

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

PATRICK STEDMAN,

Defendant.

Criminal Action No. 21-383 (BAH)

Judge Beryl A. Howell

MEMORANDUM AND ORDER

Defendant Patrick Stedman is facing trial on June 5, 2023, on a five-count indictment stemming from his alleged conduct at the U.S. Capitol on January 6, 2021. The government has moved to preclude defendant from pursuing a trio of hypothesized lines of defense that the government contends would be improper. Gov't's Mot. *in Limine* Preclude Improper Def. Args. and Evid. About Law Enf't ("Gov't's Mot."), ECF No. 44. For the reasons discussed below, the motion is granted as conceded in part and as irrelevant for the remainder.

I. DISCUSSION

The government "requests that the Court issue an order precluding" defendant from: 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 their conduct therein lawful; or (3) arguing or presenting evidence of alleged inaction by law enforcement unless the defendant specifically observed or were otherwise aware of such conduct." *Id.* at 1. Defendant responds that, as to the first two parts of the government's motion, he "does not intend to claim entrapment by estoppel" or "that any law enforcement officer misled him about the state of the law, or that actions of law enforcement made his conduct lawful by their actions or proclamations[.]" Def.'s Resp. Gov't's Mot. *in Limine* Preclude Improper Def. Args. and Evid.

About Law Enf't ("Def.'s Opp'n") at 2, ECF No. 52.¹ Thus, those parts of the government's motion are promptly granted, and defendant is precluded from asserting an entrapment by estoppel defense or arguing that law enforcement, by failing to act or censure his conduct, somehow made any of his otherwise unlawful conduct lawful.

Defendant resists only the third part of the government's motion to preclude him from presenting evidence or argument about alleged inaction by law enforcement officers, except to the extent that defendant observed or was otherwise actually aware of such inaction. *See* Gov't's Mot. at 4. According to defendant, he "properly may use, introduce, or comment on action and inaction by law enforcement which he observed or was aware—such as law enforcement standing idle and not precluding entry into the Capitol Building, and/or affirmatively waving him and others into the building and/or providing directions as to locations therein." Def.'s Opp'n at 2. The government concedes as much, noting that "the conduct of law enforcement officers may be relevant to the defendant's state of mind on January 6, 2021." Gov't's Mot. at 4. As a logical matter, however, any action or inaction of which defendant was not aware cannot possibly have had any effect on his state-of-mind and is inadmissible as irrelevant under Federal Rule of Evidence 401.

While defendant certainly may attempt to "negate the government's contention that [defendant] knowingly and intentionally acted to do something the law forbids," Def.'s Opp'n at 2, evidence of law enforcement inaction is admissible only if defendant can establish his awareness of the alleged inaction by officers—which he can do in any number of ways, such as a good faith proffer or using other evidence to show that defendant was sufficiently nearby the alleged inaction

¹ Defendant's response was a wise choice. He would be entirely unable to establish the elements of an estoppel defense to avoid criminal liability, since not even the President of the United States may unilaterally abrogate statutory law, let alone government actors in less powerful offices, such as law enforcement officers protecting the U.S. Capitol Building. *See United States v. Chrestman*, 525 F. Supp. 3d 14, 32 (D.D.C. 2021) (holding that the estoppel defense is unavailable "in cases where a government actor's statements constitute 'a waiver of law' beyond his or her lawful authority" (quoting *Cox v. State of La.*, 379 U.S. 559, 569 (1965))).

at the correct time to have perceived and understood such inaction as implicitly endorsing his decision to enter the Capitol. *See* Mem. & Order at 3, *United States v. Mels*, Case No. 21-cr-184 (BAH), ECF No. 66. Short of that, defendant cannot present a defense to avoid criminal liability for otherwise unlawful conduct due to inaction by law enforcement officers at the U.S. Capitol Building or grounds on January 6, 2021.

II. ORDER

For the foregoing reasons, it is hereby

ORDERED that the government's Motion *in Limine* to Preclude Improper Defense Arguments and Evidence About Law Enforcement, ECF No. 44, is **GRANTED**.

SO ORDERED.

Date: May 8, 2023

BERYL A. HOWELL
District Judge