

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>UNITED STATES OF AMERICA</b>	:	
	:	<b>CASE NO. 21-cr-212 (ABJ)</b>
<b>v.</b>	:	
	:	
<b>JARED HUNTER ADAMS,</b>	:	
	:	
<b>Defendant.</b>	:	

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS ON  
FIRST AMENDMENT GROUNDS**

The United States respectfully opposes defendant Jared Adams’s motion to dismiss the information pending against him. ECF No. 52. Adams’s argument that all charges against him violate his First Amendment rights lacks merit, and so his motion should be denied.

**BACKGROUND**

At 1:00 p.m., on January 6, 2021, a Joint Session of the United States Congress, consisting of the House of Representatives and the Senate, convened in the Capitol Building. The Joint Session assembled to debate and certify the vote of the Electoral College of the 2020 Presidential Election. With the Joint Session underway and with Vice President Mike Pence presiding, a large crowd gathered outside the U.S. Capitol. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows. Shortly thereafter, at approximately 2:20 p.m., members of the United States House of

Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to – and did – evacuate the chambers.

On the morning of January 6, 2021, Adams drove from Plain City, Ohio, to Washington, D.C., where he saw President Trump speak and then marched to the Capitol, where he passed through scaffolding on the Capitol’s west side. Encountering a line of police, Adams said, “I hope DHS brought enough bullets.” Adams then entered the Capitol Building through the Senate Wing Door. He was inside for approximately ten minutes. After he left the building, Adams remained on Capitol Grounds, and, after a confrontation with police, yelled, “next time we won’t leave our guns at home.” He drove home to Ohio that evening, leaving Washington, D.C. at approximately 5:30 p.m.

On January 7, 2021, the FBI received a tip that Adams had videotaped himself breaking into the Capitol on January 6 and posted it to his Instagram account. A second informant provided a screen recording of the video to the FBI, which included close-up videos of individuals breaking into the Capitol and statements such as “We stormed the Capitol building and the senate today!”

On March 8, 2021, Adams was charged by complaint in connection with his participation in the Capitol breach. The following day, he was arrested in Hilliard, Ohio. ECF No. 5. On March 7, 2022, the government charged Adams by information with four offenses: entering and remaining in a restricted building, in violation of 18 U.S.C. § 1752(a)(1) (Count One), disorderly and disruptive conduct in a restricted building, in violation of 18 U.S.C. § 1752(a)(2) (Count Two), violent and disorderly conduct in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Three), and parading, demonstrating, or picketing in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(G) (Count Four). ECF Nos. 7, 44. Adams now moves to dismiss all counts on First Amendment grounds.

## LEGAL STANDARD

A defendant may move before trial to dismiss an information, or a count thereof, for “failure to state an offense.” *See* Fed. R. Crim. P. 12(b)(3)(B)(v). The main purpose of a charging document, such as an indictment or (as here) an information, is to inform the defendant of the nature of the accusation. *See United States v. Ballestas*, 795 F.3d 138, 148-149 (D.C. Cir. 2015) (discussing purpose of an indictment). Thus, an information need only contain “a plain, concise, and definite written statement of the essential facts constituting the offense charged.” Fed. R. Crim. P. 7(c). When assessing the sufficiency of criminal charges before trial, an information “must be viewed as a whole and the allegations [therein] must be accepted as true.” *United States v. Bowdoin*, 770 F. Supp. 2d 142, 145 (D.D.C. 2011)). The “key question” is whether “the allegations ..., if proven, are sufficient to permit a petit jury to conclude that the defendant committed the criminal offense as charged.” *Id.*

## ARGUMENT

As an initial matter, Adams’s motion asks the Court to reach well beyond the allegations in the Superseding Information and embrace counsel’s proffered facts, many of which the government disputes. This is improper at the motion to dismiss stage. *See, e.g., United States v. Safavian*, 429 F. Supp. 2d 156, 158 (D.D.C. 2006) (declining to consider documents produced in discovery when evaluating a motion to dismiss).

Setting aside this defect, Adams’s motion still fails. Adams argues that the charges against him violate his First Amendment rights to film and record because he “took photos and videos inside the Capitol.” (Mot. 2). However, Adams’s arguments fail because the Capitol building is a nonpublic forum where government can lawfully restrict First Amendment activities, and Adams’s filming and photographing activities do not immunize him from prosecution.

Videotaping is generally protected under the First Amendment in public places. *Burstyn v. Wilson*, 343 U.S. 495, 502 (1952). However, even “protected speech is not equally permissible in all places and at all times.” *Cornelius v. NAACP Legal Defense and Educational Fund*, 473 U.S. 788, 799 (1985). The Supreme Court has identified three types of public property for First Amendment analysis: (1) the traditional public forum, (2) the designated public forum, and (3) the nonpublic forum. *Perry Educ. Ass’n v. Perry Loc. Decuators’ Ass’n*, 460 U.S. 37, 45-46 (1983). In a traditional public forum, like parks or streets, the rights of states to limit expressive activity are “sharply circumscribed.” *Id.* In a designated public forum, the government “is not required to indefinitely retain the open character of the facility,” but when it does, “it is bound by the same standards as apply in a traditional public forum.” *Id.* at 46. Finally, in a nonpublic forum, government “has far more leeway to regulate speech,” and “restrictions are examined only for reasonableness.” *Price v. Garland*, 45 F.4th 1059, 1068 (D.C. Cir. 2022) (quoting *United States v. Kokinda*, 497 U.S. 720, 727 (1990)). In nonpublic forums, the government may restrict speech as long as the restrictions are “viewpoint neutral” and “reasonable in light of the purpose served by the forum.” *Bynum v. U.S. Capitol Police Bd.*, 93 F. Supp. 2d 50, 56 (D.D.C. 2000) (citing *Cornelius*, 473 U.S. at 806).

“The inside of the United States Capitol is a nonpublic forum.” *Bynum*, 93 F. Supp. 2d at 54, *United States v. Nassif*, No. 21-cr-421 (JDB), 2022 WL 4130841, at \*4 (D.D.C. Sept. 12, 2022). While Congress “allows the public to observe its proceedings and visit the inside of the Capitol,” the government “has a legitimate interest in ensuring that the activities of Congress proceed without disruption,” so “Congress may enact reasonable statutes . . . to further that interest.” *Bynum*, at 56. The statutes Adams is charged under are reasonable, viewpoint neutral restrictions. *See id.* at 57. Sections 5104(e)(2)(D) and 5104(e)(2)(G) target conduct within the

Capitol building which “Congress reasonably could have concluded would disrupt its legislative process.” *Nassif*, 2022 WL 4130841, at \*4. Therefore, the restrictions further “the purpose served by the forum:” legislating. *Id.*, at \*5 (quoting *Cornelius*, 473 U.S. at 806). Furthermore, 18 U.S.C. §§ 1752(a)(1) and (a)(2) here further the same goal of protecting Congress’s activities within a restricted area, and so are similarly reasonable, viewpoint neutral restrictions. And in any event, the conduct covered under § 1752(a)(1) and (a)(2)—in essence, trespass and disruptive and disorderly conduct—are not what the First Amendment protects.

These restrictions are consistent with the “long line of cases rejecting challenges to complete bans on otherwise permissible First Amendment activity as reasonable, viewpoint-neutral regulations in nonpublic fora.” *Id.* at \*5; *see, e.g., Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 674 (1992) (upholding a complete ban on solicitation in airport terminals in light of its purpose of assisting passenger travel and minimizing inconveniences to passengers and officials); *Kokinda*, 497 U.S. at 723-24 (upholding a complete ban on solicitation on sidewalks in front of post offices due to the potential disruption of post office business). Therefore, the restrictions are permissible.

Furthermore, Adams’s arguments lack merit. Adams claims that this prosecution violates his First Amendment rights because he went to the Capitol to “record what was happening there” and take pictures. (Mot. 3) Adams’s right to record does not negate his criminal actions of entering and remaining in a restricted building and grounds, disorderly and disruptive conduct in a restricted building and grounds, violent and disorderly conduct in a Capitol building, and parading, demonstrating, or picketing in a Capitol building. *Cf. Branzburg v. Hayes*, 408 U.S. 665, 691 (1972) (First Amendment does not “confer[] a license on either the reporter or his news sources to violate valid criminal laws”); *see also Cohen v. Cowles Media Co.*, 501 U.S. 663, 669 (1991)

(stating that “generally applicable laws do not offend the First Amendment simply because their enforcement against the press has incidental effects on its ability to gather and report the news”).

Adams relies on two cases: *Glik v. Cunniff*, 655 F.3d 78 (1st Cir. 2011) for the proposition that a person has the right to record police officers in public (Mot. 2), and *ACLU v. Alvarez*, 679 F.3d 583 (7th Cir. 2012) for the proposition that a person has a general right to film and record. However, neither case relates to the right to record in *nonpublic* places. *Glik* addresses whether the arrest of a person using a cell phone digital video camera to film several police officers arresting another on the Boston Common violated their First Amendment rights. *Glik*, 655 F.3d at 80. The court held that it did because the Boston Common is “the apotheosis of a public forum” as the oldest city park in the United States, and the filming of government officials engaged in their duties in *public* places is protected by the First Amendment. *Id.* at 82-84. Here, Adams’s alleged filming activities took place in the Capitol building, a nonpublic forum, and so *Glik* has no bearing on the facts of this case. Also, unlike in *Glik*, Adams was not arrested for recording a video, but for entering a restricted area and grounds and for the other criminal conduct charged in the Superseding Information.

*Alvarez* is also inapposite. It concerns the constitutionality of an Illinois statute that criminalized the nonconsensual recording of “most any oral communication, including recordings of public officials doing the public’s business in public.” *Alvarez*, 679 at 586. The court invalidated the statute because it applied expansively to an entire medium of speech --“all audio recording of *any* oral communication absent consent of the parties.” *Id.* 595. The court therefore granted the ACLU’s motion for a preliminary injunction, noting that the “ACLU’s proposed audio recording will be otherwise lawful—that is, not disruptive of public order or safety, and carried out by people who have a legal right to be in a particular public location and to watch and listen to

what is going on around them.” *Id.* at 606. Here, the statutes at issue are not generally applicable to all speech in all areas of the state. And, Adams did not have a lawful right to be in the Capitol Building or on its Grounds on January 6, 2021. Therefore, *Alvarez* is inapplicable to the facts of Adams’s case.

**CONCLUSION**

For the foregoing reasons, the Government respectfully requests that the Court deny Adams’s motion.

Respectfully submitted,

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