

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**UNITED STATES OF AMERICA**

**v.**

**BRADLEY STUART BENNETT,**

**Defendant.**

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**Case No. 21-CR-312 (JEB)**

**UNITED STATES’ REPLY IN SUPPORT OF  
MOTION IN LIMINE TO PRECLUDE CERTAIN ARGUMENTS AND EVIDENCE**

Bennett asks the Court to permit evidence of law enforcement inaction to the extent Bennett “to the extent it relates to his state of mind” and to the extent he “observed, was aware of, or could have reasonably perceived such inaction.” *Response*, ECF No. 114, at 2. But Bennett cannot “argue that evidence of police inaction is admissible if he did not observe it.” *United States v. Zink*, No. 21-cr-191, 2023 WL 5206143, at \*2 (Aug. 14, 2023) (Boasberg, J.). The Court, therefore, should preclude Bennett from introducing evidence and argument about purported law enforcement inaction if Bennett did not observe it or was not aware of it, even if it occurred where he could have seen it.

*United States v. Rhine*, No. 21-cr-0687, 2023 WL 2072450 (D.D.C. Feb. 17, 2023) (Contrares, J.), does not compel a different result. In *Rhine*, the defendant sought to introduce “inaction by law enforcement *in demarcating the alleged restricted area, or removal of barriers*” to repel the government’s evidence that the area was restricted on January 6, 2021. *Rhine*, 2023 WL 2072450, at \*10 (emphasis added). There, the court found that the absence of signs and barriers was relevant to whether the area was restricted and was admissible “only to the extent that the 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.” *Id.*

Unlike *Rhine*, Bennett does not seek to introduce evidence of alleged law enforcement action to show that the Capitol or the Capitol grounds were not restricted. Rather, Bennett specifically seeks to introduce this evidence “to the extent it relates to his state of mind.” *Response*, ECF No. 114, 2. But as this Court has noted, “unobserved behavior could not possibly have influenced his state of mind on January 6 and would therefore be irrelevant under Federal Rule of Evidence 401.” *United States v. Mock*, No. 21-cr-444, 2023 WL 3844604, at \*3 (D.D.C. June 6, 2023) (Boasberg, J.). As such, Bennett should be precluded from presenting evidence of law enforcement inaction that he reasonably could have—but did not—perceive.

Respectfully submitted,

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