

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

HATCHET SPEED,  
Defendant.

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Case No. 1:22-cr-244 (TNM)

**REPLY BRIEF IN SUPPORT OF MR. SPEED’S MOTION TO  
DISMISS COUNT ONE OF THE INDICTMENT**

In its response, the government concedes that judges of this Court have reached opposite conclusions when considering 18 § U.S.C. 1512(c)(2) in cases involving January 6, 2021. Gov’t Resp. at 6. Indeed, the government spills much ink (Gov’t Resp. at 6-18) debating the merits of Judge Nichols’ legal conclusions in *Miller. United States v. Miller*, 589 F. Supp. 3d 60 (D.D.C.), *reconsideration denied*, 605 F. Supp. 3d 63, 78 (D.D.C. 2022).

Although Mr. Speed maintains his arguments (Mot. to Dismiss at 2-7) that the traditional tools of statutory construction render the alleged conduct insufficient under § 1512(c)(2), at the very least, the statute’s multiple plausible interpretations highlight its ambiguity and the rule of lenity’s applicability. *See Miller*, 589 F. Supp. 3d at 78 (“At the very least, the Court is left with a serious ambiguity in a criminal statute.”)

## ARGUMENT

This Court should invoke the rule that “ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.” *Yates v. United States*, 574 U.S. 528, 547-48 (2015) (quoting *Cleveland v. United States*, 531 U.S. 12, 25 (2000)). Courts have “traditionally exercised restraint in assessing the reach of a federal criminal statute,” *United States v. Aguilar*, 515 U.S. 593, 600 (1995), and have “construe[d] penal laws strictly and resolve[d] ambiguities in favor of the defendant.” *United States v. Nasir*, 17 F.4th 472, 473 (Bibas, J., concurring) (citing *Liparota v. United States*, 471 U.S. 419, 427). Applying these principles here “gives citizens fair warning of what conduct is illegal, ensuring that [an] ambiguous statute[ ] do[es] not reach beyond [its] clear scope.” *Nasir*, 17 F.4th at 473 (Bibas, J., concurring). And it makes sure that “the power of punishment is vested in the legislative, not the judicial department.” *Id.* (citations omitted); *United States v. Bass*, 404 U.S. 336, 348 (1971).

Thus, as explained in Mr. Speed’s Motion to Dismiss, the Court should adhere to the conclusion reached by Judge Nichols in *Miller* and by Attorney General Barr in the 2018 Barr Memo<sup>1</sup> and conclude that § 1512(c)(2) requires a defendant to have taken some action with respect to a document, record, or other object in order to corruptly obstruct, impede or influence an official proceeding.

Because Mr. Speed is not alleged to have taken such action, the Indictment fails to allege a violation of 18 § U.S.C. 1512(c)(2).

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<sup>1</sup> Available at [William Barr Senate Questionnaire Attachment 12\(c\).pdf \(documentcloud.org\)](https://www.documentcloud.org/documents/12(c).pdf) (last visited Jan. 25, 2023). See Mot. to Dismiss at 3; *Begay v. United States*, 553 U.S. 137 (2008); *Yates v. United States*, 574 U.S. 528 (2015).

**CONCLUSION**

For all the above stated reasons, Mr. Speed respectfully moves this Court to dismiss Count One of the Superseding Indictment.

Dated: February 24, 2023.

Respectfully Submitted,

/s/ Courtney Dixon

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