

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,) CRIM. NO. 02-10013-WGY
)
vs.)

RICHARD COLVIN REID,)
a/k/a ABDUL-RAHEEM,)
a/k/a ABDUL RAHEEM, ABU IBRAHIM)
Defendant.)

OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNT NINE

I. INTRODUCTION AND SUMMARY

Count 9 of the indictment charges a violation of 18 U.S.C. § 1993(a)(1),(8) - the attempted wrecking of a mass transportation vehicle. Specifically, it alleges that on or about December 22, 2001, at Paris, France, and on board American Airlines Flight 63 en route from Paris, to Miami, Florida, the defendant:

did willfully attempt to wreck, set fire to, and disable a mass transportation vehicle, American Airlines Flight 63, a Boeing 767-300 International airliner operated by American Airlines, a mass transportation provider engaged in and affecting interstate and foreign commerce, at a time when [the flight] was carrying passengers.

Defendant moves to dismiss this count on the ground that it fails to allege an offense. Specifically, he first maintains that an aircraft is not a "mass transportation vehicle," as the phrase is employed in the statute, because an aircraft is neither a "vehicle" nor involved in "mass transportation." Mot. to Dismiss at 1-5. Additionally, the defendant maintains that

the offense of which he stands charged under Section 1993 - attempted destruction of a mass transportation vehicle - is not a valid criminal violation of Section 1993 - because the section fails to provide for a penalty for that offense. Mot. to Dismiss at 5-8.

In brief summary, it is our submission that aircraft are clearly embraced within the statutory phrase, "mass transportation vehicle," considering the plain meaning of these operative terms in conjunction and in context. Even if, as the defendant suggests, the terms "vehicle" and "mass transportation" are independently construed, the plain meaning of each term in isolation also includes aircraft. Further, as is clear from the face of the statute, in enacting Section 1993, Congress plainly sought to give the phrase "mass transportation" its broadest possible context and to extend the protections of the statute to modes of such transportation in foreign commerce.

It is also our submission that an attempt offense is embraced by the penalty provision of Section 1993. Not only would a contrary reading of the statute defeat the plain intent of Congress - to make punishable the attempted destruction of a mass transportation vehicle - but the alternative readings of the Section offered by the defense strain normal English usage and contravene established rules of construction.

II. AN AIRCRAFT IS A "MASS TRANSPORTATION VEHICLE"

A. The Statutory Language and Governing Principles Of Construction.

The defendant's initial claim that an aircraft is not a "mass transportation vehicle" covered by Section 1993 is governed by the most fundamental canon of statutory construction and two closely related corollaries. First, "in any statutory construction case, [the court's analysis] begins with the 'language of the statute.' And where the statutory language provides a clear answer, it ends there as well." Hughes Aircraft v. Jacobson, 525 U.S. 432, 438 (1999)(internal citations omitted). See, e.g., United States v. Alvarez-Sanchez, 511 U.S. 350, 356 (1994)("[w]hen interpreting a statute, we look first and foremost to its text"); Davila-Perez v. Lockheed Martin Corp., 202 F.3d 464, 468 (1st Cir. 2000)("[w]e begin with the language of the statute").

Second, in determining whether the text of the statute provides a "clear answer" to its meaning, (Hughes Aircraft, supra), "the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." Deal v. United States, 508 U.S. 129, 132 (1993), citing King v. St. Vincent's Hospital, 502 U.S. 215, 221 (1991); see Holloway v. United States, 526 U.S. 1, 6-7 (1999)("the meaning of statutory language, plain or not, depends upon context"); Bailey v. United States, 516 U.S. 137, 145 (1995) ("[w]e consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme"); Davila-Perez, 202 F.3d at 468 ("[w]hen a word is not defined within the statute, it is given its ordinary meaning, with all due

consideration to the context," particularly the "character and aim of the Act").

Finally, in construing the language of a statute, "unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning. Therefore, we look to the ordinary meaning of the term [at issue] at the time Congress enacted the statute" Perrin v. United States, 444 U.S. 37, 42 (1979). See, e.g., Smith v. United States, 508 U.S. 223, 228 (1993)(same; "when a word is not defined by statute, we normally construe it in accord with its ordinary and natural meaning."); United States v. Holmquist, 36 F.3d 154, 159 (1st Cir. 1994)(same), cert. denied, 514 U.S. 1084 (1995). In this case, when considered in their proper context (e.g., Davila-Perez, 202 F.3d at 466), and given their ordinary meanings, the operative words used by Congress in enacting 18 U.S.C. § 1993 embrace an aircraft owned and operated by a commercial airline carrier, such as American Airlines.

The statute, entitled "Terrorist attacks and other acts of violence against mass transportation systems," was enacted as Title VIII, § 801 of the USA PATRIOT Act of 2001, Pub. L. 107-

56,¹ and makes it a crime, inter alia, to willfully "wreck[],
derail[], set[] fire to, or disable[] a mass transportation
vehicle or ferry" or to "attempt[], threaten[], or conspire[]"
to do so
if such act is committed, or in the case of a threat
or conspiracy such act would be committed, on,
against, or affecting a mass transportation provider
engaged in or affecting interstate or foreign commerce
. . . .

18 U.S.C.A. § 1993(a)(1),(8).

Under the definitional provision of the statute, Section
1993(c)(5), the term "mass transportation" has the meaning given
to that term in Section 5302(a)(7) of Title 49, "except that the
term shall include schoolbus, charter, and sightseeing
transportation." In turn, Section 5302(a)(7), which is
contained in the chapter of Title 49 governing the development
of urban transportation systems, defines the term "mass
transportation" as:
transportation by a conveyance that provides regular
and continuing general or special transportation to
the public, but does not include schoolbus, charter,
or sightseeing transportation.

Nothing in the statutory language of 18 U.S.C. § 1993 -
passed in the wake of the events of September 11 and
comprehensively designed to address terrorist acts against all
modes of mass transportation - suggests that Congress intended
to exclude aircraft from its coverage.

¹ The official "Short Title" of the legislation is the "Uniting
and Strengthening America by Providing Appropriate Tools Required to
Intercept and Obstruct Terrorism Act of 2001." Pub. L. 107-56 (Oct.
26, 2001).

When The Operative Terms of Section 1993 Are
Read In Conjunction, It Is Clear That The Statute
Includes Aircraft In Its Coverage.

The overarching thrust of the defendant's argument is that when the terms "vehicle" and "mass transportation" are independently construed, neither term includes an aircraft. This approach of isolating the operative words of a statute to determine its meaning contravenes the principle of statutory construction that "[w]ords are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all in their aggregate take their purport from the setting in which they are used.'" King, 502 U.S. at 221, quoting NLRB v. Federbrush Co., 121 F.2d 954, 957 (2d Cir. 1941)(L. Hand, J.).

Section 1993 does not simply address its prohibitions to "vehicles" - which, isolated from its context, might well include a passenger automobile, a bicycle or a horse cart; rather the statute is directed to "*mass transportation vehicles*." The descriptive modifying adjectives - "mass transportation" - which 49 U.S.C. § 5302 goes on to define as "a conveyance that provides regular and continuing . . . transportation to the public," make it readily apparent that the phrase, taken as a whole, includes commercial aircraft serving the public on international or domestic routes - a paradigm "mass

transportation" provider.²

Moreover, this same canon of construction dictates that "the meaning of statutory language . . . depends upon context." Holloway, 526 U.S. at 7 (internal quotation marks and citation omitted); see Davila-Perez, 202 F.3d at 468. As we explain in greater detail at page 15, *infra*, in borrowing the definition of "mass transportation" from Title 49, and transplanting it in the definitional portion of Section 1993 (18 U.S.C. § 1993(c)(5)), Congress modified the phrase to make it as inclusive as possible, action that is flatly inconsistent with a construction of "mass transportation vehicle" that would exclude aircraft. Indeed, in so expanding the definition as it appears in that subsection of Section 1993, Congress even included schoolbuses, sightseeing, and charter transportation as potential forms of "mass transportation." No reasoned contextual analysis of the language at issue would ascribe to Congress the intent to embrace schoolbuses and sightseeing trollies within that definition of "mass transportation" but to exclude passenger aircraft. Thus, the defendant's argument that the operative terms of the statute do not embrace aircraft is at odds with the

² We note that in Certain British Underwriters v. Jet Charter, 789 F.2d 1534, 1537 (1986), a panel majority of the Eleventh Circuit held that the term "vehicle" as employed in a casualty insurance policy did not include an aircraft. Distinguishing a dictionary definition of the term "vehicle," which included an aircraft, the court observed that, in instances where the term was so construed, a descriptive adjective had also been included, "suggesting that 'vehicle' standing alone is not sufficient to connote aircraft." Id. Even if the holding in Certain British Underwriters - a contract case - otherwise bound this Court, it is plainly distinguishable. In the context of Section 1993, the modifying adjectives are plainly of a breadth and context to include an aircraft.

totality of its statutory context.

Even If Separately Considered From "Mass Transportation, The Term "Vehicle" Includes Aircraft.

Even if the operative words employed by Congress in enacting this legislation were parsed and isolated from their context in the manner that the defendant suggests, his argument cannot prevail. Defendant's initial assertion is that, under Section 1993, an aircraft is not a "vehicle" because, properly understood, the term is confined to "a means of conveyance provided with wheels or runners" and moving on land. Mot. to Dismiss at 2. This argument is predicated upon a cramped definition of the term, selected by the defendant to support the requirements of his argument, rather than its generally accepted connotation at the time the legislation at issue was enacted.

The plain meaning of an operative term in a statute is ordinarily deduced by reference to its dictionary meaning (see, e.g., Smith, 508 U.S. at 228-29) "at the time Congress enacted the statute" Perrin, 444 U.S. at 42; id. at 44-5 (surveying definition of term "bribery" and noting that "the common understanding and meaning [of the term] had extended beyond its early common-law definition"); see Holmquist, 36 F.3d at 159 (examining "contemporary" dictionary meaning). In this

case, a similar dictionary survey impels the conclusion that the term "vehicle," as now commonly understood, embraces an aircraft. Significantly, Webster defines the word "vehicle" to mean "a means of carrying or transporting something: conveyance . . . a carrier of goods or passengers . . . *such as airplanes.*" Webster's Third New International Dictionary, 24538 (1967) (definition 5)(italics added)(App. 1).³ At the same time, Webster defines the word "aircraft" as "a *vehicle* for traveling through the air." Merriam-Webster's New Collegiate Dictionary, 25 (10th ed.)(italics added)(App. 2). Similarly, the most recent edition of Black's Law Dictionary defines the word "vehicle" to mean, *inter alia*, "[s]omething used as an instrument of conveyance; any conveyance used in transporting passengers or merchandise by land, water, or *air.*" Black's Law Dictionary, 1551 (7th Ed. 1999)(italics added)(App. 3).

On the basis of such definitions, both federal and state courts have, in a variety of contexts, recognized that the term "vehicle" embraces an aircraft. See, e.g., McReynolds v. Municipal Court of the City of Ottumwa, 207 N.W. 2d 792, 795-97 (Iowa 1973)(interpreting word, "vehicle", "in consideration of the tenor of the time" to include an aircraft; relying on Webster's Dictionary definition); Coast to Coast Marketing

³ We have appended the cited pages of the dictionary sources upon which we rely to our response.

v. Gordon B. Hamilton Co, 164 Ariz. 73, 790 P. 2d 771 (Ariz. Ct. App. 1990)("[w]e believe the term 'vehicle' is broad enough to encompass an airplane;" relying upon canon of construction and Webster's Dictionary)(collecting cases); see also Employer's Liability Corp. v. Youghioghney & Ohio Coal Co, 214 F.2d 418, 423 (8th Cir. 1954)(noting that Webster's Dictionary defines "vehicle" as "[t]hat in or on which a person or thing may be carried from one place to another, esp. along the ground, also through the air"); cf. P.A.T. Co. v. Ultrack, 948 F. Supp. 1506, 1515 (D. Kan. 1996)(based on relevant dictionary definitions, the court construes "vehicle" to mean "a means of conveyance or transport including any type of public or private transportation)."⁴

The defendant's selective reliance upon alternative dictionary definitions of the word "vehicle," which would appear to exclude aircraft, simply ignores other definitions of the term in the very same source which make it clear that an aircraft falls within its contemporary

⁴ But see Certain British Underwriters, *supra*, 789 F.2d at 1537 which, as explained in note 2, *supra*, excluded "aircraft" from the term "vehicle." In so holding, however, the principal dictionary source upon which the panel majority relied, Black's Law Dictionary, (5th ed 1979), was revised, prior to the enactment of Section 1993, to include "aircraft" within the definition of vehicle. In addition, the panel majority's conclusion concerning the scope of the term in that case acquired further force from the fact that a separate clause in the insurance policy at issue - which the insured had chosen not to purchase - covered damages to aircraft, and applicable provisions of the Florida Insurance Code suggested that an aircraft was not ordinarily encompassed within the term "vehicle." Certain British Underwriters, 789 F.2d at 1537-38. Of course, neither of these case-specific factors are present here.

ambit. For example, he relies upon definition 6 of the term in the Oxford English Dictionary to support his view that a vehicle connotes only a means of ground transportation. XIX The Oxford English Dictionary, 480 (2d ed. 1989)(App. 4). The ensuing definition of the term at the same page of the same dictionary, however, construes the word to include "any means of carriage, conveyance or transport." Id. (emphasis added.) And to illustrate the term's proper use in this context, the Oxford Dictionary, gives the following example: "Vehicles carrying people, whether ships or aircraft, moving in an environment which radar detection at long range is technically straightforward, have become exceedingly vulnerable to attack." Id. Likewise, the Random House Dictionary definition of the word "vehicle," upon which the defendant relies (i.e., definition 2), is preceded by the following: any means by which someone travels or by which something is conveyed; a means of conveyance or transport: a motor vehicle; a *space vehicle*." The Random House Dictionary of the English Language, 2109 (definition 1)(Unabridged 2d ed. 1987)(App. 5). Accordingly, the defendant's own sources belie his contention that an aircraft is not commonly understood to lie within the definition of the term "vehicle" and support our contrary view.⁵

⁵ Although the defendant argues that the term "vehicle" must be construed as limited to modes of land transport, Congress has been more explicit when it desired the term to assume such a restrictive meaning. See 18 U.S.C. § 2311(defining "motor vehicle" to include

Defendant's final argument on this point (Mot. to Dismiss at 2) is that if Congress had intended the phrase "mass transportation vehicle" to include modes of transportation other than those moving on land, it would not have drafted the statute to include the alternate phrase "or ferry." That Congress may have believed it necessary to make it clear that a "ferry" is a mode of "mass transportation" embraced by Section 1993 in no way suggests that it also did not view an aircraft to be a mass transportation vehicle within the terms of the statute. In view of the fact that the overarching purpose of the statute was to protect modes of mass transportation in both interstate *and foreign* commerce from terrorist and other violent acts, it is inconceivable that Congress would have intended to exclude modes of mass air or seaborne transportation.⁶

"any other self-propelled vehicle designed for running on land"); 19 U.S.C. § 1401(b)(providing that a "vehicle" includes "every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft"). These formulations demonstrate that Congress knows how to restrict the meaning of a word when that is its intent. Cf. Russello v. United States, 464 U.S. 16, 23 (1983)(noting that, had Congress intended to limit the meaning of a term in one subsection of a statute, it demonstrated in another subsection that it knew how to do so expressly).

⁶ Indeed, insofar as the thrust of this argument is to suggest that "ferries" are the only waterborne vessels embraced by Section 1993, the argument would also logically exclude passenger vessels - the primary "mass transportation provider" apart from aircraft engaged in foreign commerce, a subject expressly embraced by the statute.

1. Under Section 1993, An Aircraft Constitutes
a Means of "Mass Transportation."

The defendant also maintains that aircraft are not embraced by the phrase "mass transportation" as that phrase is used in Section 1993. Mot. to Dismiss at 3-5. This, he maintains, is because the definition of "mass transportation" is somehow limited by the general subject matter of the chapter of the United States Code from which it is drawn -- in this case the chapter that deals with federal funding and other programs in aid of urban transportation systems. Specifically, the defendant attempts to transpose his asserted limitations to the term "mass transportation" from the contextual parameters of Title 49, chapter 53 - the development of urban mass transportation - to its meaning in 18 U.S.C. § 1993 - a statute focused on preventing and punishing terrorist acts against mass transportation conveyances.

This argument is somewhat akin to a claim that the caption or title of a statute serves to confine or restrict the otherwise plain language in the body of the statute, itself.⁷ It is a well-settled canon of statutory

⁷ Of course, in this case the defendant's argument is even more tenuous. Rather than relying upon the chapter caption of the substantive provision he is seeking to construe - which is generally the case where such claims are advanced - he relies upon the heading and subject matter in an entirely different title of the U.S. Code that has no bearing whatsoever upon criminal law.

construction, however, that "the title of a statute . . . cannot limit the plain meaning of the text. For interpretative purposes, [it is] of use only when [it] shed[s] some light on some ambiguous word or phrase." Pennsylvania Dept. Of Corrections v. Yerskey, 524 U.S. 206, 211 (1998), quoting, Trainmen v. Baltimore & Ohio Ry., 331 U.S. 519, 528-29 (1947); see Carter v. United States, 530 U.S. 255, 267 (2000). It logically follows that the general subject matter of a portion of the United States Code from which a definition is borrowed cannot serve to constrict the plain meaning of that provision.⁸

The definition of the phrase "mass transportation" in 49 U.S.C. § 5302(7) - i.e., transportation by a conveyance that provides regular and continuing general or special transportation to the public - could not be more clear on its face; indeed, the defendant makes no claim to the contrary. Thus, this case provides no occasion to look beyond the plain language of the provision at issue for the purpose of divining legislative intent. Furthermore, the definition plainly embraces a commercial passenger airliner

⁸ It is not, by any means, uncommon for Congress, in the enactment of a criminal statute, to borrow an operative definition from a totally unrelated portion of the United States Code. For example, in enacting statutes relating to "terrorism," Congress adopted the definition of "national of the United States" from the Immigration and Nationality Act. See 18 U.S.C. § 2331(2). Surely it could not be argued that the overarching purpose of the immigration laws, in some manner, constrains the function of that definition in the context of punishing acts of terrorism.

providing regularly scheduled transatlantic flights on a predetermined route.

Moreover, the interpretation of "mass transportation" posited by the defendant is inconsistent with the scope of mass transportation providers covered by the statute. Section 1993 broadly embraces any "mass transportation provider engaged in or affecting interstate or foreign commerce." Save instances of commerce with nations that are contiguous to the United States, "foreign commerce" typically relies upon aircraft, as well as seagoing vessels, rather than modes of transportation, such as buses, subways and trains, that are designed and intended to provide mass transit to urban areas. In view of that commonly understood fact, Congress surely would not have intended the statute to protect buses and streetcars and not to embrace commercial aircraft (and passenger vessels) as well.⁹

Finally, the interpretation of "mass transportation" posed by the defendant is plainly inconsistent with the actions of Congress when it promulgated 18 U.S.C. § 1993. In adopting a definition of "mass transportation" for section 1993, Congress reached out to an existing definition of the term found in another part of the United

⁹ We also note that aircraft now routinely play a role in "urban mass transportation" to include intercity commuter flights, such as the hourly shuttles between Boston and Washington, D.C., or flights between Boston and New York, and the increasing use of helicopters for urban transportation.

States Code and then specifically accorded it more expansive breadth. It did so by deleting the particular limitations that had been imposed on the otherwise general definition of "mass transportation" in 49 U.S.C. § 5302. The inclusion in Section 1993 of those forms of "mass transportation" - schoolbuses, charter buses and sightseeing transportation - that had been expressly excluded in Section 5302 makes it clear that Congress intended to provide expansive protection for the public in Section 1993 by incorporating an open and inclusive definition of "mass transportation." Thus, the only question that should be before the Court is whether American Airlines "provides regular and continuing general or special transportation to the public," a question that obviously must be answered in the affirmative.

In sum, whether the operative words - "mass transportation vehicle" - are considered in conjunction and in their proper context or - as the defendant's argument suggests - in isolation from one another, the plain language of the statute plainly embraces aircraft. A more restrictive definition of the term would defeat the manifest purpose of Congress in seeking to broadly protect mass transportation providers operating in both interstate and foreign commerce.

II. SECTION 1993 PROVIDES PUNISHMENT FOR ATTEMPTED OFFENSES

The defendant also maintains that Section 1993 does not effectively criminalize *attempted* wrecking of mass transportation vehicles because, in enacting the statute, Congress neglected to prescribe a penalty for such violations. It is settled law, however, that the courts will "not assume that Congress, in passing laws, intended [absurd] results." United States v. X- Citement Video, 513 U.S. 64, 69 (1994)(rejecting construction of criminal statute that would lead to absurd result of criminalizing otherwise innocent conduct). A statute that plainly criminalizes an attempted offense but fails to provide a penalty therefor is not one that Congress likely would have enacted. Indeed, Congress did not do so here.

An Attempt Offense Is Plainly Embraced By The Statute's Penalty Provision.

As the defendant explains, Section 1993(a) enumerates a series of eight categories of prohibited acts involving mass transportation providers. The final category subjects to punishment anyone who "attempts, threatens, or conspires to do any of the aforesaid acts." The statute then provides that offenders:

shall be fined under this title or imprisoned not more than twenty years, or both, if *such act is committed, or in the case of a threat or conspiracy, such act would be committed*, on, against, or affecting a mass transportation provider engaged in or affecting interstate or foreign commerce, or if in the course of committing such act, that person travels or

communicates across a State line in order to commit such act, or transports materials across a State line in aid of the commission of such act.

(italics supplied.)

As we understand it, the defendant's argument is that the final penalty provision is deficient with respect to attempts because it fails to include the term, along with other inchoate offenses, in the phrase "or in the case of a threat or conspiracy, such act would be committed, on, against, or affecting a mass transportation provider engaged in or affecting interstate or foreign commerce" Mot. to Dismiss at 6.

The omission of the word "attempt" from this phrase was plainly not inadvertent. Threat or conspiracy offenses do not (unless the statute otherwise specifies) require the commission of an act in furtherance thereof. In contrast, an attempt offense requires the confluence of (1) an intent to do an act or bring about certain consequences which would amount to a crime; and (2) "an act in furtherance of that intent which . . . goes beyond mere preparation." 2 W. LaFare & A. Scott, Substantive Criminal Law § 6.2 at 18 (1986); Model Penal Code § 5.01(c) (commission of an act or omission that constitutes a "substantial step" in the commission of the offense); United States v. Rivera-Sola, 713 F.2d 866, 869 (1st Cir. 1983)(adopting Model Penal Code definition). Thus, under Section 1993, such an attempt offense would involve a "committed" act, i.e., the "substantial step" (Rivera-Sola,

supra) in furtherance of the offense, in contrast to an inchoate threat or conspiracy.

B. Defendant's Alternative Reading of the Section Leads To A Strained Interpretation Of Its Penalty Provision.

The factors that the defendant cites in his attempt to refute such a construction of the statute (Mot. to Dismiss at 7) merit little consideration. First, he maintains that the phrase "such act" in the catchall phrase of Section 1993 refers only to the phrase in category 8, "the aforesaid acts," i.e. the acts specified in categories 1 through 7. Such an interpretation strains both normal English usage and construction as well as normal rules of statutory construction. The phrase "such act" was obviously intended to embrace all eight categories - including attempts - as its purpose is to specify penalties for all of them. Indeed, if the phrase "such act" were not intended by Congress to include attempts, attempted offenses would have a penalty provision, since the penalty precedes the term "such act," but would lack any requirement for a nexus with interstate or foreign commerce.

Second, for some reason, the defendant maintains that if the phrase "such act" is construed to embrace acts in furtherance of an attempt offense, the ensuing requirement that "in the course of committing such act, that person travels or communicates across a State line in order to commit such act" makes no sense. In the first place, there is no reason why a person cannot engage in interstate travel or communication in

order to commit an attempt. More importantly, however, the catchall phrase, which itself contains two alternative commerce nexes, was drafted to reach all the ways in which the offense could be committed to include various consummated crimes, attempts, conspiracies and threats.

Finally, the defendant argues that, if an attempt could be deemed to involve an act, a threat should as well and, consequently, Congress had no reason to include a threat (along with conspiracy) within the "would have been committed" language of the penalty provision. A threat, however, is ordinarily understood to involve nothing more than a verbal communication of an intent to do an act which the law makes criminal. Congress therefore had ample reason to address a threat differently from an attempt in the catchall provision.

CONCLUSION

For the foregoing reasons, the Motion to Dismiss Count 9 should be denied.

Respectfully submitted,

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