UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DEFENDANT'S BRIEF IN REPLY TO GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION FOR A BILL OF PARTICULARS

Defendant Mark Sahady, through counsel, hereby submits this brief in Reply to the Government's Opposition to Defendant's Motion for a Bill of Particulars.

In its brief in Opposition, the Government takes issue that Sahady "demand[s] disclosure of the act or acts he committed on January 6 that the government will present to establish his guilt for Count One." Dkt. 98. According to the Government, the constitutional requirement of due process is satisfied simply by informing the defendant that he violated a law, without telling him what specific act he committed in violation of the law. The Government asks the Court to deny a motion requesting the Government to disclose which specific act Mr. Sahady committed that violates 18 U.S.C. § 1512(c)(2). The Government claims that to reveal the actual act would be revealing the Government's "trial strategy." In other words, the Government's "trial strategy" is to bring a vague indictment and surprise Sahady at trial with the actual illegal act.

This is particularly unfair in the context of 18 U.S.C. § 1512(c)(2) for several reasons all set forth in prior briefings. First, the meaning of the word "corrupt" is still yet to be determined by the Courts. Second, the Government's inconsistency with charging 18 U.S.C. § 1512(c)(2) causes further confusion. On October 18, 2023, thousands of protestors invaded the Capitol, and none were charged with 18 U.S.C. § 1512(c)(2), yet the Government has charged at least one

January 6 defendant with 18 U.S.C. § 1512 when that individual was not even in Washington, D.C. on January 6, 2021. *See United States v. Tarrio,* 21-cr-175. Assuming arguendo that the Government is not selectively prosecuting January 6 defendants with this rarely used statute, Sahady has no way of knowing which actions violated the statute because the Government applies it inconsistently.

Third, the Government represented to this Court and to the Defendant that "the Indictment was partially filed in response to new evidence, and that new evidence's effect on the government's view of pre-existing evidence. This new material, which arose through—and in tandem with—the typical document review, witness interviews, and strategic assessments that accompany trial preparation, was presented to the grand jury to complement the plethora of other evidence in this case." Dkt. 73, at 20. But this statement is demonstrably false. No new evidence was presented to the Grand Jury. If the Government wishes to dispel what it calls a "baseless" allegation of misleading the Grand Jury and this Court (Dkt. 6 n.2), the Government need only explain what new evidence was presented. But conspicuously, in its Opposition the Government did not explain what new evidence was presented to the Grand Jury, because there was no new evidence presented to the Grand Jury.

The Government cites four examples of cases where this Court denied a Motion of Bill of Particulars and argues that these are appropriate comparators. Each is easily distinguishable and only supports Defendant's argument. If these cases are the standard for an indictment that satisfies due process requirements, then it is obvious that the indictment in this case falls far short and requires clarification.

The First case the Government cites is *United States v. Han*, 280 F. Supp. 3d 144, 149 (D.D.C. 2017). Han's indictment could not be more different than Sahady's. As opposed to a

short recitation of the statute with no accompanying facts, Han's indictment was 16 pages long and included granular details of the alleged acts. The indictment is attached as Exhibit 1. Han was charged with defrauding investors by collecting millions of dollars under the false premise that he invented a magic solution to convert plastic to oil. Unlike in this case, the Government explained the accusation in plain English. He defrauded investors, thereby violating various "fraud" statutes.

Similarly, in the Government's second and third examples, *United States v. Brodie*, 326 F. Supp. 2d 83 (D.D.C. 2004) and *United States v. Mejia,* 448 F.3d 436 (D.C. Cir. 2006), the defendants were charged respectively with defrauding various financial institutions by submitting fraudulent documents in order to receive inflated mortgage proceeds *(Brodie,* 326 F. Supp. 2d*,* at 86) and conspiring to distribute cocaine (*Mejia,* 448 F.3d, at 438). In those cases, it is immediately clear what acts were alleged (submitting fraudulent documents and conspiring to distribute cocaine) and what laws were violated. Here, Sahady is charged with corruptly obstructing an official proceeding, but it is far from clear what act he did to violate the law. Did he do so by being in a restricted area? By entering the Capitol building? By participating in the Stop the Steal rally? By posting on social media? By organizing a bus of protestors? The indictment provides no guidance as to what act he committed that violated the statute.

In the Government's third and final example, *United States v. Sanford Ltd.,* 841 F. Supp. 2d 309, 316 (D.D.C. 2012), the defendants were charged with "violating federal criminal laws related to their alleged discharge of oil-contaminated sludge and bilge waste into the ocean and the alleged maintenance of false records regarding these discharges." *United States v. Sanford Ltd.*, 841 F. Supp. 2d 309, 311 (D.D.C. 2012). In the Sanford indictment, attached as Exhibit 2, the Government listed 42 separate "overt acts" that the defendant committed. The "overt acts"

clearly specified the exact conduct that the defendant committed in violation of the very clear and easily understandable statutes. *E.g.*, Exhibit 2, at 10 ("OVERT ACT 41. On or about July 15, 2011, the First Mate (A.K.A. "Navigator") of the F/V San Nikunau instructed a crewmember while in the galley of the vessel, in sum and substance, to falsely tell United States Coast Guard personnel that only water is pumped overboard from the vessel."). The 18-page indictment setting forth very clearly what overt acts the defendant committed could not be more distinguishable from the indictment in this case.

These four cases, rather than support the Government's position, actually weaken its position by bringing examples of when the Government provided defendants with sufficient information to satisfy the defendants' due process rights. Sahady is simply asking the Government to do the same and provide the "overt act" that violated 18 U.S.C. 1512(c)(2) so that Sahady can properly prepare a defense and not be surprised at trial.

Sahady was initially only charged with misdemeanor charges, then mysteriously, after over two years, the Government charged him with a felony carrying a penalty of twenty years in prison for the exact same conduct. This fact alone necessitates the Government to clarify what changed. The Government claims that divulging the overt act that violated the statute would be divulging its trial strategy, and Sahady must wait until trial to learn what he actually did on January 6, 2021, that warrants a twenty-year prison sentence. Supreme Court Justice Niel Gorsuch pithily summarized the Constitutional issues that arise from an unfettered expansion of traditional norms of criminal law, such as in the Government's open-ended pursuit of Mark Sahady, who appears to be prosecuted more for the content of his ideas than any act he committed.

> In our own time and place, criminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for

> something. If the state could use these laws not for their intended purposes but to silence those who voice unpopular ideas, little would be left of our First Amendment liberties, and little would separate us from the tyrannies of the past or the malignant fiefdoms of our own age.

Nieves v. Bartlett, 139 S. Ct. 1715, 1730 (2019) (Gorsuch, J. concurring in part and dissenting in part).

Dated: November 15, 2023

Respectfully submitted,

/s/ Eden P. Quainton
Eden P. Quainton
Bar No: NY 23017
Quainton Law, PLLC
2 Park Ave., 20th Fl.
New York, NY 10016
(212) 419-0575
eden.quainton@quaintonlaw.net

/s/ Jonathan Gross
Jonathan Gross, Esq.
BAR ID: MD 0126
2833 Smith Ave, Suite 331
Baltimore, MD 21209
(443) 813-0141
jonathansgross@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being served on opposing counsel via email on

November 15, 2023

/s/ Jonathan Gross