

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

Crim. Action No. 21-377 (BAH)

v.

ANTHONY WILLIAMS,

Defendant.

_____ /

REPLY REGARDING MOTION TO DISMISS COUNTS ONE, TWO, AND THREE

- 1. The questions about the propriety of using 18 U.S.C. § 1512(c)(2) in this context are being raised to preserve the issue for potential appeal.**

Anthony Williams acknowledges that this Court rejected two of his argument in *United States v. DeCarlo*: First, his argument about the certification of the election falling outside the definition of “official proceeding” in 18 U.S.C. § 1512(c)(2), and second, his argument about the vagueness of the term “corruptly” in § 1512(c)(2). *DeCarlo*, No. 21-cr-73, ECF No. 66, at 32–50. Acknowledging these prior holdings, Mr. Williams believes these arguments have merit and should result in the dismissal of Count One.

To counsel’s knowledge, this Court has not yet addressed the ruling in *United States v. Miller*, No. 1:21-CR-00119 (CJN), 2022 WL 823070, at *1 (D.D.C. Mar. 7, 2022), dismissing a § 1512(c)(2) count because the statute is limited to “action with respect to a document, record, or other object in order to corruptly obstruct, impede or influence an official proceeding.” *Id.* at 15. Mr. Williams is not alleged to have taken any action with respect to records or documents or other objects, and asks for dismissal of Count One on that basis.

2. Counts Two and Three should be dismissed.

As to Counts Two and Three, under 18 U.S.C. § 1752, the government does not deny that the Capitol Police, not the Secret Service, restricted the area around the Capitol. (ECF No. 51, Resp., at 39, 42.) As discussed in Mr. Williams’s motion, there is nothing in the legislative history or the statutory language to suggest that anyone other than the Secret Service has the authority to so restrict the areas surrounding the Capitol building. Section 1752(c)(1)(B), defines “restricted building or grounds” as a “building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting.” Since it is the Secret Service who protects the President or “other person,” it is the Secret Service who must designate the area “restricted.”

Section 1752 also should not apply because the former Vice President was not “temporarily visiting” the Capitol on January 6, 2021, given his office there and was carrying out his official duties by presiding over the vote-count ceremony. *See* 3 U.S.C. § 15. The government makes policy arguments about the need not to have a gap in coverage of protection. (ECF No. 51, Resp., at 45–46.) But “only the words on the page constitute the law adopted by Congress and approved by the President.” *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020). “If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, [they] would risk amending statutes outside the legislative process reserved for the people’s representatives.” *Id.* Here, former Vice President Pence was not traveling to a speaking event or a political rally. He was meeting with other government officials in a federal government building where he had a permanent office as part of fulfilling his official duties as Vice President/President of the Senate. Thus, he was not “temporarily visiting” the Capitol building as required by the plain language of § 1752.

CONCLUSION

This Court should dismiss counts one, two, and three of the Indictment.

Respectfully submitted,

/s/ Benton C. Martin

/s/ James R. Gerometta

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