

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :  
 :  
 v. : Case No. 1:21-cr-377 (BAH)  
 :  
 ANTHONY ROBERT WILLIAMS, :  
 :  
 Defendant. :

UNITED STATES' REPLY TO DEFENDANT'S RESPONSE TO  
GOVERNMENT'S MOTION *IN LIMINE* TO PRECLUDE  
IMPROPER DEFENSE ARGUMENTS AND EVIDENCE

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits the following reply to the defendant's response to the government's motion *in limine* to preclude the defendant from the following: (1) arguing any entrapment by estoppel defense related to law enforcement; (2) offering evidence or argument concerning any claim that by allegedly failing to act, law enforcement made the defendant's entry into the United States Capitol building or grounds or his conduct therein lawful; and (3) arguing or presenting evidence of alleged inaction by law enforcement unless the defendant specifically observed or was otherwise aware of such conduct. As stated in the government's motion *in limine* (ECF No. 37), the defendant should be prohibited from presenting an entrapment by estoppel defense or inaction by law enforcement defense, and should be allowed to present evidence of law enforcement's alleged inaction only if he can establish his direct knowledge of such.

**1. This Court Should Preclude the Defendant from Arguing Entrapment by Estoppel**

The defendant has failed to present any evidence to support an entrapment by estoppel defense related to law enforcement and should therefore be prohibited from setting forth this defense. A motion *in limine* is a proper vehicle by which the government may challenge the sufficiency of an affirmative defense before trial. *United States v. Ross*, 206 F.3d 896 (9th Cir.

2000). To entitle a defendant to present an affirmative defense to the jury, his proffer in response to a motion *in limine* must meet the minimum standard as to each element of the defense, so that if a jury finds it to be true, it would support the defense. *United States v. Tokash*, 282 F.3d 962, 967 (7th Cir. 2002). Where the evidence proffered in response to a motion *in limine* is insufficient as a matter of law to support an affirmative defense, a pretrial ruling precluding the presentation of the defense at trial is appropriate. *See Id.*; *United States v. Robinson*, 180 Fed. Appx. 92 (11th Cir. 2006) (entrapment defense).

Here, all the defendant asserts in his response is that it is not appropriate for the court to preclude argument before testimony. (ECF No. 49 at 2.) The defendant cites no law for this erroneous assertion, and more significantly, has proffered no evidence to support an affirmative defense of entrapment by estoppel. Therefore, this Court should grant the government's motion to exclude this defense.

**2. This Court Should Preclude the Defendant from Arguing That Alleged Inaction by Law Enforcement Officers Made His Conduct on January 6, 2021 Legal**

In addition to prohibiting any defense arguments that law enforcement actively communicated to the defendant that entering the Capitol building or grounds was lawful, the Court should also bar the defendant from arguing that any failure to act by law enforcement rendered his conduct legal. Similar to the defendant's response related to entrapment by estoppel, the defendant did not proffer any evidence in his response to the governments' motion *in limine* that would establish that law enforcement's alleged inaction rendered his conduct on January 6, 2021 legal. (ECF No. 49.) Therefore, the defense should be precluded from arguing such.

But in any case, as stated in the government's motion *in limine*, a Metropolitan Police Officer or Capitol Police Officer cannot "unilaterally abrogate criminal laws duly enacted by Congress" through his or her purported inaction. *United States v. Chrestman*, 525 F. Supp. 3d 14,

33 (D.D.C. 2021). Accordingly, defendant should be prohibited from arguing that his conduct was lawful because law enforcement officers allegedly failed to prevent it or censure it when it occurred.

**3. This Court Should Preclude the Defendant from Arguing or Presenting Evidence of Alleged Inaction by Law Enforcement Officers Unless the Defendant Specifically Observed or Was Otherwise Aware of Such Conduct**

Unless the defendant shows that he observed or was otherwise aware of some alleged inaction by law enforcement, such evidence of officer inaction is irrelevant to the defendant's intent (or any other fact at issue) under Federal Rule of Evidence 401 and should therefore be excluded. Fed. Rule Evid. 401. If the defendant was not aware of law enforcement's alleged inaction at the time of his entry onto restricted grounds or into the Capitol building, any alleged inaction would have no bearing on the defendant's state of mind and therefore would not meet the threshold for relevance.

The defendant has proffered no evidence in his response indicating that any alleged inaction of law enforcement had any bearing on his state of mind on January 6, 2021. The defendant instead argues that he will not know if law enforcement's alleged inaction had any effect on the defendant's state of mind unless or until the defendant testifies. The defendant offers no support for his suggestion that the Court must wait for the *defendant's potential testimony* in order to assess whether he may cross examine witnesses in the government's case in chief regarding such facts. This is clearly not a practical or workable standard. If the defendant wishes to cross-examine a law enforcement witness regarding his alleged inaction on January 6, 2021, or present evidence or arguments based on alleged inaction by law enforcement, the Court should first require that the defendant make an offer of proof outside of the presence of the jury as to how such evidence is relevant to the defendant's state of mind. *See* Fed. Rule Evid. 103 (allowing the trial

court to direct that an offer of proof be made). Otherwise, as stated above, such evidence would have no relevance to any fact at issue and should be excluded under Federal Rule of Evidence 401.

### CONCLUSION

For the reasons set forth herein and in the United States' motion *in limine* (ECF No. 37), the United States respectfully requests that this Court preclude improper argument or evidence related to entrapment by estoppel, that law enforcement's alleged inaction rendered the defendant's actions lawful, and any evidence or argument relating to alleged inaction by law enforcement unless the defendant specifically observed or was otherwise aware of such conduct.

Dated: May 11, 2022

Respectfully Submitted,  
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**CERTIFICATE OF SERVICE**

On May 11, 2022, a copy of the foregoing was served on counsel of record for the defendants via the Court's Electronic Filing System.

/s/ Grace Albinson  
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