UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
	:	
v.	:	**Case No. 21-CR-312 (JEB)**
	:	
BRADLEY STUART BENNETT,	:	
	:	
Defendant.	:	

UNITED STATES' MOTION IN LIMINE TO PRECLUDE
CERTAIN ARGUMENTS AND EVIDENCE

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby requests that the Court issue an order precluding Defendant Bradley Bennett from presenting arguments or evidence during the trial that are misleading, unduly prejudicial, or irrelevant in determining Bennett's guilt of the offenses charged in the Indictment. Specifically, Bennett should be precluded from arguing that he has been treated differently than his co-defendant or that he has been singled out for prosecution because of his political views, and any evidence of his co-defendant's plea agreement or resolution should be precluded if offered for that purpose.

1. **This Court Should Preclude the Defendant from Arguing in a Manner That Encourages Jury Nullification, Whether During *Voir Dire* or During Trial.**

Bennett should be prohibited from making arguments or attempting to introduce non-relevant evidence that encourages jury nullification. As the D.C. Circuit has made clear,

> [a] jury has no more "right" to find a "guilty" defendant "not guilty" than it has to find a "not guilty" defendant "guilty," and the fact that the former cannot be corrected by a court, while the latter can be, does not create a right out of the power to misapply the law. Such verdicts are lawless, a denial of due process and constitute an exercise of erroneously seized power.

United States v. Washington, 705 F.2d 489, 494 (D.C. Cir. 1983). Evidence that only serves to support a jury nullification argument or verdict has no relevance to guilt or innocence. *See United*

States v. Gorham, 523 F.2d 1088, 1097-98 (D.C. Cir. 1975); *see also United States v. Funches*, 135 F.3d 1405, 1409 (11th Cir. 1998) ("No reversible error is committed when evidence, otherwise inadmissible under Rule 402 of the Federal Rules of Evidence, is excluded, even if the evidence might have encouraged the jury to disregard the law and to acquit the defendant.").

Bennett may intend to argue that he should be acquitted because, in his view, he has been treated differently from his co-defendant Elizabeth Williams, who pled guilty to non-felony charges. *See* Def. Mtn to Dismiss, ECF No. 97; *see also* Plea Agreement (Williams), ECF No. 61. But a "selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution." *United States v. Armstrong*, 517 U.S. 456, 463 (1996). Allegations of selective prosecution have no place in a jury trial. *See United States v. King*, No. CR-08-002-E-BLW, 2009 WL 1045885, at *3 (D. Idaho Apr. 17, 2009) ("The Court will therefore exclude any evidence or argument as to selective prosecution at trial."); *United States v. Kott*, No. 3:07-CR-056 JWS, 2007 WL 2670028, at *1 (D. Alaska Sept. 10, 2007) (where defendant, in response to government's expressed concern that defendant might use challenged evidence to claim selective prosecution at trial, the defendant "abjured any effort to" to make such a claim, "[t]he court will enforce that promise").

Evidence or argument that Williams was charged only with misdemeanor offenses, or that she was offered a plea agreement including only one misdemeanor offense where Bennett is charged with a felony, is irrelevant to Bennett's guilt, encourages jury nullification, and should not be raised at trial. "Generally, codefendants' guilty pleas may not be offered as substantive evidence of the guilt of those on trial." *United States v. Cervantes*, No. 12-CR-00792-YGR, 2015 WL 4624067, at *6 (N.D. Cal. July 31, 2015) (citing *United States v. Halbert,*

640 F.2d 1000, 1004 (9th Cir.1981), which in turn cited *Baker v. United States,* 393 F.2d 604, 914 (9th Cir.1968)). Evidence of guilty pleas may be used only in certain permitted circumstances, such as (1) when there is a "permissible purpose such as establishing witness credibility,"[1] and (2) if the trial court's jury instructions "adequately explain to the jury the purpose for which the evidence could be used." *Id.* (quoting *Halbert*, 640 F.2d at 1005). Just as it would be impermissible for the government to introduce a co-defendant's plea agreement to establish the defendant's guilt, it would be impermissible for the defendant to use that evidence to support improper inferences by the jury. "Traditionally, our courts have held that the guilty pleas or the acquittal of a co-defendant are irrelevant to the defendant's guilt or innocence. *See State v, Hill*, 760 S.E.2d 802, 805-06 (S.C. 2014). Other courts have also ruled similarly on this issue. *See State v. Moore*, 522 S.E.2d 354 (Ct. App. 1999) (holding that co-defendants' guilty pleas were not admissible); *State v. Brown*, 412 S.E.2d 440 (Ct. App. 1991) (holding that admission of codefendant's guilty plea was irrelevant and therefore inadmissible).[2]

Similarly, argument and evidence about the fact that Williams was only charged with misdemeanor offenses would improperly inject issues of sentencing before the jury. *See*, *United States v. Wilkins*, 539 F. Supp. 3d 49, 67 (D.C. Cir. 2021) ("When a jury has no sentencing

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[1] Should the Government call Williams as a witness, questions about her understanding about whether her testimony will impact the Government's recommendation at sentencing *could* be a permissible form of impeachment. Facts about Williams's plea agreement and sentencing, however, should not be admitted as substantive evidence as they are irrelevant, misleading, and encourage jury nullification.

[2] Courts in other circuits have cautioned against admission of a codefendant's guilty plea. "[A] defendant is entitled to have the question of his guilt determined upon the evidence against him, not on whether a codefendant or government witness has been convicted of the same charge." *United States v. Dworken*, 855 F.2d 12, 30 (1st Cir. 1988) (quoting *United States v. Miranda*, 593 F.2d 590, 594 (5th Cir. 1979) (internal quotation marks omitted)). The potential for prejudice is present where evidence of a co-conspirator's conviction is admitted for substantive purposes. *See United States v. Blevins*, 960 F.2d 1252, 1260-62 (4th Cir. 1992).

function, it should not consider the question of punishment in arriving at its verdict."). Bennett should not be permitted to arouse the jury's sympathy by introducing any evidence or attempting to argue about the possible sentence in this case. *See United States v. Bell*, 506 F.2d 207, 226 (D.C. Cir. 1974) ("evidence which has the effect of inspiring sympathy for the defendant or for the victim … is prejudicial and inadmissible when otherwise irrelevant") (internal citation omitted); *United States v. White*, 225 F. Supp. 514, 519 (D.D.C. 1963) ("The proffered testimony (which was clearly designed solely to arouse sympathy for defendant) was thus properly excluded."). These circumstances have no bearing on Bennett's guilt and invite jury nullification.

CONCLUSION

For the reasons set forth above, the United States respectfully requests that this Court preclude improper argument or evidence.

Respectfully submitted,

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