

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NO. 1:21-CR-00312-JEB

UNITED STATES OF AMERICA

v.

BRADLEY STUART BENNETT

**DEFENDANT'S RESPONSE TO  
GOVERNMENT'S MOTION IN  
LIMINE TO PRECLUDE IMPROPER  
DEFENSE ARGUMENTS AND  
EVIDENCE ABOUT LAW  
ENFORCEMENT (ECF-104)**

Defendant Bradley Stuart Bennett, by and through counsel, hereby responds to the Government's Motion in Limine to Preclude Improper Defense Arguments and Evidence About Law Enforcement (ECF-104). The Government seeks an order precluding Mr. Bennett from "introducing evidence or arguing any of the following: (1) any entrapment by estoppel defense related to law enforcement; (2) 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) any alleged inaction by law enforcement unless the defendant specifically observed or was otherwise aware of such conduct at the time of the crime." Gov't Mot. 1.

Mr. Bennett does not intend to rely on an entrapment defense or argue that law enforcement's inaction rendered his entry into the Capitol building lawful. As the Government admits, however, "the conduct of law enforcement officers may be relevant to the defendant's state of mind on January 6, 2021." Gov't Mot. 4. In

addition, in other January 6 cases, courts have held that “evidence of law enforcement inaction or removal or barriers is relevant and admissible . . . to the extent that Defendant was aware of it or reasonably could have perceived it, or that it occurred in close proximity to the locations where Defendant is alleged to have entered or been in the Capitol before he was there such that it reasonably bears on whether the area was restricted.” *United States v. Rhine*, 2023 U.S. Dist. LEXIS 27764, \*34-35 (D.D.C. Feb. 17, 2023); *see also United States v. Chwiesiuk*, 2023 U.S. Dist. LEXIS 68584, \*18-19 (D.D.C. Apr. 19, 2023) (agreeing with the government’s clarification that evidence of police inaction would be admissible “for a purpose that is proper and has a foundation that relates to that purpose”). This Court should thus permit Mr. Bennett to argue and present evidence of inaction by law enforcement to the extent it relates to his state of mind and to the extent Mr. Bennett observed, was aware of, or could have reasonably perceived such inaction.

Respectfully submitted this 5th day of September, 2023.

G. ALAN DUBOIS  
Federal Public Defender

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*CERTIFICATE OF SERVICE*

I HEREBY CERTIFY that a copy of the foregoing was served upon:

NIALAH S. FERRER  
Assistant United States Attorney  
United States Attorney's Office  
Criminal Division  
601 D Street NW  
Suite 6-1301  
Washington, DC 20530

by electronically filing the foregoing with the Clerk of Court on September 5, 2023,  
using the CM/ECF system which will send notification of such filing to the above.

This the 5th day of September, 2023.

/s/ Leza Lee Driscoll

LEZA LEE DRISCOLL  
Assistant Federal Public Defender