No. 23-7158

IN THE SUPREME COURT OF THE UNITED STATES

RUSSELL DEAN ALFORD, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether sufficient evidence supported petitioner's convictions for disorderly or disruptive conduct in a restricted building, in violation of 18 U.S.C. 1752(a)(2), and disorderly or disruptive conduct in a Capitol Building, in violation of 40 U.S.C. 5104(e)(2)(D).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D.D.C.):

United States v. Alford, No. 21-cr-263 (Feb. 8, 2023)

United States Court of Appeals (D.C. Cir.):

United States v. Alford, No. 23-3023 (Jan. 5, 2024)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 89 F.4th 943.

JURISDICTION

The judgment of the court of appeals was entered on January 5, 2024. The petition for a writ of certiorari was filed on April 4, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Columbia, petitioner was convicted of entering

and remaining in a restricted building, in violation of 18 U.S.C. 1752(a)(1); disorderly or disruptive conduct in a restricted building, in violation of 18 U.S.C. 1752(a)(2); disorderly or disruptive conduct in a Capitol Building, in violation of 40 U.S.C. 5104(e)(2)(D); and parading, demonstrating, or picketing in a Capitol Building, in violation of 40 U.S.C. 5104(e)(2)(G). Judgment 1. The district court sentenced him to 12 months of imprisonment, to be followed by 12 months of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-18a.

1. On January 6, 2021, Congress and Vice President Mike Pence met to certify the winner of the 2020 presidential election. Pet. App. 2a. The U.S. Capitol was closed to the public, the U.S. Capitol Police had formed a security perimeter around the building, and "Area Closed" signs were posted around the perimeter. Ibid. That afternoon, a crowd broke through the perimeter, tore down barricades, and clashed with police. Ibid. Members of the crowd entered the Capitol through broken windows, opened doors for others once inside, and delayed the electoral certification by several hours. Id. at 3a.

Petitioner was among those who entered the Capitol that day. Pet. App. 3a. He had traveled from Hokes Bluff, Arkansas, to Washington, D.C., for a rally held by President Donald Trump. Ibid. As the crowd moved toward the Capitol after the rally, petitioner walked past "Area Closed" signs and overturned

barricades. Ibid. He then watched more than 20 police officers try to secure the steps toward the Upper House Door, which is reserved for Members of Congress. Ibid. But other crowd members already inside the building opened the door, triggering a shrill, continuous security alarm. Ibid. After pausing outside the door to upload a photograph of the incursion to social media, petitioner walked into the Capitol. Ibid. As he entered, he tried unsuccessfully to open the other double door. Id. at 3a-4a.

Petitioner ventured deeper into the building, passing through a metal detector and setting off its alarm. Pet. App. 4a. While inside, he observed and filmed others who had similarly entered the building in defiance of the restrictions. Ibid. Police arrived about ten minutes after petitioner entered and began to direct and physically move petitioner and the others back outside through the Upper House Door. Ibid. Petitioner, however, disobeyed those directions and went further into the Capitol, only later moving toward the exit. Ibid. And after reaching the Upper House Door, he stayed inside for a few additional minutes to use his phone to film other crowd members departing; only then did he finally leave himself. Ibid.

2. The government filed an information charging petitioner with entering and remaining in a restricted building, in violation of 18 U.S.C. 1752(a)(1); disorderly or disruptive conduct in a restricted building, in violation of 18 U.S.C. 1752(a)(2);

disorderly or disruptive conduct in a Capitol Building, in violation of 40 U.S.C. 5104(e)(2)(D); and parading, demonstrating, or picketing in a Capitol Building, in violation of 40 U.S.C. 5104(e)(2)(G). Information 1-2.

Petitioner moved for a judgment of acquittal on the counts charging violations of 18 U.S.C. 1752(a)(2) and 40 U.S.C. 5104(e)(2)(D). See Pet. App. 4a; D. Ct. Docs. 90, 91 (Oct. 3, 2022). Those provisions prohibit "disorderly or disruptive conduct" in particular locations. A person violates Section 1752(a)(2) if he "knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engages in disorderly or disruptive conduct" within or near a restricted building, including a building containing the Vice President, and "such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions." 18 U.S.C. 1752(a)(2); see 18 U.S.C. 1752(c)(1)(B); 18 U.S.C. 3056(a)(1). A person violates Section 5104(e)(2)(D) if he "willfully and knowingly * * * engage[s] in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress." 40 U.S.C. 5104(e)(2)(D).

Petitioner asserted that the evidence was insufficient to show that he had engaged in "disorderly or disruptive conduct."

See D. Ct. Doc. 91, at 1-3. The district court denied his motion, explaining that petitioner's "mere presence inside the Capitol disturbed the public peace or undermined public safety." Pet. App. 4a-5a (citation omitted); see Pet. C.A. App. 899-901. A jury found petitioner guilty on all counts. Judgment 1. The district court sentenced him to 12 months of imprisonment, to be followed by 12 months of supervised release. Judgment 2-3.

3. The court of appeals affirmed. Pet. App. 1a-18a.

The court of appeals agreed with the district court that sufficient evidence supported petitioner's convictions under 18 U.S.C. 1752(a)(2) and 40 U.S.C. 5104(e)(2)(D). Pet. App. 6a-15a. The court of appeals observed that "disorderly conduct" is a term of art that carries forward the history of the common-law offense of breach of the peace. Id. at 7a-8a. And the court explained that, at common law, "'whether a given act provokes a breach of the peace depends upon the accompanying circumstances,'" and even "quiet and nonviolent conduct," such as obstructing a meeting or refusing an official order to disperse, "can be disorderly." Id. at 8a-9a (citation omitted).

The court of appeals also explained that, while "disruptive conduct" is not a term of art, its plain meaning encompasses conduct that throws something into turmoil or interrupts to the extent of stopping, preventing normal continuance, or destroying. See Pet. App. 10a. The court observed that whether conduct is

disruptive is "a context-sensitive inquiry" that "centers on an action's tendency, taken in context, to interfere with or inhibit usual proceedings." Id. at 10a-11a. And on the facts of this case, the court found sufficient evidence that petitioner's conduct was disorderly or disruptive. Pet. App. 14a-15a.

The court of appeals observed that a jury could find that petitioner's actions were "disorderly" because he participated in a large and unruly group that jeopardized Congress and police and that created a widespread disturbance, contributing to a multi-hour delay in the vote-count certification. Pet. App. 14a; see id. at 14a-15a. And it observed that, for similar reasons, a jury they find that his actions were "disruptive," again noting that it created safety concerns and disturbance, and emphasizing that petitioner "played a part in that by adding to the crowd and by attempting to open the closed half of the door through which he entered the Capitol to allow more people inside." Id. at 14a.

ARGUMENT

Petitioner renews his argument (Pet. 6-14) that insufficient evidence supported his convictions under 18 U.S.C. 1752(a)(2) and 40 U.S.C. 5104(e)(2)(D). The court of appeals correctly rejected that argument, and its decision does not conflict with any decision of this Court or another court of appeals. This case also would be an unsuitable vehicle for further review of the issue. The petition for a writ of certiorari should be denied.

1. Section 1752 regulates conduct in "restricted" areas, 18 U.S.C. 1752(a), which are defined to include areas visited by someone protected by the Secret Service, such as the Vice President, see 18 U.S.C. 1752, 3056(a)(1). Under Section 1752(a)(2), a person may not "knowingly, and with intent to impede or disrupt the orderly conduct of Government business," engage in "disorderly or disruptive conduct" in a restricted area, where "such conduct, in fact, impedes or disrupts" the orderly performance of government business. 18 U.S.C. 1752(a)(2).

Section 5104(e), in turn, regulates conduct in the U.S. Capitol and nearby buildings. See 40 U.S.C. 5104(e). Under Section 5104(e)(2)(D), a person may not "willfully and knowingly * * * utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct" in a Capitol building "with the intent to impede, disrupt, or disturb the orderly" performance of Congress's functions. 40 U.S.C. 5104(e)(2)(D).

Here, the court of appeals correctly found sufficient evidence that petitioner's conduct was disorderly or disruptive, violating both statutes. As the court of appeals explained, "disorderly" conduct is a term of art referring to "behavior that tends to disturb the public peace, offend public morals, or undermine safety." Pet. App. 7a-8a (quoting Black's Law Dictionary 292 (7th ed. 1999); brackets omitted). And as it additionally recognized, the plain meaning of "disruptive conduct" includes

behavior that "interrupt[s] to the extent of stopping, preventing normal continuance of, or destroying." Id. at 10a (quoting Webster's Third New International Dictionary of the English Language 656 (1966)).

Here, a jury could find that petitioner's conduct was disorderly because petitioner formed part of a large, unruly group that "jeopardized the safety" of individuals in the U.S. Capitol and that "created a widespread public disturbance." Pet. App. 15a. And for similar reasons, a jury could find that petitioner's conduct was disruptive; "[e]ach additional person, no matter how modestly behaved, increased the chaos within the building, the police's difficulty in restoring order and the likelihood of interference with the Congress's work." Id. at 14a.

2. Petitioner's efforts to characterize his conduct as entirely outside the scope of Sections 1752(a)(2) and 5104(e)(2)(D) lack merit and do not warrant further review.

First, petitioner errs in asserting (Pet. 7-8) that conduct can violate those provisions only if, by "its nature," the conduct is categorically disorderly and disruptive. Petitioner cites no judicial decision adopting that interpretation, which conflicts with the settled meaning of the words "disorderly" and "disruptive." The offense of disorderly conduct "is the modern successor to the common-law offense of breach of the peace," and "it is well-established that whether conduct qualifies as

disorderly depends on the surrounding circumstances." Pet. App. 7a-8a. Similarly, as this Court explained in the context of another statute, a court must decide whether conduct is "disrupt[ive]" "on an individualized basis, given the particular fact situation." Grayned v. City of Rockford, 408 U.S. 104, 119 (1972).

Petitioner's interpretation also defies common sense. Assessing whether particular conduct is disorderly or disruptive necessarily requires considering not the "nature" of the conduct as an abstract or isolated matter, Pet. 6, but the conduct as it occurred in particular circumstances. For example, as the court of appeals has previously recognized, a lawyer at the lectern does not engage in disorderly or disruptive conduct by addressing a court during an oral argument, but a member of the audience does. See United States v. Bronstein, 849 F.3d 1101, 1109 (D.C. Cir. 2017). Similarly, screaming is not disorderly or disruptive "at a football game," but is during a congressional session. Pet. App. 11a. Petitioner offers no workable rule for determining, without considering context, what types of conduct are inherently disorderly or disruptive.

Second, petitioner errs in arguing (Pet. 7-9) that, because Section 1752(a)(2) requires proof both that the defendant engaged in "disorderly or disruptive conduct" and that "such conduct, in fact, impede[d] or disrupt[ed] the orderly conduct of Government

business or official functions," 18 U.S.C. 1752(a)(2), the phrase "disorderly or disruptive" must refer to the conduct's innate nature rather than its effects. Conduct that does in fact impede or disrupt government business will likely also qualify as "disorderly or disruptive," especially when the defendant intends to impede or disrupt government proceedings, as the statute also requires. But it is possible for conduct that would not be considered "disorderly or disruptive," even in context -- such as crying out in pain for medical reasons while observing Congress in action -- to in fact disrupt a proceeding. In any event, overlap in the statute's elements provides no justification for narrowing the established meaning of "disorderly or disruptive conduct"; "[s]ometimes, the better overall reading of the statute contains some redundancy." Rimini Street, Inc. v. Oracle USA, Inc., 586 U.S. 334, 346 (2019).

Third, petitioner errs in arguing (Pet. 10-11) that, because Section 5104(e)(2)(D) covers "utter[ing] loud, threatening, or abusive language, or engag[ing] in disorderly or disruptive conduct," 40 U.S.C. 5104(e)(2)(D), the interpretive canon of noscitur a sociis (a word is known by the company it keeps) requires reading "disorderly or disruptive conduct" to cover only conduct whose "nature" is disorderly and disruptive. The noscitur a sociis principle can help a court choose among alternative reasonable interpretations of a word or phrase in a list. See,

e.g., Russell Motor Car Co. v. United States, 261 U.S. 514, 519 (1923). But petitioner again identifies no alternative reasonable interpretation of the phrase "disorderly or disruptive conduct" that is consistent with its plain language, is workable, or can be determined in isolation without regard to context. Furthermore, "[c]anons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings." Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979). And as the court of appeals noted, the language and conduct portions of Section 5104(e)(2)(D)'s actus reus element are separate prohibitions on a disjunctive list; they do not share a "common feature" that would justify application of the noscitur a sociis maxim. Pet. App. 13a (citation omitted).

Fourth, petitioner errs in arguing (Pet. 12) that "mere presence" cannot constitute disorderly or disruptive conduct. Nothing in the text of the relevant statutes distinguishes between disrupting proceedings through unauthorized presence at a particular location and disrupting proceedings in some other way. If protesters were to occupy a courtroom and stage a sit-in during an oral argument, for example, their "mere presence" in the courtroom would surely be disorderly and disruptive. Petitioner provides no basis for his suggestion (Pet. 13) that a sit-in becomes disruptive only when the protesters "remain[] in defiance of orders to disperse"; where, as here, signs and other indicia

make clear that unsanctioned occupation is forbidden, a specific order to disperse is not necessary to confirm that it is disorderly or disruptive.

Finally, petitioner errs in arguing (Pet. 11-13) that the proper interpretation of the provisions at issue here is constrained in light of certain state laws on disorderly or disruptive conduct that are expressly limited to conduct such as making a loud noise, fighting, or engaging in violence. The fact that some States have limited disorderly-or-disruptive-conduct statutes to particular types of conduct does not mean that Congress incorporated similar limits into Sections 1752(a)(2) and 5104(e)(2)(D). To the contrary, petitioner's citations show that Congress could have written the federal statutes more narrowly but chose not to do so.

3. In all events, this case would be an unsuitable vehicle for considering the question presented. Petitioner challenges (Pet. 4) the sufficiency of the evidence rather than the correctness of the jury instructions. Addressing that challenge would involve a fact-bound, case-specific assessment of the evidence, "view[ed] in the light most favorable to the prosecution," Musacchio v. United States, 577 U.S. 237, 243 (2016). And petitioner's account of the facts (Pet. 4) omits important details, which make clear that sufficient evidence supported his conviction even under his own interpretation of the statutes. See

Supervisors v. Stanley, 105 U.S. 305, 311 (1882) (explaining that this Court does not sit to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties).

Contrary to petitioner's characterization (Pet. 4), the evidence showed that he did more than just "walk[] into the Capitol" and "st[and] silently" inside. Petitioner entered the Capitol through a door that had been reserved for members of Congress, that had been opened from the inside by other rioters, and that sounded a shrill alarm. Pet. App. 3a. Once inside, petitioner tried to open the other double door to allow more of the crowd inside. Id. at 4a. He also walked through a metal detector, setting off its alarm. See ibid. And after police officers ordered him to leave, he ventured further into the Capitol, later remaining inside near the exit to film other rioters. See ibid.

That conduct would be sufficient for conviction even if petitioner were correct in arguing (Pet. 7) that the statutes require courts to focus on the conduct's abstract "nature." Petitioner's conduct -- proceeding through a door forced open by an invading crowd, attempting to force open another door to allow even more of the crowd inside, and setting off an alarm by passing through a metal detector -- would seem to be disorderly and disruptive by its nature. The conduct would also be sufficient even if petitioner were correct in arguing (Pet. 12) that a

defendant's "mere presence" cannot constitute disorderly or disruptive conduct; as the facts recounted above show, petitioner did far more than just remain present in the Capitol. Petitioner also acknowledges (Pet. 11) that a defendant engages in disorderly conduct by remaining present after an order to disperse, and petitioner remained in the Capitol -- indeed, "moved further down the hallway" -- after the police "verbally direct[ed] the crowd back out." Pet. App. 4a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 2024