Fischer*, Defendant avers that he filed his motion “out of an abundance of caution.” ECF No. 67 at 2. As demonstrated below, Defendant’s motion should be denied.

The D.C. Circuit has expressly held that “[t]he statutory definition of ‘official proceeding’ under § 1512(c)(2) includes a ‘proceeding before the Congress.’” *Fischer*, 64 F.4th at 342-43 (quoting 18 U.S.C. § 1515(a)(1)(B)). And “[a]lthough appellees [in *Fisher*] strain[ed] to argue that the Electoral College vote certification is not a ‘proceeding before the Congress’ because it does not involve ‘investigations and evidence,’” the Circuit found “no such limit in the ordinary meaning of the word ‘proceeding.’” *Id.* (citing *Proceeding*, Oxford English Dictionary (2d ed. 1989) (“[T]he carrying on of an action or series of actions.”)). “Notably,” the Circuit held, “Congress follows statutory directives to complete the certification of the Electoral College vote, including: (1) convening a joint session at 1:00 PM on January 6 in the year following the presidential election; (2) appointing four tellers to read and list the votes; (3) announcement of the voting results by the President of the Senate; and (4) allowing written objections from members of

Congress, subject to a procedure for submitting and resolving such objections. Those directives reflect Congress’s own intent that the vote certification shall be a ‘proceeding before the Congress.’” *Id.* at 343 (citations omitted). As such, this Court should refuse to adopt the Defendant’s narrow definition of “official proceeding” as only “an evidence-gathering, formal, judicial, or quasi-judicial event” (*see* ECF No. 67 at 9), because that definition is “inapt when interpreting the meaning of a ‘proceeding before the Congress.’” *Id.* (quoting 18 U.S.C. § 1515(a)(1)(B)) (emphasis in original); *see also United States v. Puma*, 596 F. Supp. 3d 90, 97-102 (D.D.C. 2022) (“The Court concludes that Congress’ activities on January 6, 2021, clearly constitute a formal assembly akin to a hearing and thus fall within this definition of an ‘official proceeding’ before ‘the Congress.’”).

Moreover, the D.C. Circuit has also rejected the Defendant’s rule of lenity argument. ECF No. 67 at 3, n.2. The rule of lenity applies “only when a criminal statute contains a ‘grievous ambiguity or uncertainty,’ and ‘only if, after seizing everything from which aid can be derived,’ the Court ‘can make no more than a guess as to what Congress intended.’” *Fischer*, 64 F.4th at 350 (quoting *Ocasio v. United States*, 578 U.S. 282, 295 n.8 (1994)). In addressing the rule of lenity argument from another January 6 defendant, the Circuit concluded, “the language of § 1512(c)(2) is clear and unambiguous. Restraint and lenity therefore have no place in our analysis.” *Id.* And the other tools of statutory interpretation relied upon by the Defendant (*see* ECF No. 67 at 6-9) are likewise inapplicable here, where there is no ambiguity. *See id.*

## CONCLUSION

For the foregoing reasons, the government respectfully submits that the Court should not dismiss count three in the Superseding Indictment.

Respectfully submitted,

MATTHEW M. GRAVES  
UNITED STATES ATTORNEY  
D.C. Bar Number 481052

By: /s/ Sonia W. Murphy  
SONIA W. MURPHY  
Trial Attorney  
Detailee  
D.C. Bar No. 483072  
United States Attorney's Office  
District of Columbia  
(202) 305-3067  
sonia.murphy@usdoj.gov