

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
Plaintiff)	Criminal Case 21-CR-28
)	
v.)	Trial: February 1 or April 2023
)	
WILLIAM ISAACS)	Judge Amit P. Mehta
Defendant)	

RESPONSE TO THE GOVERNMENT’S OMNIBUS MOTION *IN LIMINE*

Defendant William Isaacs (“Mr. Isaacs”), through undersigned counsel, respectfully submits to this Honorable Court a response to the Government’s Motion *in Limine* to Preclude Certain Untimely and Irrelevant Testimony (ECF Doc. No. 778).

Mr. Isaacs takes the following positions with respect to the Government filings: (1) objects to the Motion *in Limine* that seeks to preclude evidence and arguments supporting a public-authority or entrapment-by-estoppel defense to the extent that it would preclude him from introducing evidence relating to former President Donald Trump’s “implicit call for imminent violence or lawlessness” on January 6, 2021, and his outrageous statements in support of the unfounded “Big Lie,” and Mr. Isaacs’ deeply unfortunate reliance on such blatantly false statements; (2) does not object to Motion *in Limine* 2 that precludes evidence of the actions or inaction of law enforcement officers, unless Mr. Isaacs observed or was otherwise aware of such conduct; (3) objects to Motion *in Limine* 3 that asks this Court to exclude any evidence or argument pertaining to charges or dispositions in other January 6 cases; (4) at this juncture in the proceedings, Motion *in Limine* 4 is not applicable to Mr. Isaacs. See ECF Docs. 757, 779,

and 797, as well as this Court's order issued during the December 21, 2022, court conference; and (5) does not object to Motion *in Limine* 5 that limits cross examination of U.S. Secret Service witnesses to questioning about the function performed by the Service as testified to on direct examination.

I. Motion *in Limine* 1

Sadly, Mr. Isaacs' actions on January 6 were guided by the former President of the United States ("Mr. Trump"), Republican Senators, and Republican Congressmen, all of whom recklessly continued to repeat the nefarious "Big Lie," i.e., that the Democrats had miraculously stolen the 2020 election from the former President, who received more than seven million votes *less* than President Joseph Biden. Mr. Isaacs has not asserted a public-authority or entrapment-by-estoppel defense and does not intend to do so at trial. Nonetheless, Mr. Isaacs objects to Motion *in Limine* 1 because he should be permitted to introduce evidence of his reliance on statements made by Mr. Trump on January 6 and in the days, weeks, and months leading up to that day. Mr. Trump's own deceitful messaging and propaganda, all of which places him in the pantheon of utterly disgraced Presidents, regarding the 2020 election are inextricably intertwined with the events giving rise to this case.

A. Background

After the 2020 presidential election, Mr. Trump and others stated that the election was "stolen" by Democrats. *See, e.g.,* Amy Gardner, *How Trump Drove The Lie That The Election Was Stolen, Undermining Voter Trust In The Outcome*, Washington Post (Dec. 20, 2020, 5:22 PM ET), available at <https://www.washingtonpost.com/politics/>

trump-election-voter-trust/2020/12/20/00282aa6-407a-11eb-8db8-395dedaaa036_story.html. According to Representative Liz Cheney, Vice Chair of the House Select Committee investigating January 6, “President Trump invested millions of dollars of campaign funds purposely spreading false information, running ads he knew were false, and convincing millions of Americans that the election was corrupt and that he was the true President.” Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess. (June 9, 2022), available at <https://www.govinfo.gov/content/pkg/CHRG-117hhr48998/pdf/CHRG-117hhr48998.pdf>. “[T]his misinformation campaign provoked the violence on January 6th.” *Id.*

After telling his supporters that corrupt politicians were to blame for stealing an election *from them*, Mr. Trump invited his supporters to Washington, D.C. to attend a protest on January 6, 2021 and tweeted: “Statistically impossible to have lost the 2020 Election. Big protest in D.C. Be there, will be wild!” The American Presidency Project, *Tweets of December 19, 2020* (Dec. 19, 2020, 1:42 AM ET), available at <https://www.presidency.ucsb.edu/documents/tweets-december-19-2020>. Mr. Isaacs made plans to travel to Washington, D.C. to support the former President in what Mr. Isaacs believed, based on Mr. Trump’s statements, were legitimate efforts to claim victory in the 2020 election.

On January 6, Mr. Trump told thousands of rally-goers who had assembled in Washington, D.C., at his urging – including Mr. Isaacs – that the 2020 election was stolen. Trump called for them “to fight like hell” immediately before directing a march

to the United States Capitol. During and after Trump's speech, thousands of rally attendees marched on the Capitol.

On December 19, 2022, the January 6 House Select Committee voted to refer Mr. Trump to the Department of Justice for criminal investigation and potential prosecution for obstruction of an official proceeding (18 U.S.C. § 1512(c)), conspiracy to defraud the United States (18 U.S.C. § 371), conspiracy to make a false statement (18 U.S.C. §§ 371, 1001) and inciting or assisting an insurrection (18 U.S.C. § 2383). Select Committee to Investigate the January 6th Attack on the United States Capitol, *Introductory Material to the Final Report of the Select Committee*, available at <https://apps.npr.org/documents/document.html?id=23466430-introductory-material-to-the-final-report-of-the-select-comm>. The Committee cited the Senate's 57 votes in Trump's second impeachment trial to convict him on an "incitement of insurrection" charge passed by the House. *Id.* at 75. The Committee also referenced this Court's February 18, 2022 ruling that Mr. Trump's language plausibly incited violence on January 6, 2021, when his supporters besieged the Capitol. *Id.* at 83 (citing *Thompson v. Trump*, 590 F. Supp. 3d 46 (D.D.C. 2022) [Mehta, J.]).

B. Mr. Isaacs Should Be Permitted To Offer Evidence Of Statements Former President Trump Made On January 6, 2021, And In The Months Leading Up To That Day and His Reliance On Them.

Notwithstanding the fact that Mr. Isaacs does not intend to assert a public-authority or entrapment-by-estoppel defense, statements made by Mr. Trump and other public officials are pivotal to certain defenses that Mr. Isaacs will assert at trial. For example, the jury can only understand why Mr. Isaacs travelled from Florida to

Washington, D.C. by considering the influence Mr. Trump played in the months leading up to January 6 and Mr. Isaacs' reliance on the former President's statements. Mr. Isaacs believed what he read on the internet and heard from Mr. Trump himself — i.e., that the 2020 election had been stolen and that Mr. Trump was trying to protect the democratic process. *See, e.g.,* The American Presidency Project, *Tweets of January 4, 2021* (Jan. 4, 2021, 10:07 AM ET), available at <https://www.presidency.ucsb.edu/documents/tweets-january-4-2021> (“How can you certify an election when the numbers being certified are verifiably WRONG. You will see the real numbers tonight during my speech, but especially on JANUARY 6th[.]”).

As for Mr. Trump's statements on January 6, this Court previously has ruled that the former President plausibly incited violence that day when his supporters entered the Capitol in an effort to disrupt congressional certification of his loss to Joe Biden. *Thompson v. Trump*, 590 F. Supp. 3d 46 (D.D.C. 2022) (Mehta, J.). Having considered Mr. Trump's January 6 speech in its entirety and in context, this Court concluded:

[T]he President's statements that, “[W]e fight. We fight like hell and if you don't fight like hell, you're not going to have a country anymore,” and “[W]e're going to try to and give [weak Republicans] the kind of pride and boldness that they need to take back our country,” immediately before exhorting rally-goers to “walk down Pennsylvania Avenue,” are plausibly words of incitement not protected by the First Amendment.

Id. at p. 115. This Court deemed Trump's words “an implicit call for imminent violence or lawlessness” and a “positive instigation of a mischievous act.” *Id.* at 117, 118. Against this backdrop — and particularly in light of the January 6 House Select Committee's recent criminal referral of Trump to the Department of Justice — Mr. Isaacs should be

permitted to raise arguments at trial that discuss or reference Trump's statements and Mr. Isaacs' reliance on those statements.

Mr. Isaacs' decision to travel to Washington, D.C. and his subsequent actions on January 6 were guided and urged by Mr. Trump's lies regarding the 2020 election. This Court should allow the jury to hear argument and evidence to that effect. For all of these reasons, this Court should permit Mr. Isaacs to introduce evidence at trial relating to Trump's "implicit call for imminent violence or lawlessness" on January 6, 2021 and his statements in support of the "Big Lie" in the months leading up to that day, as well as the January 6 House Select Committee referral of Mr. Trump to the Department of Justice for criminal investigation and potential prosecution.

II. Motion in Limine 2

Mr. Isaacs does not object to the Government's motion precluding evidence of the actions or inaction of law enforcement officers unless Mr. Isaacs observed or was otherwise aware of such conduct.

III. Motion in Limine 3

Mr. Isaacs objects to the Government's request that this Court exclude any evidence or argument pertaining to charges or dispositions in other January 6 cases. The Government argues that "any such evidence or argument would divert the jury's attention to other defendants and criminal allegations rather than the conduct of these defendants" and, therefore, that Rule 403 supports exclusion of this evidence. The Government's request in this instance is incongruous with the Government's Motion for Leave to Late File Notice Pursuant to Federal Rule of Evidence 404(b), Doc. No. 722-2.

In that filing, the Government notified this Court of its intent to introduce certain evidence at trial including, *inter alia*, evidence of the actions and discussions of defendants in other January 6 cases. This Court should not permit the Government to introduce certain categories of evidence while simultaneously precluding Mr. Isaacs from relying on the same or similar evidence in his defense.

If evidence related to the actions and discussions of defendants in other January 6 cases is relevant to the Government's case against Mr. Isaacs and more probative than prejudicial – which, Mr. Isaacs submits, it is not – then this Court should permit Mr. Isaacs to introduce evidence or arguments pertaining to the charges or dispositions in those or other January 6th cases. Such evidence would be relevant, among other reasons, to distinguish Mr. Isaacs from certain defendants in other January 6 cases.

Moreover, by introducing evidence pertaining to defendants in other January 6 cases, the Government would “open the door” to Mr. Isaacs’ use of similar evidence in his defense – including evidence or arguments pertaining to the charges or dispositions in those cases. In sum, if the Government is allowed to introduce evidence of the actions and discussions of defendants in other January 6 cases, then Mr. Isaacs should be allowed to introduce arguments and evidence at trial pertaining to charges or dispositions in those or other January 6 cases.

IV. Motion in Limine 4

At this juncture, Motion in Limine 4 is not applicable to Mr. Isaacs, who has retained Dr. Laurie Sperry as his expert. See Doc. Nos. 757, 779, and 797, as well as this Court’s oral order issued during the December 21, 2022 court conference. The

Government and Mr. Isaacs' counsel have agreed on a date for the Government's expert to interview Mr. Isaacs. Mr. Isaacs reserves his right to respond to any future motion *in limine* the Government may file regarding or relating to Motion *in Limine* 4.

V. Motion *in Limine* 5

Mr. Isaacs does not object to the Government's Motion *in Limine* limiting cross-examination of Secret Service witnesses to questioning about the function performed by the Secret Service as testified to on direct examination.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that the **RESPONSE TO THE GOVERNMENT'S OMNIBUS MOTION IN LIMINE** was filed with the Clerk of the Court via ECF on Friday, December 30, 2022.

Respectfully submitted,

_____/s/_____
Gene Rossi, Esquire