

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :  
 :  
 v. : Case No. 1:21-cr-00184-BAH  
 :  
 JAMES ALLEN MELS, :  
 :  
 Defendant. :

**UNITED STATES' REPLY IN SUPPORT OF MOTION *IN LIMINE*  
TO PRECLUDE IMPROPER DEFENSE ARGUMENTS AND EVIDENCE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits the following reply in support of the government's motion in limine to preclude the 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 his conduct therein lawful; or (3) arguing or presenting evidence of alleged inaction by law enforcement unless the defendant specifically observed or was otherwise aware of such conduct.

**1. This Court Should Deem the Defendant Precluded from Arguing Entrapment by Estoppel or That Any Alleged Inaction by Law Enforcement Made His Entry into the Capitol Building or Grounds, or His Conduct Therein, Lawful**

In his response (ECF No. 49), the defendant offers no meaningful rebuttal to the first two requests in the government's motion in limine (ECF No. 46, at 1-4). He offers no response at all to the government's showing that those purported defenses are legally groundless. *Accord United States v. Williams*, No. 1:21-cr-377-BAH, ECF No. 87, at 2-3 (D.D.C. June 8, 2022) (rejecting the same defenses as legally baseless). Nor does he proffer any evidence suggesting that he might be able to establish either of those defenses if they were legally viable. The defendant simply asserts

that he “does not intend” to press those claims at trial. (ECF No. 49, at 1-2). Based on that representation alone, the defendant should be deemed precluded from asserting either defense at trial.

**2. This Court Should Preclude the Defendant from Arguing or Presenting Evidence of Alleged Inaction by Law Enforcement Officers Unless the Defendant Specifically Observed or Was Otherwise Aware of Such Conduct**

In its motion in limine, the government maintained that the defendant should be precluded from arguing or presenting evidence of alleged inaction by law enforcement, except to the extent he specifically observed or was otherwise aware of such inaction. (*See* ECF No. 46, at 3-4). The logic of the government’s request is unassailable, as this Court explained in *Williams*, ECF No. 87, at 3-4: Evidence of law enforcement inaction may be relevant to one issue – the defendant’s state of mind at the time of the offense – but “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.” *Id.* at 3.

The defendant offers only a threadbare response. He asserts that “any evidence that relates to [his] subjective intent ... is relevant and admissible at trial.” (ECF No. 49, at 2). That is true, but beside the point. The defendant’s statement casts no doubt on the proposition – recognized by this Court in *Williams* – that evidence of law enforcement inaction is not relevant to the defendant’s mental state at the time of the offense unless the defendant observed or was otherwise actually aware of such inaction. (*See* ECF No. 46, at 3); *Williams*, ECF No. 87, at 3-4. In other words, unless and until the defendant has shown “his awareness of the alleged inaction” – either by “good faith proffer outside the presence of the jury” or through admissible evidence – any alleged inaction by the police is irrelevant, and the defendant should be precluded from offering it. *Williams*, ECF No. 87, at 4. That is the ruling requested in the motion in limine, and nothing in the defendant’s response casts doubt on its soundness.

**CONCLUSION**

For the reasons set forth in the government's motion in limine (ECF No. 46) and this reply, the Court should grant the government's motion.

Dated: June 29, 2022.

Respectfully submitted,

MATTHEW M. GRAVES  
United States Attorney  
D.C. Bar No. 481052

By: /s/ Francesco Valentini  
FRANCESCO VALENTINI  
D.C. Bar No. 986769  
Trial Attorney  
United States Department of Justice, Criminal Division  
Detailed to the D.C. United States Attorney's Office  
601 D Street NW  
Washington, D.C. 20530  
(202) 598-2337  
francesco.valentini@usdoj.gov

By: /s/ Douglas B. Brasher  
DOUGLAS B. BRASHER  
Texas State Bar No. 24077601  
Assistant United States Attorney (Detailed)  
1100 Commerce Street, Third Floor  
Dallas, TX 75242  
(214) 659-8604  
douglas.brasher@usdoj.gov