

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

UNITED STATES OF AMERICA,

v.

ETHAN NORDEAN, et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)
)

Case No. 1:21-cr-175

Judge Timothy J. Kelly

**DEFENDANT NORDEAN’S NOTICE OF ADDITIONAL MATERIAL EVIDENCE THE
GOVERNMENT WITHHELD UNTIL AFTER DETENTION HEARINGS**

Defendant Nordean, through his counsel, provides this notice of additional evidence the government withheld from the defense and the Court until after the Court revoked his release order. LCrR 5.1(a).

As the Court knows, in the April 19 detention hearing the Court focused on the perceived risk that Nordean would engage in dangerous political rallying in the future. The Court found:

[T]hese defendants can produce events that draw large numbers of people, including Proud Boys, others sympathetic to Proud Boy perspectives . . . Even if the election has passed all of politics has not.

Hr’g Trans., 4/19/21, p. 55.

Although Nordean had presented a February audio recording of himself in a conversation with members of his group in which he rejected future political rallying, the Court found that “without any further context there’s no indication that that was some kind of permanent decision.” *Id.* at 55:22.

Attached to this notice is an FBI memorandum that reviews Nordean’s audio messages on the Telegram app. FD-302, 4/14/21, Exh. 1 (highlighting added by Nordean). Although it was produced to the defense over a month after the detention hearing, the memo predates the

April 19 detention hearing by a week. The memo shows that at the moment the Court found a determinative lack of “further context” regarding Nordean’s future plans concerning rallying, Hr’g Trans., 4/19/21, p. 55:22, the government possessed further context in the form of multiple additional statements from Nordean forswearing rallying. Exh. 1. The transcript of the detention hearing shows that the government remained silent after the Court made its finding about the lack of further context. Hr’g Trans., 4/19/21, p. 55.

Dated: June 15, 2021

Respectfully submitted,

/s/ David B. Smith

David B. Smith (D.C. Bar No. 403068)
108 N. Alfred St.
Alexandria, VA 22314
Phone:(703)548-8911
Fax:(703)548-8935
dbs@davidbsmithpllc.com

Nicholas D. Smith (D.C. Bar No. 1029802)
7 East 20th Street
New York, NY 10003
Phone: (917) 902-3869
nds@davidbsmithpllc.com

Certificate of Service

I hereby certify that on the 15th day of June, 2021, I filed the foregoing notice with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following CM/ECF user(s):

Jim Nelson
Assistant United States Attorney
555 4th Street, N.W., Room 4408
Washington, D.C. 20530
(202) 252-6986

And I hereby certify that I have mailed the document by United States mail, first class postage prepaid, to the following non-CM/ECF participant(s), addressed as follows: [none].

/s/ David B. Smith
David B. Smith, D.C. Bar No. 403068
David B. Smith, PLLC
108 North Alfred Street, 1st FL
Alexandria, Virginia 22314
(703) 548-8911 / Fax (703) 548-8935
dbs@davidbsmithpllc.com
Counsel to Ethan Nordean

EXHIBIT 1

FEDERAL BUREAU OF INVESTIGATION

Date of entry 04/14/2021

On April 13, 2021, Task Force Officer (TFO) Rik Hall reviewed 637 "telegram-cloud-documents" audio files from the forensic extraction of Ethan Nordean's iPhone 8 plus, phone number 253-508-0207 for items relevant to the investigation regarding the Ethan Nordean's participation at the United States Capitol in Washington D.C. on January 6, 2021.

During the review, TFO Hall observed there were audio files contained on the phone which included, but were not limited to discussions relevant to the January 6, 2021 event, discussions regarding Enrique Tarrio, discussions regarding an individual referenced as "Brian James" and some general banter between members within the telegram chat(s). Some of the files reference or are directed to Ethan Nordean, some toward other members and some are by Ethan Nordean.

A spreadsheet of the files and the associated audio files are attached hereto and made a part hereof by this reference.

The summary of each audio file does not represent the totality of the content within each respective audio file but is used merely as a reference for the individual reviewing the thirty-nine attached audio files.

#	Audio File Name	Accessed-Time	Summary
1	telegram-cloud-document-2-5242749523188517442_Converted.wav	2/1/2021 6:51:38 AM(UTC-8)	Individual comments that he is curious about the specifics in the Proud Boy cases as they don't prosecute unless they have a "completely locked case"
2	telegram-cloud-document-2-	2/1/2021	Individual

Investigation on 04/13/2021 at Seattle, Washington, United States (In Person)File # 266O-SE-3380382, 176-WF-3366759-NORDEANDate drafted 04/14/2021by HALL RIK HENDRIK

2660-SE-3380382

(U) Review of Audio Files recovered from

Continuation of FD-302 of Ethan Nordean's Cellular Phone, On 04/13/2021, Page 2 of 11

	5242316109448744307_partial_Converted.wav	7:23:30 AM(UTC-8)	comments that he believes that the charges as just for a chilling effect
3	telegram-cloud-document-1-4956269702692209233_partial_Converted.wav	2/1/2021 7:02:44 PM(UTC-8)	Individual comments that he believes that "we are fucked"... "they are coming for us..."
4	telegram-cloud-document-1-4956269702692209082_Converted.wav	2/1/2021 5:47:32 PM(UTC-8)	Individual commenting to another individual that he believes he is a bad cub?cop? because they disagree.
5	telegram-cloud-document-1-4956269702692209080_Converted.wav	2/1/2021 5:47:20 PM(UTC-8)	Individual comments that he hates bad cops and that he believes the other person to be a bad cop.
6	telegram-cloud-document-1-4954211069032661686_partial_Converted.wav	2/1/2021 2:48:23 PM(UTC-8)	Individual comments that they have been around the block a time or two, that the "Warboys" went to DC and that it "...completely fucking crashes and burns on us...good job with the comms, good job with security, good job with legal..I mean fuck 'tifa looks like professionals compared to us...It's already fucked. You had your play in that."

2660-SE-3380382

(U) Review of Audio Files recovered from

Continuation of FD-302 of Ethan Nordean's Cellular Phone, On 04/13/2021, Page 3 of 11

7	telegram-cloud-document-1-4954211069032661529_Converted.wav	2/1/2021 9:40:05 AM(UTC-8)	Individual comments about that the people that go to rallies are the ones bringing negative attention to the Proud Boys
8	telegram-cloud-document-1-4954211069032661450_Converted.wav	2/1/2021 8:08:04 AM(UTC-8)	Individual comments "Twenty goddam years? Man, no matter what we do they're going to throw the fucking book at us."
9	telegram-cloud-document-1-4954211069032661444_partial_Converted.wav	2/1/2021 8:08:26 AM(UTC-8)	Individual comments that another is looking at twenty years and it isn't the time
10	telegram-cloud-document-1-4954211069032661428_Converted.wav	2/1/2021 7:47:07 AM(UTC-8)	Ethan Nordean comments that about another while he is looking to "...mend some of this bullshit that people keep friggin 'digging up."
11	telegram-cloud-document-1-4954211069032661418_Converted.wav	2/1/2021 7:39:21 AM(UTC-8)	Ethan Nordean comments that it isn't helpful to publicly respond.
12	telegram-cloud-document-1-4954211069032661339_partial_Converted.wav	2/1/2021 6:51:28 AM(UTC-8)	Individual comments that if the feds have enough evidence they are not going to offer much of a plea, that he believes that the feds don't charge until they have a

2660-SE-3380382

(U) Review of Audio Files recovered from

Continuation of FD-302 of Ethan Nordean's Cellular Phone, On 04/13/2021, Page 4 of 11

			lot of evidence.
13	telegram-cloud-document-1-4954211069032661337_partial_Converted.wav	2/1/2021 6:51:28 AM(UTC-8)	Individual comments about high federal conviction rate and federal time and that pleading guilty is the course of action
14	telegram-cloud-document-1-4954211069032661317_Converted.wav	2/1/2021 6:51:38 AM(UTC-8)	Individual comments about indictments and the subsequent high rate of conviction and high rate of time served
15	telegram-cloud-document-1-4954017902878523672_Converted.wav	2/1/2021 9:18:55 AM(UTC-8)	Ethan Nordean comments about dealing with issues and people commenting that he needs a long break after this
16	telegram-cloud-document-1-4954017902878523671_partial_Converted.wav	2/1/2021 9:09:37 AM(UTC-8)	Individual comments to Ethan that he apologizes and wants the club to succeed.
17	telegram-cloud-document-1-4954017902878523666_Converted.wav	2/1/2021 9:06:54 AM(UTC-8)	Individual comments that Rufio got "lost in the sauce." Comments that Enrique should step down.
18	telegram-cloud-document-1-4954017902878523664_Converted.wav	2/1/2021 9:03:55 AM(UTC-8)	Ethan Nordean comments that "I understand where we're at in the frat. I understand that we've taken some risks that we shouldn't have taken. We've done some things we

2660-SE-3380382

(U) Review of Audio Files recovered from

Continuation of FD-302 of Ethan Nordean's Cellular Phone, On 04/13/2021, Page 5 of 11

		<p>shouldn't have done. Ok but they've been done and we need to learn from em." States that he hasn't been in the chats lately to ask for thanks or any praise at all or to debate his position as a rallier. States he is no longer a Trump supporter and would take back doing the rallies for Trump that he would. He says he thought they were fighting for some secret plan that didn't come to fruition and that Trump hanging high and dry. And that Trump condemned their action at the capitol. Says that he isn't a rally guy anymore. He doesn't disagree that things went bad. He says he cares about leading guys. He says that most of the time he goes to the rallies because there is a lack of leadership and that is his motivation.</p>
19	telegram-cloud-document-1-	2/1/2021 Individual

2660-SE-3380382

(U) Review of Audio Files recovered from

Continuation of FD-302 of Ethan Nordean's Cellular Phone, On 04/13/2021, Page 6 of 11

	4954017902878523663_partial_Converted.wav	9:01:50 AM(UTC-8)	comments that he didn't mean any disrespect to Rufio, that he just wants him to see another side and that they need to change, to not keep secrets. He doesn't feel that DC was a success. He says that Rufio brings credibility that guys listen to him.
20	telegram-cloud-document-1-4954017902878523662_partial_Converted.wav	2/1/2021 9:00:06 AM(UTC-8)	Individual comments that "Rufio has already said like ten times that he fucked up. So why are we rubbing it in his face..."
21	telegram-cloud-document-1-4954017902878523661_partial_Converted.wav	2/1/2021 9:00:06 AM(UTC-8)	Individual comments that he is confused about what happened in DC because they thought that they had voted to not go to DC. He hates that guys went and it was easily unavoidable.
22	telegram-cloud-document-1-4954017902878523660_Converted.wav	2/1/2021 9:00:06 AM(UTC-8)	Individual comments to Ethan that he was mentioned in the Biggs indictment and mentioned others that were arrested/indicted. He doesn't believe it went well.
23	telegram-cloud-document-1-4954017902878523656_Converted.wav	2/1/2021 8:59:56	Individual commenting to

2660-SE-3380382

(U) Review of Audio Files recovered from

Continuation of FD-302 of Ethan Nordean's Cellular Phone, On 04/13/2021, Page 7 of 11

		AM(UTC-8)	Aaron. Said that Ethan brought himself into it, they had already agreed to not to do any rallies. Said he would never thank a rally boy.
24	telegram-cloud-document-1-4954017902878523655_Converted.wav	2/1/2021 8:59:56 AM(UTC-8)	Ethan Nordean said that he and other guys led others so they didn't go astray.
25	telegram-cloud-document-1-4954017902878523654_partial_Converted.wav	2/1/2021 8:59:56 AM(UTC-8)	Individual commenting to others that Ethan said that people should be thankful that he was at the rally, not thanking him for his service
26	telegram-cloud-document-1-4954017902878523653_Converted.wav	2/1/2021 8:59:56 AM(UTC-8)	Individual commenting that he is anti-rally now, that he used to be pro-rally.
27	telegram-cloud-document-1-4954017902878523652_Converted.wav	2/1/2021 8:59:56 AM(UTC-8)	Individual commenting about how Ethan said that you should be thanking me
28	telegram-cloud-document-1-4954017902878523650_Converted.wav	2/1/2021 8:59:56 AM(UTC-8)	Ethan Nordean asked how he was asking for thanks. Ethan states that he is trying to mend the club and doesn't want Brian James stirring the pot. Says he has a pretty good reputation doing rallies in the pacific northwest

2660-SE-3380382

(U) Review of Audio Files recovered from

Continuation of FD-302 of Ethan Nordean's Cellular Phone, On 04/13/2021, Page 8 of 11

			but that he didn't plan the national rallies.
29	telegram-cloud-document-1-4954017902878523649_partial_Converted.wav	2/1/2021 8:59:56 AM(UTC-8)	Individual commenting to Aaron that "He's admitting he fucked up now, but thank him for what he's done"
30	telegram-cloud-document-1-4954017902878523647_partial_Converted.wav	2/1/2021 8:59:56 AM(UTC-8)	Individual commenting that it is a disconnect that Biggs has too. That now he wants thanks for what he's done. Thinks he should stop going to rallies.
31	telegram-cloud-document-1-4954017902878523646_Converted.wav	2/1/2021 8:59:56 AM(UTC-8)	Ethan Nordean is wondering what is the problem with him. Ethan says that he has already admitted to everything that he is open to changing things and not doing rallies.
32	telegram-cloud-document-1-4954017902878523644_Converted.wav	2/1/2021 8:59:56 AM(UTC-8)	Ethan Nordean says that he was asked to attend the last couple rallies. He said that he didn't plan them. He said that the last one, that "you should be lucky I was there. You know, I'm the guy that you want leading guys because I actually know how to do it

2660-SE-3380382

(U) Review of Audio Files recovered from

Continuation of FD-302 of Ethan Nordean's Cellular Phone, On 04/13/2021, Page 9 of 11

			and keep people in line versus if I wasn't there guys would probably be running off doing their own thing. That he doesn't recall an abundance of people asking him not to go, don't do this. He said that since it happened that he is one of the gust that has said they need to be smart. He wonders what problem people have with him not stopping and that they should be happy he was at some those rallies leading but that they will go on with or without him
33	telegram-cloud-document-1-4954017902878523643_Converted.wav	2/1/2021 8:59:56 AM(UTC-8)	Individual comments that they aren't defending Brian James, they are just trying to keep the main issues in the forefront. Not to let it fall to the back, not to lose focus on what started everything.
34	telegram-cloud-document-1-4954017902878523642_Converted.wav	2/1/2021 8:45:50 AM(UTC-8)	Individual commenting that no one is saying that Ethan didn't give up anything for

2660-SE-3380382

(U) Review of Audio Files recovered from

Continuation of FD-302 of Ethan Nordean's Cellular Phone, On 04/13/2021, Page 10 of 11

			the club, but wonders when did people asked him to stop. Was it after January 6th? After Beard got stabbed? That he doesn't believe that Ethan learns from his actions. That people listen to him. Trying to get people to wake up. That people are glad Ethan sees it now. It's time to stop, time to play a better hand.
35	telegram-cloud-document-1-4954017902878523641_partial_Converted.wav	2/1/2021 8:41:10 AM(UTC-8)	Individual commenting that some don't care who is doing what as long as their agenda goes through
36	telegram-cloud-document-1-4954017902878523640_partial_Converted.wav	2/1/2021 9:28:32 AM(UTC-8)	Individual comments that others can talk about Ethan all they want. He tells others that Ethan has sacrificed and given everything for the club.
37	telegram-cloud-document-1-4954017902878523639_Converted.wav	2/1/2021 9:28:32 AM(UTC-8)	Ethan Nordean comments that he openly stated that they should stop rallying. He says that there was a lot of them out there who thought they could reach the normies. He

2660-SE-3380382

(U) Review of Audio Files recovered from

Continuation of FD-302 of Ethan Nordean's Cellular Phone, On 04/13/2021, Page 11 of 11

			said that they learned the hard way. He says he cares about the club. He says that he hasn't said that he isn't opposed to change. He talks about how he has sacrificed for the club.
38	telegram-cloud-document-1-4954017902878523633_Converted.wav	2/1/2021 9:28:32 AM(UTC-8)	Ethan Nordean comments talking about a poll about someone else. He says that he has done some stuff that wasn't good for the club but that he needs to learn from it.
39	telegram-cloud-document-1-4954017902878523613_partial_Converted.wav	2/1/2021 8:31:05 AM(UTC-8)	Individual commenting about how he wants to pursue voting about individuals who are under indictment should leave leadership position (Chairman, Elders and possibly Chapter President(s))