

**United States District Court
District of Columbia**

United States of America)	
)	
vs.)	Case No. 1:22-CR-00038-BAH
)	
Jolene Eicher)	

**Notice of Public-Authority Defense
– Federal Rule of Criminal Procedure 12.3**

“Big Protest in D.C. on January 6th. Be there, will be wild!”

Title of Chapter 6, Final Report of the Select
Committee to Investigate the January 6th
Attack on the United States Capitol (quoting
from a tweet of the 45th President of the
United States).

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Jolene Eicher notifies the Court and the Government that she may rely on the defense of public-authority. Federal Rule of Criminal Procedure 12.3. This defense is based on her belief that any actions she might take on January 6, 2021 in and around the capitol building were authorized by the then President of the United States. This apparent authority applied to this Defendant for all of January 6, 2021.

The actions of the 45th President which may support this defense include his statements made on the Ellipse on January 6, 2021 as well as his many statements, speeches, and online posts between November 3, 2020 and that date. Those statements and other actions resulted in an investigation by a select committee of the United States House of Representatives wherein that committee suggested to the Department of Justice that they pursue criminal charges of the 45th President for his actions surrounding January 6, 2021. As that committee stated in their executive summary:

In his speech from the Ellipse on January 6th, President Trump recited a host of election fraud allegations he knew to be false, and then told tens of thousands of his angry supporters this: And fraud breaks up everything, doesn't it? When you catch somebody in a fraud, you're allowed to go by very different rules. So I hope Mike has the courage to do what he has to do. And I hope he doesn't listen to the RINOs and the stupid people that he's listening to. The meaning of President Trump's comments was sufficiently clear then, but he recently gave America an even more detailed understanding of his state of mind. Trump wrote that allegations of "massive fraud" related to the 2020 election "allow[] for the termination of all rules, regulations and articles, even those found in the Constitution." And President Trump considered pardoning those involved in the attack and has since expressed a desire to pardon them—and even give them an apology—if he returns to the Oval Office.

U.S. House Select Committee to Investigate the January 6th Attack on the United States Capitol 117th Congress Second Session, House Report 117-663. p. 113 (internal footnotes omitted).

Further, the 45th President was impeached by the United States House of Representatives for his actions on and leading up to January 6, 2021. In part the article of impeachment reads:

On January 6, 2021, pursuant to the 12th Amendment to the Constitution of the United States, the Vice President of the United States, the House of Representatives, and the Senate met at the United States Capitol for a Joint Session of Congress to count the votes of the Electoral College. In the months preceding the Joint Session, President Trump repeatedly issued false statements asserting that the Presidential election results were the product of widespread fraud and should not be accepted by the American people or certified by State or Federal officials. Shortly before the Joint Session commenced, President Trump, addressed a crowd at the Ellipse in Washington, DC. There, he reiterated false claims that “we won this election, and we won it by a landslide”. He also willfully made statements that, in context, encouraged—and foreseeably resulted in—lawless action at the Capitol, such as: “if you don’t fight like hell you’re not going to have a country anymore”. Thus incited by President Trump, members of the crowd he had addressed, in an attempt to, among other objectives, interfere with the Joint Session’s solemn constitutional duty to certify the results of the 2020 Presidential election, unlawfully breached and vandalized the Capitol, injured and killed law enforcement personnel, menaced Members of Congress, the Vice President, and Congressional personnel, and engaged in other violent, deadly, destructive, and seditious acts.

117th Congress, 1st Session United States House of Representatives Resolution 24.¹

Still further, Attorney General Merrick Garland has appointed a special counsel to investigate and consider prosecution of the 45th President for his actions

¹ Full text of the article of impeachment can be found at <https://www.congress.gov/bill/117th-congress/house-resolution/24/text> (last visited April 18, 2023).

to inspire and motivate individuals to take actions on and within the Capitol building and grounds on January 6, 2021.²

Respectfully Submitted,
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The undersigned hereby certifies that this document was filed electronically and a copy will automatically be sent to all counsel of record by the CM/ECF system.

/s/ Matthew Hill

² Order appointing John L. Smith as Special Counsel <https://www.justice.gov/opa/press-release/file/1552896/download> (last visited April 18, 2023).