

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES)	
)	
v.)	Case No. 1:21-cr-134
)	
SAHADY)	
_____)	

DEFENDANT’S UNOPPOSED MOTION FOR LEAVE TO FILE
AN OMNIBUS MOTION OF POINTS AND AUTHORITIES
RELATING TO OUTSTANDING MOTIONS

Defendant Mark Sahady (“Defendant” or “Sahady”), through counsel, seeks leave to submit a supplemental brief to the Defendant’s Motion to Dismiss Counts I and V of the Third Superseding Indictment, previously filed on April 28, 2023, Dkt. 7, together with any additional points and authorities relating to pending motions outstanding as of the date of the entry of appearance of Defendant’s new counsel (collectively, the “Omnibus Motion”). Counsel for the Defendant has conferred with the Government and the Government does not oppose this motion.

As grounds for the Omnibus Motion, Defendant submits that the recently decided case of *United States v. Fischer*, 64 F.4th 329 (D.C. Cir. 2023) gives rise to significant issues of legal interpretation that were inadequately addressed in prior briefing. A full briefing on *Fischer* would aid the Court in resolving the outstanding Motion to Dismiss Counts I and V. In addition, new counsel has just entered its appearance and submits they should have an opportunity to confer with Defendant and address any pending motions to protect Defendant’s rights, consistently with the contemplated trial schedule.

PRELIMINARY STATEMENT

On January 18, 2021, the Government filed a criminal complaint against Defendant, charging him with misdemeanor violations of 18 U.S.C. § 1752(a)(1) (entering and remaining in

a restricted building or grounds) and (2) (disorderly and disruptive conduct in a restricted building or Grounds), and 40 U.S.C. § 5104(e)(2)(D) (disorderly conduct in a capitol building). Dkt. 1. On March 22, 2022, the Government filed a superseding information against Defendant, incorporating the charges in the criminal complaint. Dkt. 37. A year later, on March 22, 2023, after Defendant had refused to accept a plea offer and filed both a Motion to Change Venue, Dkt. 55, and a Motion to Compel Discovery in Support of Selective Prosecution Claim, Dkt. 56, the Government filed a Second Superseding Information, adding an additional misdemeanor charge under 40 U.S.C. § 5104(e)(2)(G) (disorderly conduct in a capitol building). Dkt. 57.

On April 5, 2023, the Government filed its Third Superseding Indictment against Mr. Sahady, including as a new first count a felony charge under 18 U.S.C. 1512(c)(2) (corruptly obstructing an official proceeding). Dkt. 65. Defendant then filed a motion to dismiss Count IV of the Second Superseding Information on First Amendment overbreadth and vagueness grounds and on the basis of vindictive prosecution. Dkt. 67. Meanwhile, on April 7, 2023, the United States Court of Appeals for the District of Columbia Circuit issued its decision in the *Fischer* case referenced above, reversing the dismissal of similar 1512(c)(2) charges in other January 6 cases. On April 28, 2023, Defendant, through prior counsel, filed a Motion to Dismiss Counts I and V of the Third Superseding Indictment (the new 1512(c)(2) felony charge and the previous fourth count of the Second Superseding Information). Dkt. 72.

Separately, on January 19, 2022, the Government filed an unopposed motion for a protective order, Dkt. 34, seeking to supplement the protective order previously entered by the Court on April 1, 2021. Dkt. 16. The Court has not acted on the motion for a supplemental protective order as of the date hereof.

After the filing of the above motions, due to a breakdown in communication between Defendant and prior counsel, Defendant's counsel filed a Motion to Withdraw as Attorney for the Defendant and a Motion to Continue Trial. Dkt. 78. Shortly thereafter, on August 14, 2023, a hearing on these motions was held, and the Court granted the Motions to Withdraw and to Continue Trial. August 14, 2023 Minute Entry.

At the August 14 hearing, Sahady stated that he would soon be retaining new counsel and that he intended to seek leave to file a supplemental brief to his Motion to Dismiss Counts I and V of the Third Superseding Indictment (the "Supplemental Brief"). The Court indicated that the filing of the Supplemental Brief would best be deferred until new counsel had been identified and had entered their appearances.¹ As of August 14, 2023, the date at which the Court granted prior counsel the right to withdraw, five motions remained outstanding: (1) Defendant's Motion to Change Venue, (2) Defendant's Motion to Compel Discovery, (3) Defendant's Motion to Dismiss Count IV of the Second Superseding Indictment, (4) Defendant's Motion to Dismiss Counts I and V of the Government's Third Superseding Indictment, and (5) the Government's previously unopposed Motion for a Protective Order.

Defendant's current counsel entered their appearances on August 22, 2023. Dkts. 82 and 83. On August 23, 2023, the Court held a status conference at which a new trial date of February 26, 2024 was entered into the Court's calendar, subject to the parties' right to seek a modification of the date at the next status conference set for September 14, 2023. Defendant's counsel had only just begun to review the docket as of the date of the status conference and were unaware of the substance of the communications at the August 14, 2023 hearing, including with respect to the Supplemental Brief.

¹ Defense counsel has not had an opportunity to review the transcript from the August 14, 2023 hearing, but understands the foregoing from conversations with the Government.

After further review of the Docket and communications with the Government, counsel determined that Defendant's rights would best be protected by seeking leave of Court to file the Supplemental Brief, together with any supplemental authority and arguments on the outstanding motions that previous counsel may have overlooked or failed to address for strategic or other reasons in the form of the proposed Omnibus Motion.

On August 25, 2023, Counsel for the Defendant conferred with the Government with respect to the Omnibus Motion. The Government does not oppose the Motion and the parties have agreed upon a briefing scheduled to be submitted to the Court for approval:

- Defendant's Omnibus Motion and any supporting papers would be due within two weeks of the Court's granting of the present motion, should the Court grant the motion.
- The Government's opposition to the Omnibus Motion would be due within two weeks of the filing of said motion.
- Defendant's reply would be due two weeks thereafter.

LEGAL ANALYSIS

A Federal District Court has discretion to grant parties leave to cite additional authority when recent case law sheds light on an issue of relevance to the disposition of a motion. *Duerr v. Bradley Univ.*, 590 F. Supp. 3d 1160, 1165 (C.D. Ill. 2022). A district court also has the discretion to grant leave to file additional briefs. *Bayala v. United States Dep't of Homeland Sec.*, 246 F. Supp. 3d 16, 21 (D.D.C. 2017). The Court can also authorize additional briefing based on its intrinsic authority to manage its docket. *See, e.g., Dietz v. Bouldin*, 579 U.S. 40, 47 (2016) (district courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases).

Here, the Court should exercise its discretion and permit Defendant to file the Supplemental Brief because the Court would benefit from a full analysis of *United States v. Fischer* as applied to the present case. *Fischer* is the only Federal Circuit Court opinion addressing the meaning and scope of the word “corruptly” in 18 U.S.C. 1512(c)(2) in the January 6 context. Correct analysis and application of *Fischer* in the context of the Government’s allegations against Defendant is thus a critical issue on which the Court would benefit from full briefing from new counsel. In addition, to ensure that Defendant’s rights are protected, Defendant’s new counsel should be given an opportunity to raise or stress any points their predecessor counsel may have omitted or inadequately argued. New counsel does not represent that this was the case, only that, to ensure new counsel benefit from the full confidence of their client and have satisfied themselves that all relevant arguments have been raised, it would be in the interests of justice to provide new counsel a limited period within which to address the prior briefing. The Government does not oppose the motion and thus would not be prejudiced.

Moreover, the parties have agreed, subject to the approval of the Court, to allow only a total of six weeks for any supplemental briefing. Given the new trial date of February 26, 2023, affording Defendant a limited amount of time for additional briefing will not delay trial or interfere with trial preparation, while adequately protecting Defendant’s rights.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests leave to file the Omnibus Motion on the schedule identified herein, said motion to be filed within two weeks of the entry of an order authorizing the motion, any papers in opposition to be filed within two weeks thereof, and any papers in reply to be filed no later than two weeks thereafter.

Dated: August 28, 2023

Respectfully submitted,

/s/ Eden P. Quainton

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on opposing counsel via ECF on August 28, 2023.

/s/ Jonathan Gross