

# THE THREE REPORTED CHARGES AGAINST TRUMP: 371, 1512, AND (MAYBE) 242

I want to caution about the reports on the charges named in Trump's target letter. Even after Jim Trusty got the summons for Trump's Espionage Act indictment, reporting based on his representation of the charges turned out to be inaccurate – not least, because what was assumed to be one 18 USC 793 charge turned out to be 31.

All the more so here, where Trump's team has even less information to work with.

That said, since comments on that other thread on the target letter have gotten so long, I'll note that Rolling Stone says the target letter cites three charges.

The letter mentions three federal statutes: Conspiracy to commit offense or to defraud the United States; deprivation of rights under color of law; and tampering with a witness, victim, or an informant.

Once you've translated from the legalese, two of these are totally expected:

18 USC 371: Conspiracy to Defraud the US has generally been discussed in terms of the fake elector scheme – basically, an effort to get 16 electors in all the swing states to submit fraudulent certificates to NARA. That the scheme was fraudulent is easy to prove. What's harder to prove is Trump's personal involvement it, which will have required DOJ to breach several levels of privileged communication to prove (something they took steps to do on Lisa Monaco's first day on the job). That said, we've seen that they've been doing that, most recently with proffers from both Boris Epshteyn and Rudy

Giuliani, who implemented the scheme.

But this is a broad statute, and DOJ could also charge Trump with ConFraudUS for campaign finance crimes, among other known Trump acts.

18 USC 1512(c)(2): What is described as witness tampering here is almost certainly obstruction of an official proceeding, the same crime with which 300 other alleged January 6 criminals have been charged. The title for that crime is witness tampering. (Though Jack Smith could also charge Trump for attempting to tamper with Cassidy Hutchinson's testimony.) I first started laying out how Trump might be charged for this in August 2021. More recently, I've recommended people read Royce Lamberth's Findings of Fact in the Alan Hostetter case – a VIP, like Trump, who was prosecuted in part for inciting others to obstruct the vote certification – to see how judges are applying this law to January 6.

In summary, if my assumptions that this would be charged in conjunction with January 6 are correct, it would require the government to prove that:

- Trump took steps to obstruct the certification of the votes. I would expect this to consist *both* of his pressure on Mike Pence, but also on his support for the mob, including for the threats the mob made on Congress.
- Trump intended to obstruct the vote certification. This would require proving that he knew the significance of the event, which DOJ will prove with the weeks of plotting he put in before

the event.

- Trump had corrupt purpose in doing so. The standard for corrupt purpose as regards this statute is still being decided by the DC Circuit, but it will end up being some combination of “otherwise illegal activity” and “corrupt benefit.” The former might be proven by showing that Trump knowingly gave an illegal order to Mike Pence. The latter would easily be proven by showing that Trump wanted to retain an office he didn’t win.

Note that DOJ has been charging conspiracy tied to this statute under 18 USC 1512(k) and I would be unsurprised to see that happen with Trump.

The last of these statutes is more of a surprise.

**[See correction below]** 18 USC 242: It prohibits someone from impeding someone’s rights “under color of law,” which can mean “beyond the scope of one’s official duties.” Charging Trump with 242 may be a way to charge him for attempting to deprive 81 million Biden voters of their right to vote, to deprive Joe Biden of his right to be assume the Presidency, and to deprive election workers of their right to work safely. Charging him under 242 would eliminate any dodge Trump might make – for example on the call to Brad Raffensberger – that he was simply acting within his official role as President.

This charge may be why, since last year and increasingly in recent weeks, Jack Smith has focused on the harassment of election officials. Just today, AJC reported that Smith subpoenaed

footage from the State Farm arena counting center, suggesting Ruby Freeman might be treated as a victim here as well, which would be well, well deserved.

Two other potential implications of this. When January 6 defendants have argued that Trump authorized them to attack the Capitol, DOJ has *always* responded that the President has no role in the vote certification. So if DOJ were to include January 6 in such a charge, it would be an area – one of the most clear cut areas in the Constitution – where the President literally has no authority, and so easy to show that Trump was exceeding his authority.

Additionally, as noted above, the standard for corrupt purpose on obstruction is not yet settled. The DC Circuit might yet require “corrupt purpose” to be shown via some “otherwise illegal activity.” If that happens, DOJ may want to have several other crimes charged that will prove that prong of the offense, of which 242 could be one.

In other words, the thinking may be, in part, that it’s clear the President has no authority in the Electoral vote certification. Trump tried to deprive Biden voters of their franchise with his efforts on January 6. And that is one of a number of other crimes he committed in his efforts to obstruct the vote certification.

All that said, note my caution about the giant game of telephone this discussion relies on. Ultimately, we’ll learn what the charges are soon enough.

Update: Both the NYT and Guardian have reported that the third charge is 18 USC 241, not 242. Jack Smith is going to accuse Donald Trump of voting fraud.