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 10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,  
 14 Plaintiff,  
 15 v.  
 16 ALEXANDRIA DEMETRIUS AUGUSTINE,  
 17 Defendant.

No. 2:25-cr-00678-KS

GOVERNMENT'S OPPOSITION TO  
 DEFENDANT'S MOTION TO DISMISS

Trial Date: October 7, 2025  
 Trial Time: 9:00 am  
 Location: Courtroom of the  
 Hon. Karen L.  
 Stevenson

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 20 Plaintiff United States of America, by and through its counsel  
 21 of record, the Acting United States Attorney for the Central District  
 22 of California and Assistant United States Attorneys Patrick D. Kibbe  
 23 and Christopher R. Jones, hereby files its opposition to defendant's  
 24 Motion to Dismiss Counts 2 and 3. (Dkt. 32 ("MTD")).

25 The Court should deny defendant's Motion. Counts 2 and 3 are  
 26 not multiplicitous because they have different elements, as detailed  
 27 below. Further, while the government does not believe that Count 3  
 28 is duplicitious, it nevertheless clarifies that it will proceed on a

1 failure to follow lawful direction theory, not a signage theory,  
2 which should resolve the dispute. Consistent with the position of  
3 many other courts, defendant's as applied vagueness challenge should  
4 be rejected because she should have been on notice that her conduct -  
5 - running onto federal property to prevent an officer from removing  
6 protestors and then throwing the metal skeleton of an umbrella at him  
7 -- could be considered criminal. Finally, defendant's non-delegation  
8 challenge fails because, as many courts have held, the authorizing  
9 statute for the regulations in Counts Two and Three provides an  
10 intelligent principle that contains executive discretion. The  
11 defendant's Motion should be denied.

12 **I. COUNTS TWO AND THREE OF THE FIRST SUPERSEDING INFORMATION ARE**  
13 **NOT MULTIPLICITOUS**

14 Counts Two and Three of the First Superseding Information are  
15 not multiplicitous because they are different crimes that have  
16 different elements (and which are predicated on different conduct).

17 "An indictment is multiplicitous if it charges a single offense  
18 in multiple counts." United States v. Wahchumwah, 710 F.3d 862, 868  
19 (9th Cir. 2013). The parties appear to agree that the answer to this  
20 inquiry is governed by the test set forth in Blockburger v. United  
21 States, 284 U.S. 299, 304 (1932). See MTD at 2. "Under that test,  
22 'where the same act or transaction constitutes a violation of two  
23 distinct statutory provisions,' we ask 'whether each provision  
24 requires proof of a fact which the other does not.' 'If two different  
25 criminal statutory provisions ... punish the same offense or one is a  
26 lesser included offense of the other, then conviction under both is  
27 presumed to violate congressional intent.' '[T]he Court's application  
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1 of the test focuses on the statutory elements of the offense. If  
2 each requires proof of a fact that the other does not, the  
3 Blockburger test is satisfied, notwithstanding a substantial overlap  
4 in the proof offered to establish the crimes.'" Wahchumwah, 710 F.3d  
5 at 868-69 (citations omitted).

6 Here, Counts Two and Three have different elements and thus  
7 satisfy the Blockburger test. Count Two charges defendant with  
8 violating 41 C.F.R. § 102-74.390(c), which, as relevant here,  
9 prohibits "persons entering in or on Federal property" from  
10 "exhibiting other conduct on property that . . . [o]therwise impedes  
11 or disrupts the performance of official duties by Government  
12 employees." The elements of Count Two are: (1) the conduct occurred  
13 on government property under the authority of General Services  
14 Administration; (2) the regulation proscribing the conduct was posted  
15 in a conspicuous place on the property; (3) Defendant acted knowingly  
16 and willfully; (4) the FPS officers affected were government  
17 employees; and (5) Defendant's conduct impeded or disrupted FPS  
18 officers in the performance of their official duties. 41 C.F.R.  
19 § 102-74.390(c); United States v. Brice, 926 F.2d 925, 928 (9th Cir.  
20 1991).

21 Count Three charges defendant with violating 41 C.F.R. § 102-  
22 74.385, which makes it unlawful for persons in and on federal  
23 property to fail to "comply with official signs of a prohibitory,  
24 regulatory or directory nature and with the lawful direction of  
25 Federal police officers and other authorized individuals." "To prove  
26 a violation of § 102-74.385, the Government must show '(a) that the  
27 incident occurred on federal property; (b) that the defendant failed  
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1 to comply with either (i) an official sign of a prohibitory,  
2 regulatory, or directory nature; or (ii) the lawful direction of  
3 federal police officers and other authorized individuals; and (c)  
4 that the defendant acted unlawfully, willfully, and knowingly.’’  
5 United States v. Kittel, No. 6:19-CR-00240-MK, 2021 WL 3823185, at \*7  
6 (D. Or. Aug. 26, 2021) (citing 41 C.F.R. § 102-74.385).<sup>1</sup>

7 Counts Two and Three have different elements that “requires  
8 proof of a fact that the other does not.” Wahchumwah, 710 F.3d at  
9 869. To prove Count Two, the government must prove, among other  
10 things, that the defendant’s “conduct impeded or disrupted” FPS  
11 officers in the performance of their official duties. This element  
12 focuses on affirmative conduct by the defendant to impede or disrupt  
13 an officer. As discussed in the government’s trial brief and during  
14 the hearing that the Court held on October 2, 2025, Count Two is  
15 based on on defendant running across the street and opening her  
16 umbrella between the FPS officers and a group of protestors while  
17 officers were trying to remove the protestors from federal property.  
18 (Dkt. 42 at 7 (“Trial Br.”)). This action -- using an umbrella to  
19 impede law enforcement -- does not depend upon any sort of  
20 instruction or directive from law enforcement, and is not required to  
21 prove Count Three.

22 By contrast, to prove Count Three, the government must prove, as  
23 relevant here (see n.1), that defendant failed to comply with the  
24 lawful direction of federal police officers or authorized  
25 individuals. As explained in the government’s trial brief and at the  
26 hearing held on October 2, 2025, Count Three is based on repeated

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28 <sup>1</sup> As discussed below, the government will proceed on the lawful  
direction theory but not the posted singage theory.

1 warnings from law enforcement officers that defendant was not  
2 permitted to be on federal property. (Trial Br. at 11.) Failure to  
3 abide by these commands is a separate inquiry from whether defendant  
4 impeded or disrupted law enforcement, and is not required to prove  
5 Count Two. For example, just because an officer warns someone to  
6 exit federal property, it does not follow that the person impeded or  
7 disrupted law enforcement. To take another example, one could also  
8 impede or disrupt law enforcement in the absence of a warning from  
9 law enforcement (e.g., by standing in front of a moving government  
10 vehicle with no instruction not to do so) and be charged with  
11 violating Count Two but not Count Three.

12 Case law supports the government's position. In United States  
13 v. Cruscial, No. 3:18-CR-00465-JR, 2019 WL 1087150, at \*1 (D. Or.  
14 Mar. 7, 2019), defendant argued that it was multiplicitous for the  
15 government to charge failing to comply with lawful direction in  
16 violation of 41 C.F.R. § 102-74.385, as charged here, and a statute  
17 (41 C.F.R. § 102-74.390(b)) prohibiting unreasonably obstructing the  
18 usual use of entrances. The district court rejected defendant's  
19 argument, finding that the counts were not multiplicitous because  
20 Section 102-74.385 (i.e., Count Three here) "clearly requires proof  
21 of an element" that the other statute at issue in that case and Count  
22 Two do not: "there must be a lawful verbal direction that was not  
23 obeyed." (Id. at 6.) The same is true here.

24 Notably, Cruscial also explained why United States v. Mumford,  
25 No. 3:17-CR-0008-JCC, 2017 WL 652449 (D. Or. Feb. 16, 2017), the  
26 opinion relied on by defendant (MTD at 4-5), is distinguishable. For  
27 one, Mumford "did not engage in the required Blockburger analysis in  
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1 making its finding." Cruscial, 2019 WL 1087150, at \*6. As Cruscial  
2 explains, "[i]n Mumford, the defendant was charged with three counts:  
3 (1) disorderly conduct in violation 41 C.F.R. § 102-74.390(c) ('Count  
4 1'); (2) failing to comply with signs prohibiting conduct that  
5 impedes or disrupts the performance of official duties by government  
6 employees in violation of 41 C.F.R. § 102-74.385 ('Count 2'); and (3)  
7 failing to comply with lawful direction in violation of 41 C.F.R. §  
8 102-74.385 ('Count 3')." 2019 WL 1087150, at \*5. Without conducting a  
9 Blockburger analysis, Mumford found that Count 1 and Count 2 were  
10 multiplicitous. Cruscial, 2019 WL 1087150, at \*5. Critically,  
11 however, the defendant in that case **did not** assert -- as defendant  
12 does here -- that failure to comply with a lawful direction (i.e.,  
13 Count Three here) is multiplicitous of impeding or disrupting  
14 official duties (i.e., Count Two here).

15 **II. COUNT THREE IS NOT DUPLICITIOUS, BUT THE GOVERNMENT WILL PROCEED**  
16 **ON A FAILURE TO FOLLOW LAWFUL DIRECTION THEORY, RENDERING**  
17 **DEFENDANT'S DUPLICITIOUS ARGUMENT MOOT**

18 Count Three is not duplicitious. "An indictment is considered  
19 duplicitious if a single count combines two or more different  
20 offenses." United States v. Renteria, 557 F.3d 1003, 1007-08 (9th  
21 Cir. 2009). But, critically, "[w]hen a statute specifies two or more  
22 ways in which an offense may be committed, all may be alleged in the  
23 conjunctive in one count and proof of any of those acts conjunctively  
24 charged may establish guilt." Id. at 1108 (citing United States v.  
25 Urrutia, 897 F.2d 430, 432 (9th Cir. 1990)). Here, Count Three  
26 charges a violation of a single regulation, so it is not duplicitious.  
27 (MTD, Ex. A, at 4.)

1 That said, in order to streamline the issues for trial, the  
2 government clarifies that it will be proceeding on a failure to  
3 comply with lawful direction theory in Count Three. Thus, it will  
4 not seek to prove a violation of 41 C.F.R. § 102-74.385 on account of  
5 failure to comply with official signage, rendering the issue moot.

6 **III. COUNT TWO IS NOT VAGUE AS APPLIED TO DEFENDANT'S CONDUCT**

7 Defendant argues that Count Two is vague as applied because she  
8 merely "trespassed onto federal property for less than 5 seconds in a  
9 driveway behind the Roybal building." (MTD at 7.) But defendant is  
10 not charged in Count Two for merely "cross[ing] onto the driveway  
11 behind the Roybal building momentarily to access MDC, the courthouse,  
12 or to get to Union Station." (Id.)

13 As explained in the government's trial brief and at the hearing  
14 on October 2, 2025, defendant's conduct was substantially more  
15 provocative than her brief suggests. At approximately 11:20 p.m., upon  
16 seeing law enforcement approach other protestors who were on federal  
17 property, defendant ran across the street with an umbrella, opened  
18 the umbrella between herself and an FPS officer and then -- after the  
19 officer tore the fabric off of the umbrella -- threw the metal  
20 skeleton of the umbrella at the officer. (Trial Br. at 1-2.) The  
21 regulation in Count Two is easily specific enough to provide  
22 defendant notice that her conduct was criminal. Indeed, her conduct  
23 is worlds away from some of the hypotheticals raised in the brief,  
24 such as continuing a conversation with a government worker about  
25 skiing being considered impeding or disrupting official duties. (MTD  
26 at 7.) Any person of "ordinary intelligence" would know that  
27 throwing an umbrella at an FPS officer while they're approaching  
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1 other protestors on federal property should constitute criminal  
2 conduct.

3 Courts routinely reject vagueness challenges to the regulation  
4 charged in Count Two. See, e.g., Moriello, 980 F.3d at 931-32;  
5 United States Staples United States v. Gerhard, No. 24-PO-11-SM-1,  
6 2025 WL 1358545, at \*7 (D.N.H. May 9, 2025); Cruscial, 2019 WL  
7 1087150, at \*4; Mumford, 2017 WL 652449, at \*4. The Court should do  
8 so here as well.

9 **IV. THE REGULATIONS CHARGED IN COUNTS TWO AND THREE DO NOT VIOLATE**  
10 **THE NON-DELEGATION DOCTRINE**

11 Defendant argues that the authorizing statute for the  
12 regulations at issue in Counts Two and Three violates the non-  
13 delegation doctrine. It does not.

14 40 U.S.C. § 1315(c) authorizes the Secretary of the Department  
15 of Homeland Security to establish regulations with criminal penalties  
16 relating to the protection of federal property. Courts have  
17 routinely rejected non-delegation challenges to this provision  
18 because they have found that the statute provides an intelligible  
19 principle that constrains executive discretion. See, e.g., United  
20 States v. Moriello, 980 F.3d 924, 932-33 (4th Cir. 2020) (finding the  
21 statute "is clearly a permissible delegation by Congress in light of  
22 our precedent"); United States v. West, No. 3:25-CR-00118-IM-1, 2025  
23 WL 2416975, at \*6-8 (D. Or. Aug. 21, 2025) (conducting a thorough  
24 analysis and concluding that the statute "includes an intelligible  
25 principle that meaningfully constrains executive discretion");  
26 Kittel, 2021 WL 3823185, at \*5 (agreeing with other courts in this  
27 district the statute does not violate the non-delegation doctrine);

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