

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 23-3140

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UNITED STATES OF AMERICA,

Appellee,

v.

LEO CHRISTOPHER KELLY,

Appellant.

**JOINT MOTION TO GOVERN FURTHER PROCEEDINGS**

Pursuant to this Court's Order filed on February 29, 2024, appellant, Leo Kelly, and appellee, the United States of America, submit the following motion to govern future proceedings in this appeal. The parties respectfully request that the Court vacate Kelly's conviction under 18 U.S.C. §§ 1512(c)(2) and 2 (Count One)—leaving the remaining convictions intact. The parties further request this Court to remand the case for further proceedings, at which time the parties may request resentencing or seek other relief as appropriate. In support of this motion, the parties state as follows:

1. Following a jury trial, Kelly was convicted on seven counts for his conduct at the United States Capitol on January 6, 2021: (1) Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. §§ 1512(c)(2) and 2; (2) Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1); (3) Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2); (4) Entering and Remaining on the Floor of Congress, in violation of 40 U.S.C. § 5104(e)(2)(A); (5) Entering and Remaining in Certain Rooms in the Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(C); (6) Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D); and (7) Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G).

2. On February 29, 2024, before Kelly filed his opening brief, the Court held this case in abeyance pending disposition of *United States v. Fischer*, No. 23-5572, which addressed the scope of § 1512(c)(2). The parties were ordered to file motions to govern future proceedings within 30 days of this Court's issuance of the mandate following the Supreme Court's decision.

3. On June 28, 2024, the Supreme Court decided *Fischer*. On August 7, 2024, this Court issued its mandate remanding *United States v. Fischer* to the district court.

4. Given the Supreme Court's decision in *Fischer*, the parties respectfully move to vacate Kelly's conviction under 18 U.S.C. §§ 1512(c)(2) and 2 (Count One)—leaving the remaining convictions intact. The parties further request this Court to remand the case for further proceedings, at which time the parties may request resentencing or seek other relief as appropriate.

### CONCLUSION

WHEREFORE, appellant, Leo Kelly, and appellee, the United States of America, respectfully request that the instant motion be granted, Count One vacated, and the case remanded for further proceedings, at which time the parties may request resentencing or seek other relief as appropriate.

Respectfully submitted,

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United States Attorney

CHRISELLEN R. KOLB  
Assistant United States Attorney

/s/

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**CERTIFICATE OF COMPLIANCE WITH RULE 27(d)**

I HEREBY CERTIFY pursuant to Fed. R. App. P. 32(g) that this motion contains 429 words, and therefore complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A). This motion has been prepared in 14-point Century Schoolbook, a proportionally spaced typeface.

/s/

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T. DIETRICH HILL  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have caused a copy of the foregoing entry of appearance to be served by electronic means, through the Court's CM/ECF system, upon counsel for appellant, Nicholas D. Smith, [nds@davidbsmithpllc.com](mailto:nds@davidbsmithpllc.com), on this 29th day of August, 2024.

/s/

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T. DIETRICH HILL  
Assistant United States Attorney