

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

**UNITED STATES OF AMERICA**

**V.**

**Case No.: 21-cr-78 (EGS)**

**JOHN SULLIVAN**

**MOTION TO ADOPT AND JOIN RELEVANT PORTIONS OF MOTION  
TO DISMISS COUNT 2 OF THE INDICTMENT IN UNITED STATES v.  
CALDWELL, 21-cr-28 (APM) AND TO DISMISS COUNT 1 OF THIS  
SUPERSEDING INDICTMENT  
(Obstruction of an official proceeding does not apply  
to the Electoral College certification)**

Defendant, John Sullivan, by and through undersigned counsel, does hereby respectfully move for dismissal of Count 1 of the superseding indictment, ECF 56. Defendant does hereby additionally move to adopt and join all relevant legal arguments related to the Motion to Dismiss Count 2 of the fourth superseding indictment as forth in *United States v. Caldwell*, 21-cr-28 (APM), ECF 240 and the Motion for Reconsideration filed on December 24, 2021, 21-cr-28 (APM), ECF 566. In support thereof, defendant represents as follows:

1. Defendant has been indicted as one of many individuals for events at the United States Capitol on January 6, 2021. Specifically, and relevant

to this pleading, is Count 1 of the superseding indictment, *United States v. John Sullivan*, 21-cr-78 (EGS) ECF 56, charging as follows:

On or about January 6, 2021...John Sullivan, attempted, and did, corruptly obstruct, influence, and impede an official proceeding before Congress, specifically, Congress's certification of the Electoral College vote as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 158

Obstruction of an Official Proceeding and Aiding and Abetting, in violation of Title 18, U.S. Code §§ 1512 (c)(2) and 2.

2. Count 1 of this superseding indictment is the same as Count 2 in the fourth superseding indictment in *United States v. Caldwell*, 21-cr-28 (APM), ECF 196. On June 15, 2021 the defendant in *United States v. Caldwell*, 21-cr-28 (APM) filed a Motion to Dismiss Indictment, ECF 240. The Motion to Dismiss was denied on December 20, 2021, ECF 558. A Motion for Reconsideration was filed on December 24, 2021 and remains pending, ECF 566. The grounds for the Motion to Dismiss relevant to this proceeding is that the term official proceeding does not relate to the Electoral College certification.

3. A similar argument was raised before the Honorable Randolph D. Moss of this Court in *United States v. Patrick Montgomery*, 21-cr-46 (RDM). Oral argument was presented before Judge Moss on August 3, 2021. On

December 28, 2021 Judge Moss entered an Order denying the Motion to Dismiss the count charging 18 U.S.C. § 1512 (c)(2).

4. Defendant submits that the interests of judicial economy will best be served by permitting the joinder and adoption of arguments presented in the Motion to Dismiss Count 2 of the Indictment in *United States v. Joseph Caldwell*, and by joining and adopting the pending Motion for Reconsideration in 21-cr-28 (APM), ECF 566.

5. Should the Court have any additional questions, Defendant is prepared to submit further briefing on the issue raised in the Motion to Dismiss.

WHEREFORE, the foregoing considered, defendant seeks leave to adopt and join the Motion to Dismiss Count 2 of the fourth superseding indictment as filed in *United States v. Caldwell*, 21-cr-28 (APM).

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served, via the Court's electronic filing system, on this the \_\_\_\_ 31st \_\_\_\_ day of December, 2021 upon Candice Wong, Esquire, Assistant U.S. Attorney.

\_\_\_\_\_/s/\_\_\_\_\_  
Steven R. Kiersh