

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

UNITED STATES OF AMERICA

v.

RALPH JOSEPH CELENTANO III,

Defendant.

Crim. Action No. 22-186 (TJK)

MOTION IN LIMINIE TO PRECLUDE USE OF PREJUDICIAL LANGUAGE

Ralph Celentano III, through counsel, moves *in liminie* for an order that the government may not, through witness testimony or in argument before the jury, use inflammatory, prejudicial, and conclusory words to describe (1) the events at or near the Capitol Building on January 6, 2021, and (2) persons who participated in or were present for those events. While it is not possible to anticipate a complete list of such words, some examples – which are by no means exhaustive – are “riot,” “rioter,” “insurrection,” “insurrectionist,” “mob,” “disorderly conduct,” and “trespass.” The jury ultimately will have to decide whether the government has proven that Mr. Celentano had the requisite intent to “riot” or be part of an “mob” and whether or not he was “disorderly” or “trespassed.” In advance of the jury's verdict, any reference to events or people by these terms necessarily conveys the speaker's opinion that a crime in fact occurred. Conveying such a personal belief in the particular circumstances of this case biases the jury against Mr. Celentano, implies a belief in the truthfulness of the evidence, violates the presumption of innocence, and lessens the government's burden of proof.

Mr. Celentano is presumed innocent unless the government proves all elements of the alleged offenses beyond a reasonable doubt. U.S. Const. amend. V; *In re Winship*, 397 U.S. 358,

364 (1970). A federal district court has both the inherent authority and the duty to ensure that trials are conducted in a manner that protects a defendant's right to a fair trial. *See United States v. Marks*, 530 F.3d 799, 807 (9th Cir. 2008) ("District courts have broad power to ensure that a trial proceeds in a proper manner."). That authority includes preventing the use of language that casts the defendant, or others, in a negative light – particularly when it is irrelevant to the proceeding. *See* 20 Am. Jur. Trials 441 § 20 ("Expressions, names and nicknames, and the like, which are so sensitive that their use would be likely to stir up antagonistic feelings on the part of the jurors, ought to be removed from the case at the earliest opportunity. The damage they can inflict on a party's legal position may be irreversible even if they are used but once in front of the jury"). Allowing the government, through the testimony of witnesses or argument, to use prejudicial and conclusory language lessens the government's burden and usurps the jury's role as factfinder.

Conclusory language to describe the people that participated in the events of January 6, 2021, such as "mob," "rioters," and "insurrectionists" is particularly problematic in Mr. Celentano's case for three reasons. First, Mr. Celentano has the right to have the jury make an "individualized determination [] of guilt based on the evidence presented at trial." *United States v. McGill*, 815 F.3d 846, 895 (D.C. Cir. 2016); *see also id.* at 898 (verdict should be based on "an individual assessment of the...defendant's personal culpability" (quoting *United States v. Blevins*, 960 F.2d 1252, 1260 (4th Cir. 1992))). As the Court is aware, and as has been discussed in previous filings, the events of January 6, as well as the over 950 prosecutions of people alleged to have participated in those events, have been widely publicized. Using words like "rioter," and "insurrectionist" either to describe Mr. Celentano individually, or to describe everyone at the Capitol on January 6, 2021 without specificity, echo the words that have been

used in the media and emphasize group culpability distracting from the proper question of individual culpability.

Second, allowing the use of “insurrection,” and “insurrectionist,” will mislead the jury because Mr. Celentano has not been accused of overthrowing or attacking the United States government and he is not charged with seditious conspiracy. These terms are highly prejudicial and will evoke emotional responses from the jury which will lead them to judge Mr. Celentano based on inflammatory labels instead of his specific alleged conduct. Such testimony therefore must be precluded pursuant to Federal Rule of Evidence 403.

Third, and most importantly, use of such terms is conclusory, inadmissible opinion evidence and presupposes Mr. Celentano’s guilt. Mr. Celentano is charged with, among other things, Disorderly and Disruptive Conduct in a Restrictive Building or Grounds under 18 U.S.C. § 1752(a)(2), Civil Disorder under 18 U.S.C. § 231(a)(3), and “aiding and abetting,” Obstruction of an Official Proceeding under 18 U.S.C. § 1512(c)(2). *See* Indictment, ECF No. 14. While terms such as “trespass,” “disorderly conduct,” and “mob” may be proper in the context of a closing argument, allowing such words during the presentation of evidence would “intrude upon the duties of, and effectively substitute for the judgment of, the trier of fact and the responsibility of the Court to instruct the trier of fact on the law.” *United States ex rel. Mossey v. Pal-Tech, Inc.*, 231 F. Supp. 2d 94, 98 (D.D.C. 2002); *see also Cameron v. City of New York*, 598 F.3d 50, 62 (2d Cir. 2010 (“The cases [prohibiting legal conclusions in testimony] have focused on *expert* witnesses. But the impropriety of allowing a lay witness to testify in the form of a legal conclusion is all the clearer.”). For example, during argument on pretrial motions, the government represented that their aiding and abetting theory is that Mr. Celentano, “assisted the overall crowd that day in its obstruction efforts, not any specific person.” *See* Order Denying

Motion for a Bill of Particulars, ECF No. 27. Allowing the government, through argument or witness testimony, to use the word “mob” to describe the people participating in the events of January 6, will mislead the jury to believe that the government need not prove Mr. Celentano “aided and abetted” the overall crowd, but rather, that his guilt is assumed.

For the foregoing reasons, Mr. Celentano respectfully asks this Court to order that the government witnesses not use inflammatory, prejudicial, and conclusory words to describe events or persons. He also requests that the Court allow time at the pretrial conference, currently set for March 1, 2023, for the parties and the Court to discuss more specifically the terms that will and will not be permitted at trial.

Respectfully submitted,

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