

No. 23-32

IN THE

Supreme Court of the United States

EDWARD LANG, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*,

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the District of
Columbia Circuit (Record No. 22-3038)

***MOTION FOR LEAVE TO FILE AMICUS
CURIAE BRIEF IN SUPPORT OF A WRIT OF
CERTIORARI FROM FORMERFEDS GROUP
FREEDOM FOUNDATION, MEMBERS, et. al,***

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September 29, 2023

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Proposed *Amici Curiae* hereby respectfully request that this Honorable Court grant leave for them to file an *Amicus Curiae* brief in the hope that their points and explanations will assist this Court in quickly observing from the lengthy record pertinent reasons why the Court should grant *Certiorari* due to the importance of these issues and perhaps if any procedural doubts persist the Court should remand to fully brief the definition of “corruptly” as the key but undefined limiting term in 18 U.S.C. 1512(c)(2).

Pursuant to Rule 37.3 of the Rules of the Supreme Court, the Solicitor General responded to *Amici’s* query and Appellant’s counsel of record Norman Pattis also did, and both took no position on the filing of this *Amicus Curiae* brief, except that Appellant expresses strong confidence that his existing Appellant’s Brief already filed is complete, accurate, correct, and sufficient for the Court to grant him a writ. Appellant appears unconvinced that additional briefing is required. But Pattis’ email leaves it to the discretion of the Court.

This brief supports the Petition for a Writ of *Certiorari* and the substantive requests for relief of the Petitioners which are pure questions of law.

In parallel cases and motions, the District Court granted Defendants Lang’s, Fischer’s, and Miller’s Federal Rule of Criminal Procedure Rule

12 motion to dismiss the charges under 18 U.S.C. § 1512(c)(2) from the indictment.

As a result, although other Counts of the indictment have proceeded in the District Court, the issue here of the applicability of 18 U.S.C. § 1512(c)(2) comes now to this Court as many pure questions of law without the burden of a record of evidentiary proceedings.

Thus, although the legal issues are challenging, the case is both vastly important for the broad potential reach of the new approach to the application of the law, almost without limit, as a felony punishable by up to 20 years in prison, but also relatively easier for the Court to fit into its schedule because there has been no trial or other evidence on this question.

The principal parties have done an excellent job of raising, arguing, and briefing many, many issues. However, with so many issues and debates surrounding the application of the statute to this scenario, a surprising diversity of important questions, *Amici* believe they may have some additional insights to offer on the “best” meaning of the qualifier “corruptly.”

This insight that *Amici* believe should be emphasized in detail comes from the fact that Congress has narrowed the options by choosing to use the term “corruptly” as something distinct from “unlawfully.” Congress’ choice to say “corruptly” cannot be overlooked and it is binding upon the legal system now.

Where Congress meant to say “unlawfully,” it did so and knows how to say it. Where Congress says

“corruptly” it must mean something different from “unlawfully.”

All judicial consideration of “corruptly” as a qualifier and limitation on criminal liability, whether related to January 6, 2021, cases or not, appear to suffer from a significant error:

Regardless of the best interpretation of “corruptly” in the abstract, in the context of Congressional enactments of statute, Congress has foreclosed any interpretation of “corruptly” which is the same or almost the same as “unlawfully.” Where Congress chooses the word “unlawfully” in some statutes but “corruptly” in other statutes, the Judiciary must at least begin its analysis with the view that “corruptly” is not the same as “unlawfully.”

Now, recent events and prosecutions leave *Amici* baffled by when, how, and for what they might be prosecuted under 18 U.S.C. § 1512(c)(2). The only guiding principle appears to be whether a protestor agrees with government messages.

Are they guilty of “corruptly” attempting to (18 U.S.C. 1512(k)) “influence” an “official proceeding” when nobody knows what “corruptly means?”

In an unusual posture, the United States filed an interlocutory appeal from the District Court’s dismissal of charges under 18 U.S.C. 1512(c)(2). The USAO chose to appeal the dismissal immediately rather than wait for the outcome of trial. Therefore Lang, Fischer, and Miller have gained standing prior to trial by the United States’ interlocutory appeal.

Because the United States of America appealed to the U.S. Court of Appeals for the District of Columbia Circuit, immediately while the rest of the case proceeded, the Petitioner may under the rules and is required at pain of losing his appeal rights to appeal this issue now.

This Petition arises from *United States v. Lang*, 64 F.4th 329 (D.C. Cir. 2023), *rehearing denied*, 2023 LEXIS 12753 (D.C. Cir., May 23, 2023), Consolidated Record Nos. 22-3038, 22-3039, and 22-2041), from the District Court at:

- *United States v. Edward Lang*, Trial Docket, 1-21-cr-00053-CJN.
- *United States v. Joseph Fischer*, Trial Docket No. 1-21-cr-00234-CJN.
- *United States v. Garrett Miller*, Trial Docket 12-cr-00119-CJN.

Hundreds of other prosecutions arising from the events of January 6, 2023, also involve criminal charges under the exact same novel, expansive interpretation by the USAO of 18 U.S.C. § 1512(c)(2).

Proposed *Amici Curiae* further respectfully request any waiver that may be required as to the timeliness of this brief. They note that the Solicitor General requested and received an extension until September 29, 2023, for the deadline for the United States to file an Appellee's Brief. *Amici* believe that this makes filing today timely, but note that the rules are complex,

possibly different at the writ of certiorari stage from the merits stage.

Therefore, out of an abundance of caution proposed *Amici Curiae* further respectfully request that this Honorable Court excuse, waive, or extend any deadlines that their volunteer efforts may have exceeded in filing this brief.

They note that only one *Amicus Curiae* brief appears to have been filed so far.

The FormerFedsGroup Freedom Foundation is an IRS Code Section 501(c)(3) organization that is staffed primarily by hundreds of volunteer widows and relatives of victims of hospital treatment protocols and MRNA vaccines for COVID-19 that in many instances were coerced or administered without “informed consent.”

The Foundation and members intend to influence official proceedings and may engage in actions that some could twist into obstructing or impeding, in order to stop falsehoods that they are convinced led to the death of their loved ones.

If granted leave, *Amici* will physically file by U.S. mail forty (40) copies of the brief in the U.S. Supreme Court’s booklet format.

Amici include in their electronic filing of this Motion a copy of the proposed *Amicus Curiae* brief.

CONCLUSION

Proposed *Amici* respectfully request that this Court receive their *Amicus Curiae* brief urging the

Court to grant *Certiorari*, reach the constitutional issues and/or remand, and grant the Petitioner relief.

Amici asks the Court to strike 18 U.S.C. § 1512(c)(2) as unconstitutionally vague and overbroad, particularly burdening the constitutional right under the First Amendment to “influence” an official proceeding. “Corruptly” has too many inconsistent definitions to be constitutional.

But at a minimum this Court should adopt the meaning from *United States v. Pettibone*, 148 U.S. 197, 206-207 (1893) that “corruptly” (in a predecessor statute) now in 18 U.S.C. § 1512(c) requires a **specific design to thwart justice.**

Corruptly must be tethered to obstruction of justice, not just breaking any law. Any predicate act is already independently illegal under other statutes.

Respectfully submitted,
BY COUNSEL

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CERTIFICATE OF COMPLIANCE

I certify that this motion is formatted and printed in typeface Century Schoolbook, 12 point font size, and contains 1,203 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

/s/ Thomas Renz

STATEMENT OF SERVICE

Amici, by counsel, certifies that a copy of the foregoing Motion for Leave to File Amicus Curiae Brief and that Brief attached were served, upon the attorney of record in this Court for the Appellant by first class U.S. mail, postage prepaid, on September 29, 2023, on:

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Also, in compliance with Rule 29 of the Rules of the Supreme Court, an electronic copy of this Motion was also sent by electronic mail (email) on the same date in electronic / computer PDF format to all attorneys for the principal parties.

/s/ Thomas Renz