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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-3037 **September Term, 2022**

1:21-cr-00496-TJK-1

Filed On: June 2, 2023

United States of America,

Appellee

v.

Mark Sami Ibrahim,

Appellant

BEFORE: Millett, Pillard, and Rao, Circuit Judges

ORDER

Upon consideration of the motion to dismiss, the opposition thereto, the reply, and the Rule 28(j) letter, it is

ORDERED that the motion to dismiss be granted. The district court's order denying appellant's motion to dismiss the indictment is not appealable under the collateral order doctrine. See Midland Asphalt Corp. v. United States, 489 U.S. 794, 798–99 (1989). Appellant has not shown that the issues of his appeal are completely separate from the merits of the underlying

proceeding or effectively unreviewable on appeal from a final judgment. See id. at 798–801.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,	)	Criminal Action No. 21-496
vs.	)	March 3, 2023 3:33 p.m. Washington, D.C.
MARK SAMI IBRAHIM,	)	
Defendant.	)	

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TRANSCRIPT OF ORAL RULING
BEFORE THE
HONORABLE TIMOTHY J. KELLY,
UNITED STATES DISTRICT COURT JUDGE

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Official Court Reporter

This hearing was held via videoconference and/or telephonically and is, therefore, subject to the limitations associated with audio difficulties while using technology, i.e., static interference, overlapping speakers, etc.

Proceedings reported by machine shorthand. Transcript produced by computer-aided transcription.

[2] **PROCEEDINGS**

THE COURTROOM DEPUTY: We are on the record in Criminal Matter 21-496, United States of America versus Mark Sami Ibrahim.

Present for the government are James Peterson and Nathaniel Whitesel. Present for the defendant is Marina Medvin. Also present is Mr. Ibrahim.

THE COURT: All right. Well, good afternoon to all of you. And let me begin by apologizing for the delay in this matter; it was not my first choice. But my calendar has been crunched these days, so that's what I had to resort to. So, again, I apologize for all of that.

I do have today – here is how I thought we could proceed today. I have rulings for you on everything that is before me except for the Privacy Act issue that we can talk about on the other side of that, and then we'll see where things – where the parties want to go from there.

How does that sound to you, Mr. Peterson?

MR. PETERSON: Acceptable to the government, Your Honor. Thank you.

THE COURT: Ms. Medvin.

MS. MEDVIN: Sounds good, Judge. Thank you.

THE COURT: All right. So before me – look, this was – I thought – Ms. Medvin, I thought there were some very interesting issues here. So while I am not going to [3] dismiss Count 3 because of the arguments you raised, in part, some of the reasons why we were delayed was because I thought they did require a lot of careful attention and thought.

So before me are two motions to dismiss Count 3 of the indictment that charges the defendant with violating 40 United States Code Section 5104(e)(1)(A)(1) by carrying a firearm onto the Capitol grounds on January 6, 2021.

In the first motion, the defendant moves to dismiss Count 3 because the indictment doesn't charge any mens rea element; that's ECF No. 48.

In the second motion, the defendant argues that the Capitol Police Board regulations exempt him from Section 5104(e)(1)(A)'s reach; that's ECF No. 61.

And also before me is the defendant's motion that I reconsider my prior ruling denying his Second Amendment challenge to the same statute in light of the Supreme Court's recent ruling in *Bruen*, 142 Supreme Court 2111, from 2022.

So for the following reasons, although I think at least the mens rea issue – motion did present an interesting question of statutory interpretation, I am going to deny all three motions.

So, first, I will turn to the mens rea issue. I will begin with that issue on which I reserved judgment [4] during my last ruling on defendant's first round of motions to dismiss.

The parties agree that Count 3 does not charge the defendant with acting with any specific mens rea; in other words, it's charged at least in the indictment as a strict-liability crime.

Since my last ruling, the parties have each briefed further the question of whether the violation charged in Count 3 contains a scienter requirement. After reviewing those filings, I agree with the government that Section 5104(e)(1)(A) is best read as a strict-liability offense.

Now, whether a statute contains a mens rea element is a question of statutory interpretation. But the Supreme Court has long made clear that the analysis

begins with a presumption of scienter. That's from *United States v. Excitement Video, Inc.*, 513 U.S. 64, 69, a Supreme Court case from 1994.

A statute's mere silence on mens rea, "Does not necessarily suggest that Congress intended to dispense with a conventional mens rea element which would require that the defendant know the facts that make his conduct illegal." That's *Staples versus United States*, 511 U.S. 600, at 605, Supreme Court case from 1994.

Rather, as *Staples* made clear: Mens rea is the [5] usual rule, not the exception. So to, "Dispense with mens rea as an element of the crime," there must be "some indication of congressional intent to do so, express or implied." That's *Staples*, at 606.

In my view, applying the *expressio unius* canon of statutory interpretation, Section 5104(e)'s text compels the conclusion that Congress intended to dispense with mens rea at least as far as – or in subsection (e)(1)(A).

The offense for which the defendant has been charged is but one of a larger – is but one within a larger statutory scheme setting out unlawful activities in the U.S. Capitol buildings and grounds. Section (e) proscribes two categories of offenses related to Capitol grounds and building security. Those relating to "firearms, dangerous weapons, explosives, or incendiary devices" under Section (e)(1) and "violent entry and disorderly conduct," under (e)(2).

Each – and this is really the heart of the ruling: Each and every offense under Section (e) besides those under (e)(1)(A) expressly includes a mens rea element including, "knowingly with force and violence, entering or remaining on the floor of either House of Congress," under Section (e)(1)(B).

Under these circumstances, the canon of negative implication very strongly suggests that Congress intended to [6] dispense with mens rea in Section 5104(e)(1)(A). This canon's force, like so many, turns heavily on context. But the Supreme Court has made it clear that it is appropriate, and it – the canon does operate with great weight where "it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it. That's *Barnhart versus Peabody Coal Company*, 537 U.S. 149, at 168, a Supreme Court case from 2003. And "negative implications raised by disparate provisions are strongest in the instances in which the relevant statutory provisions were considered simultaneously when the language raising implication was inserted." That's *Gomez-Perez versus Potter*, 553 U.S. 474, at 486, from 2008; it's a cleaned-up quote.

That is exactly – what that case mentioned, that is exactly what happened here. In 1967, Congress enacted each of the substantive offenses under Section 5104(e) simultaneously. It's readily apparent from the bill itself and in both the Senate and House Committee reports attached to the government's opposition, at ECF No. 54, Exhibits 4 and 5.

So, in summary, the text of the bill – the text of the law strongly – and by operation of the canon of negative implication strongly suggests that Congress intended to dispense with mens rea for this particular offense.

[7] Additionally, while I question the usefulness of legislative history in general, I will note that both the House and Senate Committee reports here corroborate this textual analysis. Many reports also made clear that Congress paid special attention to the mens rea requirement in Section (e)(2) while omitting the same in Section (e)(1)(A). In a Senate report, Congress explained that it added the word "willfully" to the offenses now codified under Section (e)(2), "to protect against prosecutions for inadvertent entry by tourists or others who are not aware of the nature of these places or rooms." That's ECF No. 54, Exhibit 4, at 6. But Congress did no such thing to protect against the inadvertent commission of the offenses now codified under Section (e)(1)(A).

The House then responded by further adding – by also adding the word "knowingly" to Section (e)(2)'s mens rea requirement to, "make it quite clear that the provisions of this subsection do not apply to an individual or a group of individuals who, either by accident or without intent to violate these provisions, do any of the acts which are prohibited by the reported bill." That's ECF No. 54, Exhibit 5, at 2. Again, it offered no such amendment to the offenses now codified under Section (e)(1)(A).

For all of these reasons, I do agree with the government that both the statutory text and the legislative [8] history of 5104(e)(1)(A) overcome the presumption of scienter, making clear that Congress intended to dispense with mens rea in that section. Collectively, both the text and the legislative history are very strong evidence that this is what Congress's intent was.

Now, the defendant, for his part, has not offered an alternative explanation – an alternative interpretation or otherwise refuted the force of the government's textual argument, at least in my view. Instead, he argues that Congress did not expressly state that it intended to do away with mens rea and points to stray comments in the congressional record, suggesting that certain members might have disapproved making this offense strict liability. But neither point carries the day for me and outweighs the government's straightforward reading of the statute's text. In particular, nothing says that Congress has to expressly state an offense be strict liability. As I mentioned earlier, the case law is clear that Congress can do so or at least the expression of Congress could also be – can be express or implied.

In fact, without a contrary textual argument, the defendant turns to sort of baldly asserting that Congress simply made a "mistake" in enacting Section (e)(1)(A) without a mens rea requirement. That's ECF No. 48, at pages 11 and 15. But, of course, courts are not in the [9] business of rewriting statutes on nothing more than a hunch that Congress meant something other than what it said or just because the judge in a

particular case thinks Congress made a policy mistake.

Nor can the Supreme Court's decisions in *Staples*, that I mentioned earlier, or *Rehaif v. United States* bear the weight that defendant assigns them. I will begin with *Staples*. Now, the statute at issue in that case, which punished unlawful possession of an unregistered machine gun, was entirely silenced on a mens rea issue. But there, unlike here, the government lacked any textual basis – other than Congress's silence – to combat, to counterbalance, the presumption of scienter. So, instead, it argued the crime was a so-called, "public welfare offense."

To understand the influence of *Staples* here, some background on public-welfare offenses is helpful. In "limited circumstances," the Supreme Court has recognized strict-liability offenses typically involving "statutes that regulate potentially harmful or injurious items." That's *Staples*, at 606. "In such situations, the Supreme Court has reasoned that: As long as a defendant knows that he is dealing with a dangerous device of a character that places him in responsible relation to a public danger, he should be alerted to the probability of a strict regulation." That's also *Staples*, at 607, quoting *United States versus* [10] *Dotterweich*, 320 U.S. 277, at 281, a Supreme Court case from 1943.

So the Court has "assumed that in such cases Congress intended to place the burden on the defendant to ascertain at his peril whether his conduct comes within the inhibition of the statute." Again, that's

Staples quoting another older Supreme Court case, *United States versus Balint*, 258 U.S. 250, at 254, a Supreme Court case from 1922.

Put another way, the Court has "relied on the nature of the statute and the particular character of the items regulated to determine whether congressional silence concerning the mental element of the offense should be interpreted as dispensing with conventional mens rea requirements." Examples of strict liability public-welfare offenses include the Narcotic Act of 1914, which criminalized the undocumented sale of certain narcotics, and possession of unregistered grenades. That's *Balint*, that I mentioned earlier, and *United States versus Freed*, 401 U.S. 601, Supreme Court case from 1971.

Turning back to the statute at issue in *Staples*. The Court declined to expand the concept of public-welfare offenses to cover firearms regulations, holding that Congress did not intend for 18 United States Code Section 5861(d), punishing unlawful possession of an unregistered machine gun, to be strict liability, and so "to [11] obtain a conviction, the government should have been required to prove that petitioner knew of the features of his AR-15 brought it within the scope of the Act." That's *Staples*, at 619. In so holding, the Court noted that, quote: Regulation in itself is not sufficient to place gun ownership in the category of the sale of narcotics in *Balint*. Again, that's *Staples*, at 613.

But *Staples* does not get the defendant very far here because my ruling does not hinge on whether

Section (e)(1)(A) is a public-welfare offense. The statute in *Staples* simply did not contain the same sort of textual evidence that is present here that Congress actually intended to dispense with mens rea. And the Supreme Court has never suggested that only public-welfare offenses may be strict liability. So even if *Staples* is best read to hold that no firearms regulation could ever be a public-welfare offense, it does not go so far as to say that Congress may not single out certain laws touching on firearms possession or strict liability.

The Court's reasoning in *Rehaif* is even further removed from the analysis here. In that case, the Supreme Court applied the presumption of scienter to 18 United States Code Section 922(g), holding that: To secure a conviction for unlawful possession of a firearm based on a prohibited status, "the government must prove that the [12] defendant knows that his status was a person barred from possessing a firearm." But there, the Court noted – relying in part on *Staples* – that Section 922(g) was not a public-welfare offense because firearms provisions, "are not part of a regulatory or public welfare program." So because it didn't rely on public welfare, it premised its holding on the statute's text.

Specifically, the Court found that, "the statutory text supported the presumption of scienter because, "as a matter of ordinary English grammar," the mens rea requirement in the statute's penalty provision was best read as, "applying to all the subsequently listed elements of the crime." That's – again, that is *Rehaif* at 2195 to 2196, cleaned up. But that is not the case

here. In fact, it's quite the opposite, since Congress chose to attach mens rea requirements to some distinct offenses within the statute but, at the same time, did not do so as to the offense at issue here.

Now, to be sure, the D.C. Circuit has suggested – in dicta – that *Staples* and *Rehaif* might suggest that Section 5104(e)(1)(A) requires proof of mens rea. In *United States versus Class*, where the Circuit considered 5104(e)(1)(A)'s constitutionality under the Second Amendment, it also said that: The lack of scienter in this particular statute may raise issues of statutory [13] construction, noting that, in *Rehaif* and *Staples*, the Supreme Court concluded that restrictions on the possession of firearms in those cases did require proof of scienter. That's 930 F.3d 460, at 469. *Class* is a D.C. Circuit case from 2019. The court went on to say that "the parallel" between those cases and 5104(e)(1)(A) was clear: *Rehaif* concerned a ban on possession of a gun by a person with a particular immigration status. *Staples* concerned a ban on possession of a particular type of gun; and this case contains a ban on possession of a gun in a particular place.

But, as the Circuit also noted, the defendant in that case had not – had waived any statutory argument over whether 5104(e)(1)(A) contained a mens rea element. And the court lacked the benefit of the briefing I have before me. And after full briefing on this statutory question that was waived in *Class*, I don't think the parallel between the statute here and the ones that are in *Staples* and *Rehaif* is very clear at all. The statute at issue in *Staples* lacked the strong

textual evidence of congressional intent to create a strict-liability crime that's present here. And in *Rehaif*, the most natural reading of the text supported finding a mens rea requirement – not the other way around, as is the case here.

As a final line of attack, defendant argues that the five-year penalty attached to violations of [14] 5104(e)(1)(A) counsels against holding that it is a strict-liability offense. And he's right that "historically, the penalty imposed under a statute has been a significant consideration in determining whether the statute should be construed as dispensing with mens rea." That's *Staples*, again, at 616. But neither in *Staples* nor in any other case that – or in any other case has the Supreme Court suggested that felonies can never be strict liability. While strict liability felonies are uncommon, they're not without precedent.

For example, I already mentioned *United States versus Freed*, a case in which the Supreme Court held that felony possession of unregistered hand grenades was a strict-liability offense. Under *Staples*, I must consider whether the felony penalty here is a factor in determining whether Congress meant to dispense with the mens rea requirement. But, in my view, the five-year felony penalty is not enough to outweigh the clear textual – the evidence in the text of the statute and the legislative history that all point to the conclusion – both point to the conclusion that Congress meant to make this offense strict liability.

Now, buttressing his statutory argument, defendant also argues that 5104(e)(1)(A) should not be construed as strict liability because the statute infringes on his Second Amendment rights. He leans on the Supreme Court's recent [15] decision in *Bruen*. But, as I have already explained in my last ruling, I disagree with the defendant's reading of *Bruen* as applied to this case. And as I will explain in a moment, he hasn't persuaded me to revisit that ruling.

Aside from his *Bruen* argument, defendant does not argue that Congress lacked the power to make 5104(e)(1)(A) a strict-liability crime or that the statute as written is unconstitutionally vague. Of course, on the latter point, the *Class* court's ruling that 5104(e)(1)(A) is not unconstitutionally vague would control here.

Finally, to the extent defendant takes a passing shot at the rule of lenity, that canon only comes into play when "after resort to the traditional tools of statutory interpretation, reasonable doubt remains as to the statute's meaning." That's *United States versus Villanueva-Sotelo*, 515 F.3d 1234, at 1236, a D.C. Circuit case from 2008. I do find that Congress's intent to make 5104(e)(1)(A) strict liability is sufficiently clear that resort to the rule of lenity would not be appropriate.

So I – and I do find that the government has shown that Congress did intend to make 5104(e)(1)(A) a strict-liability offense which overcomes the presumption of scienter. Defendant has not pointed to any case

where that presumption has controlled in the face of such a strong textual argument for strict liability. I am going to deny [16] the motion to dismiss Count 3 on that ground.

And before concluding and turning to the next motion, I will just briefly address the government's alternative argument that 5104(e)(1)(A) is, in fact, a public-welfare offense despite the Supreme Court's admonishments that firearms regulations generally cannot so qualify. I do think there may be many good reasons to treat this offense differently than the statutes in *Staples* and *Rehaif*. After all, unlike in those cases, a statute here does not, broadly speaking, regulate the possession or ownership of firearms. Rather, it regulates conduct in the Capitol and on Capitol grounds, including the use and carrying of firearms; but the briefing on this issue is underdeveloped. As I have said, my ruling here doesn't determine – doesn't depend on whether 5104(e)(1)(A) is a public-welfare offense, so I don't need to decide that question.

Finally, all of that said, the government has indicated in its briefing that it's prepared, in the event this case goes to trial, to agree to a jury instruction requiring the jury to conclude that the defendant acted knowingly when he carried a firearm onto the Capitol grounds. So despite my ruling here, the government may well still think it's in its interest to agree to an instruction down the road. That's the first motion.

[17] The other two – my rulings – will be much more concise.

Defendant has also moved to dismiss Count 3 on another ground; again, it presents another question of statutory interpretation. 5104(e)(1)(A) prohibits individuals from carrying a firearm on Capitol grounds unless the Capitol Police Board regulations authorize the individual to do so. Defendant contends that these regulations authorized him to carry a firearm onto the grounds that day. The government contends otherwise, offering a different reading of the relevant regulation. I ultimately do agree with the government's reading so will deny this motion as well.

The Capitol Police Board regulations provide that Section 5104(e)(1)(A)'s criminal prohibition shall not – quote: Shall not apply to officers or employees of the United States authorized by law to carry firearms, duly appointed federal, state, or local law enforcement officers authorized to carry firearms, and members of the Armed Forces, while engaged in the performance of their duties, or any person holding a valid permit under the laws of the District of Columbia to carry firearms in the course of his – any person holding a valid permit under the laws of the District of Columbia to carry firearms in the course of his employment.

[18] Defendant includes that regulation as Exhibit 1 to ECF No. 61. On January 6th, defendant was an off-duty DEA agent authorized to carry a firearm under 21 United States Code Section 878(a)(1), which doesn't limit agent's authority to carry firearms when they're on duty. So defendant submits he falls within the "federal law enforcement" exception to 5104(e)(1)(A) that I have just set out.

The government counters that the Board's regulation exception only applies when a federal officer is carrying a firearm on Capitol grounds "while engaged in the performance of their duties." I will refer to this clause as the "official-duty qualifier."

Defendant says he was "off duty" on January 6, and the government proffers he was on official leave. But, either way, there's no dispute that the defendant was not acting in his official DEA capacity at the Capitol on January 6th.

So the question is whether the official-duty qualifier modifies each item on the list; that is, officers – United States officers and employees, law enforcement officers, and members of the Armed Forces, or whether it only qualifies the immediately preceding list item, "members of the Armed Forces."

Defendant advocates the latter reading, arguing [19] that the regulation excepts Section 5104(e)(1)(A)'s reach from three distinct groups: U.S. officials or employees who are authorized by law to carry firearms – that's one; two, law enforcement officers who are authorized to carry firearms; and three, members of the Armed Forces while they are engaged in the performance of their official duties.

In support of this argument, defendant leans on the last-antecedent canon, which provides that "a limiting clause or phrase" "should ordinarily be read as modifying only the noun or phrase that it immediately follows." That's a quote from *Barnhart versus Thomas*, 540 U.S. 20, at 26, a Supreme Court case from 2003.

According to this rule, the defendant argues the official-duty qualifier should only be read to constrain the last item in the regulations list, "members of the Armed Forces." But as with any canon of construction, this general rule is not an absolute and can assuredly be overcome by other indicia of meaning. That's the *Barnhart* case, again, at 26.

As the Supreme Court elaborated in *Lockhart v. United States*, it has "long acknowledged that structural or contextual evidence may rebut the last antecedent inference," such as when the "modifier is applicable as much to the first as to the last words in a list." That is *Lockhart*, at 577 U.S. 347, at 355, a Supreme Court case from 2016.

[20] Here, I do think that context overcomes the last antecedent canon. Specifically, the comma preceding the official-duty qualifier sets it apart from the list. And consistent with *Lockhart*, there is simply no reason to think the Board would limit members of the Armed Forces to carrying firearms onto Capitol grounds to when they're engaging in their official duties but give federal employees and law enforcement officers free reign, regardless of when or why they're at the Capitol or on its grounds.

As the government points out, the D.C. Circuit's opinion in *United States v. Pritchett* supports this reading. That's 470 F.2d 455, a D.C. Circuit case, 1972. In that case, the court interpreted a statutory exception to a ban on carrying a firearm within D.C. As relevant there, the exception applied to: marshals; sheriffs;

prison or jail wardens; or their deputies; or to members of the Army, Navy, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty. That's the case at page 456. The defendant was a corrections officer. And he argued on appeal that the "when on duty" qualifier only applied to the last group of people in the list, quote: Members of the Army, Navy, or Marine Corps, National Guard or Organized Reserves. So, he said, the exception for the deputies of prison or jail wardens applied to him even when he was carrying a firearm while off duty. The district [21] court disagreed.

But the Circuit agreed with him and reversed his conviction. And in doing so, the court explained that: Had the drafters of the statute intended the phrase "when on duty" to modify the earlier portion of the Act referring to the deputies and jail wardens, they could have omitted the "or" preceding the members of the Army, Navy, or Marine Corps, and inserted a comma before the phrase "when on duty" so as to separate it from the clause immediately preceding. That's that case at 459.

That is, essentially, precisely how the Capitol Board regulation here is structured. The "members of the Armed Forces" clause is joined to the list by the conjunctive "and" rather than the disjunctive "or," and the official-duty qualifier is offset by a comma "so as to separate it from the clause immediately preceding." So I do find the *Pritchett* case very persuasive in favor of the government's reading.

The defendant's remaining arguments don't convince me that his reading of the regulation is correct. First, he argues it would be "incongruous" for federal employees and law enforcement to have two preconditions to carry a firearm onto Capitol grounds – that they're authorized to carry firearms and the official-duty qualifier – while members of the Armed Forces only have one. But I don't see the logical [22] inconsistency this reading produces.

Whatever reason the Board might have had for not including a requirement that members of the Armed Forces be "authorized" to carry firearms, too, it doesn't affect my reading of the official-duty qualifier. Nor do I think, as defendant argues, that my reading of the regulation suggests that federal employees and law enforcement "can be engaged in the performance of their duties with firearms while not authorized to carry those firearms." That's ECF No. 63, at 3. The statute simply recognizes that someone authorized to carry a firearm generally is not always doing so in furtherance of their duties.

Nor is my interpretation here inconsistent with another paragraph of the Capitol Police Board Regulations, as defendant argues. A different section of the same set of regulations says that another section of the statute – another prohibiting "using a dangerous weapon" on Capitol grounds "shall not apply to any duly appointed law enforcement officer engaged in the performance of his official duties." That's ECF No. 61-1. The only difference I see between these regulations is that more individuals qualify for the exception to the

offense provision at issue here than the offense concerning the use of a dangerous weapon. But I don't read it to have any bearing on my interpretation of the official-duty qualifier.

[23] For all of those reasons, I don't find that defendant qualifies for the regulations exception to the reach of 5104(e)(1)(A). So I have denied the motion to dismiss on that basis as well.

Last, I will address the defendant's motion to reconsider my previous denial to Second Amendment challenge to 5104(e)(1)(A). As a reminder, I denied that challenge in light of what I view as binding Circuit precedent in *United States versus Class*, which denied a Second Amendment challenge to the very same statute. My discussion of that issue is located on pages 39 to 41 of the transcript of my oral ruling on that motion, which is on the docket at ECF No. 70. The government correctly points out that: In his notices of supplemental authority asking me to reconsider that ruling, the defendant does not cite or attempt to meet the standard applicable to motions for reconsideration. That, in addition to the merits of the argument dooms this motion.

Now, in this district, motions to reconsider interlocutory orders are available only "as justice requires." That's *United States v. Hemingway*, 930 F.Supp.2d 11, at 12, a D.D.C. case from 2013, from a quote that is cleaned up. A court shall grant such a motion only if: One, there has been an intervening change in controlling law; two, there is new evidence; or, three, there is

a need [24] to correct clear error or to prevent manifest justice. *United States versus Ferguson*, 574 F. Supp. 2d 111, at 113, a D.D.C. case from 2008. The cases the defendant supplied in support of his motion are from the Western District of Texas, so they cannot constitute a change in controlling law.

In any event, neither case impacts my analysis. Both cases defendant supplied, *United States versus Quiroz* and *United States versus Perez-Gallan*, examined unrelated firearms statutes under *Bruen*'s framework, analyzing whether they aligned with the historical tradition under step two of the *Bruen* test. But I have already held that the relevant portions of *Class*, which as I have said before, survived a limited abrogation of some of that court – of that opinion's reasoning are consistent with *Bruen* and the *District of Columbia versus Heller* before it. So the defendant's supplemental authority doesn't much disturb that ruling. So, again, I will deny that motion to reconsider.

That, I think, cleans the slate of a lot of very interesting motions you-all had before me, except for the more recent motion for a privacy disclosure act order.

I guess I don't – Ms. Medvin, after reading the motion, your response, and then the government's response, I don't know if you really have any opposition to this remaining in the sense that I think it's now clear it has nothing to do with the motions before me, it's something [25] that the government is going to be obtaining anyway through other means; this is just something they have done to alert you to it.

Do you have an opposition to this?

MS. MEDVIN: Yes. Judge, we do oppose.

I don't know whether or how they obtain what – if they wanted to alert me they could have sent me notice via email or mail. I don't see this as a notice to counsel. I see this as something else entirely because it was filed on the docket. I have requested from this Court, the District of Columbia, which – as we said, I still don't understand the connection to this case or courthouse. As far as all of the arguments that we have laid out in our response, I think we'll stand on those arguments.

THE COURT: All right. Very well.

I don't see – as the arguments are laid out, I don't see a reason why this doesn't qualify and why I wouldn't – and why it's a motion I wouldn't grant given what's laid out here. I will ask – I don't know – and particularly given – to circle back to maybe a concern you might have, Ms. Medvin, that the discovery – that this isn't – assuming the government obtains this information through my order or in some other way, they would not be free to put it on the docket in this case both because of the way the Privacy Act works and because discovery in this [26] case is subject to a protective order anyway.

Let me just ask the government. That's your understanding of this, correct? That this information, whether I grant – however you were to obtain it, it's still Privacy Act protected, which just means that you

– while the government may obtain it in the course of investigating the case and preparing for trial, it's not something that can be just shared with the public.

MR. PETERSON: Absolutely, Your Honor. We agree with the Court. And I hope that was clear from the filing, that it would – the government would obtain it, and we would disclose it, of course, to counsel. We have not – we have spoken to DEA folks. I do not have it in my possession. We will disclose it immediately to defense counsel, and there will be no further disclosure from the government. We don't intend to file it on the docket. We certainly don't intend to publish it in any form or fashion.

THE COURT: I mean, there might be something in it that eventually – if the case proceeds to trial, one side or the other might want to use. We'll cross that bridge when we get to it. Fair enough.

MR. PETERSON: I would agree. I think it has potential derivative use. And then – as I hope it's clear, I think there is a forum, obviously, for counsel to object, evidentiary objections, statutory – whatever it is, it can [27] be addressed; I think it can be addressed without disclosure.

THE COURT: Right, under seal or in whatever – absolutely. So nothing – me granting this motion does not make anything public at all, just to be very clear.

I would just ask – Mr. Peterson, I don't know what you want – I noticed you did not submit an order with

your motion. So let me just ask you to put on the docket – I want to make sure that I – I want to make sure that the language of whatever I sign is appropriate given the sensitivities here. If you would just submit on the docket a proposed order, it doesn't mean – I at least want to have what the government thinks is appropriate in terms of what the order exactly should say. So if you will submit that, I will consider it.

My inclination is the merits of the motion – I side with the government on it. But I want to see what an order would say exactly that the government would propose before committing to any particular language.

MR. PETERSON: Yes, sir. I will make clear the Court's last point. I don't think there is a disagreement on disclosure. I will make sure that's part of the order, too. Thank you, Your Honor.

THE COURT: Thank you. Very well.

All right. So you have some things to digest now.

[28] I don't know – let me ask, I guess, in the first instance Mr. Peterson, and then Ms. Medvin. I am sure you will want to sort of digest these rulings perhaps before deciding a next step.

What do you-all think makes sense, as far as setting a next date in the case? How far out do you think it makes sense?

MR. PETERSON: I will defer – since Your Honor asked the government, I will defer to defense counsel.

I do think it makes sense to set another date. I would ask, obviously, for an exclusion of speedy trial. I think that, as discussed here today, there is more discovery that we will obtain and produce to counsel as it relates to those matters.

I also note that counsel had referenced in her filing of February 10th a potential of forthcoming motions as well. I would think 60 days seems to be long enough to digest it and to generate motions, if that's inclined; but I will defer to counsel. If she wants it less than that or if she wants to go ahead in some other form or fashion today, I am happy to do that too.

THE COURT: Ms. Medvin.

MS. MEDVIN: Judge, I think a 60-day continuance makes sense under the circumstances.

THE COURT: All right. If we do the 60 days, [29] though, tell me about – I mean, we have gone through – and I know part of this, Ms. Medvin, extends back to before your involvement in the case, so fair enough.

But what other motions – I mean, I guess, if there are other – let me put it this way. You have had a shot to file motions attacking the indictment. It seems to me that wherever we're going here – again, I confess, I didn't see what Mr. Peterson just – what he referenced about you, suggesting that more motions were coming.

What are the nature of those motions?

MS. MEDVIN: He was referencing a motion to reconsider the motion for discovery on – what was the language?

MR. PETERSON: Malicious prosecution.

MS. MEDVIN: Yes. That's it. That's a motion.

Right now, I am not sure if that's going to be going forward or not; but that's the particular motion that he was referencing. The other motion – anything else that would be filed would be related to trial.

THE COURT: Okay. That's fair. That's fine. I just wanted – if it's a motion to reconsider something like that, I think it's an appropriate time for that, if he wants to do that. That's fine.

I wasn't sure we were talking about some other type of attack on the indictment. And I think – you know, [30] we have – again, I know part of this stretches back to before you were on the case. I think you have had a fair, full opportunity to attack the indictment. And I think, yes, obviously, you will have your right – if the case goes to trial – to litigate motions in limine, and all the rest.

But I think it – in this window of time, I think it's fine. If you want to pursue that motion to reconsider, I think we're within a time frame where that makes sense.

All right. So let's get a date.

How about Friday, May 5th, which is just about 60 days out? Obviously, via video again. And I will say at 11:30.

11:30 eastern, does that work for you, Mr. Peterson?

MR. PETERSON: I would defer to Mr. Whitesel who entered his appearance. I will say that – I would ask if the Court is considering my involvement, not that day. I am going to be traveling for a wedding – not my own – but I am traveling for a wedding.

THE COURT: All right. Well, if you are comfortable – Mr. Whitesel, let me ask you: Are you available at 11:30 that day?

MR. WHITESEL: I am available that day. If the Court thinks that Mr. Peterson's presence is not required, I am happy to proceed on that day and time.

[31] THE COURT: Well, let me just – look, it's a convenient day for me, but it's not the only day; and I could try to adjust it.

Is the government comfortable proceeding that way?

MR. PETERSON: I am, Your Honor.

MR. WHITESEL: As I am.

THE COURT: Ms. Medvin, we haven't gotten to you. Are you available on that day?

MS. MEDVIN: That day works for me.

THE COURT: All right. So we'll have a status 11:30, May 5th. I am assuming the government will request a speedy trial exclusion until then.

Ms. Medvin, I assume, given all in all, that's something you are comfortable with?

MS. MEDVIN: Yes, Judge. We will agree to the speedy trial waiver under the Act. All others are (indiscernible) under the Constitution.

(Overlapping speakers.)

THE COURT: Well, I mean, there has to be a basis under the Act as well, of course.

I guess here, again, a factual basis apart from your waiver is my point. So we have additional discovery coming, as Mr. Peterson indicated.

Are the parties – can I also cite the possibility that the parties, particularly given the fact that you now [32] have to process a series of rulings from me, in terms of potential resolution of the case, whether the parties may be discussing a nontrial resolution as well?

Is that – Ms. Medvin, would you say that's fair?

MS. MEDVIN: I have not been approached by the government. I know they approached prior counsel on a count that was already dismissed. With the new rulings and now the new indictment – with a three-count indictment now, we have not discussed it

yet. So it would create an opportunity for us to discuss that so – in good faith we can discuss it. I am not sure what the operative function is of new counsel, Mr. Whitesel. We can discuss it with Mr. Whitesel and Mr. Peterson.

May I inquire as to why the government is substituting counsel?

MR. PETERSON: I would be happy – I mean, I don't think there is a requirement. It's not a substitution of counsel; I am still here.

I will say that my detail is for a fixed period of time, and Mr. Whitesel has joined the team. I think beyond that – it's uncertain to me how long I will be here. It's not a substitution. At least it's not a substitution at this point, but it may be.

MS. MEDVIN: Okay. So with whoever remains, we will discuss it in good faith.

[33] THE COURT: So I will find that the time between today's date and May 5th is excludable under the Speedy Trial Act because the ends of justice are served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. I am doing so here at the request of both parties, one, to give the government an opportunity to produce and the defendant to receive additional discovery in this case, and for the parties to – in light of my rulings today, to give them the opportunity to discuss a nontrial disposition of this case between now and then.

All right. Very well.

Anything further from the government this afternoon?

MR. PETERSON: No, sir, Your Honor.

THE COURT: All right. Ms. Medvin, anything further from you?

MS. MEDVIN: Nothing for today, Judge. Thank you.

THE COURT: All right. Everyone, have a good weekend. We'll see you in about 60 days. Until then, the parties are dismissed.

MR. PETERSON: Thank you, Your Honor.

MS. MEDVIN: Thank you.

(Whereupon, the proceeding concludes, 4:26 p.m.)

CERTIFICATE

I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby certify that the foregoing constitutes a true and accurate transcript of my stenographic notes, and is a full, true, and complete transcript of the proceedings to the best of my ability.

This certificate shall be considered null and void if the transcript is disassembled and/or photocopied in

any manner by any party without authorization of the signatory below.

Dated this 22nd day of March, 2023.

/s/ Elizabeth Saint-Loth, RPR, FCRR
Official Court Reporter

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-3037 **September Term, 2023**

1:21-cr-00496-TJK-1

Filed On: September 11, 2023

United States of America,

Appellee

v.

Mark Sami Ibrahim,

Appellant

BEFORE: Millett, Pillard, and Rao, Circuit Judges

ORDER

Upon consideration of the petition for rehearing and appellant's Rule 28(j) letter, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-3037 **September Term, 2023**

1:21-cr-00496-TJK-1

Filed On: September 11, 2023

United States of America,

Appellee

v.

Mark Sami Ibrahim,

Appellant

BEFORE: Srinivasan, Chief Judge, and Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, appellant's Rule 28(j) letter, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	CR No. 1:21-cr-00496-TJK-1
v.	Washington, D.C.
MARK SAMI IBRAHIM, Defendant.	Thursday, July 28, 2022 2:00 p.m.

TRANSCRIPT OF STATUS CONFERENCE HELD BEFORE THE HONORABLE TIMOTHY J. KELLY UNITED STATES DISTRICT JUDGE

APPEARANCES VIA VIDEOCONFERENCE:

For the United States:	James D. Peterson, Esq. DOJ-CRM 1331 F Street 6th Floor Washington, DC 20530 (202) 353-0796
For the Defendant:	Marina Medvin, Esq. MEDVIN LAW PLC 916 Prince Street Suite 109 Alexandria, VA 22314 (888) 886-4127
Court Reporter:	Timothy R. Miller, RPR, CRR, NJ-CCR Official Court Reporter U.S. Courthouse, Room 6722 333 Constitution Avenue, NW Washington, DC 20001 (202) 354-3111

Proceedings recorded by machine shorthand; transcript produced by computer-aided transcription.

[2] **PROCEEDINGS**

THE DEPUTY CLERK: We are on the record in Criminal Matter 21-496, United States of America v. Mark S. Ibrahim.

Present for the Government is James Peterson; present for the defendant is Marina Medvin; also present is the defendant, Mr. Ibrahim.

THE COURT: All right. Well, good afternoon to everyone.

We are here for an oral ruling on the two motions, ECF Nos. 27 and 37, that I heard argument on the last time we were all together.

Are – is there anything preliminary either side wants to raise with me before I rule?

Ms. Medvin?

MS. MEDVIN: Yes, Judge. We wanted to make sure the Court had an opportunity to review the defendant's supplement that we had filed.

THE COURT: I did. I did. I had a – I did have enough time. I think you filed it last week. Whenever you did, I had had enough time to consider that. Yes.

MS. MEDVIN: Thank you, Judge.

THE COURT: Anything from you, Mr. Peterson?

MR. PETERSON: The Government also filed a response to that supplement. I filed that on Monday and [3] sent a courtesy copy to the Clerk's Office – the Clerk. And so hopefully the Court has had a chance to review that, as well.

THE COURT: I've had enough time to review the materials I need to review in this.

All right. So let me go ahead. And you all know that I reviewed – and in the interim before we were – between the last time we were together and today, I did rule on the motion to remove the designation by minute order. As it turned out, you know, I think we were all on a little bit of a wild goose chase in terms of the right legal standard, but I think I got the right standard and nailed it down, and so you already have my ruling on that.

With regard to the two outstanding matters, the defendant in this case is charged with four counts related to the events of January 6th, 2021: first, knowingly entering and remaining on restricted grounds without lawful authority and while carrying a firearm, in violation of 18 United States Code Section 1752(a)(1) and (b)(1)(A) ; two, climbing a statue on the Capitol grounds, in violation of 40 United States Code Section 5104(d); three, carrying and having readily accessible a firearm on Capitol grounds, in violation of 40 United States Code Section 5104(a)(1)(A)(i); and, four, knowingly and – willfully and knowingly making

material false statements and representations to a federal [4] agent, in violation of 18 United States Code Section 1001(a)(2) .

Pending before me now are two motions: a motion to compel filed by defendant's prior counsel, ECF No. 27; and a motion for discovery filed by Ms. Medvin at ECF No. 37. The motion to compel seeks three categories of evidence: first, evidence required to be produced under Brady v. Maryland, the well known case at 373 U.S. 83, a 1963 Supreme Court case; and, second, information about a pre-existing relationship between the special agent in this case and defendant's – a friend of the defendant; and, third, evidence regarding selective prosecution. The more recent motion filed by Ms. Medvin also seeks evidence regarding selective prosecution. So as I'm going to explain more fully, I will grant in part and deny in part the motion to compel, No. 27, but I will deny the motion for discovery at No. 37 in its entirety.

To begin with, I will grant the defendant's request for Brady evidence, but a defendant need not file a motion to compel to obtain such evidence. Quote, A defendant's failure to request favorable evidence does not absolve the government of its Brady obligations. That's United States v. Sitzmann, 74 F. Supp. 3d 128 at 137, a D.D.C. case from 2014. Indeed, the docket in this case already reflects that I have warned the Government of those [5] obligations. But I will, again, remind the Government that it must review its disclosure obligations under Brady and comply with those obligations.

As for the information about the relationship between the special agent in this case and the defendant's friend, the Government represents that, as it has already told counsel, quote, There was no contact between the special agent and the defendant's friend prior to the special agent's investigation into the events of January 6th, 2021. That's ECF No. 29 at 8. The Court has no reason to question that representation, and the defendant provides no reason to question that representation. Thus, there appears no relevant discovery to order the Government to turn over to him.

But the meat of what we – of what I heard argued – argument on is the remainder of, sort of – the remainder of the motion filed by prior counsel and the motions filed by Ms. Medvin which is the motion for discovery on a selective prosecution claim. And as I look at the legal standards that have to govern my analysis, I believe the law requires me to deny that motion, and I'll explain why.

Selective prosecution claims are subject to a demanding standard. That's United States v. Armstrong, 517 U.S. 456 at 463. It's a Supreme Court case from 1996. The [6] standard for discovery on such claims – which is the issue here – is also, quote, Rigorous, closed quote. Indeed, nearly as rigorous as that for proving the claim itself. That's that same case, Armstrong, at 468. As one court in this District has put it, a defendant must present at least a colorable claim of selective prosecution before any discovery is permitted. That's United States v. Judd, 2021 WL 6134590 at 3. It's a D.D.C. case from December 28th, 2021. To do that, the

cases lay out that a defendant must provide at least, quote, Some evidence, closed quote, tending to show the existence of both discriminatory effect and discriminatory purpose. That's United States v. Khanu, K-H-N – A-N-U, 664 F. Supp. 2d 28 at 31, a D.D.C. case from 2009.

In this case, the defendant believes he is being selectively prosecuted because of his outward and public displays of his conservative views. But, in my view, he's failed to provide any evidence of discriminatory effect. For that reason, the motion for discovery on that claim – the motion for discovery on his selective prosecution claim fails, and there is no need for me to consider the evidence of discriminatory purpose.

I'll just pause here and say I think the evidence on discriminatory purpose is more complicated. Most of it, I think, clearly does not show that the defendant was [7] investigated for his displays of conservatism or outward displays of that. That's at least most of it. But I don't need to parse through all of that evidence to determine whether it meets the "some evidence" standard on that prong because, again, as I mentioned earlier, the claim here fails on discriminatory effect.

So let's talk about what discriminatory effect is.

To make a colorable showing of discriminatory effect, a defendant needs to show at least some evidence that the defendant [sic] afforded different treatment to persons outside his protected class who are similarly situated to him. That's the Armstrong case, again, at 470. And a person is similarly situated when his or her

circumstances, quote, Present no distinguishable legitimate factors that might justify different prosecutorial decisions between that person and the defendant. That's Branch Ministries v. Rossotti, 211 F.3d 137 at 145, a D.C. Circuit case from the year 2000.

Here, then, the defendant needs to show at least some evidence that the defendant [sic] has treated differently people who were not outwardly and publicly conservative but who allegedly committed about the same crime under about the same circumstances on January 6th.

Defendant hasn't pointed to any such persons. For one, he has seemingly abandoned the argument that a CBP [8] officer who was not prosecuted for carrying a firearm at a Justice for J6 rally months after January 6th is an apt comparator. That makes sense to me. The CBP officer was at an entirely separate event that, in short, was much different than the January 6th attack.

The only other specific individual defendant still points to is his brother, an off-duty FBI agent who was not prosecuted even though he, too, had a firearm and badge on him on January 6th near the Capitol. The problem is, in my view, that's where the similarities end and he was not, as – he does not meet the legal test for being similarly situated to the defendant. Defendant does not dispute that, unlike him, there is no allegation that his brother ever posed for photos with his – displaying his – allegedly – and there is no allegation that his brother ever posed for photos, displaying his government-issued badge, displaying his

government-issued firearm, climbed on a monument, and lied to law enforcement officers about his conduct that day. So these differences, especially when taken together collectively, are, to me, pretty stark and obvious reasons why the two are not similarly situated.

Now, defendant offers a number of responses to this point, including that exposing a firearm – pointing out that exposing the firearm is not an element of any criminal offense. Fair enough. But the legitimate [9] distinguishing – but legitimate distinguishable prosecuting [sic] factors need not be elements of a crime. In fact, it actually makes – I think it makes no sense that they ever would be elements of a crime because, then, if you – if that distinguished two people, they wouldn't be able to charge one or the other with a particular crime. I think always – these distinguishing prosecutorial factors are at least very often not going to be elements of a crime. The defendant also faults the Government for not showing that it arrested or is prosecuting every person who climbed on a monument on January 6th, but the reality is the legal test that I am bound to apply, set out by the Supreme Court and the D.C. Circuit, doesn't require the Government to make any such showing, and the defendant cites no case law to suggest that it does. He contends that it's – also contends that it's rare that the Government even charges that particular statute, but, again, that is of no moment here because it does not help the identify [sic] do what he must which is identify a person comparable to him which is the – which he needs to show discriminatory effect. Finally, defendant takes, sort of, several shots at

the strengths of the Government's evidence against him, especially the false statement charge. You know, the defendant is free to make these arguments to the jury, but they are ultimately not relevant when it comes to whether his brother is similarly [10] situated to him. In my view, he isn't.

Now, defendant also claims that there were other, unidentified federal law enforcement officers who were present near the Capitol on January 6th and who were not charged, and he says it is likely that they, too, filed – carried firearms. But in the end, he offers little more than speculation on that point. In fact, it wasn't until his recently filed supplement that he pointed to any evidence beyond his own conjecture. There, in that supplement, the defendant highlighted the statements – the statement of a law enforcement officer who was on duty on January 6th and that statement, I'd say, in short, suggests that the officer knew that there were other law enforcement officers who were present at the Capitol that day in a personal capacity. But, in my view, that statement hardly confirms that there truly were any such officers. And even if it did, it doesn't constitute any evidence at all suggesting that any of those officers were truly similarly situated to this defendant in that they even possessed a firearm, let alone allegedly posed for photos displaying that firearm and their law enforcement badge and, again, climbed on a monument and allegedly lied to law enforcement officers about their conduct that day. Again, the supplement also points out other evidence received in discovery: some witness statements, a map that defendant [11] says

undermine the Government's theory of the case. Maybe that's right. But, again, none of that evidence gets him any closer to showing discriminatory effect. As for these holes in the Government's case, that's for the jury to weigh in deciding whether the Government has met its burden at trial. And, maybe, they will be able to meet – make – meet that burden; and, maybe, they won't.

In the end, in my view, there's no evidence, again, that any person exists who is truly similarly situated, as the case law describes that phrase, to the defendant: in this case, someone who's alleged to have displayed his government-issued firearm and law enforcement badge near the Capitol on January 6th, even posing for photos while doing so; climbed on a monument; and lied to federal agents about his conduct.

And so for those reasons, his selective prosecution discovery motions – ECF No. – part of ECF No. 27 and ECF No. 37 – will be denied.

I appreciate the advocacy of both sides in – on these points. They're – and I wanted to carefully consider both the law and the different arguments the sides brought to bear, but that's my conclusion.

* * *

40 U.S.C. Sec. 5104

§ 5104. Unlawful activities

e) Capitol Grounds and Buildings security. –

(1) Firearms, dangerous weapons, explosives, or incendiary devices. – An individual or group of individuals –

(A) except as authorized by regulations prescribed by the Capitol Police Board –

(i) may not carry on or have readily accessible to any individual on the Grounds or in any of the Capitol Buildings a firearm, a dangerous weapon, explosives or an incendiary device;

(ii) may not discharge a firearm or explosives, use a dangerous weapon, or ignite an incendiary device, on the Grounds or in any of the Capitol Buildings; or

(iii) may not transport on the Grounds or in any of the Capitol Buildings explosives or an incendiary device; or

(B) may not knowingly, with force and violence enter or remain on the floor of either House of Congress.

POLICE BOARD REGULATIONS PERTAINING TO FIREARMS EXPLOSIVES INCENDIARY DEVICES AND OTHER DANGEROUS WEAPONS (1967).

TRAFFIC REGULATIONS FOR CAPITOL GROUNDS

POLICE BOARD REGULATIONS PERTAINING TO FIREARMS, EXPLOSIVES, INCENDIARY DEVICES AND OTHER DANGEROUS WEAPONS

October 31, 1967

Pursuant to the authority vested in it by the Act of July 31, 1946, as amended by the Acts of July 11, 1947 and October 20, 1967 (40 U.S.C. *193a et seq*.; D.C. Code 9-118 *et seq*.), the Capitol Police Board hereby issues the following regulations with respect to firearms, dangerous weapons, explosives and incendiary devices in order to preserve safety and order within the Capitol Buildings and Grounds.

1. The provisions of section 6(a)(1)(A) and (C) of the Act, as amended, shall not apply to witnesses before Committees or Subcommittees of the Congress summoned or subpoenaed to appear and produce as exhibits firearms, dangerous weapons, explosives or incendiary devices.

2. Except as specified below, the provisions of section 6(a)(1)(A) of the Act, as amended. relating to the carriage of firearms shall not apply to officers or employees of the United States authorized by law to carry firearms, duly appointed federal, state of local

law enforcement officers authorized to carry firearms, and members of the Armed Forces, while engaged in the performance of their duties, or any person holding a valid permit under the laws of the District of Columbia to carry firearms in the course of his employment. *Provided*, That nothing contained in the provisions of section 6(a)(1)(A) of the Act shall prohibit any Member of Congress from maintaining firearms within the confines of his office or any Member of Congress or any employee or agent of any Member of Congress from transporting within the Capitol Grounds firearms unloaded and securely wrapped.

No person, whether or not specified in the preceding paragraph, shall carry any firearm inside the chamber or on the floor of either House, in any lobby or cloakroom adjacent thereto, in the galleries of either House or in the Marble Room of the Senate or Rayburn Room of the House unless assigned or approved by the two Sergeants of Arms for maintenance of adequate security.

3. The provisions of section 6(a)(1)(B) of the Act, as amended, relating to the use of firearms and dangerous weapons shall not apply to any duly appointed law enforcement officer engaged in the performance of his official duties.

4. The provisions of section 6(a)(1) of the Act, as amended, relating to the carriage, transporting and use of explosives and incendiary devices shall not apply to any person receiving written approval of the

Capitol Police Board, upon certification by the Architect of the Capitol that the use of explosives or incendiary devices is necessary in connection with duly authorized and supervised construction or demolition work.

5. As used in the Act and in these regulations, the term "incendiary device" means any substance, material or item, or any combination thereof (including, but not limited to, spontaneously inflammable, oxidizing, thermal, metallic, and modified oil mixtures) capable of igniting other materials by means of combustion, explosion, intense heat, or otherwise, but does not include ordinary matches, flint and steel lighters or gas lighters intended primarily for personal or household use.

CAPITOL POLICE BOARD,
ROBERT G. DUNPHY, *Chairman*
ZEAKE W. JOHNSON, *Member.*
J. GEORGE STEWARD, *Member.*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on January 8, 2021

UNITED STATES OF AMERICA	**CRIMINAL NO.**
v.	**MAGISTRATE NO. 21-MJ-516**
MARK S. IBRAHIM,	**VIOLATIONS:**
Defendant.	**18 U.S.C. §§ 1752(a)(1) and (b)(1)(A) (Entering and Remaining in a Restricted Building or Grounds with a Deadly or Dangerous Weapon)**
	40 U.S.C. § 5104(d) (Injuries to Property)
	40 U.S.C. § 5104(e)(1)(A)(i) (Firearms and Dangerous Weapons on Capitol Grounds)
	18 U.S.C. § 1001(a)(2) (False Statements and Representations)
	(Filed Jul. 28, 2021)

INDICTMENT

The Grand Jury charges that:

COUNT ONE

On or about January 6, 2021, within the District of Columbia, **MARK S. IBRAHIM**, did knowingly enter and remain in or on restricted grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President and Vice President-elect were temporarily visiting, without lawful authority to do so and did during and in relation to the offense, use and carry a deadly and dangerous weapon and firearm.

(**Entering and Remaining in a Restricted Building or Grounds with a Deadly or Dangerous Weapon**, in violation of Title 18, United States Code, Section 1752(a)(1) and (b)(1)(A))

COUNT TWO

On or about January 6, 2021, within the District of Columbia, **MARK S. IBRAHIM**, did step or climb on, a statue, seat, wall, fountain, or other erection or architectural feature in the Grounds of the Capitol.

(**Injuries to Property**, in violation of Title 40, United States Code, Section 5104(d))

COUNT THREE

On or about January 6, 2021, within the District of Columbia, **MARK S. IBRAHIM**, did carry on and have readily accessible on the Grounds of the Capitol a firearm and a dangerous weapon.

(**Firearms and Dangerous Weapons on Capitol Grounds**, in violation of Title 40, United States Code, Section 5104(e)(1)(A)(i))

COUNT FOUR

On or about March 15, 2021, within the District of Columbia and elsewhere, **MARK S. IBRAHIM**, did willfully and knowingly make materially false, fictitious, and fraudulent statements and representations in a criminal matter in the District of Columbia within the jurisdiction of the executive branch of the Government of the United States, by stating to a Special Agent of the Office of the Inspector General that he did not knowingly expose his firearm and DEA badge on the Grounds of the United States Capitol Building on January 6, 2021, in the District of Columbia. Specifically, **MARK S. IBRAHIM** stated "I had my creds. I had my firearm, and my badge on me . . . **But never exposed** . . . Not that I know of." The statements and representations were false because, as **MARK S. IBRAHIM** then and there knew, he did expose his firearm and DEA badge while on the grounds of the United States Capitol Building on January 6, 2021, in the District of Columbia.

(**False Statements and Representations**, in violation ofTitle 18, United States Code, Section 1001(a)(2))

A TRUE BILL:

FOREPERSON.

/s/ Channing D. Phillips/RWH

Attorney of the United States in
and for the District of Columbia.