

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

UNITED STATES OF AMERICA

v.

**PAULINE BAUER,
Defendant**

*
*
*
*
*
*

Case No. 21-cr-0386-2 (TNM)

**MOTION TO DEFER RULING ON THE MOTION TO DISMISS
FILED BY PAULINE BAUER**

Pauline Bauer, by her undersigned stand-by counsel, respectfully moves this Honorable Court to defer ruling on Ms. Bauer's Motion to Dismiss (ECF 62) filed by Ms. Bauer herself. As more fully set forth below, Ms. Bauer has authorized counsel to file a motion to dismiss the felony charge that is pending against her to provide the Court with adequate legal arguments and citations, not contained in her motion.

1. On September 24, 2021, the Court docketed a Motion to Dismiss filed by Ms. Bauer. The motion seeks to dismiss all the charges pending against Ms. Bauer on various grounds.

2. Ms. Bauer's motion consists of two hand-written pages, apparently drafted by Ms. Bauer while detained. The Motion contains few, if any, legal citations or legal analysis. Counsel does not believe that Ms. Bauer had access to the law library at the DC Jail before filing the motion.

3. The application of this obstruction statute, 18 U.S.C. § 1512(c)(2) to prosecute Ms. Bauer and other January 6 defendants raises complex and weighty legal issues that implicate the First Amendment, the Due Process clause and other constitutional guarantees. A ruling on the motion to dismiss the § 1512(c)(2) charge should not be entered by this Court without proper analysis of the issues, which requires more than a few paragraphs without legal citation.

4. Section 1512(c)(2) is being challenged as unconstitutionally vague, on its face and as applied to the January 6 defendants and on other grounds in cases pending before Judge Friedrich, Judge Kelly, Judge Mehta and Judge Moss. In each of those cases, even after substantial memoranda of law have been submitted by counsel, the courts have requested supplemental briefings.

5. Section 1512(c)(2) was enacted by Congress in 2002, in the aftermath of the Enron and other corporate fraud scandals as part of the Sarbanes-Oxley Act. In the 20 years since its enactment, the government has never used § 1512(c)(2), titled the “Corporate Fraud Accountability Act of 2002” to prosecute political demonstrators. Every § 1512(c)(2) prosecution has involved allegations of conduct that affected the availability and integrity of evidence. In *Yates v. United States*, 574 U.S. 528 (2015), the Supreme Court vacated a conviction under a related obstruction statute (18 U.S.C. § 1519) also enacted as part of the Sarbanes-Oxley Act on the ground that the government overreached in reading § 1519 to cover conduct that did not involve the availability or integrity of evidence.

6. By way of contrast, the motion to dismiss filed by undersigned counsel in the case pending before Judge Mehta, *United States v. Crawl*, No. 21-cr-0028-2 (APM) consists of 15 pages, the reply consists of 30 pages, and the supplemental brief filed at the request of Judge Mehta after oral argument consists of 30 pages. Dozens of Supreme Court and Circuit cases are cited. The government and counsel for the other defendants also filed supplemental memoranda.

7. Undersigned counsel respectfully requests that the Court grant until November 22, 2021, to file a motion and legal memoranda to dismiss the § 1512(c)(2) charges and supplement the motion filed by Ms. Bauer.

WHEREFORE, Ms. Bauer respectfully requests that this Honorable Court defer ruling on her motion to dismiss (ECF 62) until undersigned counsel files a proper motion to dismiss with supporting memorandum of law, the government has an opportunity to respond and the defense can reply.

Respectfully submitted,

/s/ Carmen D. Hernandez

Carmen D. Hernandez

Bar No. MD 03366

7166 Mink Hollow Rd

Highland, MD 20777

240-472-3391

chernan7@aol.com

CERTIFICATE OF SERVICE

I hereby certify that the instant Motion was served this 5th day of November, 2021 via ECF on all counsel of record.

/s/ Carmen D. Hernandez

Carmen D. Hernandez

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

UNITED STATES OF AMERICA

v.

**PAULINE BAUER,
Defendant**

*
*
*
*
*
*

Case No. 21-cr-0386-2 (TNM)

ORDER

Upon consideration of the Motion to Defer Ruling on the Motion to Dismiss Filed by Pauline Bauer, good cause having been shown, it is this _____ day of _____, 2021, by the United States District Court for the District of Columbia,

ORDERED:

1. That the Motion is hereby **GRANTED**.

**HONORABLE TREVOR N. MCFADDEN
UNITED STATES DISTRICT JUDGE**