UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	**CASE NO. 21-cr-455**
v.	:	
	:	
REED KNOX CHRISTENSEN,	:	
	:	
Defendant.	:	

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS COUNTS ONE, FIVE, SIX, SEVEN, AND EIGHT OF THE SUPERSEDING INDICTMENT

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits that this Court should deny Christensen's Motion to Dismiss, ECF No. 43, Counts One, Five, Six, Seven, and Eight of the Superseding Indictment, ECF No. 21.

Count One charges Christensen with civil disorder, in violation of 18 U.S.C. § 231(a)(3). Christensen argues that Count One of the Indictment is unconstitutionally vague and does not contain facts essential to the offense charged. ECF 43 at 2.

Counts Five through Seven charge Christensen with illegal acts "in a restricted building or grounds." 18 U.S.C. § 1752(a)(1, 2, 4). Christensen urges that these should be dismissed for failing to state an offense because (1) only the United States Secret Service ("USSS") can establish a "restricted area" under 18 U.S.C. § 1752, and the indictment fails to allege that they did, and (2) USSS could not enforce a "restricted area" at the Capitol because former Vice President Pence and then Vice President-Elect Harris were not "temporarily visiting" on January 6, 2021. ECF 43 at 2-6.

Finally, Christensen contends that Counts Five through Seven must be dismissed because 18 U.S.C. § 1752 is unconstitutionally vague. ECF 43 at 6-7.

Count Eight charges Christensen with an "Act of Physical Violence in the Capitol Grounds or Buildings" under 40 U.S.C. § 5104(e)(2)(F). Christensen's motion includes this count in its headings but makes no attempt to justify its dismissal or address it in any specific way. Thus, the Court should not consider this issue.

Christensen's contentions misapply the law and should be denied.

FACTUAL BACKGROUND

General Facts

At 1:00 p.m., on January 6, 2021, a Joint Session of the United States Congress convened in the United States Capitol building. The Joint Session assembled to debate and certify the vote of the Electoral College of the 2020 Presidential Election. With the Joint Session underway and with Vice President Mike Pence presiding, a large crowd gathered outside the U.S. Capitol. As early as 12:50 p.m., certain individuals in the crowd forced their way through, up, and over erected barricades. The crowd, having breached police officer lines, advanced to the exterior façade of the building. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol. At approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to – and did – evacuate the chambers.

Facts Specific to Defendant Christensen

Christensen is charged in an eight-count indictment for offenses committed at the U.S. Capitol Building on January 6, 2021. Around 2:20pm on the Lower West Terrace, Christensen

initiated the forcible removal of bike rack barriers that were preventing rioters from moving closer to the Capitol building. While Christensen attempted to remove the bike rack barrier, an officer deployed a chemical irritant in his face. Despite this, Christensen breached the bike rack perimeter. Briefly, Christensen pauses while he received aid from officers in the form of a water bottle to wash away the irritant. But once other rioters forcefully removed the barrier, Christensen charged several officers. He struck them with his fists and pushed them. At this point, Christensen was at the front of the group of rioters initiating physical attacks on the officers, who go on to lose ground allowing the rioters access to the Capitol building.

PROCEDURAL HISTORY

Based on his actions, the grand jury returned an eight-count Superseding Indictment on December 1, 2021, charging Christensen with: Count One, Civil Disorder, in violation of 18 U.S.C. § 231(a)(3); Counts Two-Four, Assaulting, Resisting, or Impeding Certain Officers, in violation of 18 U.S.C. § 111(a)(1); Count Five, Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1); Count Six, Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2); Count Seven, Engaging in Physical Violence in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(4); Count Eight, Act of Physical Violence in the Capitol Grounds or Buildings, in violation of 40 U.S.C. § Section 5104(e)(2)(F). ECF No. 28.

Christensen was arraigned on the Superseding Indictment on January 18, 2022. On January 31, 2023, Christensen filed a Motion to Dismiss Counts One, Five, Six, Seven, and Eight of the of the Superseding Indictment ("Indictment"). ECF 43. A status hearing is set on February 10, 2023 to set a trial date.

LEGAL STANDARD

Federal Rule of Criminal Procedure 7(c)(1) states, in relevant part, that "[t]he indictment … must be a plain, concise, and definite written statement of the essential facts constituting the offense charged." An indictment is sufficient under the Constitution and Rule 7 of the Federal Rules of Criminal Procedure if it "contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend," *Hamling v. United States*, 418 U.S. 87, 117 (1974), which may be accomplished, as it is here, by "echo[ing] the operative statutory text while also specifying the time and place of the offense." *United States v. Williamson*, 903 F.3d 124, 130 (D.C. Cir. 2018). "[T]he validity of an indictment 'is not a question of whether it could have been more definite and certain.'" *United States v. Verrusio*, 762 F.3d 1, 13 (D.C. Cir. 2014) (quoting *United States v. Debrow*, 346 U.S. 374, 378 (1953)). An indictment need not inform a defendant "as to every means by which the prosecution hopes to prove that the crime was committed." *United States v. Haldeman*, 559 F.2d 31, 124 (D.C. Cir. 1976).

Rule 12 permits a party to raise in a pretrial motion "any defense, objection, or request that the court can determine *without a trial on the merits*." Fed. R. Crim. P. 12(b)(1) (emphasis added). It follows that Rule 12 "does not explicitly authorize the pretrial dismissal of an indictment on sufficiency-of-the-evidence grounds" unless the prosecution "has made a full proffer of evidence" or the parties have agreed to a "stipulated record," *United States v. Yakou*, 428 F.3d 241, 246-47 (D.C. Cir. 2005) (declining to hold but citing this holding in Circuits 3, 8, and 11)—neither of which occurred here.

A criminal defendant may move for dismissal based on a defect in the indictment, such as a failure to state an offense. *United States v. Knowles*, 197 F. Supp. 3d 143, 148 (D.D.C. 2016). Whether an indictment fails to state an offense because an essential element is absent calls for a legal determination. Criminal cases have no mechanism equivalent to the civil rule for summary

judgment. *See United States v. Bailey*, 444 U.S. 394, 413, n.9 (1980); *Yakou*, 428 F.2d at 246-47; *United States v. Oseguera Gonzalez*, No. 20-cr-40-BAH at *5, 2020 WL 6342940 (D.D.C. Oct. 29, 2020) (there is no procedure in criminal cases that permits pretrial determination of the sufficiency of the evidence). Indeed, "[i]f contested facts surrounding the commission of the offense would be of *any* assistance in determining the validity of the motion, Rule 12 doesn't authorize its disposition before trial." *United States v. Pope*, 613 F.3d 1255, 1259 (10th Cir. 2010) (Gorsuch, J.).

Thus, when ruling on a motion to dismiss for failure to state an offense, the court is limited to reviewing the face of the indictment and more specifically, the language used to charge the crimes. *Bingert*, 21-cr-93 (RCL) (ECF 67:5); *United States v. Puma*, No. 21-cr-454 (PLF), 2020 WL 823079 at *4 (D.D.C. Mar. 19, 2022) (quoting *United States v. Sunia*, 643 F.Supp. 2d 51, 60 (D.D.C. 2009)).

ARGUMENT

I. 18 U.S.C. § 231(a)(3) is Not Unconstitutionally Vague, and Count One is Legally Sufficient to State an Offense.

Count One states:

> On or about January 6, 2021, within the District of Columbia, REED KNOX CHRISTENSEN, committed and attempted to commit an act to obstruct, impede, and interfere with law enforcement officers lawfully engaged in the lawful performance of his/her official duties, incident to and during the commission of a civil disorder, which in any way and degree obstructed, delayed, and adversely affected commerce and the movement of any article and commodity in commerce and the conduct and performance of any federally protected function.
>
> (Civil Disorder, in violation of Title 18, United States Code, Sections 231(a)(3))

(ECF 28.)

First, Christensen briefly suggests that the phrase "federally protected function" in 18 U.S.C. § 231(a)(3) is unconstitutionally vague but fails to flesh out this argument.

An outgrowth of the Due Process Clause of the Fifth and Fourteenth Amendments, the "void for vagueness" doctrine prevents the enforcement of a criminal statute that is "so vague that it fails to give ordinary people fair notice of the conduct it punishes" or is "so standardless that it invites arbitrary enforcement." *Johnson v. United States*, 576 U.S. 591, 595 (2015). To ensure fair notice, "generally, a legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply." *United States v. Bronstein*, 849 F.3d 1101, 1107 (D.C. Cir. 2017) (citation omitted).

A statute is not unconstitutionally vague simply because its applicability is unclear at the margins, *United States v. Williams*, 553 U.S. 285, 306 (2008), or because reasonable jurists might disagree on where to draw the line between lawful and unlawful conduct in particular circumstances, *Skilling v. United States*, 561 U.S. 358, 403 (2010). A provision is impermissibly vague only if it requires proof of an "incriminating fact" that is so indeterminate as to invite arbitrary and "wholly subjective" application. *Williams*, 553 U.S. at 306; *see Smith v. Goguen*, 415 U.S. 566, 578 (1974). There is a strong presumption that a statute is not vague. *See United States v. Nat'l Dairy Products Corp.*, 372 U.S. 29, 32 (1963).

As relevant here, Section 232 defines "federally protected function" to mean "any function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof." 18 U.S.C. § 232(3). The Court should adopt Judge Kelly's reasoning in *Nordean* and conclude that a "federally protected function" in 18 U.S.C. § 231(a)(3) is not unconstitutionally vague. *United States v. Nordean*, 579 F. Supp. 3d 28, 55-58 (D.D.C. 2021); *see also United States v. McHugh*, No. 21-cr-

453, 583 F. Supp. 3d 1, 10 (D.D.C. 2022) (Bates, J.); *United States v. Fischer*, 2022 WL 782413, at *2–4 (D.D.C. Mar. 15, 2022) (Nichols, J.) (rejecting vagueness and overbreadth challenges).

Next, Christensen argues that Count One fails to include legally sufficient facts regarding the "federally protected function." ECF 43 at 2. Here, evidence at trial could establish the "federally protected function" through the USSS's protection of the Vice President and his family, *see Nordean*, 579 F. Supp. 3d at 55-56, or the United States Capitol Police's obligation to protect the Capitol, *see* 2 U.S.C. § 1961. Under Rule 7, Count One is legally sufficient because it "echo[s] the operative statutory text while also specifying the time and place of the offense." *Williamson*, 903 F.3d at 130. The Indictment need not inform Christensen "as to every means by which the prosecution hopes to prove . . . the crime." *Haldeman*, 559 F.2d at 124. The time and place of the offense, Christensen's own assaultive conduct, and the significance of the civil disorder at the Capitol on January 6, 2021 provide Christensen with notice that the United States may prove that the civil disorder "obstructed, delayed, and adversely affected . . . the conduct and performance of" the duties of either the USSS or Capitol Police. If Christensen moved for a bill of particulars under Rule 7(f), it would outline these two "federally protected functions."

In *Sargent*, Judge Hogan rejected an argument like Christensen's, concluding that the indictment need not allege the specific facts detailing precisely how the prosecution believes the defendant violated the statute. *See United States v. Sargent*, 2022 WL 1124817 at *3, *4, *7, and *10, (D.D.C. 2022). Instead, as noted above, an allegation of fact beyond the statute's elements is required only if "guilt depends so crucially upon such a specific identification of fact." *Id.* at *10 (quoting *Russell*, 369 U.S. at 764). The exact nature of the "federally protected function" obstructed by the Capitol riot will not decide Christensen's guilt. Thus, the Court should deny the Motion to Dismiss pertaining to Count One.

Even if the Court determined that the Indictment was legally insufficient to state an offense, it should not dismiss the charge until the United States "has made a full proffer of evidence" or the parties have agreed to a "stipulated record." *See Yakou*, 428 F.3d at 246-47; *United States v. DeLaurentis*, 230 F.3d 659, 661 (3d Cir. 2000); *United States v. Nabors*, 45 F.3d 238, 240 (8th Cir. 1995).

II. The Motion to Dismiss Charges Five, Six, and Seven Should be Denied.

a. 18 U.S.C. § 1752 does not Require that USSS Designate the Restricted Area.

Christensen wrongly contends that he is immune from liability under Section 1752 because, in anticipation of the certification vote, the United States Capitol Police, not USSS, determined the locations of the fences, barricades, and the "Do Not Enter" signs around the Capitol Building on January 6. ECF 43 at 2-4.

The text of Section 1752 "is not complex," *United States v. Griffin*, 549 F.Supp.3d 49, 54 (D.D.C. 2021) (McFadden, J.). Like the defendant in *Griffin*, Christensen "contends that the Secret Service must 'establish' the restricted area under § 1752(c)(1)," "[b]ut that requirement is not in the text." *Id.* at 54-55. "Indeed, the only reference in the statute to the Secret Service is to its protectees. Section 1752 says nothing about who must do the restricting." *Id.* at 55. The text "plainly does not require that the Secret Service be the entity to restrict or cordon off a particular area," *United States v. Mostofsky*, 21-cr-138, 2021 WL 6049891 at *13 (Boasberg, J.) (D.D.C. December 28, 2021). "Congress's failure to specify how an area becomes 'restricted' just means that the statute does not require any particular method for restricting a building or grounds." *McHugh*, 583 F. Supp. 3d at 30-31.

All other judges of this court to have addressed this issue have come to the same conclusion as Judge McFadden in *Griffin*.[1] This Court should adopt Judge McFadden's thorough examination of the statutory text, legislative history, and judicial decisions to debunk the claim that USSS has exclusive authority to restrict locations under Section 1752.

b. Former Vice President Mike Pence was "Temporarily Visiting" the Capitol on January 6, 2021.

Christensen argues that Section 1752 cannot apply because Vice President Pence had an office in the Capitol and therefore could not have been "temporarily visiting." This argument defies the plain text, structure, and purpose of Section 1752 and disregards the presence of two other USSS protectees.

Chief Judge Howell correctly rejected an analogous claim in *United States v. Williams*, 21-cr-377, ECF No. 88 (D.D.C. June 8, 2022), and several other judges of this District have rejected permutations of this argument in January 6 cases. *See McHugh*, 2022 WL 296304 at *20-21; *United States v. Andries*, 21-cr-93, 2022 WL 768684, at *16-17 (D.D.C. Mar. 14, 2022) (Contreras, J.); *United States v. Puma*, 21-cr-454, 2022 WL 823079, at *16-18 (D.D.C. Mar. 19, 2022) (Friedman, J.); *United States v. Bingert*, 21-cr-91, 2022 WL 1659163, at *15 (D.D.C. May 25, 2022) (Lamberth, J.). No district judge has adopted Christensen's reading of 18 U.S.C. § 1752.

This Court should reach the same conclusion here. To determine the meaning of a statute, the Court "look[s] first to its language, giving the words used their ordinary meaning." *Levin v. United States*, 568 U.S. 503, 513 (2013) (internal quotation omitted). Subsection 1752(c)(1)(B) defines "restricted buildings or grounds," in relevant part, as "any posted, cordoned off, or

[1] *See Andries*, 2022 WL 768684 at *14; *United States v. Bozell*, 21-cr-216 (JDB), 2022 WL 474144, at *8 (D.D.C. Feb. 16, 2022); *Nordean*, 2021 WL 6134595 at *18; Omnibus Order, *United States v. Caldwell*, Crim. No. 21-28 (APM) (D.D.C. Sept. 14, 2021) [Dkt. No. 415] at 4; *Puma*, 2022 WL 823079 at *14–16; *Bingert*, 2022 WL 1659163 at *14.

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). In turn, the verb "visit" means, *inter alia*, "to go to see or stay at (a place) for a particular purpose (such as business or sightseeing)" or "to go or come officially to inspect or oversee."[2] And the adverb "temporarily" adds that the protectee's visit must occur "during a limited time."[3]

As a textual matter, the definition of "visit" plainly describes the USSS protectee's activities on January 6. Vice President Pence was physically present at the U.S. Capitol for a particular purpose: he presided over Congress's certification of the 2020 Presidential Election, first in the joint session, and then in the Senate chamber. While not specifically alleged in the Indictment, two other USSS protectees (members of the Vice President's immediate family), also came to the Capitol building that day for a particular purpose: to observe these proceedings while they were ongoing and Vice President Pence was present. Furthermore, as President of the Senate, Vice President Pence oversaw the vote certification. Given the nature of the presence of the Vice President (and his family members), the Capitol building plainly qualified as a building where "[a] person protected by the Secret Service [was] … temporarily visiting." 18 U.S.C. § 1752(c)(1)(B); *see Williams*, 21-cr-377, ECF 88 at 5-6 (adopting the "plain reading of the words" in subsection 1752(c)(1)(B) urged by the government); *McHugh*, 2022 WL 296304 at *21 (reaching "a commonsense conclusion: the Vice President was 'temporarily visiting' the Capitol"); *Andries*, 2022 WL 768684 at *16 ("Vice President Pence was 'temporarily visiting' the Capitol on January 6, 2021 . . . . He went to the Capitol for the business purpose of carrying out his constitutionally assigned role in the electoral count proceeding; he intended to and did stay there only for a limited time."); *Puma*, 2022 WL 823079 at *17.

[2] https://www.merriam-webster.com/dictionary/visit (last visited July 19, 2022).
[3] https://www.merriam-webster.com/dictionary/temporarily (last visited July 19, 2022).

Christensen has given this Court no reason to depart from the rulings of its colleagues.

c. 18 U.S.C. § 1752(a)(2) is not unconstitutionally vague.

Again, Christensen unpersuasively conflates vagueness and insufficiency arguments. ECF 43 at 6-7. Christensen makes no attempt to explain how the statutory language of 18 U.S.C. § 1752(a)(2) is vague. Instead, he urges the Court to dismiss Counts Five through Eight (but his argument only addresses the statute in Count Six) simply because the Indictment does not explain "how Mr. Christensen's actions directly disrupted or impeded any Government business or official functions as related to the Electoral College vote." *Id.*

Under Rule 7, Count Six is legally sufficient because it "echo[s] the operative statutory text while also specifying the time and place of the offense." *Williamson*, 903 F.3d at 130. The Indictment need not inform Christensen "as to every means by which the prosecution hopes to prove . . . the crime." *Haldeman*, 559 F.2d at 124.

The Court can refer back to our section addressing vagueness as it pertained to 18 U.S.C. § 231(a)(3), but Christensen's argument here is even less compelling. At trial, the United States will provide details of how Christensen's violent acts outside the Capitol did "impede and disrupt the orderly conduct of Government business and official functions."

The Motion to Dismiss Count Six should be denied.

CONCLUSION

For the foregoing reasons, the Court should deny Christensen's Motion to Dismiss Counts One, Five, Six, Seven, and Eight of the Superseding Indictment.

Respectfully submitted,

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