

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOSHUA CHRISTOPHER DOOLIN,
MICHAEL STEVEN PERKINS, and
OLIVIA MICHELE POLLOCK,

Defendants.

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CASE NO. 21-cr-447 (CJN)

**UNITED STATES’ REPLY IN SUPPORT OF THE EXCLUSION OF
“PUBLIC AUTHORITY” AND “ENTRAPMENT BY ESTOPPEL” DEFENSES**

The government has moved to preclude the defendants from raising “public authority” or “entrapment by estoppel” defenses, that is, arguments that the defendants were commanded by then-President Trump, or some other figure, to break the law. ECF No. 170.¹ Defendant Joshua Doolin, later joined by Olivia Pollock, opposed the motion for a handful of reasons. ECF Nos. 181, 182.

On a motion in limine, a court may preclude evidence that would be irrelevant, or if its probative value would be substantially outweighed by the danger of (among other things) prejudice, confusion, or delay. *United States v. Wilkins*, 538 F. Supp. 3d 49, 63 (D.D.C. 2021) (J. Contreras) (quoting Fed. R. Evid. 403). As the government has explained, the public authority and entrapment arguments are irrelevant—and prejudicial—because, for either to apply, a government official must “state” or make a “statement” of law. ECF No. 170 at 3.

¹ The government originally moved in limine to preclude defendant Doolin from presenting an entrapment by estoppel defense when he was a severed defendant and was individually set for trial. ECF No. 125 at 2-4. Doolin opposed the motion. ECF No. 134 at 3-5. Doolin filed notice of his intent to raise the public authority defense. ECF No. 161. The government then moved in limine to preclude all defendants from presenting an entrapment by estoppel or public authority defense. ECF No. 170 at 2-6.

The challenge for defendants is that, as Judge Bates observed, “President Trump neither stated nor implied that entering the restricted area of the Capitol grounds and the Capitol building or impeding the certification of the electoral vote was lawful.” *United States v. Sheppard*, No. 21-cr-203, 2022 WL 17978837, at *9 (D.D.C. Dec. 28, 2022). Judge Kollar-Kotelly agreed that “former President Trump’s statements did not in any way address the legality of the actions he urged his supporters to take. He did not, for example, assure them that marching along Pennsylvania [Avenue] was ‘lawful’ or that occupying Capitol grounds was ‘permissible.’” *United States v. Grider*, No. 21-cr-022, 2022 WL 3030974, at *3 (D.D.C. Aug. 1, 2022). The defendants, like the defendant in *Grider*, have not identified any statements by the former president that “obstructive trespass on Capitol grounds was lawful.” *Id.* at 4.

Judge Boasberg recently rejected the ‘entrapment by estoppel’ defense in part because the former president did not provide a statement of law that could be relied upon. *United States v. Dennis*, No. 21-cr-0679, Transcript of Bench Trial, Day 4, at 8 (D.D.C. Jan. 13, 2023). “[T]rump never said to enter the restricted area of the Capitol in his speech or to overcome police to enter the Capitol or to impede the certification of the vote.” *Id.* In another case, Judge Boasberg declined to preclude the defendant from raising an entrapment defense about Capitol Police, but prohibited the defendant from raising such a defense about then-President Trump, for much the same reason. Memorandum Opinion at 5, *United States v. Carpenter*, No. 21-cr-305 (D.D.C. Feb. 9, 2023), ECF No. 78 (“[I]t is not enough for Carpenter to show that she believed that the former President approved of their marching to and entering the Capitol; instead, she must offer evidence that he either expressly stated or strongly implied that to do so was *lawful*.” (emphasis in original)). And even though Judge Boasberg tentatively allowed testimony about entrapment by Capitol Police, he cautioned that the defendant “risks the possibility that the Court may not

provide an entrapment-by-estoppel instruction to the jury in the event that she has not presented sufficient evidence from which a reasonable jury could find for the defendant on that theory.” *Id.* at 5-6 (internal quotations omitted).

Even if assuming for the sake of argument that President Trump had made a “statement” of law, he possessed no authority to instruct the defendants to enter restricted areas of the Capitol and to impede the electoral certification. As Chief Judge Howell noted, “No American President holds the power to sanction unlawful actions because this would make a farce of the rule of law.” *United States v. Chrestman*, 525 F. Supp. 3d 14, 32 (D.D.C. 2021). As such, to the government’s knowledge, no court has permitted a public authority or entrapment by estoppel defense based upon public statements made by the former president on January 6, 2021. ECF No. 170 at 3 (collecting cases).

I. The Defense Confuses Defenses

In his opposition, defendant Joshua Doolin confuses defenses, namely, the public authority and entrapment defenses, with the defense that he did not “knowingly” enter the Capitol’s restricted perimeter. Doolin argues that he believed he was permitted to enter the Capitol’s grounds. ECF No. 181 at 2 (“Mr. Doolin believed that Capitol grounds were . . . permitted and unrestrained.”); *id.* at 15 (“All barricades had been removed by the time he arrived, and he never entered the Capitol building. Mr. Doolin was unsure as to whether his conduct ran afoul of the law.” (internal quotations omitted)). This is a confusion of the issue. Doolin—and all defendants—are free to argue that they did not knowingly enter restricted grounds. But that is separate from the argument that Trump made statements of law, or that the defendants’ reliance on such statements were reasonable.

II. Trump's Tweets Are Not Statements of Law

Perhaps recognizing that President Trump's speech at The Ellipse is ill-suited for a public authority or entrapment argument, defendants point to three findings of the Congressional Select Committee to Investigate the January 6th Attack on the United States Capital. ECF No. 181 at 3. In particular, the defendants point to three facts:

1. In two tweets on January 6, then-President Trump expressed a legal theory that the election was stolen and demanded that then-Vice President Mike Pence send the selection of electors back to state legislatures. ECF No. 181 at 4
2. Despite pressure to tell his supporters to leave the Capitol that day, Trump initially declined to do so, instead telling them only to stay peaceful. *Id.* at 5-6.
3. Trump finally instructed his supporters to leave the Capitol only at 6:49 PM, after Doolin had already been arrested.² *Id.* at 6.

Together, the defense appears to argue these tweets, or lack thereof, constitute statements of law in a way that Trump's speech at The Ellipse did not.

The problem is that the tweets do more harm than good for defendants. As other courts have already ruled, and as the government has previously explained, President Trump's exhortation at The Ellipse did not constitute a legal "statement" for purposes of the public authority or entrapment by estoppel defense. The tweets the defense raise do even less work: they were merely (false) claims about a rigged election: they were not instructions to Doolin or anyone else to go to the Capitol. Finally, if Doolin or his co-defendants ever saw Trump's commands to stay peaceful, they certainly ignored them: in the melee, Doolin interfered with

² Doolin was arrested by the FBI on June 30, 2021. It is not clear what law enforcement action Doolin is describing as his arrest on January 6, 2021.

police officers and stole a riot shield and crowd-control spray gun; his co-defendants assaulted officers. Superseding Indictment, ECF No. 116.

III. Defendants Misstate Or Misapply Case Law

The defendants make several confused references to the case law that only muddy the issue:

First, the defendants claim that “[m]any lawyers and judges have thoughtfully reasoned that the public authority/entrapment by estoppel defense is a proper defense for statements made by then-President Trump.” ECF No. 181 at 8. In considering precedent, what matters are not the opinions of lawyers but the opinions of judges. And the defense hasn’t cited a single January 6 case in which a court held that a public authority or entrapment defense was appropriate, based on the public statements of President Trump. Defendants do cite *United States v. Sheppard* to suggest, perhaps, that President Trump’s statements authorized their actions. ECF No. 181 at 8. But there, Judge Bates ultimately rejected the argument and prohibited the defense from raising the public authority defense at trial. Memorandum Opinion, *United States v. Sheppard*, No. 21-cr-203 (D.D.C. Dec. 28, 2022), ECF No. 63 at 1.

Second, defendants analogize their case to *Cox v. State of Louisiana*. ECF No. 181 at 9 (citing 379 U.S. 559 (1965)). In that case, protesters sued after being arrested for peacefully protesting in a location designated by law enforcement. The defense claims that Doolin “is charged mainly with violating similar statutes.” *Id.* at 10. Yet Doolin was not in an area law enforcement designated for protest and was far from peaceful on January 6: in addition to being charged with civil disorder, entering restricted grounds, and disorderly conduct on those grounds, Doolin is further charged with stealing a riot spray cannister and police riot shield.

The defense labors to show how the charges in *Cox* were similar to a subset of the charges in this case: for instance, that they are intent-based, prohibit the disruption of the government, and apply to restricted building. ECF No. 181 at 11. This is irrelevant. Because then-President Trump did not make a “statement” of law when he encouraged his supporters to go to the Capitol—and because holding otherwise would raise serious constitutional concerns—the facial similarities between the charges do not matter.

IV. Defendant Fails To Support Claim He Sought Permission To Enter

For the first time, Doolin says that on January 6 he “approached police officers to seek clarification” about the legality of his actions, but was arrested instead. ECF No. 181 at 12. Elsewhere the defense writes that “Mr. Doolin was unsure as to whether his ‘conduct ran afoul of the law’ and approached the group of police officers ‘to make further inquiries.’” *Id.* at 15 (quoting *Chrestman*, 525 F. Supp. 3d at 32). The government is not aware of any evidence that would support a claim that Doolin was arrested on January 6. If he was arrested, it would certainly undercut any argument that he had permission to be there. And if he was not, any permission Doolin did or did not receive was immediately undermined by his subsequent actions: his decision, for instance, to confront officers, brandish a flagpole at them, steal their equipment, and interfere with them by attempting to physically force his way into the Capitol building. Doolin cannot manufacture a public authority or entrapment defense by claiming unknown officers permitted his actions when other officers so clearly fought against them.



Ex. 1 (Doolin circled in red)



Ex. 2 (Doolin circled in red)



Ex. 3 (Doolin circled in red)

V. Conclusion

Defendants are, in general, permitted to put forward all evidence relevant for their defense. But a public authority or entrapment defense would not just be irrelevant: it would be prejudicial, confusing, and a waste of the court's time. To keep the forthcoming trial focused on the meaningful facts in dispute, the government's motion, ECF No. 170, should be granted.

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Respectfully submitted,

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