

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

LANDON MITCHELL (2)

Case No. 1:21CR508(BAH)

**OPPOSITION TO UNITED STATES' MOTION *IN LIMINE* TO PRECLUDE
IMPROPER DEFENSE ARGUMENTS AND EVIDENCE ABOUT LAW
ENFORCEMENT**

Landon Mitchell, through counsel, respectfully opposes the United States' Motion *in Limine*, ECF. No. 46, in which the government moves to preclude Mr. Mitchell from (1) arguing any entrapment by estoppel defense related to law enforcement;¹ (2) offering evidence concerning any claim that by failing to act, law enforcement made the defendant's entry into the United States Capitol or its grounds lawful; or (3) arguing or presenting evidence of inaction by law enforcement unless the defendant specifically observed or was otherwise aware of such conduct. ECF. No. 46 at 1.

This case will present narrow issues. First, as to the obstruction charge: (1) whether Mr. Mitchell attempted to or did obstruct or impede an official proceeding;

¹ The Government's motion *in limine* does not argue that Mr. Mitchell should be precluded from arguing a public-authority defense based on the actions and statements of President Donald J. Trump and other speakers at the "Stop the Steal" rally on January 6, 2021. The Notice filed contemporaneously with this opposition relates to actions taken by President Trump, not law enforcement and is, therefore, not covered by the government's motion *in limine*.

(2) whether Mr. Mitchell intended to obstruct or impede an official proceeding; and (3) whether Mr. Mitchell acted knowingly, with awareness that the natural and probable effect that his conduct would be to obstruct or impede an official proceeding. As to the remaining counts, (1) whether Mr. Mitchell *knowingly* entered a restricted building, (2) whether he did so with the intent to impede and disrupt the orderly conduct of government business, and (3) whether he, in fact, engaged in disorderly conduct. Mr. Mitchell does not intend to claim entrapment by estoppel nor does he intend to argue that law enforcement gave him lawful authority to enter and remain in the building. However, he reserves the right to introduce evidence as to his intent.

Indeed, it is undisputed that to convict Mr. Mitchell of the obstruction charge the government must prove that he intended to obstruct or impede the official proceeding and that he was aware that the natural and probable effect of his conduct would be to obstruct or impede the official proceeding.² *See United States v. Hale-Cusanelli*, 1:21CR37 (TNM), Jury Instructions, ECF. No. 84 at 24. It is also undisputed that the government must prove that Mr. Mitchell “knowingly” entered a restricted building and that he did so with the intent to disrupt the orderly conduct of government business.³ *See United States v. Hale-Cusanelli*, 1:21CR37 (TNM), Jury Instructions, ECF. No. 84 at 31. Therefore, any evidence that relates to Mr. Mitchell’s

² Though not specified in the Indictment, based on the record and other January 6 cases, the defense assumes the “official proceeding” is the certification of the election.

³ Though not specified in the Indictment, based on the record and other January 6 cases, the defense assumes the “government business” is the certification of the election.

subjective intent—that is whether he knew he did not have lawful authority to enter, whether he specifically intended to disrupt government business, and whether he specifically intended to obstruct or impede an official proceeding—is relevant and admissible at trial.

Date: October 3, 2022

Respectfully submitted,

A.J. KRAMER
FEDERAL PUBLIC DEFENDER

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