

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

LYNNWOOD NESTER,

Defendant.

Criminal Action No. 22-cr-183 (TSC)

**UNITED STATES' REPLY TO DEFENSE RESPONSE TO GOVERNMENT'S MOTION
IN LIMINE TO PRECLUDE IMPROPER DEFENSE ARGUMENTS AND EVIDENCE
ABOUT LAW ENFORCEMENT**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby renews its request that the Court issue an order precluding defendant Lynnwood Nester from introducing certain evidence or argument about alleged law enforcement inaction. *See* ECF 92.

In the Defendant's response, he does not appear to contest that it would be impermissible to present evidence or argue that alleged law enforcement inaction gave him a legal right to be inside the restricted area of the Capitol building and grounds. (ECF 98 at p. 2 ("no member of law enforcement possesses the ability to 'abrogate criminal laws duly enacted by Congress'")). However, the Defendant argues that he should be permitted to introduce such evidence to support a "mistake of fact" defense, *i.e.*, that he mistakenly thought his entry into the Capitol was permissible at the time. *Id.* at 3.

If the Court permits such evidence for this limited purpose, the Government respectfully requests that the Defendant be required to present an adequate foundation in advance to show that he observed or otherwise knew of the alleged law enforcement inaction, before introducing any

such evidence in court, *e.g.*, before he invokes alleged law enforcement inaction during opening statement or on cross examination of the government's witnesses.

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney
DC Bar No. 481052

By: /s/ Brian Morgan
BRIAN MORGAN
NY Bar No. 4276804
Trial Attorney
601 D Street, N.W.
Washington, D.C. 20530
Brian.morgan@usdoj.gov
(202) 305-3717

/s/ Katherine E. Boyles
Katherine E. Boyles
Assistant U.S. Attorney
D. Conn. Fed. Bar No. PHV20325
United States Attorney's Office
601 D Street NW
Washington, D.C. 20001
Phone: 203-931-5088
Email: Katherine.Boyles@usdoj.gov