

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

_____	)	
UNITED STATES,	)	
	)	
v.	)	Crim. No. 21cr268
	)	Hon. Carl J. Nichols
JEFFREY McKELLOP,	)	
Defendant.	)	
_____	)	

**MOTION TO COMPEL DISCOVERY**

Comes now Defendant Jeffrey McKellop, by counsel, and moves the Court to compel the disclosure by the government of all documentation in its possession reflecting the presence on January 6, 2021, at, in or near the Capitol, of undercover Federal Bureau of Investigation agents or assets (e.g., Confidential Informants), their purpose and any consequence of their presence.

Undersigned has been reliably informed that FBI management sent an email shortly after January 6th, to all personnel assigned to the Washington Field Office, instructing that any such personnel on, in or near the Capitol on January 6, 2021, “self report” to their chain of command for interview.<sup>1</sup> Upon information and belief, this email did not differentiate between personnel present in their official and in their individual capacities – implying that Special Agents may have been present in a covert official capacity without the awareness of the leadership of the D.C. Field Office or of each other. The FBI has already been revealed as having infiltrated the Proud Boys – prominent catalyts of the day’s events.<sup>2</sup>

To the extent that rioters were cajoled or instigated into trespass, disorder or violence by individuals or groups comprising law enforcement officials or people acting at the behest or

<sup>1</sup> Two former FBI Special Agents have orally assured undersigned separately and independently that the subject email was sent.

<sup>2</sup> *Among Those Who Marched Into the Capitol on January 6: An F.B.I. Informant*, Alan Feuer, New York Times, October 18, 2021. [www.nytimes.com](http://www.nytimes.com).

under the direction of law enforcement, they are entitled to the affirmative defense of Estoppel by Invitation.

Just prior to the breach of the Capitol, President Trump exhorted the assembled protesters at the Ellipse. He said, in part:

“These people [referring to his crowd while addressing media] are not going to take it any longer.”

“They rigged an election.”

“We won this election and we won it by a landslide.”

“All of us here today do not want to see our election victory stolen.”

“We will never give up.”

“Our country has had enough and we will not take it anymore.”

“We will stop the steal.”

“If you don’t fight like hell, you’re not going to have a country anymore.”

“Peacefully and patriotically, make your voices heard.”

“We are going to the Capitol.”

*Capitol riots: Did Trump’s words at rally incite violence?* BBC News, January 13, 2021, [www.bbc.com](http://www.bbc.com).

Whether or not the penultimate sentence could reasonably be expected to calm the already agitated crowd, the sitting President of the United States told the crowd to go the Capitol and “Stop the Steal.”

“A criminal defendant may assert an entrapment-by-estoppel defense when the government affirmatively assures him that certain conduct is lawful, the defendant thereafter engages in the conduct in reasonable reliance on those assurances, and a criminal prosecution based upon the conduct ensues.



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Counsel for the Defendant

Certificate of Electronic Service

I hereby certify that on November 7, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, with consequent service on all parties

/s/  
John C. Kiyonaga