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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF COLUMBIA

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 RONALD MELE,

13 Defendant

Case No.: 1:21-CR-00392-RCL-6

**DEFENDANT’S MOTION TO DISMISS
COUNTS 5 AND 6 OF THE SECOND
SUPERSEDING INDICTMENT**

DEFENDANT’S MOTION TO DISMISS COUNTS 5 AND 6 : REDRESS OF GRIEVANCES

ON FIRST AMENDMENT GROUNDS

17 Defendant Ronald Mele (“Mele”), by and through counsel, with this Motion seeks to
18 dismiss Counts 5 & 6 on First Amendment grounds.

BACKGROUND

21 Mele is charged with four criminal counts in the second superseding indictment, two of
22 which he is contesting here: **COUNT 5** of the superseding indictment, a violation of 18 U.S.C.
23 Sec. 1752(a)(1) (Entering or Remaining in a Restricted Building or Grounds); and **COUNT 6**
24 of the superseding indictment, a violation of 18 U.S.C. Sec. 1752(a)(2) (Disorderly or
25 Disruptive Conduct in a Restricted Building or Grounds). These allegations are aimed wholly
26

1 at Mele’s exercise of his First Amendment right to petition the government for a redress of
2 grievances at the U.S. Capitol on January 6, 2021 (Jan 6).

3 None of these counts allege any violent, harmful, hurtful, deceptive, or traditional criminal
4 conduct which could be included with Mele’s mere political advocacy.
5

6 **INTRODUCTION**

7 Mele came to the Capitol on Jan 6 to give his support to then-President Trump and to do so
8 without violence, while exercising his First Amendment Constitutional rights of freedom of
9 expression and redress of grievances.
10

11 Mele listened to Trump’s speech on the Capitol Mall and then walked with the crowd to the
12 Capitol grounds; however, he never went into any building. The fact is with all the people
13 “moving as one” to the Capitol, there was no indication to let Mele, or any other reasonable
14 person, know the grounds were restricted, and, maybe more importantly, to know at what time
15 the grounds were allegedly restricted. Mele, innocently and with no unlawful intent to trespass,
16 followed the crowd onto the Capitol complex. Mele was on the U.S. Capitol grounds with tens of
17 thousands of other people. Cell phone data, provided by the FBI, shows that Mele made his way
18 over to steps on the westside and went up about halfway. At that point, his wife texted him and
19 told him individuals had entered the Capitol. Upon hearing this news, Mele turned and headed
20 back down the steps. He was on the ground at the base of the steps and made one short stop and
21 then exited the Capitol and National Mall property.
22
23

24 **ARGUMENT**

25 **1. “Bicycle Racks” and Snow Fencing**
26
27

1 Mele acknowledges the Capitol building and grounds can be temporarily restricted by the
2 Capitol police; however, the fact is with all the tens of thousands of people “moving as one” to the
3 Capitol, there was nothing to let Mele, or any other reasonable person, know the grounds were
4 restricted or to know at what time the grounds were allegedly restricted.
5

6 The government’s argument points to bicycle racks and snow fencing as the means to provide
7 notice of restriction to the crowds. These structures were not present when Mele arrived at the
8 Capitol grounds.

9 How would “bicycle racks” and snow fencing indicate to a reasonable person that the Capitol
10 building itself was off-limits? The videos from Jan 6 show officers on duty that day did little, if
11 anything, to advise the tens of thousands of people, who were not directly in front of the Capitol,
12 that the grounds were restricted. Moreover, it is clear that the fencing, such as it was, had been
13 removed prior to Mele and the crowd traversing the area where the fencing allegedly had been.
14
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16

17 **2. U.S. Capitol Building and U.S. Capitol Grounds**

18 As a rule, of all the places in America, the U.S. Capitol must be the most accessible to the
19 citizenry. Conversely, the Capitol is perhaps the place in America where the government has the
20 least authority to restrict citizen presence, petitioning, demonstrating, and activism. The First
21 Amendment explicitly states “Congress shall make no law” restricting free speech, peaceable
22 assembly or interfering with the right to petition the government for redress of grievances. Thus,
23 Congress is subject to the control and correction of the public according to the plain text of the
24 Constitution. See, e.g., *Lederman v. United States*, 291 F.3d 36 (DC Cir. 2002) (striking down a
25 regulation banning leafleting and other “demonstration activities” on the sidewalk at the foot of
26 the House and Senate steps on the East Front of the Capitol).
27

1 The *Lederman* Court found sidewalks around the Capitol are a public forum and a regulation
2 banning leafleting and other “demonstration activities” at the foot of the House and Senate steps
3 on the east side of the Capitol is unconstitutional. *Id.*

4 **3. Demonstrating for Redress of Grievances**

5 Demonstrating for the redress of grievances is the birthright of every American.
6
7 ‘[D]emonstrate’ has been defined by the Supreme Court as “to make a public display of
8 sentiment for or against a person or cause” and “picket” as an effort “to persuade or otherwise
9 influence”). *Hill v. Colo.*, 530 U.S. 703, 721-22 (2000) (quoting Webster's Third New
10 International Dictionary).

11
12 The no-demonstration and no-picketing zone established by 40 U.S.C. § 5104(e)(2)(G)
13 in the entirety of a 1.5-million-square-foot building is the largest infringement on basic First
14 Amendment rights ever imposed anywhere in the United States.

15
16 Mele’s indictment is aimed at chilling Mele’s (and millions of others) right to petition and
17 speak against perceived government abuses at the Capitol. The government seeks to insulate
18 congressional representatives, staff, officials, and attendees from receiving the messages of
19 Mele and other protestors and petitioners. Such efforts by the government are undeniably
20 unconstitutional. See, e.g., *Gresham v. Peterson*, 225 F.3d 899 (7th Cir. 2000).

21
22 Under the First Amendment, “free speech zones” are presumptively invalid everywhere in
23 the country. However, there are a few temporary and secure spaces where courts have allowed
24 limited restrictions on picketing and demonstration.

25
26 Never, however, has any court allowed the government to silence and censor all petitioning
27 and protesting in such a vast radius as the government seeks here.

1 While some cases have recognized that certain officials or facilities are so highly sensitive
2 or protected that protestors can be confined to “free speech zones” at a distance away.

3
4 In *Madsen v. Women's Health Ctr.*, 512 U.S. 753 (1994), the Supreme Court determined
5 that a 300-foot buffer between protesters and the entrance to an abortion clinic was too great a
6 restriction on speech; however, a 36-foot buffer was acceptable. *Id.* at 771. The Court
7 reasoned that “citizens must tolerate insulting, and even outrageous, speech in order to
8 provide adequate breathing space to freedoms protected by the First Amendment.” *Id.* at 774.

9
10 The late Judge Larry McKinney of the U.S. Southern District of Indiana dealt with a
11 case similar to Jan. 6 involving a protestor who picketed a speech by Vice President Dick
12 Cheney in 2002. *Blair v. City of Evansville*, 361 F. Supp. 2d 846 (S.D.In. 2005).

13
14 Blair was arrested for “disorderly conduct” while merely holding a sign that stated
15 “Cheney 19th Century Energy Man” at an event in Evansville, Indiana. Blair later sued
16 arresting officers, and the court held “the restriction of protesters to an area 500 feet away from
17 the only entrance used by attendees, and on the opposite end of the building from where Vice
18 President Cheney would enter the facility and from where the majority of people attending the
19 event would park, burdened speech substantially more than was necessary to further the
20 [government’s] goals of safety.”

21
22
23 The expansive speech and demonstrating restrictions here (effectively the entire 1.5 million
24 square foot Capitol complex) are massively over-expansive and not narrowly tailored to serve
25 a significant government interest. See *United States v. Albertini*, 472 U.S. 675, 689 (1985)).

26 While the Vice President and Congress can and should be properly protected from danger, the
27

1 First Amendment requires that the Vice President and Congress cannot be entirely insulated
2 from picketing and advocacy.

3
4 Judge McKinney found the restriction of protesters to an area 500 feet away from the
5 only entrance used by attendees, and on the opposite end of the building from where Vice
6 President Cheney would enter the facility and from where the majority of people attending the
7 event would park, burdened speech substantially more than was necessary to further the goals
8 of safety.
9

10 Furthermore, other cases that have looked at restrictions on access to
11 public buildings similar to the Centre have found a violation of the First
12 Amendment on more narrow restrictions. See, e.g., *Kuba v. 1-A Agr. Ass'n*,
13 387 F.3d 850, 861-62 (9th Cir. 2004) (200 and 265 feet security zones found
14 overbroad); *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1229 (9th
15 Cir. 1990) (seventy-five-yard security zone found overbroad because it
prevented demonstration from reaching intended audience); but see *Madsen*,
512 U.S. at 771 (holding that a thirty-six-foot buffer zone on public property
was narrow enough).

16 *Blair*, 361 F. Supp. 2d at 858.

17 Similar to the 1,000-foot ban in *Weinberg v. City of Chicago*, 310 F.3d 1029, 1040 (7th Cir.
18 2002), Judge McKinney found the location of the protest zone in *Blair* “eliminated any
19 meaningful avenue for the communication of ideas by the protestors to at least one intended
20 audience, the attendees.”
21

22
23 According to the Architect of the U.S. Capitol:¹
24
25
26

27 ¹ Note that the government here is asserting that the entire U.S. Capitol—one of the largest public
28 buildings in the United States, as well as its grounds—is a no-free speech and no picketing zone.
DEFENDANT’S MOTION TO DISMISS COUNTS 5 AND 6 OF THE SECOND SUPERSEDING INDICTMENT

1 As the nation has grown so has the U.S. Capitol: today it
2 covers well over 1.5 million square feet, has over 600 rooms, and miles of
3 corridors.

4 Today, the U.S. Capitol covers a ground area of 175,170
5 square feet, or about 4 acres, and has a floor area of approximately 16-1/2
6 acres. Its length, from north to south, is 751 feet 4 inches; its greatest width,
7 including approaches, is 350 feet. Its height above the baseline on the east
8 front to the top of the Statue of Freedom is 288 feet. (Architect of the
9 Capitol, "The U.S. Capitol Building," ([https://www.aoc.gov/explore-](https://www.aoc.gov/explore-capitol-campus/buildings-grounds/capitol-building)
10 capitol-campus/buildings-grounds/capitol-building) (accessed 8/14/2022).

11 Significantly, some federal courts have *already held* that the West Front Lawn is a
12 traditional public forum where demonstrations must be allowed. See also, e.g., *Lederman*, 291 F.3d
13 at 44.

14
15 In *Lederman*, the D.C. Circuit declared facially unconstitutional a "regulation banning
16 leafleting and other 'demonstration activit[ies]' on the sidewalk at the foot of the House and
17 Senate steps on the East Front of the United States Capitol." 291 F.3d at 39 (alterations in
18 original). In finding the law at issue in *Lederman* failed the narrow-tailoring analysis, the Court of
19 Appeals cautioned that "the Constitution does not tolerate 'regulations that, while serving their
20 purported aims, prohibit a wide range of activities that do not interfere with the Government's
21 objectives.'" *Id.* at 44 (quoting *Cnty. For Creative Non-Violence v. Kerrigan* (CCNV), 865 F.2d
22 382, 390 (D.C. Cir. 1989)).
23

24 Applying that principle, the panel concluded that the "ban's absolute nature" rendered the
25

1
2 regulation not narrowly tailored, as “[s]ome banned activities” “cannot possibly” interfere
3 “with the stated objectives of traffic control and safety.” Id. At 45.
4

5 **COUNT 5 VIOLATES MELE’S FIRST AMENDMENT RIGHTS TO**
6 **DEMONSTRATE AND PROTEST AT THE CAPITOL**
7

8 In Count 5, Mele is accused of “Entering or Remaining in a Restricted Building or
9 Grounds.” First, Mele never entered the Capitol building proper. There is no law of Congress
10 which makes the Capitol a restricted building. The Capitol building belongs to the people.
11 Congress cannot lawfully restrict the Capitol and its grounds in such a way, as they have no
12 constitutional authority to “make [any] law abridging the freedom of speech, . . . or the right
13 of the people peaceably to assemble, and to petition the Government for a redress of
14 grievances.” Section 1752(a) does not proclaim that the Capitol grounds as “restricted.”
15
16

17 The Capitol grounds are open to the public during normal business hours. Prior to Jan 6,
18 the official website explicitly informed visitors that “The Capitol Visitor Center, the main
19 entrance to the U.S. Capitol, is located beneath the East Front Plaza. The Capitol Visitor
20 Center is open to visitors from 8:30 a.m. to 4:30 p.m. Monday through Saturday” It is simply
21 not possible for the government to lawfully convict Mele of “enter[ing] and remain[ing] in
22 the United States Capitol, without lawful authority to do so,” when, in fact, Mele never
23 entered into the Capitol Building.
24

25 Mele has a constitutional right, under the First Amendment, to monitor, watch, advocate,
26

27 //

1 petition, and protest regarding the work of Representatives and Officials inside the Capitol
2 building.

3
4 Indeed, it can be argued that Mele has a civic duty to monitor, observe, watch, and
5 (try to) influence the goings-on inside the Capitol.

6 Although Mele's right and duty to watch and monitor activities inside the Capitol may be
7 subject to reasonable time, place, and manner restrictions, the government cannot prevent Mele
8 from exercising his constitutional rights.

9
10 Mele's right to enter the Capitol is not subject to the arbitrary permission, will, or
11 discretion of the government. *Cf., inter alia, Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622
12 (1994); *Ward v. Rock Against Racism*, 491 U.S. 781 (1989); *Weinberg v. City of Chicago*, 310
13 F.3d 1029 (7th Cir. 2002); *Bay Area Peace Navy v. United States*, 914 F.2d 1224 (9th Cir.
14 1990); *A Quaker Action Group v. Hickel*, 137 U.S. App. D.C. 176, 421 F.2d 1111 (D.C. Dir.
15 1969)).

16
17 Given these principles, Count Five does not state an offense under federal law upon
18 which any relief can be granted and must be dismissed pursuant to Rule 12(b) of the Federal
19 Rules of Criminal Procedure.

20
21 **COUNT 6 VIOLATE MELE'S FIRST AMENDMENT RIGHTS**

22 **TO DEMONSTRATE AND PROTEST AT THE CAPITOL**

23
24 Count 6 in Mele's indictment also violates the Constitution.

25
26 Count 6 alleges that Mele was "disruptive or disorderly." *Disorderly and disruptive conduct*
27 *occurs when a person is unreasonably loud and disruptive under the circumstances or*

1 *interferes with another person by jostling against or unnecessarily crowding that person.* USA
2 v. Matthew Martin. Magistrate No 21-MJ-388 (D.D.C., 2022). The facts will show that Mele
3 was acting peacefully. FBI supplied video shows Mele walking on the Capitol grounds with
4 tens of thousands of others. He was not engaged in any disruptive behavior but was just
5 wandering on the grounds, talking to people, taking in the spectacle, and not being loud or
6 interfering with anybody.
7

8 Mele was doing nothing more than exercising his constitutional rights and doing so in a
9 peaceful way. He has a constitutional right, under the First Amendment, to monitor, watch,
10 advocate, petition, and protest regarding the work of representatives and officials inside the
11 building.²
12

13 Given these principles, Count Six does not state an offense under federal law upon which
14 any relief can be granted and must be dismissed pursuant to Rule 12(b) of the Federal Rules of
15 Criminal Procedure.
16

17 **CONCLUSION**
18

19 Mele is accused of nothing more than walking on the Capitol grounds and exercising his
20 First Amendment rights during normal business hours as part of a demonstration of expression
21 regarding the fairness of the 2020 presidential election. Mele has a First Amendment right to
22 express his opinions in such a manner.
23

24
25
26
27 ² Mele never enters into any Government building, let alone the US Capitol.

1 For all the above-described reasons, counts 5 and 6 of the superseding indictment must
2 be dismissed.

3 //

4 //

5 //

6 Dated: June 9, 2023

7 Respectfully submitted,

8
9 /s/ Steven C. Bailey
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14
15
16 **CERTIFICATE OF SERVICE**

17
18 I, Steven C. Bailey, hereby certify that on June 11, 2023, I caused a copy of this Motion
19 to Dismiss Counts 5 and 6 of the Second Superseding Indictment to be delivered to the parties of
20 record by filing it electronically.

21
22
23 /s/ Steven C. Bailey
24 Steven C. Bailey