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

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| **UNITED STATES OF AMERICA** | ) | |
| | ) | |
| | ) | |
| **v.** | ) | **Criminal No. 21-cr-455** |
| | ) | |
| **REED KNOX CHRISTENSEN** | ) | |
| | ) | |
| **Defendant.** | ) | |

# MOTION FOR DISMISSAL OF INDICTMENT

Comes now Defendant Reed Knox Christensen, by and through his counsel, Troy D. Nixon, Esq., and pursuant to Fed. R. Crim. P. 12(b)(3)(B), and respectfully requests that the Court dismiss the following charges because, on its face, the Superseding Indictment fails to state an offense as to Counts One, Five, Six, Seven, and Eight.

## Statement of the Case

On December 01, 2021 the Government filed its Superseding Indictment (hereinafter "Superseding Indictment") against Christensen. ECF No. 28. Christensen is charged with eight counts in the Superseding Indictment. These charges include: Count 1 –Civil Disorder (18 U.S.C. § 231(a)(3)), Count 5—Entering and Remaining in a Restricted Building or Grounds (18 U.S.C. § 1752(a)(1)), Count 6—Disorderly and Disruptive Conduct in a Restricted Building or Grounds, Count 7—Engaging in Physical Violence in a Restricted Building or Grounds, and Count 8—Act of Physical Violence in the Capitol Grounds or Buildings (18 U.S.C. § 5104(e)(2)(F)). As the Court is fully versed with the background of the instant case, Christensen will dispense with a recital of the facts. Counts 1 and 5-8 charged against Christensen, for the reasons stated below, should be dismissed.

## Standard of Review

A defendant may move to dismiss an indictment on the grounds that, *inter alia*, it fails to invoke the Court's jurisdiction, contains duplicitous counts, or fails to state an offense. Fed. R. Crim. P. 12(b)(3)(B). In considering a Rule 12 motion to dismiss, "the Court is bound to accept the facts stated in the indictment as true." *United States v. Syring*, 522 F. Supp. 2d. 125, 128 (D.D.C. 2007); *United States v. Sampson*, 371 U.S. 75, 78 (1962). Accordingly, "the Court cannot consider facts beyond the four corners of the indictment." *United States v. Ring*, 628 F. Supp. 2d 195, 204 (D.D.C. 2009) (internal quotations omitted).

A criminal statute is unconstitutionally vague if it "fails to give ordinary people fair notice of the conduct it punishes, or is so standardless that it invites arbitrary enforcement." *United States v. Bronstein*, 849 F.3d 1101, 1106 (D.C. Cir. 2017) (quoting *Johnson v. United States*, 576 U.S. 591, 595 (2015)). "The touchstone is whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the defendant's conduct was criminal." *United States v. Lanier*, 520 U.S. 259 (1997). The "void-for-

vagueness doctrine" protects against arbitrary or discriminatory law enforcement. *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018) (citing *Kolender v. Lawson*, 461 U.S. 352, 358 (1983)).

The rule of lenity applies if the terms of the statute or ambiguous; once it is determined that a statute is ambiguous, the rule of lenity "requires that the more lenient interpretation prevail." *United States v. R.L.C.*, 503 U.S. 291, 293 (1992). This rule exists to address "the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should." *Id.* at 305 (quoting *United States v. Bass*, 404 U.S. 348, 336 (1971)). The Courts have "[r]eserved lenity for those situations in which a reasonable doubt persists about a statute's intended scope even after resort to the language and structure, legislative history, and motivating policies of the statute." *Id.* (citing *Moskal v. United States*, 498 U.S. 103, 108 (1990)). "Whether a statutory term is unambiguous … does not turn solely on dictionary definitions of its component words. Rather, 'the plainness or ambiguity of statutory language is determined [not only] by reference to the language itself, [but as well by] the specific context in which that language is used, and the broader context of the statute as whole.'" *Yates v. United States*, 574 U.S. 528, 537 (2015) (quoting *Robinson v. Shell Oil Co.*, 5129 U.S. 337, 341 (1997)).

**Argument**

The government has attempted to charge Christensen under seldom used Codes that are misapplied to this defendant. Rather than pursue their case under the more obvious Code, the government has decided to stretch beyond the bounds of the law by charging Christensen under statutes of dubious applicability. The counts in the superseding indictment as referenced above fail to state a claim and must be dismissed.

**I. Count One must be dismissed because, when strictly construed, 18 U.S.C. § 231(a)(3)) is Unconstitutionally Vague**.

Count One also alleges that a "federally protected function" was obstructed, delayed, or adversely affected by the civil disorder, but it does not allege what federally protected function. The term "federally protected function" is defined at 18 U.S.C. § 232(3). Without knowing which function the government alleges to have been obstructed, delayed, or adversely affected, Mr. Christensen cannot determine whether the alleged function meets the statutory definition. Additionally, the government's framing of Count One omits facts needed for Mr. Christensen to mount possible constitutional challenges to his prosecution. Without knowing what the government alleges that Mr. Christensen did, he cannot argue pretrial that the statute is unconstitutionally vague as applied to him or that it overburdens his free speech or association rights. See Holder v. Case 1:21-cr-00258-TFH Document 26 Filed 09/30/21 Page 6 of 9 7 Humanitarian L. Project, 561 U.S. 1, 18-19 (2010) ("a plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others"); Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 (1982) ("We have said that when a statute interferes with the right of free speech or of association, a more stringent vagueness test should apply"); United States v. Howard, 2021 WL 3856290 at *14 (E.D. Wis. Aug. 30, 2021, Slip Op.) (Pepper, C.J.) (denying a defendant's vagueness challenge to 18 U.S.C. § 231(a)(3) in-part because the indictment alleged that defendant threw a brick at a police officer, which is clearly proscribed). Here, the Superseding Indictment is entirely devoid of facts to support the government's charge in Count One.

**II. Counts Five, Six, Seven, and Eight must be dismissed because, when strictly construed, 18 U.S.C. §1752 fails to state an offense.**

**a. 18 U.S.C §1752 must be strictly construed under the plain text of the statute.**

To determine legislative intent, courts "always begin with the text of the statute." *United States v. Barnes*, 295 F.3d 1354, 1359 (D.C. Cir. 2002). "It is elementary that the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms." *United States v. Hite*, 769 F.3d 1154, 1160 (D.C. Cir 2014) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917) (internal quotes omitted)). "The search for the meaning of the statute must also include an examination of the statute's context and history." *Hite*, 769 F.3d at 1160. Moreover, "due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope." *United States v. Lanier*, 520 U.S. 259, 268 (1997). In order to be held valid 18 U.S.C. §1752 must be strictly construed by first the text of the statute, and if ambiguity exists on its face, then by the legislative intent and application of the statute.

**b. The United States Secret Service is the Entity that Governs Designating "Restricted Areas" under the statute and not the United States Capitol Police.**

Mr. Christensen is charged with three counts of violating 18 U.S.C. §1752 for "Entering and Remaining in a Restricted Building or Grounds," "Disorderly and Disruptive Conduct in a Restricted Building or Grounds," and "Engaging in Physical Violence in a Restricted Building or Grounds." However, the text of the statute and the legislative intent very clearly narrow what should be considered "restricted" for purposes of the statute. 18 U.S.C. §1752(c)(1)(b) defines a "restricted building or grounds" as "any posted, cordoned off, or otherwise restricted area . . . of a building or grounds where the President or other person protected by the Secret Service is or will be *temporarily* visiting" (emphasis added).

Legislative history makes clear that, when this statute was enacted, the purpose was specifically to provide the United States Secret Service ("USSS") the authority to restrict areas for temporary visits by the President. *See* S. Rep. No. 91-1252 (1970). At the time of enactment, the USSS was part of the Treasury. Therefore, section 1752 grants the Treasury Secretary the authority to "designate by regulations the buildings and grounds which constitute the temporary residences of the President." 18 U.S.C. §1752(d)(1). It also allows the Secretary to "prescribe regulations governing ingress or egress to such buildings and grounds to be posted, cordoned off, or otherwise restricted areas where the President may be visiting." §1752(d)(2). There is nothing in the legislative history to suggest that, under the meaning of this particular statute, anyone other than the USSS has the authority to so restrict the areas surrounding the Capitol building.

18 U.S.C. §3056 outlines the USSS's duties and responsibilities, which include:

> (e)(1) When directed by the President, the United States Secret Service is authorized to participate, under the direction of the Secretary of Homeland Security, in the planning, coordination, and implementation of security operations at special events of national significance, as determined by the President.
> (2) At the end of each fiscal year, the President, through such agency or office as the President may designate, shall report to the Congress—
>> (A) what events, if any, were designated special events of national significance for security purposes under paragraph (1); and
>> (B) the criteria and information used in making each designation.

§3056(e)(1)-(2)(B).

The statute does not state that any other agency is permitted to designate events for security purposes and only explains that the USSS would be under the designation of the Department of Homeland Security instead of the Treasury Department. The statute makes the exclusive role of the USSS even clearer in §3056(g), which states:

> (g) The United States Secret Service shall be maintained as a *distinct entity* within the Department of Homeland Security and shall not be merged with any other Department function. *No personnel and operational elements of the United States Secret Service shall report to an individual other than the Director of the United States Secret Service*, who shall report directly to the Secretary of Homeland Security without being required to report through any other official of the Department.

(Emphasis added.)

There is a substantial legal justification for this distinction. If there is no designation as to *who* must restrict the area, anyone claiming to be law enforcement could theoretically post a sign designating an area as restricted, leading a criminal defendant to be penalized for trespassing because they "willfully" ignored a sign in an otherwise public forum. Therefore, this distinction is required in order to put any potential defendant on notice of the requirements of the statute and what the statute can punish. *United States v. Johnson*, 576 U.S. 591 (2015)

**c. The Government does not allege that the Secret Service Restricted the Capitol Grounds on January 6, 2021.**

The Indictment charged Mr. Christensen with remaining or entering, disorderly and disruptive conduct, and engaging in physical violence in a "Restricted Building or Grounds," but does not allege that the USSS designated that area as being restricted. In *United States v. Griffen*, the government actually conceded that the United States Capitol Police were responsible for the restricted designations on that day and not the USSS. 21-CR-92 (TNM) at Dkt. No. 33. The Court in *Griffen* denied a motion to dismiss §1752 based on a similar argument on the ground that the statute did not specifically state who must designate the "restricted areas." *Id.* at Dkt. No. 41. However, the plain reading of 18 U.S.C. §1752(c)(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." The legislative history bolsters this interpretation.

The court in *Griffen* also gave an example of the result that would occur if the defense's interpretation of the statute prevailed, such as the President not being able to rely on the military fortification at Camp David already in existence when he visits that facility because the Secret Service was not the entity to restrict the area. *See Griffen* ECF Dkt. No. 41 at pg. 11. However, this argument is illusory at best, because Camp David is a military installation with substantial security and extremely limited access, and is not otherwise a "public forum" that must be otherwise "restricted." Unlike the Capitol, Camp David and other military bases are not open to the public. Military bases are heavily guarded, have entry and exit checkpoints, and are different than federal buildings that need sections to be "cordoned" off in order for the general public to know which area is restricted. Furthermore,

each military installation has specific laws to protect the facility against intruders. For example, 18 U.S.C. §1382 prohibits any person from entering any military installation for any purpose prohibited by law. Therefore, there is no need for 18 U.S.C. §1752(c)(B) to apply to such locations, and because other specific laws apply to military basis, the necessary conclusion is that it was not the legislative intent for section 1752 to do so.

Therefore, based upon this clear legislative history, for the statute to be applicable, the "restricted" area in question must specifically be restricted by the USSS and not by another entity. Because the area in question was allegedly restricted by Capitol police and not by the USSS, the statute, when strictly construed, is not applicable to Mr. Christensen.

**d. Even if the Capitol Police were authorized to restrict the grounds, 18 U.S.C. §1752 is not applicable because former Vice President Pence and then Vice President-Elect Harris were not "temporarily visiting" the Capitol on January 6, 2021.**

As previously discussed, under the plain language of 18 U.S.C. §1752, the statute does not apply to Mr. Christensen. Section 1752 prohibits conduct specifically in or near "any restricted building or grounds" and expressly defines the term "restricted buildings or grounds":

(1) The term "restricted buildings or grounds" means any posted, cordoned off, or otherwise restricted area—

(A) of the White House or its grounds, or the Vice President's official residence or its grounds;
(B) of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting; or
(C) of a building or grounds so restricted in conjunction with an event designated as a special event of national significance.

18 U.S.C. §1752(c); *see United States v. Samira Jabr*, Criminal No. 18-0105, Opinion at 12, EFC No. 31 (May 16, 2019), *aff'd*, 4 F.4th 97 (D.C. Cir. 2021).

Counts Five, Six, and Seven of the Indictment charge Mr. Christensen with conduct "in a restricted building and grounds, that is, any posted, cordoned-off and otherwise restricted area *within the United States Capitol and its grounds, where the Vice President and Vice President-elect were temporarily visiting* . . ." *See* ECF No. 21, Count Five, Six, and Seven of Indictment (emphasis added).

First, as already discussed in sections (a)-(c) of this motion, the "United States Capitol and its grounds" plainly do not constitute "restricted buildings or grounds" under any prong of §1752(c)(1).

Second, under the plain meaning of the statute, Vice President Pence and then Vice President-Elect Harris, then a senator, were not "temporarily visiting" the Capitol. The plain meaning of "temporary" is "lasting for a time only." Black's Law Dictionary (11th Ed. 2019). "Visiting" is defined as "invited to join or attend an institution for a limited time." Merriam-Webster (2021). Together, the phrase "temporarily visiting" connotes temporary travel to a location where the person is not living and/or working on a regular basis.

Plainly, under this definition, neither of the Vice Presidents was "temporarily visiting" the Capitol on January 6, 2021. The Capitol is a federal government building in the District of Columbia, where both people lived and worked. Moreover, both individuals worked frequently at the Capitol Building and each had *permanent* offices "within the United States Capitol and its grounds." On January 6, both individuals were not "visiting" the Capitol building, but were in fact meeting, working, and carrying out their official sworn duties to "meet" there, with Vice President Pence "presiding," to count the electoral votes. *See* 3 U.S.C. §15 ("Congress shall be in session on the sixths day of January succeeding every meeting of the electors. The Senate and House of Representatives shall *meet* in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and *the President of the Senate [Vice President] shall be their presiding officer*.") (Emphasis added).

Case law involving conduct in and near areas where the President and Vice President where clearly "temporarily visiting" supports this plain reading of the statute. *See United States v. Bursey*, 416 F.3d 301 (4th Cir. 2005) (defendant entered and remained in a restricted area at an airport in South Carolina where the President was visiting for a political rally); *United States v. Junot*, 902 F.2d 1580 (9th Cir. 1990) (defendant pushed his way through a restricted area where then Vice President George Bush was speaking at a rally at a park in Los Angeles that was secured by United States Secret Service agents); *Blair v. City of Evansville, Ind.* 361 F.Supp.2d 846 (D.C. S.D. Indiana 2005) (defendant charged with 18 U.S.C. §1752 at protest during then Vice President Richard Cheney's visit to the Centre in Evansville Indiana). These cases all involve the President and Vice President traveling *outside* of their designated work locations and residences in D.C. and "visiting" the area in question for a "temporary" purpose, consistent with the plain meaning of 18 U.S.C. §1752(c)(1)(B). Former Vice President Pence and Vice President Harris were not traveling to a speaking event or a political rally. They were meeting with other government officials in the regular designated course of their employment and responsibilities, in a federal government building where they both had permanent offices. Based on the plain language of 18 U.S.C. §1752, they were not "temporarily visiting" the Capitol building.

Because the instant Indictment does not allege that the Secret Service was exercising jurisdiction over the Capitol grounds, and because the Vice Presidents were not "visiting" within the meaning of the statute, 18 U.S.C. §1752 fails to state an offense and does not apply as charged in this case. Therefore, Counts Five, Six, and Seven of the Superseding Indictment must be dismissed.

**II. Even if the Court determines that 18 U.S.C. §1752 states an Actionable Offense, 18 U.S.C. §1752(a)(2) is Unconstitutionally Vague and therefore, at minimum, Counts Five through Eight must be dismissed.**

If the deficiency of a statute creates an absurd result or creates arbitrary enforcement, it must be amended to provide clarity and provide fair notice to a defendant. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Under the same principles of *United States v. Johnson*, 576 U.S. 591 (2015) and its progeny, 18 U.S.C. §1752(a)(2) specifically violates due process because it is vague and does not provide fair notice to Mr. Christensen as to the conduct it punishes. Section 1752(a)(2) provides that a defendant's conduct must, in fact, "impede[] or disrupt[] the orderly conduct of Government business or official functions."

The Court in *Johnson* explained that "the indeterminacy of the wide-ranging inquiry required by the residual clause both denies fair notice to defendants and invites arbitrary enforcement by judges." *Johnson*, 576 U.S. at 597. There, the Court found a due process

violation where a defendant's sentence was enhanced by the residual clause in the Armed Career Criminal Act if the prior felony "involved conduct that presented a serious potential risk of physical injury to another." *Johnson*, 576 U.S. 591. The residual clause violated due process because it required speculation in each case as to what could potentially cause injury in each set of circumstances. *Id.* at 598.

While Section 1752(a)(2) does not include a residual clause, the basis of Count Five of the Indictment is that Mr. Christensen intended to "impede or disrupt" Congress's certification of the Electoral College vote, *and* that he, in fact, did so, without any indication of how Mr. Christensen's actions directly disrupted or impeded any Government business or official functions as related to the Electoral College vote. There is no evidence that Mr. Christensen ever entered the Capitol Building where said vote was being held. Christensen was protesting far outside the Capitol Building when he interacted with law enforcement on the lower west terrace of the Capitol Grounds. He was standing at the first set of bike racks and never even made it to the first step of the west steps of the Capitol. Mr. Christensen did not do anything to actually impede or disrupt Congress. The circumstances of his case mirror those of many defendants on that day whose mere presence and words did not place them on notice that they would be committing a felony involving criminal intent to actually "impede" or "disrupt" Congress's business or official functions.

**Conclusion**

For the reasons stated above, Mr. Christensen requests that the Court dismiss Counts 1 and 5-7 of the Superseding Indictment.

Dated: January 31, 2023

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **Defendant's Motion for Dismissal of Indictment** on the following named person(s) on the date indicated below by:

☒ By Notice of Electronic Filing using the CM/ECF system.

DATED: January 31, 2023

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