UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**CASE NO. 21-cr-447 (CJN)**
	:	
JOSHUA CHRISTOPHER DOOLIN, MICHAEL STEVEN PERKINS, and OLIVIA MICHELE POLLOCK,	:	
	:	
Defendants.	:	

UNITED STATES' REPLY TO PRECLUDE
IMPROPER DEFENSE ARGUMENTS AND EVIDENCE

The government moved to bar defendants from raising certain irrelevant or prejudicial arguments at trial, including—among others—that any inaction by law enforcement, or the First Amendment itself, made defendants' conduct legal. ECF No. 170. Defendant Joshua Doolin objected to some of these arguments (ECF No. 181) to which the government replied. This reply addresses arguments raised by defendant Olivia Pollock in her own objection (ECF No. 182).

I. Inaction By Officers

The government moved to bar defendants from arguing that any inaction by law enforcement officers on January 6, 2021 made the defendants' conduct legal. This is because, as the government explained, a law enforcement officer cannot ratify illegal conduct simply by failing to prevent it. ECF No. 170 at 6-7. Defendant Olivia Pollock opposes the motion, and argues that she should be able to argue that officers' inaction shows that she lacked the necessary intent or knowledge to violate the laws with which she's been charged.

The government understands that Pollock—and all defendants—should be permitted to argue that they lacked the mens rea necessary to commit the offenses of which they have been accused. However, defendants should be precluded from raising arguments that any government

inaction categorically legalized the entrance into, and actions on, the restricted grounds of the Capitol. It is thus possible to grant the government's motion while allowing Pollock and the other defendants to make their arguments about their own intent that day.

II. First Amendment Claim

The government moved to bar defendants from arguing that there was a First Amendment right to protest inside the restricted area around the Capitol that day. ECF No. 170 at 7. Pollock opposes the motion, and appears to argue that some of the statutes which she is charged with violating are themselves unconstitutional. *Id.* at 4 ("Assuming [the Capitol Grounds] were 'restricted' the restrictions did not constitute a lawful 'time, place and manner regulation[ ].'" (quoting *Mahoney v. Doe*, 642 F.3d 1112, 1117 (D.C. 2011)).

The government has previously argued that there is no First Amendment right to protest in a restricted area: in this case, a place where the Vice President was under (justified) security protection. ECF No. 170 at 7-8. Courts have repeatedly affirmed that public forums may be closed to free expression in similar circumstances. *Id.* (collecting cases).

It is within the defendants' right to challenge the constitutionality of the statutes which they are charged with violating. But the time to do so is prior to trial or on appeal, not during the trial itself, where the focus will be on whether the defendants violated the law, not whether those laws are constitutional. To permit a debate over the constitutionality of these statutes would be both distracting and prejudicial. Certainly such arguments are irrelevant at this stage.

III. Self-Defense

The government moved to preclude defendants from arguing that their actions were justified by self-defense or the defense of others. ECF No. 170 at 11-12. Pollock opposes, citing three cases for the proposition that self-defense may, in some circumstances, permit violence

against law enforcement officers. ECF No. 182 at 7-8. The problem for Pollock is that in all three cases, jury instructions on self-defense were denied, and that "[g]enerally, the defense of self-defense is not available to one who provokes the difficulty." *United States v. Grover*, 485 F.2d 1039, 1041 (D.C. Cir. 1973) (quoting jury instructions). Pollock and her co-defendants variously started the difficulty by entering a restricted area and assaulting law enforcement officers. While an initial aggressor may raise a self-defense argument if she subsequently tries to disengage from the conflict, *id.*, neither Pollock nor her co-defendants have claimed as much. Absent a plausible argument that the defendants were merely resisting the excessive use of force, their claims of self-defense are speculative and would be confusing and prejudicial.

IV. Good Conduct

The government moved to preclude arguments that defendants' lack of additional criminal conduct on January 6, 2021, or any allegedly helpful acts that day, negated their criminal conduct. ECF No. 170 at 12-14. Pollock opposes, saying that to exclude such evidence would violate her Sixth Amendment rights. ECF No. 182 at 9. The government agrees with Pollock that the Sixth Amendment "guarantees a defendant the right to present a defense by calling witnesses on his or her own behalf." *Id.* But that right is not unlimited. In particular, irrelevant evidence is inadmissible, and past "good acts" are generally irrelevant unless a defendant is alleged to have always or continuously committed bad acts or engaged in ceaseless criminal conduct. *United States v. Damti*, 109 Fed. Appx. 454, 455-56 (2nd Cir. 2004). If the defendants allegedly helped law enforcement at some moments, it does nothing to negate the harm they caused at others: such evidence is irrelevant for both the defense and prosecution, and ought to be excluded.

V. Conclusion

For the reasons discussed above, the government's motion in limine to preclude certain arguments, ECF No. 170, should be granted.

Respectfully submitted,

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