

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)

REPLY TO GOVERNMENT’S RESPONSE TO
MOTION IN LIMINE TO PRECLUDE
REFERENCES TO OFFENSES AS MISDEMEANORS

The Defendant, Russell Dean Alford, through counsel, hereby replies to the government’s response, Doc. 58, to Mr. Alford’s motion in limine requesting “an order that the parties may not, and must instruct their witnesses not to, refer to any of the charged offenses as a ‘misdemeanor’ in the jury’s presence,” Doc. 55. The government appears to agree with the principle Mr. Alford’s motion is based on, *see* Doc. 58 at 2 (agreeing that the parties “may not argue to the jury about the potential punishment that the defendant will face upon conviction”), and the relief that he seeks, *see id.* at 1 (“the government does not plan to use the word ‘misdemeanors’ during trial, and will instruct its witnesses not to use that word”). The government even volunteers that “the inadvertent use of the word “misdemeanor” [might] support a curative instruction that the jury is not to consider punishment.” *Id.* at 2. Nevertheless, it asks the Court to deny the motion because, “[i]f an attorney or witness inadvertently uses that word, . . . there should be no sanction.” *Id.*

Mr. Alford’s motion says nothing of sanctions *or* curative instructions, so neither possibility supports denying the motion. The pretrial order he requests is well

supported by a fundamental precept about the jury’s role, which the government does not dispute, and his motion in limine should be granted; indeed, the government offers no reason to deny it. Mistakes may happen—and if they do, the Court can take appropriate steps to prevent foreseeable harm, *accord* Doc. 58 at 2—but the possibility of an inadvertent slip-up does not mean the motion ought to be denied, *contra id.* at 1.

Instead, the principal purpose of the government’s response evidently is to argue that Mr. Alford’s charges are serious. *See id.* at 1–2 (stating that “[t]he government agrees that this matter is serious” and “misdemeanor offenses committed [on January 6, 2021,] were not minor crimes”). But Mr. Alford hasn’t argued otherwise; his motion expresses concern that hearing the charges described as misdemeanors could “cause *jurors* to minimize . . . the consequences of their verdict” and to “belie[ve] that [their] verdict will not carry serious consequences.” Doc. 55 at 1 (emphasis added).

Mr. Alford and his counsel recognize that he would face significant penalties upon conviction. The charges are serious, and the motion in limine reflects that fact. The government has given the Court no reason to deny Mr. Alford’s motion, and the Court should reject the government’s unsupported opposition and grant the motion.

Respectfully submitted,
KEVIN L. BUTLER
Federal Public Defender
Northern District of Alabama
/s/ James T. Gibson
JAMES T. GIBSON
Assistant Federal Public Defender

/s/ Tobie J. Smith

TOBIE J. SMITH

Research & Writing Attorney

Federal Public Defender's Office

Northern District of Alabama

505 20th Street North, Suite 1425

Birmingham, AL 35203

205-208-7170

tobie_smith@fd.org

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 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,

/s/ Tobie J. Smith

TOBIE J. SMITH

Research & Writing Attorney