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

| UNITED STATES,    | )<br>)<br>) |                       |
|-------------------|-------------|-----------------------|
| v.                | )           | Crim. No. 21cr268-CJN |
| JEFFREY MCKELLOP, | )           |                       |
| Defendant.        | )<br>)      |                       |

## <u>DEFENDANT'S REPLY TO GOVERNMENT OPPOSITION TO</u> MOTION TO COMPEL DISCOVERY

Defendant Jeffrey McKellop, by counsel, hereby replies to the Government's Opposition (Doc 131, "Opp") to his Motion to Compel Discovery regarding the presence of undercover officers or their confederates during the events subject of the instant charges (Doc 123).

Neither the quantity of discovery disclosed to this point, (3.86M files [Opp at n. 1]), nor the medium, ("results of searches of digital devices, FBI Memoranda, subject interviews, tips, and camera footage," [Opp at n. 1]), addresses the very specific issue presented in Defendant's motion – whether and how the unlawful conduct on January 6<sup>th</sup> was impelled by individuals acting at the behest of or subject to the control of law enforcement.

"Informant's privilege" (Opp at 2) presents no impediment to the disclosure Defendant seeks. The extent of the covert presence of law enforcement and its proxies can be revealed without identifying any confidential informants. Should identification become necessary on a more focused basis, the Court can implement appropriate safeguards.

The covert law enforcement presence referenced by Defendant is hardly a matter of "mere speculation" (Opp at 3). The New York Times reported at least one Proud Boy FBI

informant among those who breached the Capitol building.<sup>1</sup> Most importantly, the government does not deny in its Opposition the existence of the FBI DC Field Office email referenced in Defendant's motion. The DC Field Office did not know how many of its agents were afield that day – or why. Defendant is entitled to an accounting of the conduct of those that participated undercover and of their civilian assets.

"[W]e are not afraid to follow truth wherever it may lead...

Thomas Jefferson.

Respectfully submitted, JEFFREY MCKELLOP

By Counsel

John C. Kiyonaga

600 Cameron Street Alexandria, Virginia 22314 Telephone: (703) 739-0009 Facsimile: (703) 340-1642

E-mail: john@johnckiyonaga.com

Counsel for Jeffrey McKellop

## Certificate of Electronic Service

I hereby certify that on December 15, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, with consequent service on all parties.

<sup>&</sup>lt;sup>1</sup> A Proud Boy rioter and informant for the FBI reportedly communicated with his official handler throughout the riot. 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.