

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

ELIAS COSTIANES,

Defendant.

Case No.: 1:21-cr-00180-RJL-1

**MOTION TO DISMISS
INDICTMENT**

COMES NOW, Elias Costianes, through counsel, pursuant to Rule 12(b)(3) of the Federal Rules of Criminal Procedure to respectfully request this Honorable Court to dismiss the instant indictment for violation the Department of Justice's policy regarding arresting or charging members of the news media. In support of this motion counsel has provided the accompanying Memorandum of Points and Authorities.

Dated: April 27, 2022

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BACKGROUND

On February 12, 2021, Mr. Costianes was arrested by members of the Federal Bureau of Investigation and has pending charges of Obstruction of Congress in violation of 18 U.S.C. §1512(c)(2), Unlawful Entry on Restricted Buildings or Grounds in violation of 18 U.S.C. §1752(a)(1) and (2), and Violent Entry, Disorderly Conduct, and other Offenses on Capitol Grounds in violation of 40 U.S.C. §5104(e)(2)(D) and (G). The charges stem from the riot which occurred on January 6, 2021, at the United States Capitol.

Admittedly the defendant was present at the Capitol on January 6, 2021, however, he was there, as a member of the press, filming the riot for his YouTube channel “Stop the Steal.”¹ Mr. Costianes’ channel has nearly 10,000 followers and he is considered an “influencer” on that platform and thus a legitimate member of the press.

¹ YouTube is an American online video sharing and social media platform.

The arrest of Mr. Costianes and the search of his home were in direct violation of the Department of Justice's police regarding arresting and charging members of the news media.

ARGUMENT

28 C.F.R. 50.10(f)(2) provides:

(2) No member of the Department [of Justice] shall seek a warrant for an arrest, or conduct an arrest, of a member of the news media for any offense that he or she is suspected of having committed in the course of, or arising out of, news gathering activities without first providing notice to the Director of the Office of Public Affairs and obtaining the express authorization of the Attorney General.

Although not a member of the traditional broadcast or print media, Mr. Costianes, nevertheless is a member of the media. His YouTube channel has been in existence since October 2, 2012. He has 9,630 subscribers and his channel has been viewed 2,916,513 times since its inception. Before arresting Mr. Costianes or searching his residence the government was required to obtain the express authorization of the Attorney General.

WHEREFORE counsel respectfully requests that this motion be granted.

Dated: April 27, 2022

Joseph R. Conte