

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

CASE NO.: 21-CR-129

Plaintiff,

vs.

Gabriel Garcia,

Defendant.

NOTICE OF ENTRAPMENT BY ESTOPPEL DEFENSE

COMES NOW, the Defendant, Gabriel Garcia, and files his Notice of Entrapment by Estoppel Defense as required under Federal Rule of Criminal Procedure 12.3 and states the following: The Defendant intends to assert a defense of entrapment by estoppel, which a defendant may claim when a 1) a government official or agent 2) actively assures the defendant that certain conduct is legal and 3) the defendant reasonably relies on that advice. *United States v. Trevino-Martinez*, 86 F.3d 65, 69 (5th Cir. 1996). Here, Garcia relied on then President Donald Trump’s statements to the crowd at his rally on January 6, 2021, where Trump called the election outcome, “this egregious assault on our democracy,” and went on to tell the crowd to “walk down . . . to the Capitol” and then said “we are going to cheer on our brave senators and congressmen and women” . . . “and we are probably not going to be cheering so much for some of them because you will never take back our country with weakness.” Trump also said he was going to the Capitol too: “We’re going to walk down, and I’ll be there with you . . . we are going to the Capitol, and we are going to try and give—the Democrats are hopeless, they are never voting for anything, not even one vote, but we are going to try—give our Republicans, the weak ones, because the strong ones don’t need any of our help, we’re try—going to try and give them the kind of pride and boldness that they need to take back our country. “ Thus, Garcia, who heard

the then President's speech above, who has no criminal history, and who is a retired military officer still subject to the Uniform Code of Military Justice, was following the orders of his Commander-in-Chief (as he followed the orders of his Commander-in-Chief, President Barak Obama while serving in Iraq) reasonably relied on then President's assurances to lawfully walk over to the Capitol and peacefully exercise his First Amendment right to express his political grievances at the Capitol.

Respectfully submitted,

/s/Aubrey Webb
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was efiled to the Office of the Clerk, United States District Court, District of Columbia, 333 Constitution Ave., N.W. Washington D.C. 20001, Room 1225 and to the Office of the United States Attorney, 555 4th St N.W., Washington D.C. 20530, on January 28, 2022.

/s/Aubrey Webb