

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

UNITED STATES OF AMERICA

v.

MARSHALL NEEFE,

Defendant.

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Case No. 21-CR-567 (RCL)

**DEFENDANT’S RESPONSE TO GOVERNMENT’S SUPPLEMENT TO OPPOSITION
TO MOTION TO APPEAL DETENTION ORDER**

Defendant Marshall Neefe, (“Mr. Neefe”), by and through undersigned counsel, respectfully submits this Response to the Government’s Supplement to its Opposition to Mr. Neefe’s Appeal of the Detention Order by the Magistrate Judge from the Middle District of Pennsylvania. In its Supplement, the Government aims to provide clarification and additional information related to issues that arose during the detention hearing the Court held on February 23, 2022.

One such additional piece of information relates to the metal sign frame which was used by protestors to push through a police barricade outside of the U.S. Capitol Building. The Government contends that the metal sign frame was approximately 10-15 feet wide and 10 or more feet high, and that its wheels were about the size of a human head. *See* Supp. at 2. The Government bases its estimates on the eyewitness account of U.S. Capitol Police Officer Nikolas Scharkopf who was allegedly present at the location where the sign was pushed towards the officers. *Ibid.* The Government further noted that Officer Scharkopf described the sign frame as “extremely heavy” and that “it took 15-20 officers to carry and move the sign”. *Id.* at 3.

As previously noted in his Reply and as can be seen in the video evidence presented to the Court during the detention hearing, Mr. Neeffe was one of dozens of protestors, including his co-defendant, Charles Bradley Smith, who held the sign as it was passed over his head. *See* Reply at 4. Mr. Neeffe, however, did not bring the sign to the protests; he did not take any actions to lift the sign or direct others to do so; and he did not actively push the sign from the moment it was lifted until it was pushed into the line of police officers. What can be seen from the video evidence is that Mr. Neeffe temporarily held the sign with one hand—a sign that can barely be lifted by 15-20 police officers—as it was passed over his head. The sign moved prior to his actions and continued to move after his actions. Notably, Mr. Smith held the same sign temporarily with both hands—not just with one hand—but he has been released pending trial. The Government has yet to provide a satisfactory clarification for its disparate treatment of these two defendants in this instance.

The other additional information the Government provides in its Supplement pertains to the individual depicted in Government Hearing Exhibit 1-M, Sean McHugh. *See* Supp. at 3. This individual is seen with a bullhorn yelling at police officers and rallying the crowd behind him. By contrast, Mr. Neeffe, who is depicted in the background behind Mr. McHugh, does not yell or even attempt to communicate with anyone during the protests, especially as the sign is being carried over his head, further proving the fact that Mr. Neeffe was a passive participant throughout most of his movements and activities on January 6, 2021.

As Mr. Neeffe stated previously, his mere presence during the protest on January 6 is something that he deeply regrets. He should have not participated during the January 6 event—not even as a passive participant. Mr. Neeffe understands this more than anyone else.

For the foregoing reasons and for reasons stated in his prior briefing and during the detention hearing, Defendant Marshall Neeffe respectfully requests that this Honorable Court order his release pending trial.

Respectfully Submitted,

/s/ Dennis E. Boyle

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