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**18 U.S.C. § 1512(c)(2) – OBSTRUCTION OF  
AN OFFICIAL PROCEEDING**

(18 U.S.C. § 1512(c)(2))

Count [] of the Indictment charges the defendant with corruptly obstructing an official proceeding, which is a violation of federal law.

[Count [] also charges the defendant with [at-tempt to obstruct or impede an official proceeding] [and] [aiding and abetting others to commit that offense]. First, I will explain the elements of the substantive offense, along with its associated definitions. Then, I will explain how to determine [whether the defendant attempted the offense] [and] [whether the defendant aided and abetted the offense].]

Elements

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

First, the defendant attempted to or did obstruct or impede an official proceeding.

Second, the defendant intended to obstruct or impede the official proceeding.

Third, the defendant acted knowingly, with awareness that the natural and probable effect of [his] [her] conduct would be to obstruct or impede the official proceeding.

Fourth, the defendant acted corruptly.

Definitions

The term “official proceeding” includes a proceeding before Congress. The official proceeding need not be pending or about to be instituted at the time of the offense. If the official proceeding was not pending or about to be instituted, the government must prove beyond a reasonable doubt that the official proceeding was reasonably foreseeable to the defendant. For purposes of this count, the term “official proceeding” means Congress’ Joint Session to certify the Electoral College vote.

A person acts “knowingly” if [he] [she] realizes what [he] [she] is doing and is aware of the nature of [his] [her] conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant acted knowingly, you may consider all of the evidence, including what the defendant did, said, or perceived.

To act “corruptly,” the defendant must use independently unlawful means or act with an unlawful purpose, or both. The defendant must also act with “consciousness of wrongdoing.” “Consciousness of wrongdoing” means with an understanding or awareness that what the person is doing is wrong or unlawful.

Not all attempts to obstruct or impede an official proceeding involve acting corruptly. For example, a witness in a court proceeding may refuse to testify by invoking his or her constitutional privilege against self-incrimination, thereby obstructing or impeding

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the proceeding, but that person does not act corruptly. In contrast, an individual who obstructs or impedes a court proceeding by bribing a witness to refuse to testify in that proceeding, or by engaging in other independently unlawful conduct, does act corruptly. Often, acting corruptly involves acting with the intent to secure an unlawful advantage or benefit either for oneself or for another person.

While the defendant must act with intent to obstruct the official proceeding, this need not be [his] [her] sole purpose. A defendant's unlawful intent to obstruct an official proceeding is not negated by the simultaneous presence of another purpose for [his] [her] conduct.

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August 4, 2023

Ms. Laura Morgan  
Clerk's Office  
U.S. Court of Appeals for the D.C. Circuit  
333 Constitution Avenue, NW Rm 5205  
Washington DC 20001

**Re: United States v. Thomas Robertson,  
Appeal No. 22-3062**

Dear Ms. Morgan,

In accord with FRAP 28(j), Appellant notifies the Court of the attached August 1, 2023 Indictment in *United States v. Trump*, No. 23-CR-00257-TSC (D.D.C.) (the "Trump Indictment").

Because the mens rea requirement of a statute does not change from indictment to indictment, acting "corruptly" cannot mean one thing for one person accused of violating 18 U.S.C. § 1512(c)(2), and something else for another. In the present case, the government asserted:

Although the 'corruptly' definition that Robertson offered after trial – that it requires a *dishonest* intent to benefit oneself – would be *sufficient* to prove that a defendant acted corruptly, [it is not] *necessary* to prove corrupt

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intent for purposes of congressional or judicial obstruction.

(Gov't Br. 19) (first emphasis added).

Thus, the government took the position that for Robertson to violate § 1512(c)(2) it sufficed that he was “using unlawful means” (e.g. brandishing a wooden stick; breaking into the Capitol); it was unnecessary to prove that he “acted dishonestly.” Gov't Br. 33-35.

Count 3 of the Trump Indictment also charges a violation of 18 U.S.C. § 1512(c)(2). It recognizes that the defendant did not use unlawful means: even if the speech he gave outside the White House on January 6 “falsely” claimed victory, he had a “right” to say this. ¶ 3. What allegedly turned the defendant’s conduct into a § 1512(c)(2) violation was that he “obstruct[ed] . . . the federal government function through dishonesty, fraud and deceit.” ¶ 10.

These positions are inconsistent. The Trump Indictment position is the correct one: dishonesty and deceit are *necessary* to establish corrupt intent. See *Arthur Andersen v. United States*, 544 U.S. 696, 706 (2005) (faulting jury instructions on “corruptly” that “no longer made any type of ‘dishonest[y]’ necessary to a finding of guilt.”).

Robertson did not act dishonestly. He was one of the participants “deceived” by “repeated knowingly false claims of election fraud” into believing the Vice-President – whom the defendant allegedly told: “You’re too honest” -could change the result ¶¶ 10 (d) & (e) &

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90(c). Deceit is at the heart of corrupt intent; being deceived is not.

Respectfully submitted,

/s/ Timothy Cone

Timothy Cone, Esq.

Counsel Appointed by the Court

For Appellant Robertson

[Exhibit Omitted]

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[SEAL]

**U.S. Department of Justice**  
Criminal Division

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*Appellate Section*      *Washington, D.C. 20530*

August 15, 2023

Mark J. Langer  
Clerk, U.S. Court of Appeals for the  
District of Columbia Circuit  
E. Barrett Prettyman United States Courthouse  
333 Constitution Avenue NW  
Washington, DC 20001

Re: *United States v. Thomas Robertson*, No. 22-3062  
(Argued May 11, 2023)

Dear Mr. Langer:

In a letter submitted pursuant to Federal Rule of Appellate Procedure 28(j), defendant-appellant Thomas Robertson contends (Letter at 2) that the government’s position in this case is inconsistent with the “position” in the indictment in *United States v. Trump*, No. 23-cr-257, ECF No. 1 (D.D.C. Aug. 1, 2023). As an initial matter, the letter does not comply with Rule 28(j) because an indictment in a different case is not a “pertinent and significant” authority. Fed. R. App. P. 28(j).

In any event, Robertson’s contention is flawed in several respects. First, although the indictment in *Trump* charges a violation of 18 U.S.C. § 1512(c)(2), which prohibits the corrupt obstruction of a congressional proceeding, the indictment’s allegations do not



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set forth a “position” on the proper definition of “corruptly” for purposes of Section 1512(c)(2). *See Trump, supra*, at ¶¶ 127-28 (incorporating prior allegations and alleging a violation of Section 1512(c)(2) using the relevant statutory language). Second, the language on which Robertson relies—namely, the allegation that defendant Donald J. Trump “obstruct[ed] . . . the federal government function through dishonesty, fraud, and deceit,” *id.* at ¶10—charges a violation of a different federal statute, namely 18 U.S.C. § 371. As relevant here, Section 371 requires proof that a defendant “interfere[d] with or obstruct[ed]” a lawful government function “by deceit, craft or trickery, or at least by means that are dishonest.” *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924). Finally, Robertson is incorrect that “dishonesty and deceit are *necessary* to establish corrupt intent.” Robertson 28(j) Letter at 2. Just as the improper-benefit theory that Robertson advocates (*see* Br. 12-21) would be sufficient but not necessary to prove that a defendant acted “corruptly” for purposes of Section 1512(c)(2), *see* Gov. Br. 35-39, so too would a theory that a defendant acted dishonestly, *see Arthur Andersen LLP v. United States*, 544 U.S. 696, 705-06 (2005); *United States v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013).

Respectfully,

/s/ James I. Pearce

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing letter with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on August 15, 2023. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ James I. Pearce  
James I. Pearce

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