

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

UNITED STATES OF AMERICA

v.

RALPH JOSEPH CELENTANO III,

Defendant.

Crim. Action No. 22-186 (TJK)

MOTION FOR A BILL OF PARTICULARS REGARDING COUNT SEVEN

Ralph Celentano through undersigned counsel, and pursuant to Rules 7(f) and (b) of the Federal Rules of Criminal Procedure (the “Rules”), respectfully requests that the Court order the government to provide him with a bill of particulars related to Count Seven of the Indictment, charging him with “obstruction of an official proceeding” under 18 U.S.C. § 1512(c)(2). Section 1512(c)(2) makes it illegal to “corruptly” “otherwise obstruct, influence, or impede” “any official proceeding,” or to attempt to do so.

The indictment alleges that, on or about January 6, 2021, in the District of Columbia, Mr. Celentano:

attempted to, and did, corruptly obstruct, influence, and impede an official proceeding, and did aid and abet others known and unknown to do so, that is, a proceeding before Congress, specifically, Congress’s certification of the Electoral College vote as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18.

ECF 14.

These bare allegations do not in any meaningful way describe *how* Mr. Celentano corruptly obstructed an official proceeding. Thus, Mr. Celentano does not have sufficient notice of the allegations against him in Count Seven, in order to prepare a meaningful defense.

I. An Indictment Must Apprise Defendants of the Nature of the Charges Against Them

The Court of Appeals for the District of Columbia Circuit has long held that an indictment insufficiently notifies the defendant of the nature of his charges when it fails to meaningfully describe the defendant's acts that constitutes the charged offenses. In *United States v. Hillie*, a district court relied on this authority to hold that a child pornography indictment that "did not contain any facts that describe the conduct of Hillie's that the government believes to constitute criminal behavior" failed to provide notice of the factual bases for the charges and failed to provide adequate protection of the defendant's double jeopardy rights. *Hillie*, 227 F. Supp. 3d 57, 71 (D.D.C. 2017). One case the district court relied on to reach this conclusion was *United States v. Hunter*, 47 App. D.C. 406 (D.C. Cir. 1918).¹

In *Hunter*, the Court of Appeals for the District of Columbia Circuit considered an indictment charging a violation of the unlawful assembly statute that alleged that the defendants had "congregate[d] and assemble[d] on Pennsylvania avenue, N.W., [and] did then and there crowd, obstruct, and incommode the free use of the sidewalk thereof on said avenue." 47 App. D.C. at 408. The court found that the indictment was fatally flawed because it was devoid of any fact "to inform defendants of the nature of the acts which [were] relied upon by the prosecution as constituting alleged obstruction of the sidewalk, or that would enable defendants to make an intelligent defense, much less to advise the court of the sufficiency of the charge in law to support a conviction." *Id.* at 410.

¹ As the district court pointed out in *Hillie*, "at the time *Hunter* was decided, the federal appellate court we know today as the 'United States Court of Appeals for the District of Columbia Circuit' was called the 'Court of Appeals of the District of Columbia.'" *Hillie*, 227 F.Supp.3d at 74.

If an indictment's lack of particularity is not fatal, Federal Rule of Criminal Procedure 7(f) provides that the Court may nevertheless direct the filing of a bill of particulars upon the motion of a defendant. Fed. R. Crim. P. 7(f). The purpose of a bill of particulars is to apprise defendants of the nature of the charges against them so as to ensure that they: (1) understand the charges, (2) can prepare a defense, (3) can avoid prejudicial surprise at trial, and (4) can be protected against retrial for the same offense. *See United States v. Butler*, 822 F. 2d 1191, 1193 (D.C. Cir. 1987) (citing *United States v. Gorel*, 622 F.2d 100, 104 (5th Cir. 1979) (noting a bill of particulars can be necessary to avoid a surprise at trial)).

A. A bill of particulars is necessary to inform both Mr. Celentano and the Court of the government's theory.

Count Seven of Mr. Celentano's indictment contains many of the same flaws as the indictment in *Hunter*. First, the Indictment fails to provide notice of how Mr. Celentano allegedly acted "corruptly." Second, the Indictment fails to allege *how* Mr. Celentano allegedly obstructed an official proceeding – there are no allegations of any actions Mr. Celentano took to obstruct an official proceeding. *See Hunter*, 227 F. Supp. 3d at 409 (noting that indictment that failed to "inform the defendants of the nature of the acts" that allegedly constituted "obstruction of the sidewalk" lacked sufficient particularity). Without knowing exactly what acts the government intends to prove "obstructed, influenced, or impeded" the counting of the electoral college votes, Mr. Celentano does not have the required notice of the exact crime of which he is charged.

B. A bill of particulars is needed to provide clarity as to the government's theory on Count Seven.

This lack of clarity about the government's theory is especially significant considering that the government is making novel use of Section 1512 to prosecute offenses unrelated to the administration of justice or destruction of evidence. The application of the obstruction statute to

Mr. Celentano's conduct is particularly questionable. As such, as set forth in a separate motion to dismiss Count Seven, Mr. Celentano's position is that Count Seven should be dismissed as a matter of law.

Setting aside the propriety of the obstruction statute's application to Mr. Celentano's case, as the Honorable Judge Dabney L. Friedrich pointed out recently, the lack of particularity in the government's obstruction charges in the January 6 cases, also makes it difficult for the district courts to assess the sufficiency of the charges. At an oral argument on another January 6 defendant's Motion to Dismiss the obstruction count in *United States v. Reffitt*, Judge Friedrich *sua sponte* ordered the government to provide a bill of particulars on this ground:

I'm going to request the government to provide a bill of particulars, because it is not really clear to me what your theories are and what you think the facts that you're going to prove support in terms of obstruction.

Min. Order, *United States v. Reffitt*, 21-CR-32 (D.D.C).²

Here, Count Seven of the Indictment lacks particularity just as Judge Friedrich found in *Reffitt*. As such, Mr. Celentano requests a bill of particulars to provide proper notice of the charges against him and aid the Court in assessing the sufficiency of the charge. *See Hunter*, 47 App. D.C. at 410 (noting that particularity in indictment is important "so that [the court] may decide whether [the allegations] are sufficient in law to support a conviction").

II. Conclusion

For the foregoing reasons, Mr. Celentano respectfully requests that the Court grant this Motion and order the Government to provide a bill of particulars that specifically details the information requested herein.

² As the Court is surely aware, Mr. Reffitt was subsequently convicted by a jury of all counts. Of course, this does not undermine Mr. Celentano's claim that his Indictment fails to notify him of the crimes he has to defend against at his trial.

Respectfully submitted,

Marissa Sherman

Marissa Sherman
Attorney for Ralph Joseph Celentano III
Federal Defenders of New York, Inc.
One Pierrepont Plaza, 16th Floor
Brooklyn, NY 11201
(718) 407-7408