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' REPLY IN SUPPORT OF MOTION
IN LIMINE TO PRECLUDE CERTAIN ARGUMENTS AND EVIDENCE

The Government moved to preclude defendant Bradley Bennett from arguing to the jury that he has been treated differently from his co-defendant Elizabeth Williams. In response, Bennett skirts the issue—he declined to inform the Court whether he intends to make this argument or offer any explanation why such an argument should be permitted in this case. In keeping with Supreme Court precedent explaining that "selective-prosecution claim is not a defense on the merits to the criminal charge itself," *United States v. Armstrong*, 517 U.S. 456, 463 (1996), this Court should preclude Bennett from offering evidence or arguing that he believes the prosecution to be unfair because Williams was not charged with a felony offense. *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) (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").

Instead, Bennett notes that Williams' plea agreement may be admissible for another purpose. In a single sentence, he claims that it may be admissible "to eliminate any concern that

the jury may harbor concerning whether the government has selectively prosecuted the defendant." *Response*, ECF. 119, at 1. But the case Bennett relies upon, *United States v. Jackson*, 849 F.3d 540 (3d Cir. 2017), does not allow a defendant to use a co-defendant's plea agreement to inject claims of unfair or disparate treatment before a jury. Rather, the purpose is to address jurors' questions about whether a witness who "took part in the crime" was "prosecuted," why that witness is testifying, and what the witness "may be getting in return." *Jackson*, 849 F.3d at 556. If Williams testifies, her prosecution, guilty plea, and plea agreement may become relevant and admissible for the jury to assess her credibility. *See, id.* at 556-557 (affirming government's use of co-conspirators' guilty pleas to assist jury in evaluating co-conspirators' testimony where court gave limiting instruction); *United States v. Carson*, 560 F.3d 566, 574-75 (6th Cir. 2009) ("With a limiting instruction, evidence of a guilty plea may be elicited by the prosecutor on direct examination so that the jury may assess the credibility of the witness the government asks them to believe.") (quotation marks omitted); *United States v. Tran*, 568 F.3d 1156 (9th Cir. 2009) (finding that district court did not plainly err in admitting redacted plea agreement as an inconsistent statement where defendant did not object). It does not, however, open the door for Bennett to argue about the fact that Williams was only charged with misdemeanor offenses or to argue or imply that the Government is unfairly treating him differently than his co-defendant.

At bottom, evidence or argument suggesting that Bennett's prosecution is unfair because Williams was not charged with a felony offense is inadmissible and improper, and the Court should preclude Bennett from either.

Respectfully submitted,

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By: /s/ Anna Z. Krasinski

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