

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

UNITED STATES OF AMERICA,	:	CASE NO. 1:23CR114
	:	
Plaintiff,	:	JUDGE ANA C. REYES
	:	
vs.	:	
	:	
KYLE MLYNAREK, et al.,	:	<u>DEFENDANT’S RESPONSE IN</u>
	:	<u>OPPOSITION TO GOVERNMENT’S</u>
Defendant.	:	<u>MOTION IN LIMINE REGARDING</u>
	:	<u>LAW ENFORCEMENT CONDUCT</u>

Defendant, Kyle Mlynarek, through counsel, submits this objection to the Government’s motion in limine to preclude the defense from “arguing that alleged inaction by law enforcement officers made their conduct on January 6, 2021 legal.”

The government’s motion is overbroad and would exclude evidence that is clearly probative and “of consequence” in this case. *See* Fed. R. Evid. 401. Mr. Mlynarek is charged with multiple counts that require knowledge that he was trespassing or in a restricted area. The fact that law enforcement officers may have allowed some people to enter the capitol is clearly relevant to the mens rea of these offenses. The Government bases its objection on the fact that “an officer cannot shield an individual from liability for an illegal act by failing to enforce the law, nor can an officer ratify unlawful conduct by failing to prevent it.” This rationale ignores other reasons that law enforcement inaction is relevant to this case. The conduct of law enforcement is admissible, not for the purpose of arguing that the authorities had somehow abrogated the law to Mr. Mlynarek’s benefit, but because it relates to Mr. Mlynarek’s knowledge.

For the foregoing reasons, Mr. Mlynarek requests that the Court not impose the Government's erroneous view of relevance, but to permit the admission of evidence that relates to one of the crucial elements of these charges. The Government's motion in limine should be denied.

Respectfully submitted,

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