

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	No. 21-cr-508-01-BAH
	:	
v.	:	
	:	
LUKE WESSLEY BENDER,	:	
<i>Defendant.</i>	:	

**DEFENDANT’S RESPONSE TO  
GOVERNMENT’S MOTION *IN LIMINE* TO PRECLUDE IMPROPER  
DEFENSE ARGUMENTS AND EVIDENCE ABOUT LAW ENFORCEMENT**

Defendant, Luke Wessley Bender, has no intention of raising an entrapment defense at trial or arguing to the jury that simply because he was not arrested inside the U.S. Capitol or otherwise detained, that provides him immunity from criminal prosecution. Mr. Bender, however, has every right, and intends to exercise that right, to present evidence that law enforcement’s failure to stop, arrest, or detain him inside the U.S. Capitol goes directly to his knowledge as to whether his actions were unlawful and his state of mind, especially, when law enforcement’s inaction inside the United States Capitol, further supports what was known by Mr. Bender prior to entering the U.S. Capitol (and confirmed by the Government’s own timeline of events), that the official proceeding that he is alleged to have obstructed, had already been suspended and participants evacuated. Accordingly, as discussed below, the Government’s motion *in limine* should be denied in part.

**FACTUAL BACKGROUND**

In this case, the Government alleges that on January 6, 2021, Mr. Bender, then 20 years old: (i) “*walk[ed]* in the Rotunda of the U.S. Capitol”; (ii) “*walked* down the hallway in the East Front Corridor, towards the Senate Chamber”; (iii) “*walked* inside of the Senate chamber;”

(iv) took photographs inside the Senate Chamber; and (v) “stood on the dais in the Senate floor.” Complaint, Statement of Facts, at 6-9 (D.E. 1-1) (emphasis added). The Government’s discovery purports to show that Mr. Bender entered the U.S. Capitol at 2:45 p.m. and exited approximately 25 minutes later, at 3:10 p.m. According to the Government’s allegations, by the time Mr. Bender entered the building, the certification of the election had already been postponed until 8:00 p.m. and members of Congress had already been evacuated. *Id.* at 1.

The Government does not allege that Mr. Bender, while inside or outside the U.S. Capitol on January 6, 2021, assaulted or threatened anyone, or stole or defaced any property. And while many others attacked their way into the U.S. Capitol, injuring officers and destroying property, the Government’s discovery shows Mr. Bender calmly walking into the U.S. Capitol and subsequently walking out, with officers standing next to him, some 25 minutes later.

***Government Alleges Mr. Bender Entered at 2:45 p.m.***



***Government Alleges Mr. Bender Exited at 3:10 p.m.***



Additionally, the Government does not allege, nor would it be able to establish at trial, that Mr. Bender had any weapons with him on January 6, 2021, or that he was part of any militia or organized group that planned or trained to do harm at the U.S. Capitol on January 6, 2021. Instead, on January 6, 2021, Mr. Bender was present with his codefendant, Landon Mitchell, whom he knew from prior employment.

Mr. Bender was charged on July 26, 2021 and arrested on July 29, 2021. Mr. Mitchell was charged on October 19, 2021 and arrested on October 20, 2021. According to the Government, upon his arrest, Mr. Bender truthfully answered all questions posed to him by the Federal Bureau of Investigation (“FBI”), identified Mr. Mitchell, provided Mr. Mitchell’s contact information, and described the extent of his knowledge of Mr. Mitchell. *See United States v. Mitchell*, 21-cr-717-BAH, Complaint, Statement of Facts, at 4-5 (D.E. 1-1).

On August 4, 2021, a grand jury indicted Mr. Bender on six counts relating to his presence

at the U.S. Capitol on January 6, 2021.<sup>1</sup> Indictment (D.E. 7). Count One of the Indictment charges Mr. Bender with felony obstruction of an official proceeding in violation of 18 U.S.C. § 1512(c)(2), based solely on the allegation that he passed a prosecutorial bright line of demarcation, *i.e.*, the floor of the United States Senate. While other defendants may have been screaming “Stop the Steal” and carrying on around the U.S. Capitol in a threatening and menacing manner, in the absence of any violent conduct, they would not be charged with felony obstruction unless they passed this certain prosecutorial line of demarcation.

### ARGUMENT

As previewed above, Mr. Bender has no intention of raising an entrapment defense at trial or arguing to the jury that simply because he was not arrested inside the U.S. Capitol or otherwise detained, that provides him immunity from criminal prosecution. The focus of Mr. Bender’s opposition is that Mr. Bender intends to present evidence that law enforcement’s failure to stop, arrest, or detain him inside the U.S. Capitol goes directly to his knowledge as to whether his actions were unlawful and his state of mind. The surveillance video produced by the Government shows law enforcement walking past Mr. Bender while he is walking inside the Capitol or standing alone while Mr. Bender walks around inside. Consistent with the Government’s own concession, because Mr. Bender was aware of law enforcement’s inaction while inside the U.S. Capitol, Mr. Bender may be permitted to argue such conduct as relevant to his knowledge as to whether his actions inside the U.S. Capitol were unlawful and his state of mind as to the charged offenses.

The photograph below shows Mr. Bender calmly walking past a Capitol Police officer:

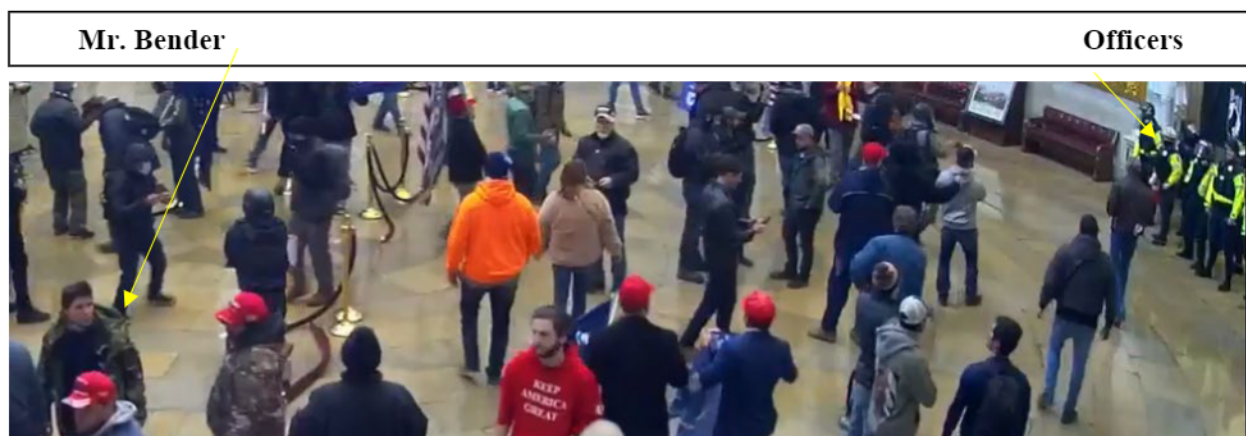
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<sup>1</sup> Mr. Mitchell was charged separately with the same six offenses. On May 13, 2022, the Government moved to join the criminal actions against Mr. Bender and Mr. Mitchell (*see* D.E. 33). On May 24, 2022, this Court granted the Government’s motion over Mr. Bender’s opposition, directing that this case, No. 21-cr-508, be consolidated for all purposes with *United States v. Mitchell*, No. 21-cr-717 (May 24, 2022 Min. Order).





The photograph below shows Mr. Bender standing inside the U.S. Capitol, while officers watch from the corner of the location.



The photograph below shows Mr. Bender calmly leaving the U.S. Capitol while walking past multiple Capitol Police officers.



**Officers**

**Mr. Bender**

Accordingly, having observed law enforcement inaction throughout his time inside the U.S. Capitol and when exiting, Mr. Bender has every right to present such evidence at trial and any other evidence that corroborates what he specifically observed, which makes his reliance on what he observed reasonable in light of the surrounding circumstances.

### **CONCLUSION**

For all these reasons, Defendant Luke Wesley Bender respectfully requests that this Court enter an Order denying in part the Government's motion *in limine*.

Dated: October 3, 2022

Respectfully submitted,

**SILVERMAN|THOMPSON|SLUTKIN|WHITE, LLC**

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