

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JAMES ALLEN MELS,

Defendant.

Crim. Action No. 21CR184 (BAH)

**MR. MELS'S RESPONSE TO THE GOVERNMENT'S MOTION *IN LIMINE*
TO PRECLUDE IMPROPER DEFENSE ARGUMENTS AND EVIDENCE
ABOUT LAW ENFORCEMENT**

Undersigned counsel respectfully submits this brief reply to the government's Motion *in Limine*, ECF. No. 46., in which the government moves to preclude Mr. Mels from 1) arguing any entrapment by estoppel defense related to law enforcement; 2) offering evidence concerning any claim that by failing to act, law enforcement made the defendant's entry into the United States Capitol or its grounds lawful; or 3) arguing or presenting evidence of inaction by law enforcement unless the defendant specifically observed or was otherwise aware of such conduct. ECF. No. 36 at 1.

This case will present the following narrow issues: (1) whether Mr. Mels *knowingly* entered a restricted building, (2) whether he did so with the intent to impede or disrupt the orderly conduct of government business, and (3) whether he, in fact, engaged in disorderly conduct. Mr. Mels does not intend to claim entrapment by estoppel nor does he intend to argue that law enforcement gave him lawful authority

to enter and remain in the building. However, he reserves the right to introduce evidence as to his intent. Indeed, it is undisputed that the government must prove that he “knowingly” entered a restricted building and that he did so with the intent to disrupt the orderly conduct of government business.¹ See *United States v. Hale-Cusanelli*, 1:21CR37 (TNM) Jury Instructions, ECF. No. 84 at 31. Therefore, any evidence that relates to Mr. Mels’s subjective intent—that is whether he knew he did not have lawful authority to enter and whether he specifically intended to disrupt government business—is relevant and admissible at trial.

Respectfully Submitted,

A.J. KRAMER
FEDERAL PUBLIC DEFENDER

_____/s/_____
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¹ Though not specified in the Information, based on the record and other January 6 cases, the defense assumes the “government business” is the certification of the election.