

DOJ REFUSES TO LET TRUMP DISAVOW HIS MOB

In three different ways in their responses to Trump's motions to dismiss submitted yesterday, Jack Smith's prosecutors emphasized that Trump should be subject to the same standards – and legal precedents – as the mob he sicced on the Capitol.

One pertains to the appellate precedents already set in the application of 18 USC 1512(c)(2). DOJ cited both January 6 precedents – Fischer and Robertson – to lay out that interrupting the vote certification to secure the presidency for oneself would be evidence of corrupt intent.

The alternatives include “using independently unlawful, felonious means,” *id.* at *9, and acting with a “corrupt purpose,” *id.* at *11, which includes acting “with an intent to procure an unlawful benefit,” Fischer, 64 F.4th at 352 (Walker, J., concurring) (quotation marks omitted), such as “secur[ing] . . . the presidency,” and acting dishonestly, *Arthur Andersen LLP v. United States*, 544 U.S. 696, 706- 07 (2005); see Robertson, 2023 WL 6932346, at *12 (noting that “dishonesty” or “seeking a benefit for oneself or another” is not necessary but “may be sufficient to prove corrupt intent”).

Then, in response to Trump's claim of selective prosecution (based off two stories – the famous Carol Leonnig one and a much earlier NYT one, both by journalists who did little other coverage of the larger January 6 investigation) – DOJ pointed to all the other similarly situated Jan6ers who not only were prosecuted, but whose claims of selective prosecution or prosecution for speech failed.

The passage cited to:

- Carl Nichols' opinion that Garret Miller's role in interrupting the peaceful transfer of power distinguished him from Portland rioters.
- Trevor McFadden's opinion that, because January 6 posed a greater threat than the Portland riots, David Judd could not argue he was being prosecuted more severely than they had been for setting off a firecracker in The Tunnel.
- James Boasberg's opinion that judge's son Aaron Mostofsky, was not being prosecuted because he wore animal pelts to January 6, but because he obstructed the vote certification.
- John Bates' opinion that the threat to government officials and employees, as well as the objective of obstructing the vote certification, could warrant harsher charges against retired Air Force Lieutenant Colonel Larry Brock, who brought zip ties onto the floor of the Senate.
- John Bates' opinion that Zeeker Bozell, was not being

prosecuted for his political views but for “the destructive acts he allegedly took to disrupt the January 6 Certification.”

- Royce Lamberth’s findings of fact that it didn’t matter that, even if Alan. Hostetter sincerely believed—which it appears he did—that the election was fraudulent, that President Trump was the rightful winner, and that public officials committed treason, as a former police chief, he still must have known it was unlawful to vindicate that perceived injustice by engaging in mob violence to obstruct Congress.”
- Amy Berman Jackson’s opinion dismissing Danny Rodriguez’ claim that he was being prosecuted for his “sincerely held political belief that the 2020 presidential election was not fairly decided,” noting that it was his criminal conduct, including tasing Michael Fanone.
- Amit Mehta’s argument that Stewart Rhodes and his co-conspirators were charged of more in their seditious

conspiracy indictment than simply calling on Trump to invoke the Insurrection Act.

This list includes four GOP appointed judges, including his two Trumpiest appointments (one a former Clarence Thomas clerk), it includes the scion of a prominent Republican family and several people who invaded the Senate, it includes two of the defendants whose actions prosecutors showed were the most directly tied to Trump's speech. And it includes an Oath Keeper convicted of sedition.

That section describing January 6 defendants whose First Amendment claims have already failed included a cross-citation to DOJ's response on the motion to strike. Over the course of that filing, DOJ provided still more precedents from Trump's mob, *about the collective action of the mob*, that they argue should apply to him too:

- Beryl Howell's opinion that Patrick Stedman could not exclude evidence regarding the rest of the mob because,

"The sheer numbers of individuals making up the mob that marched on the U.S. Capitol on January 6, 2021—without stopping at the fencing or the barricades or the police lines or the chemical spray and other crowd control tools deployed by law enforcement—had the effect of overwhelming law enforcement officers attempting to secure the Capitol, with the direct consequence of creating a catastrophic security risk requiring the evacuation of lawmakers, staff, and press representatives legitimately gathered inside the Capitol building that day to conduct, facilitate, and observe the certification of the Electoral College vote count and triggering a lengthy delay before this constitutionally-

mandated proceeding could resume.”

- James Boasberg’s opinion that Sara Carpenter could not exclude evidence of the effect on the vote certification because, “the weighty probative value of evidence that broadly depicts what happened on January 6 outweighs any potential prejudice or cumulativeness.”
- James Boasberg’s opinion, again finding that such general evidence can come in to prove what Bradley Bennett obstructed.
- Colleen Kollar-Kotelly’s opinion that evidence about context could come in at Danean MacAndrew’s trial because “the size of the crowd, political leaders, and false allegations of voter fraud and election interference” ... “bear on Defendant’s mental state at the time of the charged offenses.”
- Colleen Kollar-Kotelly’s opinion repeating her MacAndrew ruling that the government could present evidence of the collective action of the mob in Anthony Alfred Griffith’s trial.

The response to Trump's motion to strike did more: It hung Trump's mob on him. It called Trump out for disavowing his mob in an attempt to wipe away a critical part of the indictment.

[P]ublicly, the defendant has promoted and extolled the events of that day. While the violent attack was ongoing, the defendant told rioters that they were "very special" and that "we love you." In the years since, he has championed rioters as "great patriots" and proclaimed January 6 "a beautiful day." In this case, though, the defendant seeks to distance himself, moving to strike allegations in the indictment related to "the actions at the Capitol on January 6, 2021." ECF No. 115 at 1. The Court should recognize the defendant's motion for what it is: a meritless effort to evade the indictment's clear allegations that the defendant is responsible for the events at the Capitol on January 6.

It debunked Trump's claim that he is not charged with being responsible for January 6.

The defendant's motion is premised on the disingenuous claim that he is not charged with "responsibility for the actions at the Capitol on January 6, 2021." ECF No. 115 at 1. But the indictment clearly alleges, and the Government will prove at trial, that the defendant bears such responsibility.

And, as I predicted would happen, DOJ committed to prove that Trump obstructed the vote certification – and nearly got Mike Pence killed – in significant part, with his mob.

Ultimately, the defendant's three conspiracies culminated and converged when, on January 6, the defendant attempted to obstruct and prevent the

congressional certification at the Capitol. One of the ways that the defendant did so, as alleged in the indictment, was to direct an angry crowd of his supporters to the Capitol and to continue to stoke their anger while they were rioting and obstructing the certification.

At trial, the Government will prove these allegations with evidence that the defendant's supporters took obstructive actions at the Capitol at the defendant's direction and on his behalf. This evidence will include video evidence demonstrating that on the morning of January 6, the defendant encouraged the crowd to go to the Capitol throughout his speech, giving the earliest such instruction roughly 15 minutes into his remarks; testimony, video, photographic, and geolocation evidence establishing that many of the defendant's supporters responded to his direction and moved from his speech at the Ellipse to the Capitol; and testimony, video, and photographic evidence that **specific individuals who were at the Ellipse when the defendant exhorted them to "fight" at the Capitol then violently attacked law enforcement and breached the Capitol.**

The indictment also alleges, and the Government will prove at trial, that the defendant used the angry crowd at the Capitol as a tool in his pressure campaign on the Vice President and to obstruct the congressional certification. Through testimony and video evidence, the Government will establish that rioters were singularly focused on entering the Capitol building, and once inside **sought out where lawmakers were conducting the certification proceeding** and where the electoral votes were being counted. And

in particular, the Government will establish through testimony and video evidence that after the defendant repeatedly and publicly pressured and attacked the Vice President, the rioting crowd at the Capitol turned their anger toward the Vice President when they learned he would not halt the certification, asking where the Vice President was and chanting that they would hang him. [my emphasis]

DOJ's commitment to prove this echoes moves it has taken during past prosecutions – the evidence of Trump's effect on defendants has already been introduced in plea hearings or at trial.

DOJ has been preparing to prove this for a very, very long time.

Meanwhile they've been collecting receipts of all the times that Trump has owned this mob since – including receipts from the Waco rally kicking off his current presidential run.

The Government will further establish the defendant's criminal intent by showing that, in the years since January 6, despite his knowledge of the violent actions at the Capitol, the defendant has publicly praised and defended rioters and their conduct. There is a robust public record of how rioters' actions at the Capitol on January 6 were extraordinarily violent and destructive, including attacks on law enforcement officers with flag poles, tasers, bear spray, and stolen riot shields and batons. One officer who was dragged into the crowd endured a brutal beating while members of the crowd reportedly yelled, "Kill him with his own gun!" Terrified lawmakers and staff hid in various places inside the building, and many were evacuated. Despite this, the defendant has never wavered in his

support of January 6 offenders. For instance, the Government will introduce at trial the defendant's own statements in the years since January 6 proclaiming it "a beautiful day" and calling rioters "patriots," many of whom he "plan[s] to pardon."² The Government will also introduce evidence of the defendant's public support for and association with the "January 6 Choir," a group of particularly violent January 6 defendants detained at the District of Columbia jail. ³ The defendant's decision to repeatedly stand behind January 6 rioters and their cause is relevant to the jury's determination of whether he intended the actions at the Capitol that day.

³ The defendant began a campaign rally in Waco, Texas, on March 25, 2023, by playing a recording of the Star-Spangled Banner by the January 6 Choir. Of the January 6 Choir, the defendant told the crowd, "[O]ur people love those people, they love those people." See C-SPAN at 2:44, <https://www.c-span.org/video/?526860-1/president-trump-holds-rally-waco-texas>. The January 6 Choir includes defendants who assaulted law enforcement officers on January 6 and one who used chemical spray on a Capitol Police officer who died the next day. See Washington Post, Behind Trump's Musical Tribute to Some of the Most Violent Jan. 6 Rioters (May 7, 2023), <https://www.washingtonpost.com/investigations/interactive/2023/trump-j6-prison-choir/>.

In an attempt to avoid the fate hundreds of them have already faced, Trump attempted to disavow his mobsters.

DOJ intends to prove that Trump was very much a part of the mob that attacked the Capitol on

January 6 and almost got his Vice President
killed.