

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

UNITED STATES )  
 )  
v. ) Case No. 1:21-cr-134  
 )  
SAHADY )  
\_\_\_\_\_ )

**DEFENDANT’S SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF HIS  
MOTION TO COMPEL DISCOVERY IN SUPPORT OF  
HIS SELECTIVE PROSECUTION CLAIM**

This Second Supplement to Defendant Sahady’s Omnibus Motion is filed in light of a number of recent developments since Sahady’s first Supplement. Dkt. 91. See *Wilson v. U.S. Dep’t of Justice*, 42 F. Supp. 3d 207, 212 (D.D.C. 2014) (“Because new information and arguments were (understandably) being revealed as late as the Government’s Reply brief in this case, the Court will permit and will consider the additional briefing”). Cf. *Flynn v. Veazey Const. Corp.*, 310 F.Supp.2d 186, 189 (D.D.C.2004).

**An additional similarly situated defendant has been identified.**

On October 26, 2023, United States House of Representatives member Jamaal Bowman pleaded guilty to a misdemeanor charge for falsely triggering a fire alarm in a House office building.<sup>1</sup> He was not charged with violating federal law for his actions and is an appropriate similarly situated defendant to Sahady, whose disparate treatment further strengthens Sahady’s pending Motion to Compel Discovery in Support of Selective Prosecution Claim. Dkt. 56, Dkt. 88, Dkt. 90, Dkt. 91.

On September 30, 2023, Rep. Bowman obstructed an official proceeding by pulling a fire alarm in the Capitol, resulting in the evacuation of the building for one-and-a-half hours, causing

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<sup>1</sup> Rep. Jamaal Bowman pleads guilty to misdemeanor for falsely pulling fire alarm in House office building | CNN Politics, <https://www.cnn.com/bowman-fire-alarm-plea/index.html>.

a command post to be established, and delaying an important congressional vote. *See* Exhibit A, Affidavit in Support of an Arrest Warrant. According to the Capitol Police, Rep. Bowman pulled a fire alarm inside the second floor Rotunda just minutes after the members of the United States House of Representatives were called to a vote inside the United States Capitol. One minute after he caused the false alarm, and before the building was evacuated, Rep. Bowman is seen on camera as he “passes three uniformed USCP officers without stopping or saying anything to them.” *Id.* Had he warned the USCP at that time, he could have prevented the evacuation of the Capitol, the waste of emergency response resources, the obstruction of the official proceeding, and the ensuing panic.

When the Capitol Police asked if he intended to cause a fire alarm, Rep. Bowman answered, “no,” but the Capitol Police concluded based upon the evidence that there was “probable cause to believe that [Rep. Bowman] willfully or knowingly gave a false fire alarm[.]” Exhibit A. Rep. Bowman was also caught on video removing warning signs posted on the Cannon Building door.<sup>2</sup> Rep. Bowman’s actions undeniably obstructed an official proceeding in a manner that endangered the lives of others, including his fellow Representatives. Teenagers who cause false alarms in the same manner face prison time for their actions.<sup>3</sup>

Moreover, Rep. Bowman acted to prevent a “crucial, last minute House vote that ultimately avert[ed] a government shutdown.”<sup>4</sup> By the Government’s own standard, unilaterally disrupting the actions of duly elected officials urgently attempting to stave off a shut-down of the entire

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<sup>2</sup> New Video Shows Rep. Jamaal Bowman LIED About Pulling Fire Alarm and Opening Door, with Jesse Kelly - YouTube, <https://www.youtube.com/watch?v=Pvx-CMuclmg>.

<sup>3</sup> *See, e.g.*, Teen jailed for pulling fire alarm ‘just for the fun of it’ at apartment complex - Villages-News.com, <https://www.villages-news.com/2020/10/05/teen-jailed-for-pulling-fire-alarm-just-for-the-fun-of-it-at-apartment-complex/>.

<sup>4</sup> Rep. Jamaal Bowman pulls fire alarm ahead of House vote to fund government - CBS News, <https://www.cbsnews.com/news/jamaal-bowman-fire-alarm-house-vote-government-shutdown/>.

government, “threatens the fabric of democracy.” Dkt. 94, at 2. Yet, the District of Columbia allowed Rep. Bowman to plead to a misdemeanor, and the Federal Government did not charge him with anything. Within two weeks of January 6, 2021, Sahady was arrested and ultimately charged with a felony for unspecified conduct, and the Government does not dispute that Sahady’s actions in entering and walking inside the Capitol building were entirely peaceful. The Federal Government’s failure to charge Rep. Bowman, who committed an obstructive act that disrupted the functioning of democracy inside the Capitol makes him a similarly situated defendant who received disparate treatment, thus further underscoring the merits of Sahady’s Selective Prosecution claim.<sup>5</sup>

**New developments regarding the October 18, 2023 breach of the Cannon Building.**

Sahady’s First Supplement (Dkt. 91), introduced a similarly situated comparator from the Capitol breach on October 18, 2023. The Government argued that “no comparison can be made to a recent incident that has only reached the arresting stage.” Dkt. 94, at 1. But Sahady was arrested just 13 days after January 6, and the same amount of time has passed since the October 18, 2023 Capitol breach. According to Pacer, Huwaida Arraf has still not been arrested. Further, videos have emerged of violent protestors who also have not been arrested or charged. Specifically, a video has emerged of a rioter who broke past Capitol Police on the second floor of the building while a mob filled the Rotunda and he attempted to physically assault a Representative.<sup>6</sup> The violent protestor endangered the lives of the Representative, her staffers, and the Capitol Police who were standing nearby. No January 6 protestor came that close to a lawmaker.

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<sup>5</sup> Sahady reserves the right to move to dismiss the indictment for selective prosecution.

<sup>6</sup> Rep. Marjorie Taylor Greene on X: "Watch Tlaib’s aggressive insurrectionist come at me in Cannon today. After Hamas murdered and kidnapped innocent Israelis, this antisemite screams ‘Let Gaza live’ and claims I have blood on my hands.” <https://t.co/aCLr5vUlrX> / X (twitter.com), <https://twitter.com/RepMTG/status/1714809681124769873>.

The Government argues that a comparison between violent intruders on October 18, 2023, with peaceful protestors like Mr. Sahady on January 6, 2021, is apples to oranges because “this incident did not involve a massive riot - *thousands* strong - that threatened the fabric of our democracy and disrupted a proceeding directly connected to the constitutional transfer of presidential power. Nor did it involve a violent mob’s assault on the U.S. Capitol Building.” The Government’s argument is flawed on its face, not only because it gets its apples and oranges backwards, but also because the October 18, 2023 incident manifestly *did* involve a violent mob’s assault on a U.S. Capitol Building and its subsequent threatening conduct inside the building.

To shore up its weak argument, the Government cites this Court’s ruling in *United States v. Judd*, 579 F. Supp. 3d 1, 8 (D.D.C. 2021). But contrary to the Government’s wooden analysis, this case in fact *strengthens* Sahady’s position. In *Judd*, the Court, while clearly sympathetic to Judd’s claims – which raised “troubling patterns,” *id.* at 2, and “troubling questions,” *id.* at 9, while illustrating a “troubling theme” in the Government’s decisions, *id.* at 7 – held that Judd was not similarly situated to Portland rioters who threw firecrackers that exploded in the face of an officer, struck an officer with a shield as he was trying to pick up a smoke grenade, placed an officer in a headlock, and struck and hit another officer in the face with a shield. *Id.* at 5. According to the Court, Judd was not similarly situated to these violent rioters, who engaged in conduct far more extreme than anything with which Judd was charged, because their conduct occurred at night, outside of official buildings, and could not have, because of the time and place of their occurrence, affected any ongoing official proceeding, while Judd acted in “broad daylight” and was part of an action that threatened members of Congress inside the Capitol building itself. *Id.* at 7-8.

As the Court’s reasoning makes clear, *Judd* in fact *supports* Sahady’s selective prosecution claim. First, the October 18, 2023 events took place inside the Cannon House Office Building in

the middle of the day, exactly like the January 6 events. Second, the Court’s description of the January 6 rioters applies almost verbatim to the October 18, 2023 rioters. Like the worst of the January 6 participants, the October 18 rioters “raged against the building” while Congressmen and staffers were walking the corridors. *Id.* The October 18, 2023 intruders “endangered hundreds of federal officials in the Capitol complex.” *Id.* “Members of Congress ...blockaded themselves in offices,” because the Capitol Police ordered them to shelter in place, and there was reasonable “fear[ of] physical attacks from the rioters.” *Id.* Based on *Judd*, it is impossible to distinguish the conduct of violent January 6 and October 18 intruders. If a reader were asked to match the quotations above with the events on only one of the two days, she would be unable to do so.

Thus, even if Sahady were assimilated to a violent actor like Judd – which he clearly was not – the Government’s decision to charge him with a felony under 18 U.S.C. 1512(c)(2) while declining to bring any charges against more violent October 18 rioters who disrupted proceedings and threatened members of Congress *in daylight, inside the Capitol*, unquestionably raises the “colorable claim” of selective prosecution that warrants discovery under the reasoning in *Judd. Id.* at 5.

**The Government released sensitive discovery materials on October 24, 2023, that are evidence of selective prosecution.**

On October 24, 2023, the Government released sensitive discovery materials to Sahady that provide additional evidence that the Government is unfairly prosecuting Sahady. These materials are discussed in detail in the unredacted version of Sahady’s Motion for Bill of Particulars, filed under seal on October 27, 2023. Sahady incorporates by reference the Motion for Bill of Particulars and the accompanying exhibits, and respectfully requests the Court to consider them as further evidence supporting Sahady’s selective prosecution claim.

For these reasons, and the reasons provided by Sahady in prior briefing on this topic, Sahady's Motion to Compel Discovery in Support of His Claim of Selective Prosecution should be granted.

Dated: October 30, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing is being served on opposing counsel via email on

October 30, 2023

/s/ Jonathan Gross