IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 1:21-cr-00263-TSC
	)	
RUSSELL DEAN ALFORD	)	

RESPONSE TO GOVERNMENT'S MOTION IN LIMINE TO PRECLUDE ARGUMENTS AND EVIDENCE ABOUT LAW ENFORCEMENT INACTION

The Defendant, Russell Dean Alford, hereby replies to the government's motion in limine to exclude arguments and evidence that Mr. Alford could lawfully have entered the Capitol Building on January 6, 2021. Doc. 53. Mr. Alford largely agrees with the government's motion; he does not expect to argue that he was entrapped, or that entering the Capitol was actually lawful, or that circumstances outside his knowledge could bear on his mental state. But the government itself concedes that "the conduct of law enforcement officers may be relevant to the defendant's states of mind on January 6, 2021," and Mr. Alford reserves the right to present arguments and evidence relevant to the mens rea elements of the charged offenses.

The elements determine what is relevant. Mr. Alford has been charged by information with four criminal counts. Doc. 8. Count One, by itself, requires proof that Mr. Alford (1) *knowingly* entered or remained in a restricted building or grounds; (2) *knew* the building or grounds was restricted; (3) lacked lawful authority to enter or remain there; and (4) *knew* he lacked lawful authority. *See id.* at 1; 18 U.S.C.

§ 1752(a)(1). All evidence that tends to show or negate any element, including the element of knowledge, is relevant. Fed. R. Evid. 401.

Moreover, evidence that is not relevant to one element may nonetheless be relevant to another. For example, the term "restricted buildings or grounds" is statutorily defined, and the definition belies the notion that an individual police officer could impose or lift a restriction. *See* § 1752(c). So evidence of actions by individual officers might not be relevant to show that an area was or wasn't "restricted" under the statute, yet could be relevant to whether *Mr. Alford knew* an area was restricted.

Even actions and events outside Mr. Alford's view may be relevant if he saw the actions' consequences. For instance, the government's motion rightly notes that "obvious police barricades [and] police lines" on January 6 are probative of the knowledge of persons who saw those visible barriers. Doc. 53 at 3 (quoting *United States v. Chrestman*, 525 F. Supp. 3d 14, 32 (D.D.C. 2021)). But for the same reason, the inverse is true: evidence that a line evaporated or a barricade was removed is relevant to the knowledge of a person who saw an area only after visible demarcations were gone. The government does not appear to argue to the contrary. *See id.* at 4–5.

Likewise, Mr. Alford does not quarrel with the broad strokes of the government's motion, though he does not stipulate to any charged element, such as that the Capitol Building and grounds were a restricted area on January 6. He does not intend to assert the affirmative defense of entrapment by estoppel. *Cf. id.* at 1–3. He agrees that police officers' "inaction" "cannot 'unilaterally abrogate criminal laws

duly enacted by Congress,'" *id.* at 4 (quoting *Chrestman*, 525 F. Supp. 3d at 33), and does not intend to argue that officers' acts or omissions caused an area not to be "restricted," Doc. 8 at 1; 18 U.S.C. § 1752(a)(1). Instead, Mr. Alford would offer evidence of such acts or omissions where it is probative of his own mental state—for example, his knowledge that an area was restricted or that he lacked lawful authority to enter an area. *Cf.* Doc. 53 at 4–5.

It is important to note, however, that the government's arguments on that last point run both ways. To give just one illustration, evidence that some persons present at the Capitol on January 6 used violence against police and property should not be admissible against Mr. Alford if he "was not aware of [the violence] at the time of his entry onto restricted grounds or into the Capitol building," *cf.* Doc. 53 at 5. The physical barriers and police resistance that those persons confronted are plainly probative of *their* knowledge and the knowledge of others who were watching. But evidence of those matters would not be probative of Mr. Alford's guilt unless accompanied by evidence that he knew of those matters at the time. Evidence of such matters could only be calculated to inflame juror passions, unfairly prejudice Mr. Alford, and confuse the issues at trial. If the government intends to offer such evidence, it should move in limine for a pretrial ruling on its admissibility.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2022, I electronically filed the foregoing via this Court's CM/ECF system, which will send notice of such filing to all counsel of record.

Respectfully submitted,

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