

**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)

**THE UNITED STATES' SUR-REPLY TO DEFENDANT'S REPLY TO THE  
GOVERNMENT'S RESPONSE TO DEFENDANT'S OPPOSITION TO THE  
GOVERNMENT'S NOTICE PURSUANT TO FEDERAL RULE  
OF EVIDENCE 404(b)**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby moves the Court for leave to file a sur-reply to the Defendant's Reply in support of his opposition to the Government's 404(b) evidence. The Defendant consents to the filing of a sur-reply on the condition that he is permitted to file a written response to the sur-reply.

The Government seeks to admit evidence related to the Defendant's participation in (1) the "Hear Us Roar – Election Integrity" protest at the Pennsylvania State House in Harrisburg on January 5, 2021 (ECF 82); and (2) the separate "Cutler Protest" outside the home of Pennsylvania House Speaker Bryan Cutler in Quarryville, Pennsylvania on December 30, 2020, at which the Defendant held a sign that read "Decertify," *see* ECF 97 at 3.<sup>1</sup>

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<sup>1</sup> Per the Defendant's brief, at least one photo of the Defendant that the Government initially believed came from the January 5, 2023 protest was actually from the protest on December 30, 2020. ECF 97.

The Defendant's participation in these two events is probative of his knowledge, motive, and intent at the U.S. Capitol on January 6, and does not carry a risk of improper propensity evidence because the Defendant is not alleged to have acted wrongfully at the prior events.

Among other things, and in brief, the evidence is probative of Defendant's knowledge that the U.S. Congress was working to certify the results of the presidential election on January 6. The evidence is also relevant to the Defendant's motive and intent to prevent the certification from taking place and to "impede or disrupt the orderly conduct of Government business" at the Capitol. 18 U.S.C. § 1752(a)(2).

Respectfully submitted,

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