No. 23-5572

IN THE

Supreme Court of the United States

JOSEPH W. FISCHER,

Petitioner,

v.

UNITED STATES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF *AMICUS CURIAE* CITIZENS CONCERNED FOR THE CONSTITUTIONAL RIGHTS OF DEFENDANTS IN SUPPORT OF PETITIONER

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INTERESTS OF AMICI[1]

Amici Nicholas McFerran, Wayne Denn, William R. Fox, Sr., Bill Frady, Thomas A. Marotta, William Miner, James Ostrowski, Gary Powers, Scott A. Rager, Robert C. Savage, Patricia Sheppard, Kevin E. Sisson, and Gary Stout, are citizens concerned for the constitutional rights of defendants.

SUMMARY OF THE ARGUMENT

18 U.S.C. §1512(c)(2) is a tool Congress can request the U.S. Attorney General use to prosecute corporate actors who, *inter alia,* "obstruct" their investigations into activities of those at or associated with publicly-traded corporations in order to protect shareholders and the macro-economy. The U.S. Department of Justice Attorney for Washington, D.C. admitted on broadcast television in March 2021 the politically-motivated department strategy of charging as many as possible under §1512(c)(2) to "scare" others ahead of the Inauguration. In the name of rulings to "interpret" §1512(c)(2) beyond white collar criminals to the broader public, judges repeatedly violated the "four corners of the indictment" doctrine to inject their personal opinions about "the mob," "the rioters," and "the horde" of January 6, 2021. The charge was misused by prosecutors as a scare tactic and triangulated by judges into editorials. The rulings should be reversed.

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1. This Amicus Brief is authored in whole by the undersigned attorney. No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than amici and their counsel, make a monetary contribution intended to fund the preparation or submission of this brief.

METHODOLOGY

Analyzed are motion rulings in *Fischer* plus seventeen comparable cases involving motions to dismiss the count of 18 U.S.C. §1512(c)(2), under Fed. R. Crim. P. 12(b)(3), citing to 7(c) (herein, the "related cases" and "dataset cases"). All rulings issued from Washington, D.C. district and circuit courts. Appendix A is the dataset case list with reporter citations and case numbers. Appendix B is a list of the twenty-six (26) charges filed against one or more defendant(s). Appendix C is a grid of charges filed against individual defendants in said cases. Because *U.S. v. Caldwell* involved more than twenty defendants that grid is separated into Appendix D.

ARGUMENT

I. LOWER COURT "CONTEXT" ANALYSES OF 18 U.S.C. §1512(c)(2) DEFY "COMMON SENSE"

Judges knew the DOJ charges in 2021 under 18 U.S.C. §1512(c)(2) were atypical. In the *Fischer* appeal, both Judge Pan on lead and Judge Katsas on dissent identified the anomaly. Per Judge Pan:

> To be sure, outside of the January 6 cases brought in this jurisdiction, there is no precedent for using §1512(c)(2) to prosecute the type of conduct at issue in this case. J.A. at 20.

Per Judge Katsas:

> Section 1512(c)(2) has been on the books for two decades and charged in thousands of

> cases – yet until the prosecutions arising from the January 6 riot, it was uniformly treated as an evidence-impairment crime. This settled understanding is a "powerful indication" against the government's novel position. J.A. at 99 (citation omitted).

See, also, *U.S. v. Caldwell,* 581 F. Supp. 3d 1, 16 (D.D.C. 2021) ("…may be first-of-its-kind prosecution…"), which adopted *U.S. v. Mostofsky,* 579 F. Supp. 3d 9, 26 (D.D.C. 2021); and, *U.S. v. Nordean,* 579 F. Supp. 3d 28, 52 (D.D.C. 2021) ("True, no court has interpreted Section 1512(c)(2) to the precise allegations made here.").

And yet, judges lost sight of the appropriate application of §1512(c)(2). Judges penned "context" as a tool of statutory interpretation (J.A. at 74, opening Section III.A), but constricted parameters to the point that tool became useless ("…reducing a phrase of the form "*A, B, C,* or otherwise *D*" to "*D*" will likely expand its meaning." J.A. at 76). In using only the subdivision of (c)(2), itself, or only neighboring ones like §1515, judges looked at spindly trees and failed to see lush forest. ("… Congress defined "official proceeding" as used in §1512(c)(2) to mean… "a proceeding before Congress."", quoting 18 U.S.C. §1515(a)(1)(B). *U.S. v. Andries,* 2022 U.S. Dist. LEXIS 44794, *11; 2022 WL 768684 (D.D.C. 2022). See, also, *U.S. v. McHugh I,* 583 F. Supp. 3d 1, 11 (D.D.C. 2022); and *U.S. v. Williams,* 2022 U.S. Dist. LEXIS 110743, *21, 2022 WL 2237301 (D.D.C. 2022).) Section 1512(c)(2) is one small part of an omnibus Act, which itself dovetails into a prior, specialized Act. The contour of "context" cannot be drawn with two small dots.

The "words of a statute must be read in their context and with a view to their place in the overall statutory scheme." J.A. at 58, citing *West Virginia v. EPA,* 142 S. Ct. 2587, 2607[2] (2022). Looking at *West Virginia v. EPA,* both majority and dissenting opinions discuss "context." The dissent adds that "context" includes "a modicum of common sense" and cautioned against "operating far outside the lane" or "wreaking havoc" on "Congress's broader design" *Id.,* at 2633 (Kagan, J., dissenting). The phrase "overall statutory scheme" is not a synonym for "nearby statutory provisions" as proffered in *U.S. v. Puma,* 596 F. Supp. 3d 90, 100 (D.D.C. 2022).

The indictments of related decisions also included charges under 40 U.S.C. §5104(e)(2), itself a specialty statute for crimes committed at the U.S. Capitol. In the same manner as §1512(c)(2), the §5104(e)(2) statute arose from a different Act that amended its own pre-existing Act. Add that both statutes were passed in 2002 within one month of each other during the same 107th Session of Congress, and the "context" defines itself. The proper "context" of §1512(c)(2) is the full Sarbanes-Oxley Act, as integrated into the statutory scheme it amended.

I.(A.) 18 U.S.C. §1512(c)(2) TARGETS PUBLICLY TRADED COMPANIES

The criminal charge at issue – 18 U.S.C. §1512(c)(2) – originates from Sec. 1102, "Tampering with a Record or Otherwise Impeding an Official Proceeding," which is from "Title XI – Corporate Fraud Accountability," which is but one section from Public Law 107-204, which bears

2. *Fischer* cite to "26076" is in error.

the short title of "Sarbanes-Oxley Act of 2002." Pub. Law 107-204, Title I, Sec. 101, codified and amended at 15 U.S.C. §7201 *et seq.* The Sarbanes-Oxley Act dovetailed into the Securities Act of 1933. 15 U.S.C. §77a, *et seq.*

The Enron-Arthur Anderson shredding story and *Yates v. U.S.,* 574 US 528, 135 S.Ct. 1074 (2015) factored prominently in dataset cases. *E.g.,* J.A. at 36; and, *Puma, supra,* at 101. "[N]othing in the legislative history suggests a broader purpose than [closing the loophole]" from that chapter. *U.S. v. Miller,* 589 F. Supp. 3d 60, 78 (D.D.C. 2022), *rev.* 64 F.4th 329 (D.C. Cir. 2023), *cert denied.*

Sen. Hatch made "context" clear when introducing the vote on Sen. Amend. 4188 to Sarbanes-Oxley (new §1512(c)(2)): "The federal government plays an important role in upholding and enforcing standards of corporate conduct." 148 Cong. Rec. S6550 (daily ed. Jul. 10, 2002). The Amendment passed by unanimous, bi-partisan vote. *Id.,* at S6551.

In dataset decisions, use of another tool of statutory interpretation, "legislative history," was muddled. *See, e.g., U.S. v. Montgomery,* 578 F. Supp. 3d 54, 76 (D.D.C. 2021) ("And what little history exists should not be given much weight because it comes in the form of floor statements.") Those words from the Floor (S6542-6551) are the voices of the purpose of an Act so big and so specialized that the White House was actively involved. *Id.* Sen. Hatch called out the bad guys targeted through Sarbanes-Oxley: "These sorts of white-collar criminals should find no soft spots in our laws or in their ultimate sentences." *Id.,* at 6546. Furthermore: "We need to make crystal clear

that we will not tolerate this sort of outrageous criminal conduct, conduct that not only devastates the savings of citizens, but also has lasting effects on the entire world's confidence in our American financial markets." *Id.*

Judges in *Sandlin* and *Fitzsimons* also mucked-up legislative history. ("Statutes often reach beyond the principal evil that animated them." *U.S. v. Sandlin,* 575 F. Supp. 3d 16, 29 (D.D.C. 2021); *accord U.S. v. Fitzsimons,* 605 F. Supp. 3d 132, 150 (D.D.C. 2022).) Judge Friedrich in *Sandlin* cited only one case for his proposition, *Oncale v. Sundowner Offshore Servs., Inc.,* 523 U.S. 75, 118 S. Ct. 998 (1998). Both the quote and the interpretation are incorrect. Justice Scalia, writing for the *Oncale* majority penned: "…often go beyond the principal evil *to cover reasonably comparable evils*." *Id.,* at 79 (emphasis added). The reasonably comparable application was same-sex harassment as a type of sexual harassment in Title VII claims.

The relevance of Sarbanes-Oxley in Congress is as simple as turning on the news. Section 1512(c)(2) is quietly on stand-by for Congress when, for example, a House committee hearing involves CEOs of publicly-traded companies on the matter of algorithms used to identify potentially violent content on social media.[3] Likewise, when it involves corporate executives at companies trading on NASDAQ and NYSE who fail to supply testimony and documents on potential collusion by said companies to

3. U.S. House Energy and Commerce Subcmte. on Comm. and Tech., "Disinformation Nation: Social Media's Role in Promoting Extremism and Misinformation," Mar. 25, 2021, CEO witnesses from Facebook, Google, Twitter; on-line at House Repository https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=111407.

restrict First Amendment speech.[4] The tie-in is a unique dynamic, which can be at once volatile and valuable. A textbook example is the wild Facebook value surge of over $17 billion (4.5%) in share trading price *during* CEO Mark Zuckerberg's first-ever testimony on the Hill, which "[added] $2.8 billion to his [personal] fortune."[5]

Messrs. Fischer, Miller, and Lang are neither publicly-traded corporations, executives or employees, in-house licensed professionals, nor third-party professionals or consultants. The charges under §1512(c)(2) against them, and others, were misdirected and should be reversed.

I.(B.) IT IS 40 U.S.C. §5104(e)(2) THAT DEFINES CRIMES AT THE CAPITOL

Less than one month after passing the Sarbanes-Oxley Act, Congress passed a different, stylized Act, namely, the "Public Building, Property, and Works Act."[6] It amended the "Federal Property and Administrative Services Act of 1949" at 41 U.S.C. §251, *et seq.* Within it is what became 40 U.S.C. §5104(e)(2), which defines

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4. House Jud. Cmte., letter demands initiated Dec. 14, 2022 to CEO witnesses from Apple, Amazon, Microsoft, Alphabet, and Facebook; on-line at House Jud. Cmte. https://judiciary.house.gov/documents/letters. Subsequent House Jud. Cmte. subpoenas served Feb. 15, 2023 after witnesses failed to respond to initial requests; on-line at House Jud. Cmte. https://judiciary.house.gov/media/press-releases/chairman-jim-jordan-subpoenas-big-tech-executives.

5. Au-Yeung, Angel, "Zuckerberg Gets Billions Richer as Facebook Stock Rises Amid Capitol Hill Hearing," Forbes (Apr. 10, 2018).

6. "Public Buildings, Property, and Works," Pub. L. 107-217, 116 Stat. 1176 (2002).

crimes that occur at the physical "Capitol," also as defined by the Act. Congress drew the line between protected First Amendment activity versus garden-variety crimes. Where congressionally-defined crimes at the physical Capitol can be said to "begin-and-end" with §5104, traditional crimes such as "trespass" and "assault" take it from there.

Multiple subdivisions of 40 U.S.C. §5104(e)(2) continue to be used by federal prosecutors relative to January 6, 2021. The DOJ charging sweet spots are §§5104(e)(2)(D), (F), and (G). Had they stopped there – short of charging §1512(c)(2) – the cases at Appendix A wouldn't be generating anywhere near as much litigation.

I.(C.) INITIAL COMPLAINTS ANCHORED TO THE MISDEMEANOR AT §5104(e)(2); THEN DOJ SHOWED UP WITH FELONY INDICTMENTS UNDER §1512(c)(2)

The dataset cases listed in Appendix A were commenced by filing a Criminal Complaint as "ECF-1" with an attached FBI Agent "Statement" as "ECF 1-1" (herein, simply "complaint" or "pleading"). Prosecutors initially charged defendants under 40 U.S.C. §§5104(e)(2)(A)-(G) via criminal complaints used, *inter alia,* to obtain arrest warrants from judges across the country. Indictments, however, by the end of January 2021 included 18 U.S.C. §1512(c)(2) for cases consolidated into the District of Columbia courts.[7] The table below lists the initial case filings to illustrate this charging dynamic.

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7. Appendix A lists the dataset of cases with reporter citation and case number. Data in the table is taken from the ECF documents on PACER as available Dec. 13, 2023 through Feb. 1, 2024.

TABLE 1: **INITIAL CHARGES under §1512(c)(2) v. §5104(e)(2) (Only)**						
Defendants (∑ = 18)	**Complaint ECF/Date**	**1512c2**	**5104e2**	**Indictment**	**1512c2**	**5104e2**
TOTALS:		YES – 7 NO – 11	YES – 16 NO – 2		YES – 17 NO – 1	YES – 16 NO – 2
Mostofsky	1 (01.11.2021)	No	Yes sub. D, G	6 (02.19.2021)	Yes	Yes sub. D, G
Robertson	1 (01.12.2021)	No	Yes (no sub.)	8 (01.29.2021)	Yes	Yes sub. D
Montgomery	1 (01.13.2021)	No	Yes sub. G	23 (04.16.2021)	Yes	Yes sub. B, D, G
Hale-Cusanelli	1 (01.15.2021)	No	Yes sub. D, G	9 (01.29.2021)	Yes	Yes sub. D, G

LANG	1 (01.15.2021)	No	Yes (no sub.)	5 (01.29.2021)	Yes	Yes sub. D,F
Caldwell	1 (01.17.2021)	Yes	Yes (no sub.)	4 (01.27.2021)	Yes	No
Williams	1 (01.17.2021)	No	Yes (no sub.)	27 (10.06.2021)	Yes	Yes sub. D,G
Bingert	1 (01.18.2021)	No	No	3 (02.05.2021)	Yes	Yes sub. E,F
MILLER	1 (01.19.2021)	Yes	Yes Sub. G	10 (02.12.2021)	Yes	Yes sub. D,E, G
Nordean	1 (01.19.2021)	Yes	Yes sub. D, F	24 (03.03.2021)	Yes	No
Grider	1 (01.20.2021)	No	Yes (no sub.)	6 (01.26.2021)	Yes	Yes sub. D,E,F
Sandlin	1 (01.20.2021)	No	Yes sub. D, E,F,G	6 (02.05.2021)	Yes	Yes sub. D,E,F,G

Andries	1 (01.28.2021)	No	No	5 (02.08.2021)	No	Yes sub. D,E,G
Fitzsimons	1 (02.01.2021)	No	Yes	5 (02.26.2021)	Yes	Yes sub. D, F
Bozell	1 (02.11.2021)	Yes	Yes (no. sub.)	8 (03.12.2021)	Yes	Yes sub. D,F,G
FISCHER	1 (02.17.2021)	Yes	Yes sub. D, G	15 (03.19.2021)	Yes	Yes sub. D, G
McHugh	1 (05.24.2021)	Yes	Yes sub D, F	22 (07.07.2021)	Yes	Yes sub. D, F
Puma	1 (05.25.2021)	Yes	Yes (no sub.)	11 (07.07.2021)	Yes	Yes sub. D, G

Four out of five "all yes" cases were commenced after February 1, 2021 (*Bozell, Fischer, McHugh,* and *Puma*). Initial filings in *Miller* straddled the timing.

The two cases inverse to the norm were *Caldwell* and *Nordean.* Neither Indictment included a charge under §5104. *Caldwell, supra,* No. 1:21-cr-28, ECF-77; *Nordean, supra,* No. 1:21-cr-175, ECF-24. Apps. C and D, hereto. Only Jessica Watkins of the initial *Caldwell* Indictment was alleged to be an "Oath Keeper." *Supra,* ECF-4, ¶15. The first *Nordean* indictment did not use the words "Proud Boys." *Supra,* ECF-24. Even so, the dozen plus indictments in these two cases were designed from commencement to (and did) culminate in charges under 18 U.S.C. §2384, Seditious conspiracy.[8] See, *Caldwell, supra, sub nom. Rhodes,* No. 1:22-cr-15, ECF-1 (Jan. 12, 2021); *Nordean, supra,* ECF-380 (Jun. 6, 2022).

I.(D.) THE 18 U.S.C. §1512(c)(2) COUNT IS AN "EMPTY VESSEL"

Shorn of all context, a word becomes "an empty vessel." *West Virginia v. EPA, supra,* at 2614. Federal prosecutors wrote sixteen of eighteen Indictments (16/18, or, 89%) with so little context that the 18 U.S.C. §1512(c)(2) count became "an empty vessel." Only the *Caldwell* and *Nordean* indictments spelled out individual conduct of individuals, but *only* for the charge under 18 U.S.C. §371, Conspiracy to commit offense or to defraud the United States. The §1512(c)(2) count was as bald in these as any other case.

In general, the first version of the count reads, as follows:

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8. *N.B.:* no charge under 18 U.S.C. §2383, Rebellion or insurrection, was filed in the dataset cases.

> On or about January 6, 2021, within the District of Columbia and elsewhere [defendant name], attempted to, and did, corruptly obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, *by entering and remaining in the United States Capitol without authority and committing an act of civil disorder and engaging in disorderly and disruptive conduct.*[9,10,11] (emphasis added)

The second (revised) version of the count, reads as follows:

> On or about January 6, 2021, within the District of Columbia and elsewhere [defendant name], attempted to, and did, corruptly obstruct, influence, and impede an official proceeding, 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.[12,13,14] (emphasis added)

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9. *Fischer*, *supra*, No. 1:21-cr-234, Indict., ECF-5, 2 (Mar 19, 2021).

10. *U.S. v. Lang*, No. 1:21-cr-53, Indict., ECF-5, 5 (Jan. 29, 2021). *N.B.:* for Messrs. Lang and Miller, this included also the words "…and destroying federal property."

11. *Miller*, *supra*, No. 1:21-cr-119, Indict., ECF-10, 2 (Feb. 12, 2021).

12. *Fischer*, *supra*, Sup. Indict., ECF-52, 2 (Nov. 10, 2021).

13. *Lang*, *supra,* Sup, Indict., ECF-36, 5 (Sept. 15, 2021).

14. *Miller*, Sup. Indict., ECF-30, 2-3 (May 12, 2021), *et seq.* in ECF-61, ECF-111.

Neither version of the count provides notice of what prosecutors took to the Grand Jury sworn January 8 for any one, individual defendant. Neither fulfills Fed. R. Crim. P. 7(c), which requires "…a plain, concise, and definite written statement of the essential facts constituting the offense charged…" and for each count "… the official or customary citation of the statute…"

Although their §1512(c)(2) Indictment counts were similar to the dataset, *Caldwell* and *Nordean* Indictments were consistent outliers. Even where prosecutors walked the "conspiracy" count across pages of Indictments, they still visibly struggled. They resorted to dehumanizing words like "crowd" and "stack." *Caldwell,* ECF-22, *supra, passim* (*e.g.,* ¶7, use of "crowd" seven times). Count Two, the §1512(c)(2) charge, contained one (1) sentence:

> On or about January 6, 2021, in the District of Columbia and elsewhere, the defendants [names] attempted to, and did, corruptly obstruct, influence, and impede an official proceeding; that is [names] *forcibly entered the Capitol to stop, delay, and hinder Congress's certification of the Electoral College vote. Id.,* p. 17-18 (emphasis added).

That's it. Nothing more. Counts Three and Four were also a single sentence paragraph structure. All the DOJ drafting energy went into the "conspiracy" charge; none into the other charges.

Prosecutors stumbled through the charge under 18 U.S.C. §1512(c)(2), even amending indictments while motions to dismiss were pending. See, e.g., *Sandlin,*

supra, at 20, n. 1. Whether DOJ used version 1 or version 2 or rewrote *Ulysses* in an accompanying charge, §1512(c)(2) was a "misfit" to the people and the setting. *West Virginia v. EPA, supra,* at 2633 (Kagan, J., dissenting).

I.(E.) CONGRESS DEFINED CRIMES AT THE CAPITOL KNOWING THAT BOMBS CAN AND DO EXPLODE

Particularly because of the availability of the specialty statute of §5104 from Congress to protect (if you will) its place of conducting the people's business, there is a "lack of any apparent need" to adopt a "boundless reading" of a provision from another stylized statute, namely §1512(c)(2). (Quotations from and, see, in general, *Bond v. U.S.*, 572 U.S. 844, 860, (2014).)

"Of course, this case involves rioting as opposed to peaceful advocacy, lobbying, or protest." *Fischer,* J.A. at 101-102 (Katsas, J., dissenting). But, neither Congress nor the U.S. Capitol Police are strangers to violent protestors.[15] One recent example of violent protests at the Capitol in the news includes: (a.) more than 300 protestors arrested at the Capitol on October 16, 2023;[16] (b.) more than 150 protestors violently clashing with USCP, who used pepper spray and chemical irritants, on November 17, 2023;[17] and, (c.) more than 200 protestors, combined,

15. *See generally* McGreevy, "The History of Violent Attacks on the US Capitol," The Smithsonian Magazine (Jan. 8, 2021).

16. Moyer and Silverman, "300 arrested as Jewish protesters in D.C. demand Israel-Gaza cease-fire," Washington Post (Oct. 19, 2023).

17. Reuters News, "US Capitol police clash with protestors demanding cease fire in Gaza," (Nov. 17, 2023).

arrested by USCP inside the Rotunda on December 19, 2023 and January 16, 2024.[18,19]

Members of 107th Congress knew what they were doing when they passed two divergent Acts, namely "Sarbanes-Oxley" and "Public Building, Property, and Works." Voting on those bills was Pres. Biden. He was already in office when, in 1983, an explosion "…tore through the second floor of the Capitol's north wing."[20] Other Senators voting on these bills, including Lott, Leahy, Hatch, Daschle, and Durbin, were first elected in the 1970s, shortly after an earlier (1971) bomb explosion near Senate chambers.[21] The men and women cast bi-partisan votes on the referenced 2002 bills had the context of experience. Modern judges failed to credit Pres. Biden, Sen. Hatch, and others, with institutional knowledge.[22]

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18. Soldender, "Gaza ceasefire protest in Capitol rotunda leads to 60 arrests," Axios (Dec. 19, 2023).

19. Moyer, "Around 130 Mennonites, calling for Gaza cease-fire, arrested on Capitol Hill," Washington Post (Jan. 16, 2024).

20. U.S. Senate website, "Bomb Explodes in Capitol (Nov. 7, 1983)," on-line at https://www.senate.gov/about/historic-buildings-spaces/capitol/bomb-explodes-1983.htm.

21. Finney, "Bomb in Capitol Causes Wide Damage," N.Y. Times (March 2, 1971).

22. E.g., *Miller, supra,* at 77; *Montgomery, supra,* at 76; *Mostofsky, supra,* at 13; *Rodriguez, supra,* at *14 (Sen. Hatch); *Williams, supra,* at *26.

II. THE US DOJ CAMPAIGN OF "SHOCK & AWE" QUICKLY INDICTED "THE CROWD," TURNING INDIVIDUAL DEFENDANTS INTO "HAM SANDWICHES"

Prosecutions under 18 U.S.C. §1512(c)(2) raise a basic question: *why charge §1512(c)(2) when you don't need it because you have §§5104(e)(2)(A)-(G) and all manner of traditional crimes?* FBI Director Christopher Way was calm when queried by Members during his testimony to Congress on the first day of congressional hearings concerning January 6. Wray didn't mention "obstruction" or "§1512(c)(2)." Even in response to a question from Sen. Tillis directly on point, Wray said:

> The "statutory weapons" include the "easiest to prove" and "low hanging fruit charges" like "assault," "various charges related to destruction of federal property," and that "now" they are starting to get the "more advanced charges" like "conspiracy" and "some of the people who are involved in planning or coordination or preparation."[23]

Wray's response was consistent with earlier publicity out of FBI/DOJ at a joint press conference on January 12, 2021, There, Acting U.S. Attorney for the District of Columbia Michael Sherwin said the Department had "…

23. U.S. Senate, Jud. Cmte., "Oversight of the Federal Bureau of Investigation: the January 6 Insurrection, Domestic Terrorism, and Other Threats" (March 2, 2021), testimony Christopher Wray, Director, FBI, C-SPAN video at 1:12, at https://www.c-span.org/video/?509033-1/fbi-director-christopher-wray-testifies-january-6-capitol-attack.

plenty of federal charges to address all of this conduct – from felony murder related to the possession and use of destructive devices to seditious conspiracy – you know under the federal code that has significant penalties."[24]

II.(A.) THE US DOJ CAMPAIGN OF "SHOCK & AWE" DROVE PROSECUTORS TO CHARGE AS MANY DEFENDANTS AS POSSIBLE BEFORE THE JANUARY 20, 2021 INAUGURATION

On March 21, 2021, US Attorney Sherwin, did an interview on the television show "60 Minutes," "the #1 news program on television, across broadcast and cable" with nearly 9million weekly viewers.[25] Sherwin gave a name to the DOJ operation: "Shock and Awe." To the American public he said:

> "After the 6th, we had an inauguration on the 20th. So I wanted to ensure and our office wanted to ensure that there was shock and awe that we could charge as many people as possible before the 20th. And it worked because we saw through media posts that people were afraid to

24. Dept. of Justice, Off. Pub. Aff., Update on crim. charges (Jan. 12, 2021), video 17:40 – 17:56 at https://www.justice.gov/opa/video/acting-us-attorney-michael-sherwin-district-columbia-and-fbi-washington-field-office-adic.

25. Paramount, ""60 Minutes" Continues Its Reign as Television's #1 News Program for the 2022-2023 Season" (May 23, 2023), at https://www.paramountpressexpress.com/cbs-news-and-stations/shows/60-minutes/releases/?view=106598-60-minutes-continues-its-reign-as-televisions-1-news-program-for-the-2022-2023-season.

> come back to D.C. because they're like, "If we go there, we're gonna get charged."[26]

"Shock and Awe" was launched by Justice to scare people. Creating fear required a T-Rex size charge. Prosecutors handily shortened §1512(c)(2) to one word: "obstruction" and wielded a 20-year bite over the heads of the populace.

As Sherwin said:

> "The most significant charge is obstruction. That's a 20-year felony. They breached the Capitol with the intent, the goal to obstruct official proceedings, the counts, the Electoral College count."[27]

The "they" in his response, however, was to the preceding question of "The Oath Keepers in that stack, what have they been charged with?" Sherwin stopped short of telling America that his office had already walked T-Rex a long way down the "obstruction" path. At the time of his March 21, 2021 interview and using *only* the defendant dataset herein, twenty-eight defendants (28) already faced the §1512(c)(2) charge, including in the cases of *Fischer, Lang, and Miller; Bingert* (three co-defendants), *Bozell, Caldwell* (ten codefendants)[28], *Fitzsimons, Grider, Hale-*

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26. Pelley, Scott, "Inside the Prosecution of the Capitol Rioters," 60 Minutes (March 21, 2021), video at 03:37-03:56 at https://www.cbsnews.com/news/capitol-riot-investigation-sedition-charges-60-minutes-2021-03-21/.

27. *Id.,* video at 05:45-05:57

28. *Caldwell, supra,* as of ECF-77 (Mar. 12, 2021); *N.B.:* not the final co-defendant tally.

Cusanelli, Mostofsky, Nordean (four codefendants)[29], *Robertson* (two co-defendants), and *Sandlin*.

II.(B.)THE IMPRIMATUR OF GRAND JURY INDICTMENTS

To achieve rapid filings, federal prosecutors worked in "strike forces."[30] DOJ invented language around 18 U.S.C. §1512(c)(2). For example, the DOJ dubbed the statute "Obstruction of an Official Proceeding"[31,32,33] and "Obstruction of Justice/Congress."[34,35]

On Friday, January 8, 2021, a Grand Jury was sworn and DOJ immediately started presenting, "hour upon hour."[36] By Monday, January 11, 2021[37] the DOJ/FBI starting filing criminal complaints with a boilerplate

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29. *Nordean, supra,* as of ECF-26 (Mar. 10, 2021); *N.B.:* not the final co-defendant tally.

30. DOJ Press Conf., *supra*, Sherwin, video 10:25, *et seq.*

31. *Fischer, supra*, Indict., ECF-5, 1 and ECF-52.

32. *Lang, supra*, Indict., ECF-5, 1 and Super Indict., ECF-36, 1.

33. *Miller, supra,* Indict., ECF-10, 1 and Super. Indict., ECF-30, 1; Second Super. Indict., ECF-61, 1 (Nov. 10, 2021); Third Super. Indict., ECF-111, 1 (Nov. 2, 2022).

34. *McHugh, supra,* No. 1:21-cr-453, ECF-1.

35. *Puma, supra,* No. 1:21-cr-454, ECF-1.

36. DOJ Press Conf., *supra*, Sherwin, video 08:37-09:24.

37. See, e.g., *Mostofsky, supra*, No. 1:21-cr-138, ECF-1 (Jan. 11, 2021).

narrative often titled "Background." Within the defendant dataset, as early as January 29, 2021,[38] the US DOJ started uploading generic indictments into PACER, giving another lawyer cliché – "cookie cutter" – a whole new scale. See, Table 1.

While shortening a statute title may be "non-fatal," contorting §1512(c)(2) to "obstruction" from "Tampering with a witness, victim, or an information" conjures up the law school lesson on "indicting a ham sandwich." The imprimatur of the Indictments became "§1512(c)(2)," "Obstruction," "crowd," and "Grand Jury Sworn January 8, 2021."

II.(C.)THE COMPLAINT "BACKGROUND" IS SURPLUSAGE REPLETE WITH ERRORS

It wasn't only the count that was generic; it was also the "Background" section of the "Statements" attached to the Complaints. "Background" allegations lacked citation or reference, and affiants lacked foundation. Broad brushstrokes of hearsay and outright narrative do not satisfy Fed. R. Crim. P. 7(c) requirements. A line-by-line analysis is beyond the word count of this Brief. However, one example can illustrate. The §1512(c)(2) charge requires *mens rea*. Prosecutor assert "the crowd" acted of a single mind to stop the counting of the state electoral ballots. There was no like mind on that day, and Atty. Sherwin subsequently admitted as much. (See, III. (C.), herein.)

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38. See, e.g., *U.S. v. Robertson,* 810 F. Supp. 3d 229 (D.D.C. 2022), No. 1:21-cr-34, ECF-8 (Jan. 29, 2021).

1. Start with the calendar. There was no legal requirement to complete the vote count on the afternoon of January 6.[39] Title 3 allows five calendar days, excepting Sunday, to complete the task. 3 U.S.C. §16. The counting of the ballots before a Joint Session of Congress was scheduled for only the afternoon of January 6. The Senate would then be in recess.[40] The House was scheduled to recess on the 8th. Its own problem before Session started.

2. Infuse the objection dynamic atop the calendar. U.S. Sen. Cruz had already issued a "Joint Statement" on January 2, 2021, listing Members intending to file written objections to six state electoral ballots, in accordance with 3 U.S.C. §15.[41] Objections recess the Joint Session for Members to separate into Chambers to "speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours" the presiding officer of each Chamber would call for the vote. 3 U.S.C. §17. The Sen. Cruz *et Cie* objections would have required up to twelve hours of debate time. The count wasn't going to finish on January 6 as of the gavel-in.

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39. Judge Jackson in *Williams, c.f.,* is in error for "He [V. Pres. Pence] went to the Capitol with a discrete purpose to certify the Electoral votes, *a process that by law is contemplated to take one day*." *Supra,* at *51 (emphasis added).

40. U.S. Sen. Website: https://www.senate.gov/legislative/resources/pdf/2021_calendar.pdf.

41. U.S. Sen. Cruz, website, "Joint Statement" (January 2, 2021) at https://www.cruz.senate.gov/newsroom/press-releases/joint-statement-from-senators-cruz-johnson-lankford-daines-kennedy-blackburn-braun-senators-elect-lummis-marshall-hagerty-tuberville. *N.B.; accord Williams, supra,* at *21.

3. Include the unscheduled event of the pipe bombs. At 12:52 p.m., USCP Chief Steven Sund ordered evacuation of the House Canon Office Bldg. and a building of the Library of Congress upon notification of the pipe bomb discovery at RNC headquarters.[42] An hour later, the second pipe bomb was discovered at DNC. *Id.* The pipe bombs could have disrupted the continuity of the count, all on their own.

The DOJ Count for §1512(c)(2) refers only to 3 U.S.C. §15-18. It conveniently omits §19(a)(1), which spells out what-to-do if there's a "failure to qualify" a President or Vice President. "*What if*," for just these three variables, will forever hang over January 6 because legislator objections were not lodged as anticipated, V.P. Pence gaveled back in, and no judicial intervention was sought under Title 3 during, or immediately following, which might have involved §19(a)(1).

For now, "hanging chads" has no successor. (Ref. *Bush v. Gore*, 531 U.S. 98 (2000).) At 1 p.m. on January 6, 2021, no one knew any more about the what final count would be than the gone-past-midnight announcement four years earlier. There wasn't going to be a final count on January 6. There were remaining court case options. Messrs. Fisher, Lang, and Miller weren't out storming the National Archives Building to shred the original and only copy of the Twelfth Amendment and Title 3. Shearing the narrative-style allegations out of the "Statements" eliminates the §1512(c)(2) charge and sharpens §5104(e)(2). And that's just legal "common sense."

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42. U.S. Sen. Jud. Cmte., *supra*, testimony Steven Sund, Chief, USCP, video 2:09:15-2:10:36.

III. INSIDE THE "FOUR CORNERS" OF RULINGS ON THE §1512(c)(2) COUNT ARE JUDICIAL OP-EDS

The DOJ strategy negatively impacted judicial temperament in favor of rulings in support of the §1512(c)(2) charge. Judges said they had the discipline required by the "four corners of the indictment" doctrine and that they would let the juries determine the facts. Unfortunately, they abandoned discipline in favor of emotions expressed through their own "Background" sections. The group of highly-litigated related rulings reads like letters to the editor, dressed up in "F" cites.

One judge – Nichols ruling in *Miller* – who littered the opening of his decision with words like "the mob" and "rioters" and "rioters mobbed" – somehow managed to reign it back in to evaluate the Indictment based upon the Indictment. *Supra,* at 62-64. He wrote:

> But none of those facts are set forth in the indictment and the Court cannot consider them on this Motion to Dismiss. [citation omitted] And in any event, the government does not argue that Miller himself took or attempted to take any action with respect to those records or documents.

Id., at 78-79. Judge Nichols dismissed the §1512(c)(2) charge, noting the Count was "quite sparse." *Id.,* at 64. Prosecutors filed no amendment to the Count. They instead appealed and prevailed. J.A. at 4-5.

III.(A.) JUDGES ABANDONED THE DISCIPLINE OF "FOUR CORNERS" ANALYSIS IN FAVOR OF "BACKGROUNDS"

Judges recited the Fed. R. Crim. P. 7(c) "the four corners" doctrine, nodding to Grand Juries and to future trial juries. In *Andries, supra,* at *2, n. 1 (citation omitted): "…legal analysis…must turn only on "the four corners of the indictment." In *Fitzsimons*: "Indeed, the court's review is limited to "the four corners of the indictment." *Supra,* at 137. Couple with that words like "Nor does the Court purport to find any facts; the task will rest with the jury." *Andries, supra.*

But, then, judges launched into their own "Background" sections, signaling the narrative should be thought of as "facts." For example: "The Court provides the following *factual* summary "for background purposes only," and *these facts* "do not inform the Court's analysis of [Mr. Puma's] motion to dismiss, which must be limited to "the four corners of the indictment."" *Puma, supra,* at 93 (emphasis added), citing *Montgomery.* In another example, citation is to government opposition motion papers: "When members of *the mob* who braved the two-mile trek from President Trump's rally arrived at the Capitol, the scene *soon dissolved into chaos. Agitated protestors became enraged rioters*." *U.S. v. Bingert,* 605 F. Supp. 3d 111, 116 (D.D.C. 2022) (emphasis added). This, too, is a failure of discipline.

Judge Moss penned an extensive opening to the *Montgomery* ruling. Cites for words like "violent riot," "mob," "rampage," and "melee" were to "1-1" ("Statement" to the complaint), "Dkt. 41" ("Memorandum in Opposition

by USA"), "Dkt. 31" ("Motion to Revoke Defendant's PreTrial Release by USA"), "Dkt. 63" ("Memorandum in Opposition by USA") and the Congressional Record. *Supra,* at 5960. He, too, footnoted "*The facts* in this section are provided for background purposes only…" *Id.,* at 59, n. 1 (emphasis added). To consider allegations as "true" for purposes of a Rule 12(b) motion does not convert them into "facts" – a legal term of art for findings after "fact-finding."

Three Judges, notably, achieved their "Background" using the lengthy indictments in their cases for the "conspiracy" count. Judge Mehta wrote a multi-page "Background" in his *Caldwell* ruling using a 42-page "Sixth Superseding Indictment" against seventeen defendants. *Supra,* at 6-10, citing ECF-513. The *Sandlin* Superseding Indictment (15-pages) underlying the ruling allowed a similar construction. No. 1:21-cr-88, ECF-46. As did the subject Superseding Indictment (18-pages) in *Nordean*. *Supra,* ECF-26.

III.(B.) THE "BACKGROUND" SECTIONS LACK SUBSTANCE

Whether composed by the FBI/DOJ or Judges, the "Background" sections lack substance. The FBI/DOJ "Statements" provided no citations or affiant foundation, making the complaints inherently unreliable. And yet, judges not only cited to the complaint, judges intensified the language from the complaint, such as converting "crowd" into "mob" and "horde" and "attempted to jump" into "jump," and on. Additionally, judges cited to a non-related case, *Thompson v. Trump,* 20 F.4th 10 (D.C. Cir. 2021), which they also used to escalate rhetoric. Further,

citing judges failed to recognize that *Thompson* had its own integrity problems.

Though challenging to lay out in Brief format, two illustrations are provided.

Illustration 1: *Bingert*

The first sentence of *Bingert* is: "On January 6, 2021, *a violent mob attacked* the United States Capitol as Congress attempted to certify the Electoral College vote." *Supra,* at 111 (emphasis added). There is no citation. That is all Judge Lamberth.

- Judge Lamberth's "Background," was made to appear as taken from the FBI "Statement" because he placed the document number ("1") at the end of the sentences.[43] But Judge Lamberth's paraphrase heightens the document language. The "Statement" twice includes that V. Pres. Pence "…*was present and presiding*…" from No. 1:21-cr-91, ECF 1-1, p. 1 (emphasis added). Judge Lamberth converted it to "As President of the Senate, former Vice President Michael Pence *was present to perform his duties under the Twelfth Amendment*." *Supra,* at 116 (emphasis added), citing to "*Id.*"

- Next paragraph, example: The word "Trump" did not appear in the *Bingert* "Statement" at ECF 1-1. To invoke the name, Judge Lamberth cited *McHugh* and wrote "At the rally, President Trump *implored* the crowd to march towards

43. Properly ECF 1-1, p. 1.

the Capitol…" (emphasis added). The underlying decision says "Shortly after Trump's speech, in which he "*announced* to his supporters that 'we're going to walk down Pennsylvania Avenue…to the Capitol,'…" *McHugh I, supra,* at 8 (emphasis added).

- Taking this one step deeper, the *McHugh* judge, to get to "Trump," cited to *Trump v. Thompson, supra.* That case is unrelated to the issues surrounding 18 U.S.C. §1512(c)(2). The *Thompson* decision states: "Toward the end of the speech, President Trump announced to his supporters that "we're going to walk down Pennsylvania Avenue***to the Capitol and *** we're going to try and give our Republicans *** the kind of pride and boldness that they need to take back our country." (Outtakes in opinion.) It cites to the C-Span video of the rally at 4:42:00-4:42:32.[44]

  - The video demonstrates that it was 4:41:40 when Pres. Trump took a breath before his finale, making the context thus:

    > "My fellow Americans, for our movement, for our children, and for our beloved country – and I say this despite all that's happened – the best is yet to come. So we're going to – we're going to walk down Pennsylvania Avenue – I love Pennsylvania Avenue – and we're going to the Capitol and we're

44. On-line at https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification.

> going to try and give – the Democrats are hopeless they're never voting for anything – not even one vote – but we're going to try and give our Republicans – the weak ones because the strong ones don't need any of our help – and we're going to try and give them the kind of pride and boldness that they need to take back our country. So, let's walk down Pennsylvania Avenue. I want to thank you all. God bless you. And God bless America. Thank you all for being here. This is incredible. Thank you very much. Thank you." C-Span, 4:41:40 – 4:42:47.

The rally quote is "walk" and Pres. Trump references support for the anticipated Members who said they planned to file formal objections during the ballot count (as discussed above).[45] Judge Lamberth extended his cites to "Gov't Opp'n" for his use of words like "the mob" and "chaos" (neither word is in ECF-1 or 3). Judge Lamberth not only "…assume[d] that the government's alleged facts are true…" (*Bingert, supra,* 116, n 2), he inflamed the narrative.

Illustration 2: *Grider*

In another case, *U.S. v. Grider*, the ruling begins with "This criminal case is one of several hundred arising from *the insurrection* at the United States Capitol on January 6, 2021." 585 F. Supp. 3d 21, 24 (D.D.C. 2022) (emphasis added). No defendant in the *Grider* case was charged

45. U.S. Sen. Cruz, "Joint Statement," *supra.*

with insurrection. The "Background" and section "A. Certification of the 2020 Presidential Election and *Capitol Riot*" (emphasis added) takes a path similar to *Bingert.*

Once Judge Kollar-Kotelly begins section "B. Events Specific to Defendant," the ruling cites to the supporting "Statement" and the judge makes her own interpretations of the extracted video still images at ¶10, 11, 13, 15, and 16. *Id.,* at 26. The video still images do not depict what she claims to see. It's not there on the face of the image and it's not there in the FBI "Statement" by way of written allegation.

- Per Judge Kollar-Kotelly: "The photos included in the Affidavit show that only three Capitol police officers, two doors, and stacked furniture separated the mob from Members of Congress huddled behind the doors to the Floor." She cites to ECF 1-1, ¶¶11 and 15. [*Grider, Id.,* No. 1:21-cr-22.]

    - The three men with their backs to the doors are not identified by the FBI in ECF 1-1, *supra*, whether by name or employer.

    - The lower video still at ¶11 shows an empty hall behind three men in plain clothes, one of whom may be wearing a badge, two of whom wear garden-variety COVID soft masks, the third of whom sports a baseball cap with sunglasses atop.

    - The top of three video stills at ¶15 ostensibly shows Grider with his hand against a door. The man to his immediate right with his back to the door changed from the preceding photograph.

The man two over to his right may have a patch on his jacket, but the resolution is insufficient to read it. The second of three video stills at ¶15 does not provide sufficient information to decipher. The third video still at ¶15 allows a low resolution visual on a partial of what appears to be a badge, a stitched arm badge, and that there is a/some thing(s) on the other side of the cracked door glass.

- The location of Members at the time of the video stills was not described by the FBI in ECF 1-1. Not one person is visible through the windows of the doors in the hallway in these or any other image in ECF 1-1, *supra*.

- Continuing the same data point (further down the paragraph), Judge Kollar-Kotelly wrote: "As she *jumped* through the window, she was shot by a Capitol Police officer guarding Members of Congress." (emphasis added)

  - The FBI allegation in ECF 1-1 is "…breaking the glass that Babbitt eventually *attempted to jump* through." *Id.,* ¶15.

  - No video still in *Bingert, supra,* ECF 1-1 illustrates any person on the other side of the doors, including that no image depicts USCP Officer Michael Byrd, said officer with his firearm drawn, or said officer firing the one round discharged that struck and killed Ashley Babbitt.

Judge Kollar-Kotelly's narrative goes far beyond the four-corners of the Indictment and the Complaint. As with Judge Lamberth in *Bingert,* Judge Kollar-Kotelly's use of citations in the *Grider* ruling makes it look as if the complaint contains allegations and video still images that simply are not there.

III.(C.) THE §1512(c)(2) COUNT AND THE "BACKGROUND" SECTIONS FIXATE ON A SINGULAR *MENS REA*

Several judges cast the pall of a singular *mens rea* over the nameless, faceless "mob," "rioters," "horde" and "insurrectionists." The generic count for §1512(c)(2) assumes defendants were of a singular mind that their only course of action was the Twelfth Amendment and U.S.C. §§15-18. Even Atty. Sherwin, one year later, admitted in a CBS News television interview that he didn't believe the people at the Capitol acted with a singular animus, saying, "The great bulk of these individuals were these one-offs that made terrible decisions. This isn't something that was pre-baked and planned."[46]

But "Shock and Awe" and Xerox-copied "Backgrounds" put judges in a bad frame of mind. The first sentence in the *Mostofsky* ruling: "On January 6, 2021, Defendant Aaron Mostofsky was among the horde that descended on the United States Capitol while Congress was engaged in the certification of the Electoral College vote count for the 2020 Presidential election." *Supra,* at 13. Judge Boasberg posited:

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46. CBS News, Jan. 4, 2022, video 01:42-01:50, at https://www.cbsnews.com/video/january-6-capitol-riot-prosecutor-michael-sherwin-defendants-charged/.

> As to the first question, it is difficult to fathom that a reasonable person would not believe the Electoral College certification was an official proceeding, especially since the definition of that term includes "a proceeding before Congress"; *indeed, this is precisely the reason why the January 6 rioters wished to stop it.*

Id., at 26 (emphasis added). Judge Boasberg's used the word "riot" or "rioters" a total of nineteen (19) times throughout his ruling, the highest total use of the word of any judge in the dataset.

In another example, Judge Friedman uses "mob" once, "riot" and "rioters" a total of six times, and "insurrection" and "insurrectionists" three times. Mr. Puma was not charged under 18 U.S.C. §2383 ("Rebellion or insurrection"). *Puma, supra,* begin at 7.

III.(D.) WHAT THE JUDGES CREATED THROUGH SELF-REINFORCEMENT IS AKIN TO A PYRAMID SCHEME

A simple grid of the same cases, organized by the date of ruling on the §1512(c)(2) motions, partnered with a "cited" to, illustrates how the judges built upon each other like a pyramid. *Sandlin* was first to rule on ¶1512(c)(2) on December 10, 2021. Next, was Judge Mehta in *Caldwell,* who footnoted to *Sandlin,* writing "Instead of citing to *Sandlin,* the court simply notes its agreement with Judge Friedrich's holdings and finds her reasoning for those holdings to be persuasive." *Supra,* at 11, n 3. *Caldwell* was next, and the first to adopt and incorporate each of two prior decisions. Judge Boasberg cited *Caldwell* and *Sandlin* eight times, noting, "As relatively simple as the language in §1512(c)(2)

appears, a proper analysis is quite involved. Fortunately for the Court, its colleagues have engaged fully with the knotty questions and recently issued comprehensive opinions that the Court finds persuasive." *Supra,* at 24.

Once you hit *Grider,* the counting begins. Judge Kollar-Kotelly wrote "This Court shall be the seventh." *Supra,* at 27. Judge Bates counted himself as the eighth. *McHugh II, supra,* at *5. In *Fischer,* Judge Pan wrote "Notably, no fewer than fourteen district judges in this jurisdiction have adopted the broad reading of the statute urged by the government to uphold the prosecution of defendants who allegedly participate in the Capitol riot." J.A. at 19 (citations omitted).

The judges self-reinforced, writing compliments to themselves on their own prior decisions like "More importantly, in *McHugh,* after carefully considering these cases…" *U.S. v. Bozell,* 2022 U.S. Dist. LEXIS 28075 *8; 2022 WL 474144 (D.D.C. 2022). He's doing a peer review of himself; Judge Bates authored *McHugh* and *Bozell*. Seven of nine cases he references are authored by local colleagues. The judges also self-reinforced each other, writing praise like "[t]hese cases were thorough…" *Id.*

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47. Excluded from Table 2 are rulings after the *Fischer* D.D.C. ruling and two post-trial motions to dismiss the count (*Hale-Cusanelli,* 628 F. Supp. 3d 320 (D.D.C. 2022) and *Robertson, supra*).

48. On *Sandlin, supra,* Super. Indict., ECF-46; D.D.C., *supra,* 19 at n.1, amendment made while motion was pending.

49. Citation to *U.S. v. Griffin,* 549 F. Supp. 3d 49 (2021), a ruling limited to 18 U.S.C. §1752.

50. On *Nordean, supra,* First Super. Indict., ECF-26.

TABLE 2: MOTIONS AGAINST THE 18 U.S.C. §1512(c)(2) COUNT ARRANGED BY RULING DATE (Through *Fischer* D.D.C.)			
Defendants ($\sum = 11$)[47]	**Motion Doc./ Date**	**Ruling Doc./Date**	**Cites to**
Sandlin	45 (09.13.2021)	62, 63[48] (12.10.2021)	(n/a) [49]
Caldwell	240, 278, 288, 382, 386 (06.15.2021)	558 (12.20.2021)	*Sandlin* (at 11, n.3)
Mostofsky	47 (08.31.2021)	87, 88 (12.21.2021)	*Sandlin* (8 ref., beg. at 24) *Caldwell* (8 ref., beg. at 24)
Montgomery	80 (12.06.2021)	87 (12.28.2021)	*Sandlin* (3 ref., beg. at 69) *Caldwell* (2 ref., beg. at 69)
Nordean	94 (06.03.2021)	262, 263[50] (12.28.2021)	*Sandlin* (7 ref., beg. at 42) *Caldwell* (3 ref., beg. at 48)

McHugh I	41 (12.02.2021)	50, 51 (02.01.2022)	*Sandlin* (17 ref., beg. at 10) *Caldwell* (17 ref., beg. at 10) *Mostofsky* (8 ref., beg. at 10) *Montgomery* (15 ref., beg. at 10) *Nordean* (12 ref., beg. at 10)
Grider	69 (01.12.2022)	77 (02.9.2022)	*Sandlin* (10 ref. beg. at 27, n. 3) *Caldwell* (3 ref., beg. at 27, n.3) *Mostofsky* (3 ref. beg. at 26, n.2) *Montgomery* (3 ref. beg. at 27, n.3) *Nordean* (4 ref. beg. at 27, n.3) *McHugh I* (5 ref., beg. at 26, n.2)
Bozell	33 (12.17.2021)	41 (02.16.2022)	*Sandlin* (9 ref., begin *5) *Caldwell* (17 ref., begin *5) *Mostofsky* (11 ref., begin *5) *Montgomery* (11 ref., begin *5) *Nordean* (16 ref., begin *5) *N.B.: Bates, J.* decided McHugh I *Grider* (1 ref., begin *5)

MILLER	34 (06.28.2021)	72, 73 (03.07.2022)	~~*Sandlin, Caldwell, Mostofsky*~~ *Montgomery* (14 ref., beg. at 62) ~~*Nordean, McHugh, Grider*~~
Andries	20 (08.13.2021)	46, 47 (03.14.2022)	*Sandlin* (10 ref., begin *14) *Caldwell* (14 ref., begin *9) *Mostofsky* (5 ref., begin *6) *Montgomery* (18 ref., begin *2, n.1) *Nordean* (10 ref., begin *21) *McHugh I* (17 ref., begin *9, n.2) ~~*Grider, Bozell*~~ *Miller* (3 ref., begin *33, n.7)
FISCHER	54 (01.12.2021)	64, 65 (03.15.2022)	~~*Sandlin, Caldwell*~~ *Mostofsky* (3 ref., beg. at 3) ~~*Montgomery*~~ *Nordean* (3 ref., beg. at 3) | *McHugh* (5 ref., beg. at 3) ~~*Grider, Bozell*~~ *Miller* (1 ref., beg. at 7)

IV. CONCLUSION

One can read this entire Amicus Brief and not find personal information about any one of the eighteen individual defendants. The "empty vessel" of the Indictment Count for 18 U.S.C. §1512(c)(2) makes individual defendants nothing more than a faceless number in a "crowd," "mob," or "horde" from the outset of the case. Justice cannot be replaced with "Shock and Awe" agency tactics. The U.S. DOJ and the FBI publicly stated they were "not short of resources" for charging those involved and, one year later, admitted that January 6 wasn't "pre-baked" or "planned." "Strike Force" mentality at Justice generated a pile of court decisions that cannot be allowed to serve as precedents. These rulings contain narratives (not "facts"), errors of law, misrepresentations of cited documents, and a distortion of 18 U.S.C. §1512(c)(2). Congress defined crimes at the Capitol under 18 U.S.C. §5104 and it is backed by every manner of traditional crime. No one case in this analysis involved only the §1512(c)(2) charge. Nor should any case be left with it.

For the foregoing reasons, the judgment of the Court of Appeals should be reversed.

Dated: February 5, 2024

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — RELATED CASES IN THE DATASET WITH REFERENCE TO REPORTED DECISION AND CASE RECORD

1. *U.S. v.* ***Andries,*** 2022 U.S. Dist. LEXIS 44794; 2022 WL 768684 (D.D.C. 2022).

   - Case No. 1:21-cr-93; Order (ECF-46) and Mem. Op. (ECF-47) (Mar. 14, 2022, Contreras, J.)

2. *U.S. v.* ***Bingert,*** 605 F. Supp. 3d 111 (D.D.C. 2022).

   - Case No. 1:21-cr-91; Order (ECF-68) with Mem. (ECF-67) (May 25, 2022, Lamberth, J.)

   - Three (3) defendants: Craig Bingert, Isaac Sturgeon, and Taylor Johnatakis

3. *U.S. v.* ***Bozell,*** 2022 U.S. Dist. LEXIS 28075; 2022 WL 474144 (D.D.C. 2022).

   - Case No. 21-cr-216; Mem. Op. & Order (ECF-41) (Feb. 16, 2022, Bates, J.)

4. *U.S. v.* ***Caldwell,*** 581 F. Supp. 3d 1 (D.D.C. 2021).

   - Case No. 1:21-cr-28; Mem. Op. and Order (ECF-558) (Dec. 20, 2021, Mehta, J.)

   - *N.B.:* case became two cases. This case number was renamed and continued as *U.S. v. Crowl*. The second case is *U.S. v. Rhodes,* under Case No. 1:22-cr-15. It included several defendants from the case initially captioned as *U.S. v. Caldwell*.

- Twenty-five (25) defendants: (1.) James Beeks; (2.) Caleb Berry [S][1]; (3.) Thomas Caldwell; (4.) Donovan Crowl; (5.) Jason Dolan [S]; (6.) Michael Greene; (7.) Mark Grods [S]; (8.) Joseph Hackett; (9.) Kenneth Harrelson; (10.) William Isaacs; (11.) Joshua James [S]; (12.) Connie Meggs; (13.) Kelly Meggs; (14.) Roberto Minuta; (15.) David Moerschel; (16.) Bennie Parker; (17.) Sandra Parker; (18.) Stewart Rhodes; (19.) Laura Steele; (20.) Brian Ulrich [S]; (21.) Edward Vallejo; (22.) Jonathan Walden; (23.) Jessica Watkins; (24.) William Todd Wilson [S]; and (25.) Graydon Young [S].

5. *U.S. v.* ***Fischer***, 64 F.4th 329 (D.C. Cir. 2023), *cert. granted*.

   - D.C. Cir. Case: 22-3038 (consolidated with *U.S. v.* ***Lang***, No. 22-3039 and *U.S. v.* ***Miller***, No. 22-3041, both herein).

   - *As appealed from: U.S. v.* ***Fischer***, 2022 U.S. Dist. LEXIS 45877; 2022 WL 782413 (D.D.C. Mar. 15, 2022).

     i. Case No. 1:21-cr-234; Order (ECF-65) and Mem. Op. (ECF64) (Mar. 15, 2022, Nichols, J.)

6. *U.S. v.* ***Fitzsimons***, 605 F. Supp. 3d 132 (D.D.C. 2022).

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1. This list includes all defendants charged at any point in a case, regardless whether settled out. The mark "[S]" denotes a co-defendant settled prior to the final indictment.

- Case No. 1:21-cr-158; Order (ECF-76) and Mem. (ECF-77) (May 26, 2022, Contreras, J.)

7. *U.S. v.* ***Grider****,* 585 F. Supp. 3d 21 (D.D.C. 2022).

   - Case No. 1:21-cr-22; Order (ECF-77) (Feb. 9, 2022, Kollar-Kotelly, J.)

8. *U.S. v.* ***Hale-Cusanelli****,* 628 F. Supp. 3d 320 (D.D.C. 2022).

   - Case No. 1:21-cr-37; (post-trial motion).

9. *U.S. v.* ***Lang***, 64 F.4th 329 (D.C. Cir. 2023), *cert. denied*.

   - USCA Case: 22-3038 – *U.S. v.* ***Fischer*** (consolidated with *U.S. v.* ***Lang****,* No. 223039 and *U.S. v.* ***Miller****,* No. 22-3041, both herein.)

   - *As appealed from: U.S. v.* ***Lang****,* No. 1:21-cr-53, Minute Order (Jun. 7, 2021).

10. *U.S. v.* ***McHugh****,* 583 F. Supp. 3d 1 (D.D.C. 2022) (herein "*McHugh I*"), *aff'd. on renewal,* 2022 U.S. Dist. LEXIS 78655, 2022 WL 1302880 (D.D.C. 2022) (herein "*McHugh II*").

    - Case No. 1:21-cr-453, Mem. Op. (ECF-64) (May 2, 2022, Bates, J.)

11. *U.S. v.* ***Miller,*** 64 F.4th 329 (D.C. Cir. 2023), *cert. denied*.

- USCA Case: 22-3038 – *U.S. v.* ***Fischer*** (consolidated with 22-3039 – *U.S. v.* ***Lang*** and 22-3041 – *U.S. v.* ***Miller***)

- *As appealed from: U.S. v.* ***Miller****,* 589 F. Supp. 3d 60 (D.D.C. 2022).

  i. Case No. 1:21-cr-119, Mem. Op. (ECF-72) and Order (ECF73 (Mar. 7, 2022, Nichols, J.)

12. *U.S. v.* ***Montgomery****,* 578 F. Supp. 3d 54 (D.D.C. 2021).

- Case No. 1:21-cr-46, Mem. Op. and Order (ECF 87) (Dec. 28, 2021, Moss, J.)

- Three (3) defendants: Patrick Montgomery, Brady Knowlton, and Gary Wilson

13. *U.S. v.* ***Mostofsky****,* 579 F. Supp. 3d 9 (D.D.C. 2021).

- Case No. 1:21-cr-138, Order (ECF-87) and Mem. Op. (ECF-88) (Dec. 21, 2021, Bosaberg, J.)

14. *U.S. v.* ***Nordean****,* 579 F. Supp. 3d 28 (D.D.C. 2021).

- Case No. 1:21-cr-175, Order (ECF-262) and Mem. Op. (ECF-263) (Dec. 28, 2021, Kelly, J.)

- Six (6) Defendants: Ethan Nordean, Joseph Biggs, Zachary Rehl, Charles Donohoe [S], Enrique Tarrio, and Dominic Pezzola

15. *U.S. v.* ***Puma****,* 596 F. Supp. 3d 90 (D.D.C. 2022).

    - Case No. 1:21-cr-454, Op. and Order (ECF-37) (Mar. 19, 2022, Friedman, J.)

16. *U.S. v.* ***Robertson***, 810 F. Supp. 3d 229 (D.D.C. 2022).

    - Case No. 1:21-cr-34; (post-trial motion)

    - Two (2) Defendants: Thomas Robertson and Jacob Fracker [S]

17. *U.S. v.* ***Sandlin****,* 575 F. Supp. 3d 16 (D.D.C. 2021).

    - Case No. 1:21-cr-88; Order (ECF-62) and Mem. Op. (ECF-63) (Dec. 10, 2021, Friedrich, J.)

18. *U.S. v.* ***Williams****,* 2022 U.S. Dist. LEXIS 110743, 2022 WL 2237301 (D.D.C. 2022).

    - Case No. 1:21-cr-618; Mem. Op. (ECF-55) (Jun. 22, 2022, Jackson, J.)

APPENDIX B — LIST OF CRIMES CHARGED

At issue: 18 U.S.C. §1512(c)(2) – Tampering with a witness, victim, or an informant

Additional crimes charged against the relevant defendants, herein:

1. 18 U.S.C. §2 – Principals
2. 18 U.S.C. § 111(a)(1) – Assaulting, resisting, or impeding certain officers or employees
3. 18 U.S.C. §111(b) – (enhanced penalty for §111(a)(1))
4. 18 U.S.C. §231 – Civil disorders
5. 18 U.S.C. §231(a)(3) – Civil disorders (law enforcement officer engaged in lawful performance of his duties)
6. 18 U.S.C. 371 – Conspiracy to commit offense or to defraud the United States.
7. 18 U.S.C. §372 – Conspiracy to impede or injure officer
8. 18 U.S.C. §541 – Entry of goods falsely classified
9. 18 U.S.C. §641 – Public money, property or records
10. 18 U.S.C. §875(c) – Interstate communications (threat to kidnap or injure)

Appendix B

11. 18 U.S.C. §1361 – Government property or contracts

12. 18 U.S.C. §1512(c)(1) – Tampering with a witness, victim, or an informant (documents)

13. 18 U.S.C. §1512(k) - Tampering with a witness, victim, or an informant (conspirator)

14. 18 U.S.C. §1752(a)(1) – Restricted building or grounds (knowingly enters or remains in restricted building/ grounds without lawful authority to do so)

15. 18 U.S.C. §1752(a)(2) – Restricted building or grounds (orderly conduct of government)

16. 18 U.S.C. §1752(a)(3) – Restricted building or grounds (ingress or egress)

17. 18 U.S.C. §1752(a)(4) – Restricted building or grounds (physical violence)

18. 18 U.S.C. §1752(b)(1)(A) – Restricted building or grounds (punishment)

19. 18 U.S.C. §2112 – Personal property of United States

20. 18 U.S.C. §2384 – Seditious conspiracy

21. 18 U.S.C. §5104(e)(2)(B) – Unlawful activities, Capitol Grounds and Buildings Security – Violent entry and disordering Conduct (in the gallery)

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22. 18 U.S.C. §5104(e)(2)(D) – Unlawful activities, Capitol Grounds and Buildings Security – Violent entry and disordering Conduct (language used)

23. 18 U.S.C. §5104(e)(2)(E) – Unlawful activities, Capitol Grounds and Buildings Security – Violent entry and disordering Conduct (obstruct or impede passage)

24. 18 U.S.C. §5104(e)(2)(F) - Unlawful activities, Capitol Grounds and Buildings Security – Violent entry and disordering Conduct (physical violence)

25. 18 U.S.C. §5104(e)(2)(G) - Unlawful activities, Capitol Grounds and Buildings Security – Violent entry and disordering Conduct (parade, demonstrate, or picket

APPENDIX C — INDIVIDUAL DEFENDANTS

	most recent Indict. [S, if appl.]	18 U.S.C. 1512(c)(2)	18 U.S.C. 2	18 U.S.C. 111(a)(1)	18 U.S.C. 111(b)
Andries [S]	15	Yes	Yes	-	-
Bingert CB (1)	53	Yes	Yes	Yes	-
Bingert Sturgeon (2)	53	Yes	Yes	Yes	-
Bingert Johnatakis (3)	53	Yes	Yes	Yes	-
Bozell	57	Yes	Yes	Yes	-
Caldwell (see App. D)					
FISCHER	52	Yes	Yes	Yes	-
Fitzsimmons	69	Yes	Yes	Yes	Yes
Grider [S]	97	Yes	Yes	-	-
Hale-Cusanelli	59 [trial conducted]	Yes	Yes	-	-

Appendix C

LANG	**36**	Yes	Yes	Yes	Yes
McHugh [S]	**39**	Yes	Yes	Yes	Yes
MILLER [S]	**111**	Yes	Yes	Yes	-
Montgomery PM (1)	**115**	Yes	Yes	Yes	-
Montgomery Knowlton (2)	**115**	Yes	Yes	-	-
Montgomery Wilson (3)	**115**	Yes	Yes	-	-
Mostofsky [S]	**69**	Yes	Yes	Yes	-
Nordean: JN (1)	**380**	Yes	Yes	Yes	-
Nordean: Biggs (2)	**380**	Yes	Yes	Yes	-
Nordean: Rehl (3)	**380**	Yes	Yes	Yes	-
Nordean: Donohue (4) [S]	**305**	Yes	Yes	Yes	-

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Nordean: Tarrio (5)	**380**	Yes	Yes	Yes	-
Nordean: Pezzola (6)	**380**	Yes	Yes	Yes	-
Puma [S]	**11**	Yes	Yes	-	-
Robertson TR (1)	**74**	Yes	Yes	-	-
Robertson Fracker (2)[S]	**58**	Yes	Yes	-	-
Sandlin RS (1)[S]	**46**	Yes	Yes	Yes	-
Sandlin Degrave (2) [S]	**46**	Yes	Yes	Yes	-
Williams	**27**	Yes	Yes	Yes	-

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	18 U.S.C. 231	18 U.S.C. 231(a)(3)	18 U.S.C. 372	18 U.S.C. 641	18 U.S.C. 875(c)
Andries [S]	-	-	-	-	-
Bingert CB (1)	-	Yes	-	-	-
Bingert Sturgeon (2)	-	Yes	-	-	-
Bingert Johnatakis (3)	-	Yes	-	-	-
Bozell	Yes	-	-	-	-
Caldwell (see App. D)	-				
FISCHER	-	Yes	-	-	-
Fitzsimmons	-	Yes	-	-	-
Grider [S]	-	Yes	-	-	-
Hale-Cusanelli	-	-	-	-	-

Appendix C

LANG	-	Yes	-	-	-	-
McHugh [S]	-	Yes	-	-	-	-
MILLER [S]	-	Yes	-	-	Yes	-
Montgomery PM (1)	-	Yes	-	-	-	-
Montgomery Knowlton (2)	-	-	-	Yes	-	-
Montgomery Wilson (3)	-	-	-	Yes	-	-
Mostofsky [S]	-	Yes	-	Yes	-	-
Nordean: JN (1)	-	Yes	Yes	-	-	-
Nordean: Biggs (2)	-	Yes	Yes	-	-	-
Nordean: Rehl (3)	-	Yes	Yes	-	-	-
Nordean: Donohue (4) [S]	-	Yes	-	-	-	-

Appendix C

Nordean: Tarrio (5)	-	Yes	Yes	-	-	
Nordean: Pezzola (6)	-	Yes	Yes	-	-	
Puma [S]	-	-	-	-	-	
Robertson TR (1)	-	Yes	-	-	-	
Robertson Fracker (2)[S]	-	Yes	-	-	-	
Sandlin RS (1)[S]	-	Yes	-	-	-	
Sandlin Degrave (2) [S]	-	Yes	-	-	-	
Williams	-	Yes	-	Yes	-	

Appendix C

	18 U.S.C. 1361	18 U.S.C. 1362	18 U.S.C. 1512(k)	18 U.S.C. 1752(a)(1)	18 U.S.C. 1752(a)(2)
Andries [S]	-	-	-	Yes	Yes
Bingert CB (1)	-	-	-	Yes	Yes
Bingert Sturgeon (2)	-	-	-	Yes	Yes
Bingert Johnatakis (3)	-	-	-	Yes	Yes
Bozell	Yes	-	-	Yes	Yes
Caldwell (see App. D)		-			
FISCHER	-	-	-	Yes	Yes
Fitzsimmons	-	-	-	Yes	Yes
Grider [S]	Yes	-		Yes	Yes
Hale-Cusanelli	-	-	-	Yes	Yes

Appendix C

LANG	-	-	-	-	-	Yes
McHugh [S]	-	-	-	-	Yes	Yes
MILLER [S]	-	-	-	-	Yes	Yes
Montgomery PM (1)	-	-	-	-	Yes	Yes
Montgomery Knowlton (2)	-	-	-	-	Yes	Yes
Montgomery Wilson (3)	-	-	-	-	Yes	Yes
Mostofsky [S]	-	-	-	-	Yes	Yes
Nordean: JN (1)	Yes	Yes	Yes	-	-	-
Nordean: Biggs (2)	Yes	Yes	Yes	-	-	-
Nordean: Rehl (3)	Yes	Yes	Yes	-	-	-
Nordean: Donohue (4) [S]	Yes	Yes	Yes	-	-	-

Appendix C

Nordean: Tarrio (5)	Yes	Yes	Yes	-	-	
Nordean: Pezzola (6)	Yes	Yes	Yes	-	-	
Puma [S]	-	-	-	Yes	Yes	
Robertson TR (1)	-	-	-	Yes	-	
Robertson Fracker (2)[S]	-	-	-	Yes	-	
Sandlin RS (1)[S]	-	-	Yes	Yes	Yes	
Sandlin Degrave (2) [S]	-	-	Yes	Yes	Yes	
Williams	-	-	-	Yes	Yes	

Appendix C

	18 U.S.C. 1752(a)(3)	18 U.S.C. 1752(a)(4)	18 U.S.C. 1752(b)(1)(A)	18 U.S.C. 2112	18 U.S.C. 2384
Andries [S]	-	-		-	-
Bingert CB (1)	-	Yes	-	-	-
Bingert Sturgeon (2)	-	Yes	-	-	-
Bingert Johnatakis (3)	-	Yes	-	-	-
Bozell	-	-	-	-	-
Caldwell (see App. D)					
FISCHER	-	-	-	-	-
Fitzsimmons	-	Yes	Yes	-	-
Grider [S]	-	Yes	-	-	-
Hale-Cusanelli	-	-	-	-	-

Appendix C

LANG	-	Yes	Yes	-	-	
McHugh [S]	-	Yes	Yes	-	-	
MILLER [S]	Yes	-		-	-	
Montgomery PM (1)		Yes		-	-	
Montgomery Knowlton (2)		-		-	-	
Montgomery Wilson (3)		-		-	-	
Mostofsky [S]						
Nordean: JN (1)	-	-	-	-	Yes	
Nordean: Biggs (2)	-	-	-	-	Yes	
Nordean: Rehl (3)	-	-	-	-	Yes	
Nordean: Donohue (4) [S]	-	-	-	-	-	

Appendix C

Nordean: Tarrio (5)	-	-	-	-	-	Yes
Nordean: Pezzola (6)	-	-	-	Yes	Yes	Yes
Puma [S]	-	-	-	-	-	-
Robertson TR (1)	-	-	Yes	-	-	-
Robertson Fracker (2)[S]	-	-	Yes	-	-	-
Sandlin RS (1)[S]	-	-	-	-	-	-
Sandlin Degrave (2) [S]	-	-	-	-	-	-
Williams	-	-	-	-	-	-

Appendix C

	40 U.S.C. 5104(e)(2)(B)	40 U.S.C. 5104(e)(2)(D)	40 U.S.C. 5104(e)(2)(E)	40 U.S.C. 5104(e)(2)(F)	40 U.S.C. 5104(e)(2)(G)
Andries [S]	-	Yes	-	-	Yes
Bingert CB (1)	-	-	Yes	Yes	-
Bingert Sturgeon (2)	-	-	Yes	Yes	-
Bingert Johnatakis (3)	-	-	Yes	Yes	-
Bozell	-	Yes	-	Yes	Yes
Caldwell (see App. D)					
FISCHER	-	Yes	-	-	Yes
Fitzsimmons	-	Yes	-	Yes	-
Grider [S]	-	Yes	-	Yes	Yes
Hale-Cusanelli	-	Yes	-	-	Yes

Appendix C

LANG	-	Yes	-	Yes	-		
McHugh [S]	-	Yes	-	Yes	-		
MILLER [S]	-	Yes	Yes	-	Yes		
Montgomery PM (1)	Yes	Yes		Yes			
Montgomery Knowlton (2)	Yes	Yes		-	Yes		
Montgomery Wilson (3)	Yes	Yes		-	Yes		
Mostofsky [S]		Yes			Yes		
Nordean: JN (1)	-	-	-	-	-		
Nordean: Biggs (2)	-	-	-	-	-		
Nordean: Rehl (3)	-	-	-	-	-		
Nordean: Donohue (4) [S]	-	-	-	-	-		

Appendix C

Nordean: Tarrio (5)	-	-	-	-	-	-	-
Nordean: Pezzola (6)	-	-	-	-	-	-	-
Puma [S]	-	Yes	-	-	-	Yes	
Robertson TR (1)	-	Yes	-	-	-	-	
Robertson Fracker (2) [S]	-	Yes	-	-	-	-	
Sandlin RS (1)[S]	-	-	-	-	-	-	
Sandlin Degrave (2) [S]	-	-	-	-	-	-	
Williams	-	Yes	-	-	-	Yes	

APPENDIX D — OATH KEEPER DEFENDANTS

	most recent Indictment doc. no.	18 U.S.C. 1512(c)(2)	18 U.S.C. 2	18 U.S.C. 111(a)(1)	18 U.S.C. 111(b)
Caldwell: Beeks, James (1)	Crowl-684	Yes	Yes	-	-
Caldwell: Berry, Caleb (2) [S]	Berry-1	Yes	Yes	-	-
Caldwell: Caldwell, Thomas (3)	Rhodes-167	Yes	Yes	(n/a)	-
Caldwell: Crowl, Donovan (4)	Crowl-684	Yes	Yes	-	-
Caldwell: Dolan, Jason (5) [S]	Caldwell-328	Yes	Yes	-	-
Caldwell: Greene, Michael (6)	Crowl-684	Yes	Yes	-	-
Caldwell: Grods, Mark (7) [S]	Grods-1	Yes	Yes	-	-

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Caldwell: Hackett, Joseph (8)	**Rhodes-167**	Yes	Yes	(n/a)	-
Caldwell: Harrelson, Kenneth (9)	**Rhodes-167**	Yes	Yes	-	-
Caldwell: Isaacs, William (10)	**Crowl-684**	Yes	Yes	-	-
Caldwell: James, Joshua (11) [S]	**Rhodes-1**	Yes	Yes	Yes	-
Caldwell: Meggs, Connie (12)	**Crowl-684**	Yes	Yes	-	-
Caldwell: Meggs, Kelly (13)	**Rhodes-167**	Yes	Yes	(n/a)	-
Caldwell: Minuta, Roberto (14)	**Rhodes-167**	Yes	Yes	(n/a)	-
Caldwell: Moerschel, David (15)	**Rhodes-167**	Yes	Yes	(n/a)	-

Caldwell: Parker, Bennie (16)	**Crowl-684**	Yes	Yes	-	-
Caldwell: Parker, Sandra (17)	**Crowl-684**	Yes	Yes	-	-
Rhodes: Rhodes, Stewart (18)	**Rhodes-167**	Yes	Yes	-	-
Caldwell: Steele, Laura (19)	**Crowl-684**	Yes	Yes	-	-
Caldwell: Ulrich, Brian (20) [S]	**Rhodes-1**	Yes	Yes	(n/a)	-
Rhodes: Vallejo, Edward (21)	**Rhodes-167**	Yes	Yes	(n/a)	-
Caldwell: Walden, Jonathan (22)	**Walden-1**	Yes	-	-	-
Caldwell: Watkins, Jessica (23)	**Rhodes-167**	Yes	Yes	(n/a)	-

Caldwell: Wilson, William Todd (24)[S]	**Wilson-1**	Yes	-	-	-
Caldwell: Young, Graydon (25) [S]	**Caldwell-196**	Yes	Yes	-	-

	18 U.S.C. 231	**18 U.S.C. 231(a)(2)**	**18 U.S.C. 231(a)(3)**	**18 U.S.C. 371**	**18 U.S.C. 372**
Caldwell: Beeks, James (1)	-	-	Yes		-
Caldwell: Berry, Caleb (2) [S]	-	-	-	Yes	-
Caldwell: Caldwell, Thomas (3)	-	-	(n/a)	-	Yes

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Caldwell: Crowl, Donovan (4)	-	-	Yes	-	-	
Caldwell: Dolan, Jason (5) [S]	-	-	Yes	Yes	-	
Caldwell: Greene, Michael (6)	-	-	(n/a)		Yes	
Caldwell: Grods, Mark (7) [S]	-	-	-	Yes	-	
Caldwell: Hackett, Joseph (8)	-	-	(n/a)	-	Yes	
Caldwell: Harrelson, Kenneth (9)	-	-	(n/a)	-	Yes	
Caldwell: Isaacs, William (10)	-	-	Yes	-	Yes	
Caldwell: James, Joshua (11) [S]	-	-	Yes	-	Yes	

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Caldwell: Meggs, Connie (12)	-	-	Yes	-		Yes
Caldwell: Meggs, Kelly (13)	-	-	(n/a)	-		Yes
Caldwell: Minuta, Roberto (14)	-	-	(n/a)	-		Yes
Caldwell: Moerschel, David (15)	-	-	(n/a)	-		Yes
Caldwell: Parker, Bennie (16)	-	-	(n/a)	-		Yes
Caldwell: Parker, Sandra (17)	-	-	Yes	-		Yes
Rhodes: Rhodes, Stewart (18)	-	-	-	-		Yes
Caldwell: Steele, Laura (19)	-	-	Yes	-		Yes

Caldwell: Ulrich, Brian (20) [S]	-	-	(n/a)	-	Yes
Rhodes: Vallejo, Edward (21)	-	-	(n/a)	-	Yes
Caldwell: Walden, Jonathan (22)	-	-	-	-	-
Caldwell: Watkins, Jessica (23)	-	-	Yes	-	Yes
Caldwell: Wilson, William Todd (24)[S]	-	-	-	-	-
Caldwell: Young, Graydon (25) [S]	-	-	Yes	Yes	-

Appendix D

	18 U.S.C. 541	18 U.S.C. 641	18 U.S.C. 875(c)	18 U.S.C. 1361	18 U.S.C. 1512(c)(1)
Caldwell: Beeks, James (1)	-	-	-	Yes	-
Caldwell: Berry, Caleb (2) [S]	-	-	-	-	-
Caldwell: Caldwell, Thomas (3)	-	-	-	(n/a)	Yes
Caldwell: Crowl, Donovan (4)	-	-	-	(n/a)	-
Caldwell: Dolan, Jason (5) [S]	-	-	-	Yes	-
Caldwell: Greene, Michael (6)	-	-	-	(n/a)	Yes
Caldwell: Grods, Mark (7) [S]	-	-	-	-	-

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Caldwell: Hackett, Joseph (8)	-	-	-	Yes	Yes	Yes
Caldwell: Harrelson, Kenneth (9)	-	-	-	Yes	Yes	Yes
Caldwell: Isaacs, William (10)	-	-	-	Yes	(n/a)	(n/a)
Caldwell: James, Joshua (11) [S]	-	-	-	(n/a)	Yes	Yes
Caldwell: Meggs, Connie (12)	-	-	-	Yes	(n/a)	(n/a)
Caldwell: Meggs, Kelly (13)	-	-	-	Yes	Yes	Yes
Caldwell: Minuta, Roberto (14)	-	-	-	(n/a)	Yes	Yes
Caldwell: Moerschel, David (15)	-	-	-	Yes	Yes	Yes

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Caldwell: Parker, Bennie (16)	-	-	-	(n/a)	(n/a)	
Caldwell: Parker, Sandra (17)	-	-	-	Yes	(n/a)	
Rhodes: Rhodes, Stewart (18)	-	-	-	(n/a)	-	
Caldwell: Steele, Laura (19)	-	-	-	Yes	Yes	
Caldwell: Ulrich, Brian (20) [S]	-	-	-	(n/a)	Yes	
Rhodes: Vallejo, Edward (21)	-	-	-	(n/a)	(n/a)	
Caldwell: Walden, Jonathan (22)	-	-	-	-	-	
Caldwell: Watkins, Jessica (23)	-	-	-	-	(n/a)	

Caldwell: Wilson, William Todd (24)[S]	-	-	-	-	-
Caldwell: Young, Graydon (25) [S]	-	-	-	Yes	Yes

	18 U.S.C. 1512(k)	**18 U.S.C. 1752(a) (1)**	**18 U.S.C. 1752(a) (2)**	**18 U.S.C. 1752(a) (3)**	**18 U.S.C. 1752(a) (4)**
Caldwell: Beeks, James (1)	Yes	Yes	-	-	-
Caldwell: Berry, Caleb (2) [S]	-	-	-	-	-
Caldwell: Caldwell, Thomas (3)	Yes	-	-	-	-

Appendix D

Caldwell: Crowl, Donovan (4)	Yes	Yes	-	-	-	-
Caldwell: Dolan, Jason (5) [S]	-	Yes	-	-	-	-
Caldwell: Greene, Michael (6)	Yes	Yes	-	-	-	-
Caldwell: Grods, Mark (7) [S]	-	-	-	-	-	-
Caldwell: Hackett, Joseph (8)	Yes	-	-	-	-	-
Caldwell: Harrelson, Kenneth (9)	Yes	-	-	-	-	-
Caldwell: Isaacs, William (10)	Yes	Yes	-	-	-	-
Caldwell: James, Joshua (11) [S]	Yes	-	-	-	-	-

Appendix D

Caldwell: Meggs, Connie (12)	Yes	Yes	-	-	-	-
Caldwell: Meggs, Kelly (13)	Yes	-	-	-	-	-
Caldwell: Minuta, Roberto (14)	Yes	-	-	-	-	-
Caldwell: Moerschel, David (15)	Yes	-	-	-	-	-
Caldwell: Parker, Bennie (16)	Yes	Yes	-	-	-	-
Caldwell: Parker, Sandra (17)	Yes	Yes	-	-	-	-
Rhodes: Rhodes, Stewart (18)	Yes	-	-	-	-	-
Caldwell: Steele, Laura (19)	Yes	Yes	-	-	-	-

Appendix D

Caldwell: Ulrich, Brian (20) [S]	Yes	-	-	-	-	-
Rhodes: Vallejo, Edward (21)	Yes	-	-	-	-	-
Caldwell: Walden, Jonathan (22)	-	Yes	-	-	-	-
Caldwell: Watkins, Jessica (23)	Yes	-	-	-	-	-
Caldwell: Wilson, William Todd (24)[S]	-	-	-	-	-	-
Caldwell: Young, Graydon (25) [S]	-	Yes	-	-	-	-

Appendix D

	18 U.S.C. 1752(b)(1)(A)	18 U.S.C. 2112	18 U.S.C. 2384	40 U.S.C. 5104(e)(2)(B)	40 U.S.C. 5104(e)(2)(D)
Caldwell: Beeks, James (1)	-	-	-	-	-
Caldwell: Berry, Caleb (2) [S]	-	-	-	-	-
Caldwell: Caldwell, Thomas (3)	-	-	-	-	-
Caldwell: Crowl, Donovan (4)	-	-	-	-	-
Caldwell: Dolan, Jason (5) [S]	-	-	-	-	-
Caldwell: Greene, Michael (6)	-	-	-	-	-
Caldwell: Grods, Mark (7) [S]	-	-	-	-	-

Appendix D

Caldwell: Hackett, Joseph (8)	-	-	-	-	-	-
Caldwell: Harrelson, Kenneth (9)	-	-	Yes	-	-	-
Caldwell: Isaacs, William (10)	-	-	-	-	-	-
Caldwell: James, Joshua (11) [S]	-	-	-	-	-	-
Caldwell: Meggs, Connie (12)	-	-	-	-	-	-
Caldwell: Meggs, Kelly (13)	-	-	Yes	-	-	-
Caldwell: Minuta, Roberto (14)	-	-	-	-	-	-
Caldwell: Moerschel, David (15)	-	-	-	-	-	-

Caldwell: Parker, Bennie (16)	-	-	-	-	-
Caldwell: Parker, Sandra (17)	-	-	-	-	-
Rhodes: Rhodes, Stewart (18)	-	-	-	-	-
Caldwell: Steele, Laura (19)	-	-	-	-	-
Caldwell: Ulrich, Brian (20) [S]	-	-	Yes	-	-
Rhodes: Vallejo, Edward (21)	-	-	-	-	-
Caldwell: Walden, Jonathan (22)	-	-	-	-	-
Caldwell: Watkins, Jessica (23)	-	-	Yes	-	-

Appendix D

Caldwell: Wilson, William Todd (24)[S]	-	-	Yes	-	-	
Caldwell: Young, Graydon (25) [S]	-	-	-	-	-	

	40 U.S.C. 5104(e)(2)(E)	**40 U.S.C. 5104(e)(2)(F)**	**40 U.S.C. 5104(e)(2)(G)**
Caldwell: Beeks, James (1)	-	-	-
Caldwell: Berry, Caleb (2) [S]	-	-	-
Caldwell: Caldwell, Thomas (3)	-	-	-

Appendix D

Caldwell: Crowl, Donovan (4)	-	-	-	-
Caldwell: Dolan, Jason (5) [S]	-	-	-	-
Caldwell: Greene, Michael (6)	-	-	-	-
Caldwell: Grods, Mark (7) [S]	-	-	-	-
Caldwell: Hackett, Joseph (8)	-	-	-	-
Caldwell: Harrelson, Kenneth (9)	-	-	-	-
Caldwell: Isaacs, William (10)	-	-	-	-
Caldwell: James, Joshua (11) [S]	-	-	-	-

Appendix D

Caldwell: Meggs, Connie (12)	-	-	-	-
Caldwell: Meggs, Kelly (13)	-	-	-	-
Caldwell: Minuta, Roberto (14)	-	-	-	-
Caldwell: Moerschel, David (15)	-	-	-	-
Caldwell: Parker, Bennie (16)	-	-	-	-
Caldwell: Parker, Sandra (17)	-	-	-	-
Rhodes: Rhodes, Stewart (18)	-	-	-	-
Caldwell: Steele, Laura (19)	-	-	-	-

Appendix D

Caldwell: Ulrich, Brian (20) [S]	-	-	-	-
Rhodes: Vallejo, Edward (21)	-	-	-	-
Caldwell: Walden, Jonathan (22)	-	-	-	-
Caldwell: Watkins, Jessica (23)	-	-	-	-
Caldwell: Wilson, William Todd (24)[S]	-	-	-	-
Caldwell: Young, Graydon (25) [S]	-	-	-	-