

felony punishable by up to 20 years in prison. “Whoever, in the commission of any acts described in subsection (a)... inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.” 18 U.S.C. § 111(b). The D.C. Circuit determined that § 111(b) is a crime of violence. *See United States v. Klein*, 533 F. Supp. 3d 1, 10-11 (D.C. 2021).

- 4) As the Defense explained in **ECF No. 40**, common law assault was defined in a myriad of ways by different courts. *See, e.g., Edwards v. State*, 4 Ga. App. 167, 169 (1908) (discussing the varying definitions of common law assault, concluding that “an intent to injure is the gist of the offense of assault; that it necessarily includes the idea of intended violence towards the person assaulted”).
- 5) The Government’s proposed definition of common law assault is inaccurate for this Circuit. As the Defense also pointed out in **ECF No. 40**, the D.C. Circuit has defined common law assault as, “an attempt with force or violence to do a corporal injury to another; and may consist of any act tending to such corporal injury, accompanied with such circumstances as denote at the time an intention, coupled with the present ability, of using actual violence against the person.” *Beausoliel v. United States*, 107 F.2d 292, 296 n.14 (D.C. Cir. 1939).
- 6) The D.C. Circuit defined common law assault appears to be a specific intent crime in *Beausoliel v. United States*, 107 F.2d 292, 296 n.14 (D.C. Cir. 1939).
- 7) If this court chooses to adopt a common law definition of assault to any of Mr. DaSilva’s charges, the D.C. Circuit’s *Beausoliel* common law definition should be the one applicable.
- 8) Common law assault required the defendant to have acted *willfully*, not just intentionally. *See United States v. Chestaro*, 197 F.3d 600, 605 (2d Cir. 1999); *United States v. Bell*, *supra*;

United States v. Rizzo, 409 F.2d 400 (7th Cir.), cert. denied, 396 U.S. 911 (1969); *Brundage v. United States*, 365 F.2d 616 (10th Cir. 1966); *Shaffer v. United States*, 308 F.2d 654 (5th Cir. 1962), cert. denied, 373 U.S. 939 (1963); *United States v. Dupree*, 544 F.2d 1050, 1051 (9th Cir. 1976).

- 9) The 11th Circuit and the 5th Circuit have applied a “willful” *mens rea* to “forcible assault” under Section 111(a). *United States v. Fallen*, 256 F.3d 1082 (11th Cir. 2001) (defining “forcible assault” as “any willful threat or attempt to inflict bodily injury upon the person of another when coupled with an apparent present ability to do so, and includes any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm”); *United States v. Renfro*, 620 F.2d 497, 500 (5th Cir. 1980).

Respectfully submitted,

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CERTIFICATE OF SERVICE FOR CM/ECF

I hereby certify that on July 13, 2023, I will electronically file the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

_____/s/_____
Marina Medvin, Esq.