

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

Case No. 21-CR-175-2 (TJK)

JOSEPH RANDALL BIGGS,

Defendant.

Oral Hearing Requested

MOTION TO REOPEN HEARING AND FOR RELEASE FROM DETENTION

Defendant Biggs, by undersigned counsel, moves to reopen his detention hearing and for his release, pursuant to the Bail Reform Act, 18 U.S.C. Section 3142(f). Given the size and complexity of the information still surging from DOJ's January 6 investigation, and Biggs' alleged outsized leadership role at the Capitol that day, no circumstances exist or can exist in the near term in which Biggs can participate in his own defense so long as he is detained pending trial based on "future dangerousness" grounds under section 3142. His current detention, now in its fourth month, is well past the point of being on a collision course with his Sixth Amendment rights to prepare for trial with his lawyer. His release to begin the lengthy process of preparing for his trial is particularly warranted when there is no indication that Biggs and others are likely to plan and lead a "second insurrection" against the United States. Biggs' detention at this point is pure coercion to pry false histories from him about a January 6 Proud Boy conspiracy where none existed. Biggs should be restored to his previous status of home detention so he can prepare for trial.

Additional Background: Defendant Biggs

Joseph Randall Biggs, 37, is a retired United States Army Staff Sergeant and Purple Heart earner. He served two year-long deployments abroad: Iraq (2005-2006) and Afghanistan (2007-2009). In 2009, Biggs was featured in "The Commander," an on-air *Dan Rather Reports* story about the American-led NATO coalition fighting the Taliban insurgency in Afghanistan. While the hour-

long documentary's namesake is American Armed Forces commander General David McKiernan, its second 20-minute segment begins and ends with Biggs and his role in an all-volunteer "maneuver team" of sixteen soldiers, stationed near the Afghan-Pakistan border, formed from three artillery units. Biggs is interviewed in the segment along with other officers but is central to the segment as a reflection of how the maneuver team functioned. The year-long assignment of Biggs' platoon ranged from engaging Taliban combatants and suicide bombers to helping local villagers build wells, roads and schools for villages in a 350 square mile area. *See, Dan Rather Reports*, "The Commander, an Interview with General David McKiernan," Jan. 6, 2009, Rather (Dan) Papers, e_rather_00080, Briscoe Center for American History, Austin, Texas.

<https://danratherjournalist.org/ground/crises-and-conflicts/war-afghanistan/compilation-war-afghanistan-stories-videos/video>)

"The Commander" was produced by Michael Hastings, the late war correspondent and *Rolling Stone* writer. Hastings and Biggs became friends in Afghanistan. Hastings would later interview and write about Biggs two more times and use Biggs as a major source in third article. In "Kiowa Helicopters: America's New Cavalry," *MEN'S JOURNAL* (Sep. 2010 issue), Hastings highlighted the ascendancy of the use of the smallish, nimble Kiowa helicopters as air support to help Biggs' platoon and other U.S. infantry fight the Taliban on the ground. In "Obama's War," discussing a late 2008 incident involving Biggs that was also covered in *Dan Rather Reports* "The Commander" documentary, Hastings touched on a suicide bomber who wounded a 9-year-old child that Biggs and a medic managed to keep alive after the bomber had killed himself and two adults. *See*, M. Hastings and L. Read, "Obama's War," *GQ* (March 31, 2009). Finally, Hastings used Biggs, due to Biggs' concern for the safety and morale of American Army ground troops in Afghanistan, as a source for his article "The Runaway General", a profile about U.S. General Stanley McChrystal,

General McKiernan's successor in Afghanistan, in *Rolling Stone's* July 8, 2010 issue.

Hastings' work underscores that Biggs is by upbringing and training both safety conscious and community service oriented. *See*, Biggs' Supplemental Memorandum in Opposition to Motion to Revoke Pretrial Release, 3, April 6, 2021 (ECF 53). He descends from a family of both soldiers (father's side) and news reporters (mother's side). He was raised to participate in the world around him, to serve, to help others and generally to be "in the thick of things." Biggs' father is a retired Vietnam War-era U.S. Marine Corps sergeant and tunnel rat, who earned a military specialization as an Emergency Medical Technician ("EMT") in Combat Lifesaving as an Emergency Medical Technician ("EMT") before he was deployed to Vietnam in the 1960s.

The elder Biggs received more EMT training in Vietnam and had countless opportunities to use it. He continued that service in civilian life after his retirement from the Marine Corps. Growing up in the Carolinas, Joseph Biggs accompanied his father on first responder calls as a volunteer in both urban and rural settings. In 2004, Biggs, now 21, joined the military himself. He was stationed at Fort Bragg, North Carolina through 2009. In October 2005 he completed his own EMT training in combat lifesaving at a nearby college before being deployed to Iraq. Biggs was recertified by his battalion as an Emergency Medical Technician in August 2006 while still in Iraq. *See*, EMT certificates of training awarded to Joseph Biggs from 3rd Battalion, 321st Field Artillery Regiment dated October 15, 2005 (Fort Bragg, NC) (attached as Exhibit 1) and August 10, 2006 (Balad, Iraq) (attached as Exhibit 2). In Afghanistan in particular, Biggs was able to put his EMT training and experience to use in ways that were even publicly documented as they occurred. (The "Obama's War" piece by Hastings even touches on this in a description of the aftermath of a suicide bombing in late 2008. ("The [local Afghan village] kid's lying there naked and bleeding on a slab of concrete outside the motor pool. Outside the gate, Sergeant Joseph Biggs is making sure no one

else is hit. Biggs is a 24-year old from Florida.” id. at 6-7).

Between 2009 and 2013, Biggs was based at Fort Bliss military base, El Paso, Texas. In 2012, his health and safety orientation came into view again when the base command asked his help to train actors in a widely distributed training film governing language and conduct between men and women in the increasingly sexually-integrated U.S. Army. He also continued to use his EMT training and community service orientation for the benefit of several disaster areas or stressed regions in and out of America. In January 2010, he thought up, planned and carried out a rescue mission near Leogane, Haiti after the earthquake there. In 2017, while living in Austin, Texas after returning to civilian life, he devised a similar mission near Houston after hurricane Harvey’s landfall flooded and killed hundreds of people in Texas and Louisiana.

As the Court knows (ECF 42), the following year, late 2018, Biggs moved from Austin with his infant daughter to the Daytona Beach area to help care for his mother, a cancer patient on and off in remission. Shortly after the move, he hooked up with the Proud Boys, a fraternity started by comedian, internet personality and VICE Media founder Gavin McInnes two years earlier during the height of the 2016 Hillary Clinton-Donald Trump presidential contest. Biggs joined the Proud Boys organization after moving to central Florida partly to meet people. He never sought a formal leadership position (like chapter president) but did use his planning and leadership roles honed in the military to plan several Proud Boys events in and out of Florida. The two biggest events he planned were the national march and counter-rally to the “Rose City” Antifa demonstrations held in Portland, Oregon late 2019 and 2020. In planning these two events, Biggs frequently interacted with local, state and federal law enforcement, including special agents of the FBI in several FBI field offices. In July 2020, he met in person with two Daytona Beach-area FBI special agents interested in tapping his knowledge about specific Antifa persons and activities Biggs and other Proud Boys

were seeing “on the ground.” *See also*, Opposition to Motion to Revoke (ECF 42)

The Proud Boys. Founded in July 2016 by comedian and satirist Gavin McInnes, Proud Boys is a men’s fraternal organization. It is “pro-Western” civilization. It is pro-family and pro-religion (any religion). It has rules. It has by-laws. *See, The Constitution and Bylaws of Proud Boys International L.L.C.* (revised November 24, 2018) (attached as Exhibit 3). It is not and has never been far-right, white nationalist, white supremacist, racist, misogynistic or homophobic. It has resisted and fought back at such labeling. *See, e.g.,* Keith McMillan, “FBI says Proud Boys are not an extremist group,” *THE WASHINGTON POST*, Dec. 7, 2018, at B1 (Ranking Oregon Special Agent tells reporters that “the FBI had not intended to designate the group as extremist during a slide show with the Clark County Sheriff’s Office.”). Proud Boy founder and ex-chairman McInnes has sued the Southern Poverty Law Center (SPLC) in an Alabama federal district court for defamation and several other theories of recovery after designating Proud Boys as a “hate group” and engaging in a de-platforming and defunding campaign against McInnes and his media enterprises. The SPLC’s motion to dismiss filed two years ago was met with a contentious if scholarly opposition by McInnes’s lawyers and so far has failed in every respect. That litigation persists. *See Gavin McInnes v. SPLC*, 2:19-cv-98-MHT-GMB Doc. 32 filed 05/14/19 (M.D Ala. N.D.) Finally, Enrique Tarrio, Proud Boy chairman since November 2018, is past Florida state director of Latinos for Trump. Like his predecessor McInnes, Tarrio is an accomplished political satirist. He grew up in the Little Havana section of Miami. Tarrio is of Cuban and Afro-American descent.

Like any new group, especially a decentralized one, the Proud Boys have unique challenges, including unique vetting and membership challenges. Since its start in 2016, clearly unacceptable

candidates have been turned away from Proud Boy membership after vetting in scores of local chapters nationally. Members have also been ejected from Proud Boys based on their actions, words or later-discovered falsehoods or omissions made during the vetting process. And like every political or cultural organization, especially a fledgling, decentralized one, it attracts eccentrics, malcontents, wannabes, straight-up dorks and some bad actors. The Proud Boy idea, however, is to maintain and promote what members see as positive, traditional American values which they believe have served their own families and other Americans well. Twelve group tenets written five years ago still hold true for the group.

1. Minimal Government
2. Maximum Freedom
3. Anti-Political Correctness
4. Reinstating a Spirit of Western Chauvinism
5. Anti-Racial Guilt (No shame “for the deeds of ancestors.”)
6. Pro-Free Speech
7. Anti-Drug War (“An endless war that enacts policies that bury the addicted.”)
8. Anti-Racism
9. Closed Borders
10. Pro-Gun Rights
11. Glorifying the Entrepreneur
12. Venerating the Housewife

Gavin McInnes, Founder, Former Chairman, The Proud Boys, “The Proud Boy Tenets” (January 28, 2021).

Procedural History of This Motion

Between January 20 and April 22, Biggs awaited trial at his home in Ormond Beach, Florida under strict conditions of release: GPS location monitoring device, weekly drug testing, psychiatric evaluation and medical check-ups, DNA sampling, firearm surrender, passport surrender and highly restricted travel. He *daily* spoke on the phone with his Pretrial Services Agency (PSA) officer Charles Sweatt in Orlando. Sweatt found Biggs’s level of compliance exemplary. On March 22, 2021, he

wrote that Biggs “presented no concerns regarding compliance since his release from custody in our district. He has maintained compliance regarding his conditions of release and location monitoring and maintained regular communication with me.” (ECF 42-1). A week later, on March 29, Sweatt even told the PSA Supervisor in Washington, D.C., Ms. Christine Shuck, that Biggs had “super compliant” since January 20. (ECF 40).

On Saturday, March 20, Biggs had just completed his second month on home detention when he was served unexpectedly with the Government’s Motion to Revoke Pretrial Release (ECF 31). A newly unsealed six-count First Superseding Indictment (“FSI”) (ECF 26) charged that on January 6, Biggs, Ethan Nordean, Charles Donohoe and Zachary Rehl conspired, attempted to, did violate, and aided and abetted in the violation of 18 U.S.C. sections 1512(c)(2) and 231(a)(3). Counts 1, 2 and 3. FSI Count 4 charges “depredation” of federal property in over \$1,000 of damage. Finally, FSI Counts 5 and 6 charge violations of 18 U.S.C. section 1752 by entering, remaining on and being “disorderly” on a “restricted building and grounds.” After a two-part detention hearing starting on April 6 and concluding April 19 (ECF 59, 72), and issuance of a Detention Order on April 20 (ECF 66), Biggs on April 22 reported as ordered to federal marshals in the Middle District of Florida in Orlando who transported him to a federal lock-up unit the Seminole County Jail in Sanford, Florida.

Bail Reform Act Standard For Reopening Hearing

Under the Bail Reform Act (BRA), a district court may reopen a detention hearing at any time before trial if it finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue “whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.” 18 U.S.C. Section 3142(f). The hearing and oral ruling on the government’s

motion to revoke the Biggs' home detention occurred, respectively on April 6 and April 19. It culminated as required under BRA in a written order of April 20. (ECF 66). In the April 20 order Biggs is not found to be a flight risk ("assure the appearance of such person as required"). Rather, his detention in a Florida jail pending trial on the six counts against him is on the basis of future dangerousness ("the safety of...the community"). The question now before the Court under Section 3142 is whether there is any new information or evidence that has a material bearing on the likelihood of Biggs posing future threat to the peace and stability of the United States. Below Biggs proffers new information which he believes affects the pretrial detention inquiry the Court made on April 6 and 19 in a number of respects.

ARGUMENT

A. Conditions of Detention for Biggs at Seminole County Jail

Biggs has been held at the Seminole County Jail (aka John E. Polk Correctional Facility), a medium security jail in Sanford, Florida ("Seminole") since April 22. Seminole has a capacity of about 1200 inmates. Seminole is not a federal facility run by the U.S. Bureau of Prisons but has a good reputation. Biggs is housed in a federal prisoner section with a capacity of about 80. The Seminole federal unit functions as staging area and "transfer station". Federal prisoners are temporarily housed there until transferred to permanent housing elsewhere. Although not large, the unit housing Biggs is a throughfare of news, gossip and scuttlebutt due to the constant flow of people. It's a busy, fluid part of Seminole.

1. Biggs' safety and health issues

As reported at the status conference of July 15, Biggs has experienced two significant safety and health events at Seminole. National media coverage of the Proud Boys, coupled with a relatively high profile status as a leader and activist during most of his adult life, has made Biggs a "known

man” at Seminole County Jail. When he arrived at Seminole on April 22, most inmates quickly knew his name and presence there. Within a week of his incarceration there, even new prisoners knew of Biggs’ presence there immediately--and some apparently knew before arriving. Most prisoners treat Biggs with at least a modicum of respect. But some do not. On May 21-22, a small gang of Hispanic prisoners suddenly started to threaten Biggs verbally and aggressively due to his affiliation with the Proud Boys. The Seminole Classifications Department, which also controls lawyer-client meetings and phone calls at the jail, immediately and deftly transferred Biggs to another nearby but separate section of the federal lockup where he remains. The threats subsided and ceased when those prisoners left. New inmates, however, come and go constantly.

As also mentioned to the Court during the status conference on July 15, Biggs in June experienced two weeks of a painful flareup and swelling of a knee operated on in February 2020. The knee operation involved insertion of a prosthetic device behind the kneecap to correct damage caused over time by explosions in Iraq and Afghanistan. The knee flareup at Seminole in June was unexpected and the first problem of any kind since the 2020 operation. Although the pain and swelling has subsided, x-rays taken at Seminole strongly suggest that another operation will be needed to replace the current underlying prosthetic. Obviously, such an operation would have to take place at a hospital or clinic outside the Seminole Jail, preferably at the same Veterans Affairs clinic in Daytona Beach where the 2020 operation was performed. Convalescence for several weeks if not months would be needed at a venue outside Seminole.

2. Inability to Prepare for Trial: The Mother of All Client Preparation Bottlenecks

While the threats to Biggs in jail and the need for a new knee operation and convalescence period are by themselves enough to justify Biggs’ release and restoration to his previous home

detention status in Ormond Beach, neither is more pressing than the problem of Biggs' pretrial preparation limitations. And that problem is becoming difficult to overstate. Little if any substantial, meaningful pretrial preparation between Biggs and his counsel can occur as long as he is confined in any correctional facility, even one as well-managed and as reputable as Seminole. Little trial preparation has occurred so far. That is now a simple fact of life for every January 6 defendant currently detained and his counsel. Few if any--and probably not one--American jails, prisons or correctional facilities (of any security grade) is currently constituted or equipped to permit a January 6 defendant to prepare for trial or a non-trial resolution. That is especially true of defendants like Biggs and his codefendants (with no criminal records and engaging in no violence or property damage on January 6) who the Government has designated as "leaders" in "conspiracies." The discovery from DOJ they must review is both "defendant-specific" and "general" in the January 6 discovery cache. Those defendants must be presented with a specially-designed teleconferencing solution they can use most hours of the day with their counsel or be released to home detention so they can properly prepare for trial.

a. The Client Preparation Problem

The trial preparation problem is of course most acute for defendants Biggs, Nordean, Donohoe and Rehl, all alleged to be major "players" at the Capitol on January 6. The amount of discovery, much of it hundreds of hours of video, is simply too much for any counsel to efficiently share and discuss with any January 6 defendant. *See*, discussions below, at Sections B (growing discovery) and C. (growing Sixth Amendment issues). Seminole management understands the magnitude of the problem in Biggs' case. Government counsel seems well-aware of the problem. Undersigned counsel first addressed the client preparation problem with Seminole officials in May. These discussions will continue and will soon include DOJ attorneys assigned to this case. Presently,

counsel speaking with or writing to three management level officials, including two captains at Seminole's Operations Division, about crafting a new system for regular preparation sessions which permit sharing of videos and documents. However, nothing short of building a completely new, secure two-way real-time system of teleconferencing (equipment and software) that can be used by a prisoner and his counsel several hours a day will permit preparation of January 6 clients like Biggs.

b. A Note on Communications Currently Offered at Seminole.

Since the first week of his detention, Biggs and his counsel have utilized every communication app or system offered by Seminole, and are of course exploring others. Here's a summary:

1. Regular mail, it should first be noted, cannot be sent to inmates. No packages or books can be sent by a publisher, Amazon, USPS or any other delivery service.

2. **Securas phone calls.** Biggs and his counsel do speak by telephone two or three times daily on a system operated by Securus Technologies, a longtime Seminole vendor. Each Securas call is 15 minutes long, relatively expensive and non-private. However, the quality of the connection is good. A few things can be accomplished. Of course, no preliminary discovery can be reviewed. No strategy can be discussed.

3. **Seminole attorney-client calls.** Seminole also makes available a 30-minute confidential client-attorney telephone after a request on "law firm letterhead." However, the quality of the connection calls is erratic. Calls cannot be scheduled every day. Biggs and his counsel have stopped using it.

4. **Smart Communications email.** Biggs and counsel can securely email using Seminole vendor Smart Communications; however, no documents or videos can be transmitted.

5. **In person meetings at Seminole.** Counsel may meet in-person with an inmate. A meeting has been set up for August 18. For that meeting, it's still unclear whether counsel can bring

a laptop.

6. Finally, Seminole and Biggs' counsel are also currently exploring review of documents by Biggs for a couple of hours a day at the prison library. However, this would not of course permit a real time conversation with counsel as documents or videos are reviewed even if the laptop there could download the hundreds of files produced by DOJ. Moreover, it's not clear at this point how digital materials could be securely forwarded for review and what form they would take.

B. Expanding Discovery in January 6 Cases: The Single Most Compelling Reason to Reopen Detention Proceedings

Increasingly, January 6 case discovery and related information management issues have earned descriptors like “novel,” “difficult,” “problematic,” and “extraordinary”. Such terms are not routinely heard in can-do American litigation legal circles, civil or criminal. The events of January 6, 2021 at the Capitol quickly changed that. From hundreds of defendants, witnesses, informants, law enforcement officers and other security personnel came massive flows of video (body-worn, closed circuit, fixed-point surveillance, seized), photos, reports and other data routinely available to prosecutors and which defense counsel are often entitled to see and process together with their clients. But the challenge for anyone stepping into January 6 discovery universe is simply apprehending its colossal size fully. Each new arrest and case generates additional mass, variety and flow to the overall discovery “pool.” On June 3, during a status conference in this case, lawyers for the government commented on “the complexity of the case,” “the number of defendants,” “the scope of the crime scene—thousands of people unlawfully on the Capitol grounds, more than 15,000 hours of surveillance footage and body-worn camera,” the over 1,600 electronic devices seized and “over 20 responding law enforcement agencies.” The comments were made to toll the Speedy Trial Act or “to allow for both defense counsel and Government counsel alike to engage in

due diligence in their effective preparation for trial.” Hr’g Tr. at 8-9 (ECF 117).

To put just some of the January 6 trial preparation into perspective for a defendant like Biggs, consider the “15,000 hours of surveillance footage and body-worn camera” mentioned by the Government at the June 3 status conference. To review one-quarter of that footage, which some defendants (i.e., charged as a leader in a conspiracy) may need or choose to do, the time required to review the footage once through would be the equivalent of 155 days of non-stop video watching. It’s a daunting task under any circumstances but highly unlikely that any January 6 defendant could accomplish that in prison even assuming a prison permitted it.

To its credit, the government early on sought expert help to manage January 6 case information. In July, DOJ contracted with Deloitte for \$6 million to build a central repository for the discovery surge, and the contract price is expected to quickly quadruple to nearly \$25 million. *See*, Josh Gerstein and Kyle Cheney, “Feds agree to pay \$6.11 to create database for Capitol Riot prosecutions,” POLITICO, July 9, 2021. The government did not however contract for the designing of a teleconferencing tool or other secure two-way communication device which would permit a detained defendant and his counsel to share and discuss large flows of discovery as they are produced. DOJ and detained defendants share an interest in fair outcomes at trial or flowing from pre-trial discussions. For that, however, there needs to be a level playing field for information flow.

C. Sixth Amendment Concerns Alone Favor Immediate Release from Custody

The Sixth Amendment to the Constitution states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. amend. VI. While the Sixth Amendment has long guaranteed criminal defendants a variety of rights in criminal prosecution, two are notably threatened here by Biggs' current detention conditions important: (a) to know what the evidence is against him or her, and (b) to have the effective assistance of counsel. For reasons of size, complexity, sheer novelty and the utter and complete lack of any known technology adequate to the task for January 6 cases, neither of these overarching rights is possible in the government's prosecution of Biggs so long as Biggs is incarcerated. Case preparation needs *alone* favor the release of Biggs to prepare for trial or for non-trial resolutions. As of April 6—the date of Biggs' detention hearing—about 400 defendants had been charged in the January 6 cases. There are now 570 defendants. Additional defendants continue to be arrested and charged. Each new defendant, moreover, generates its own defendant-specific discovery cache of videos, photos, reports and attachments to reports still photography and documentation *plus* adds to the overall general discovery wave of information to which arguably every existing defendant is entitled.

The Court is reminded that the events and timeline of Wednesday, January 6 occurred physically on roughly one-half acre inside and just outside the Capitol with over 1000 “players.” While all defense counsel applaud and appreciate the government's efforts to obtain, organize, manage and produce the gargantuan and growing amounts of amount of information generated by each new arrest, more than one defense counsel has likened the receipt of discovery in this case like “drinking out of a firehose.” To be sure, due to the prominent January 6 roles the government has crafted for Biggs and his codefendants Nordean, Donohoe and Zehl, these defendants are entitled to all such discovery. All of it relates to each of them. There is no end to the surge of information. Keeping Biggs and other non-violent “leader” defendants in jail indefinitely with this much discovery accumulated means effective trial preparation is not likely.

D. BRA Did Not Envision “Future Dangerousness” Detainees Like Biggs

The Bail Reform Act of 1984 was more than a decade in the making. It changed the federal pretrial detention and bail system in a significant and groundbreaking way. In enacting it, however, Congress envisioned specific types of crimes for which repeat offenses were common, frequent and well-known. The goal was to address the “pressing societal problem” (United States v. *Salerno*, at 747) of defendants who remained dangerous to public safety after pretrial release. *See*, S. Rep. No. 98-225 at 4-8 (1984). As this Court noted in *United States v. Singleton*, 182 F.3d 7, 13 (D.C. Cir. 1999):

[T]he Supreme Court has already recognized that Congress limited pretrial detention of persons who are presumed innocent to a subset of defendants charged with crimes that are "the most serious" compared to other federal offenses. *United States v. Salerno*, [481 U.S. 739, 747](#) (1987) This construction is consistent with the Senate Report, which states that pretrial detention is necessary for only a "small but identifiable group of particularly dangerous defendants."

Id. (quoting S. Rep. No. 98-225, at 6). When the BRA was passed, Congress was concerned with a discrete group of offenses based a number of studies conducted nationally, including in the District of Columbia. It also narrowed its focus to primarily repeat offenders with criminal records. Another integral part of the Act’s legislative history, S. Rep. No. 98-147 (1983), stated:

Several studies indicated that the length of pretrial release plays a significant role in determining whether or not a subsequent crime will be committed. Moreover those with prior records are more prone to commit crime while on pretrial release. In addition, the GAO Study indicated that persons on bail tended to commit more felonies than misdemeanors.

A study in Memphis found that 23 percent of bail crime is committed against property, rather than against persons. Two studies bear this out. In Washington, D.C. it was found that 65 percent of auto theft defendants on pretrial release were rearrested for another auto theft. An Attorney General's report on crime in the District of Columbia showed that 70 percent of release robbery defendants were rearrested for another crime.

Id. at 30.

In addition to auto theft and robbery, other crimes of focus committed by defendants on some kind of conditional release Congress looked at were: murder, rape, burglary and assault. *Id.* at 26-27. In 1981, Senate Judiciary Chairman Edward Kennedy even underscored the prevalence of these same offenses by defendants “free on bail” in terms of percentage based on the same or similar studies: 65% (auto theft); 40% (forgery); 33% (robbery); 27% (burglary). Edward M. Kennedy, *A New Approach to Bail Release: The Proposed Federal Criminal Code and Bail Reform*, 49 Fordham L. Rev. 423, 423-424 (1981). Finally, it is noteworthy that the pretrial detainees in *Salerno*--which in 1987 upheld a facial challenge to the BRA--were defendants with significant criminal records and charged with thirty-five counts of racketeering, including conspiracy to commit murder.

As reflected above, Congress in enacting the Bail Reform Act of 1984 believed future dangerousness concerned primarily (a) discrete set of crimes committed (b) by those with significant criminal backgrounds. While Biggs appreciates that he is detained under the argument that one of Act’s enumerated crimes is 18 U.S.C. section 1361 (destruction of property over \$1000 in value), the thrust of the Act is to incarcerate pretrial defendants for common, recognizable crimes that they are likely to repeat. It is submitted that “obstruction” of a ministerial Congressional proceeding is not among the crimes Congress envisioned.

E. New January 6 Conspiracies

The six-count First Superseding Indictment in March against Proud Boys Biggs, Nordean, Donohoe and Rehl (ECF 26) represented the first January 6 leaders “conspiracy” (18 U.S.C. section 1512 obstruction) brought by the Government. Now there are at least two other major section 1512 conspiracy indictments against “extremist” groups. In May, the Government charged sixteen “Oathkeeper” defendants under an almost identical legal framework in another alleged obstruction

conspiracy that was highly elaborate and different than the conspiracy in Bigg's case. *See, United States v. Caldwell*, 21-cr-00028-APM (5/30/21). In June, and using the same legal architecture, the Government indicted six of Southern California's "Three Percenters" and alleged a third and entirely different obstruction theory. *See, United States v Hostetter*, 21-cr-00392-RCL (6/9/21).

Biggs and his counsel find it highly improbable that all three conspiracies to storm the Capitol on the same day for same purposes could exist. At a minimum, no defendant in any of them should be in pretrial detention as long as the Government has "competing" obstruction conspiracy theories about groups involved in the events of January 6.

CONCLUSION

Biggs' detention hearing should be reopened to consider arguments on his release. January 6 case management challenges are mounting for all litigants. The continuing surge in discovery production make it difficult to prepare detained clients in the January 6 cases. But this is especially true in the case of a defendant like Biggs who the Government has assigned a prominent role in the events of that day. Biggs believes he should be restored to his previous status of home detention so he can prepare for trial. At a minimum, however, the Court should hear argument on current difficulties in trial preparation and how those difficulties can be timely addressed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 8, 2021, he served a true and correct copy of the foregoing Motion to Reopen Hearing and for Release from Pretrial Detention via Electronic Case Filing (ECF) system upon counsel for the government.

By: /s/ John Daniel Hull

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3RD BATTALION 321TH FIELD ARTILLERY

Certificate of Training

is presented to

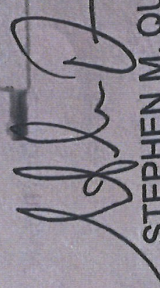
PFC BIGGS, JOSEPH
243-65-4833

For successfully completing the 40 hour
Combat Lifesaver Course

On

15 OCTOBER 2005




STEPHEN M. QUINN
LTC, FA
Commanding





DEPARTMENT OF THE ARMY CERTIFICATE OF TRAINING

This is to certify that

SPC Joe Biggs
243-65-4833

has successfully completed

The EMT-Basic Refresher Course # R-06-99
07-10 Aug 2006

The National Standard Emergency Medical Technician-Basic Refresher Course consists of 24 hours of didactic course work with written and practical examinations. Didactic hours consist of: Preparatory - 1hr, Airway - 2hrs, Patient Assessment - 3hrs, Medical/Behavioral - 4hrs, Trauma - 4hrs, Obstetrics, Infants and Children - 2hrs, Elective - 8hrs from 1994 National Standard EMT-Basic Curriculum.

Given at TF 30th MEDICAL BRIGADE

JAMESON COMBAT MEDIC TRAINING CENTER
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LTC, MC
MEDICAL DIRECTOR

DA FORM 87, 1 OCT 78

The Constitution and Bylaws of Proud Boys International L.L.C.

Revised November 24, 2018 .

Proud Boys International L.L.C.
c/o The Van Dyke Law Firm P.L.L.C.
108 Durango Drive
Crossroads, TX 76227

WITH MEMBER NAMES AND EXHIBITS REDACTED
FOR PUBLIC RELEASE

Article I: Purpose, Scope & Governing Law

Section 1. Purpose

The purpose of Proud Boys International, L.L.C., a Texas Limited Liability Company (the "Company"), shall be to establish, maintain, govern, improve and promote the welfare of a fraternal order to be known as the "Proud Boys" (the "Fraternity"), which shall have for its objects: the mutual benefit and assistance of its members; the binding by closer bonds of its members one to another; the rendition of mutual assistance to its members during life and after their death to their dependents; the extending of charity to all who need such assistance; the promotion of western civilization including free speech and the right to bear arms; the promotion of good citizenship; the training and developing of men to become positive role models as husbands, fathers, entrepreneurs, and civic leaders; and true patriotism.

Section 2. Composition of Fraternity

- (a) The Fraternity shall consist of the Company, active chapters established and existing from time to time throughout the world, Proud Boy Elders Chapter, and the members and probationers of the Fraternity. No other Company, association or other body shall be deemed to be a constituent part of the Fraternity except as set forth in these bylaws.
- (b) References in these bylaws to "brothers" shall, unless otherwise specified or unless the context clearly requires otherwise, mean persons that have completed the second degree of initiation. The term "members" shall mean all brothers and probationers of the fraternity.

Section 3. Use of Name.

Except for the entities and individuals identified in the first sentence of Section 2 of this Article 1, no entity or individual shall have the right to use the name "Proud Boys", or any insignia of the Fraternity, or any recognizable variant of any of the foregoing, in whole or in part, as a part of its name, or to identify itself or himself, or to claim affiliation with the Fraternity, without express written permission of this Company, which permission may be limited to a stated period of time.

Section 4. Governing Documents.

The Constitution and Bylaws of Proud Boys International L.L.C., (the "Bylaws") shall be the supreme law of the Fraternity. Except as provided in these bylaws, the governing law of the Fraternity shall be the resolutions of the Proud Boy Elders Chapter. Any bylaw, regulation, legislation, or resolution of any chapter of the Fraternity in conflict with any of the foregoing shall be null and void. Any private rituals of the Fraternity, as may be promulgated by the Elders Chapter from time to time, shall be incorporated into these bylaws.

Article II: Elders Chapter

Section 1. Name, Role and Powers

The terms "Elders Chapter" or "Proud Boys Elders Chapter" shall mean and refer collectively to the members of the Company. The Elders Chapter shall be the administrative, executive, and judicial head of the Fraternity, and shall have, in addition to the powers expressly provided for elsewhere in these Bylaws, the power to decide all questions concerning the meaning and interpretation of these Bylaws, and the power to adopt such other resolutions, not inconsistent with these Bylaws, as shall be necessary or appropriate for the welfare of the Fraternity. The manager of this company shall be JLVD Holdings L.L.C. However, the manager of the Company shall not have a vote in any affairs of the Fraternity.

Section 2. Composition.

The Elders Chapter shall consist of eight brothers elected from the Fraternity at large. Except as provided by Section 7 of this Article II, brothers of the Elders Chapter shall be elected for a term of one year, with such terms to expire following the election of a member to replace them.

Section 3. Chairman.

The Elders Chapter shall elect, from among the brothers of the fraternity, a ninth brother to act as Chairman and to have the powers of the Chairman set forth in these bylaws.

Section 4. Elders Chapter Powers

The sole powers of the Elders Chapter shall be as follows: (a) Through the Chairman, serving as the voice of the fraternity as a whole on matters of public concern; (b) Taking legal action on behalf of the fraternity; (c) To hold property in the name of the national fraternity and collect suggested voluntary dues for the benefit of the fraternity or for charity; (d) To establish organizations, funds or trusts to which both members and non-members of the fraternity could contribute for charitable purposes; and (e) To be the final authority on chapter status, membership criteria, and rituals of the fraternity.

Section 5. Chapter Autonomy; Elders Not Superior.

Except as set forth in these bylaws, each chapter of this fraternity is independent and autonomous from every other chapter of this fraternity. The Elders Chapter is not a chapter at all, but rather, a council intended to facilitate brothers with certain skills or abilities to use to such skills and abilities for the benefit of the fraternity as a whole. The members of the Elders Chapter do not hold rank or title that is superior to that of any other brother in the fraternity and, during their tenure in the Elders Chapter, shall remain a member of their local chapter.

Section 6. Chairman Duties

The Chairman is elected by the brothers of the Elders Chapter, but shall not be elected from *among* them. The Chairman may be any brother of the fraternity. The Chairman shall preside over the meetings of the Elders Chapter and, in the event of a tie among brothers of the Elders Chapter on any issue, shall be called upon to cast the tie-breaking vote. Unless otherwise

mandated by the members of the Elders Chapter, the Chairman shall act as the voice of the fraternity as a whole on matters of public concern.

Section 7. The First Elders Chapter

The initial eight members of the Elders Chapter shall be [REDACTED]. The first duty of the brothers the First Elders Chapter shall be to determine a method through which their successors will be selected upon the expiration of their terms. That method or such election must be approved by at least six of the eight Elders, reduced to written form, and added to these bylaws as an amendment in Section 8 below.

Section 8. Reserved for Expansion.

Section 9. Removal from Office.

No brother of the Elders Chapter shall be removed from office prior to the expiration of his term except for death, incapacity, incarceration, or good cause as determined by the Elders Chapter in its sole discretion. Removal shall be based on three fourths vote of all members of the Elders Chapter then in office. Any member of the Elders Chapter shall have the power to resign from the Elders Chapter with thirty (30) days written notice to the Chairman.

Section 10. Vacancies, How Filled

When, for any reason, a member of the Elders Chapter leaves office before the expiration of his term, the Elders Chapter shall select a successor by a majority vote. That member shall serve for the unexpired portion of the vacated term. If the Chairman resigns, the Elders Chapter shall select a new chairman by a majority vote. The resigning Chairman has the privilege, as his last act in office, of casting a vote to break any tie concerning his successor.

Section 11. Special Privileges of the Elders Chapter

- (a) The Elders Chapter may, by majority vote, confer the honor of the fourth degree of initiation on any brother of the fraternity who has met the criteria of Article VI, Section 2.
- (b) The Elders Chapter has the privilege of designating awards for merit, other than the fourth degree of initiation, which may be conferred upon a member from time to time subject to the criteria set forth by the Elders Chapter.
- (c) The Elders Chapter has the privilege of designating committees to perform certain functions related to the well-being of the members of this fraternity, provided that such functions do not constitute a prohibited exercise of power by the Elders. These committees may, but need not necessarily include, committees for bylaws, charity, merchandising, and social relations (to plan large events such as WestFest). The Elders chapter shall have the privilege of appointing one or more brothers who are not part of the Elders chapter to assist on such committees.

Section 12. Meetings

- (a) The Elders Chapter may meet from time to time at a place and manner as they may designate. Meetings may be conducted in person or through any means of electronic communication. If the Chairman is not present for the meeting, any Elder may act in place of the Chairman to keep order during the meeting.
- (b) Five members of the Elders Chapter shall constitute a quorum for the transaction of business, except that, if there are less than five members than in office, the remaining members may meet for the purpose of filling vacancies as provided in Section 10 of this Article II. A meeting at which a quorum has been established may continue to transact business notwithstanding the subsequent withdrawal of one or more members with the result that five members are no longer in attendance.
- (c) Except where a different vote is expressly required by another section of these Bylaws, a majority vote of those members present at a meeting at which a quorum is present shall be sufficient to approve any action of the Elders Chapter.
- (d) Promptly following each meeting of the Elders Chapter, any action taken by the Chapter affecting the rights and privileges of members generally shall be communicated to the membership of the fraternity as a whole by any means that is both expeditious and reasonable under the circumstances.

Section 13. Financial Matters.

- (a) The Elders Chapter shall adopt, and monitor on a regular basis, an annual budget covering the revenues and expenditures of the Company. The Elders Chapter may select, from among their membership, a member to implement and monitor the budget.
- (b) The Elders Chapter shall have the authority, but not the obligation, to assess upon *voluntary* annual dues upon each member in an amount not to exceed \$25.00 per year. The revenue from this fee may only be used for the operations of the Fraternity or the other limited purposes set forth in Section 4 of this Article II.
- (c) The payment of dues is a *voluntary assessment* and shall not be the determining factor of whether a person is a member in this fraternity.

Section 14. National Membership Records Forbidden

The Elders Chapter shall not keep or maintain a national list of members of this fraternity.

Article III Establishment and Status of Active Chapters

Section 1. Names.

- (a) Subject to these by-laws, the active chapters shall be named by using "Proud Boys" followed by the city in which the chapter has been chartered. For example, a chapter chartered in Detroit shall be named "Proud Boys Detroit". For chapters in smaller or less populous states where the use of the name of a city would be impractical, the name of the state may be used. For example, a chapter in Providence, Rhode Island would be named

“Proud Boys Rhode Island”. The same name shall not be given to more than one chapter, and the name once given to an active chapter in a particular geographic location shall not be withdrawn from that location.

- (b) The naming provisions of this bylaw are for chartering purposes only. It does not require that a chapter maintain any kind of legal existence. For those chapters which choose to have a legal existence (such as an LLC or a Corporation), this bylaw is not intended to impose any requirements or restrictions with respect to the naming requirements for that legal entity. Similar, this bylaw does not require the filing of any type of assumed name (d/b/a) certificate.

Section 2. Establishment of New Chapters.

- (a) The Fraternity shall seek to expand by establishing new active chapters, and for this purpose, the Elders Chapter shall have the *sole authority* to establish chapters in locations where it may determine there is an interest in the Fraternity. However, the Elders Chapter may delegate this authority to local bodies already responsible for overseeing the creation of chapters in their area, or such bodies which may be created in the future.
- (b) No currently existing chapters of the fraternity shall be required to reapply for chartering. After the date of the adoption of these bylaws, the Elders Chapter must approve any new chapter of the fraternity by a majority vote.
- (c) The Fraternity was formed in the United States of America and is an American organization. Chapters may be formed outside of the United States of America and its territories using the procedures set forth in these bylaws and all members of those chapters shall be recognized as brothers by other chapters. However, all chapters formed outside of the United States of America shall bear the responsibility of complying with all laws relating to the formation of a fraternal organization in their home country. All chapters formed outside of the United States of America shall, as an additional condition of chartering, agree to the jurisdiction of the Elders Chapter over their activities pursuant to these bylaws.

Section 3. Prohibition on Individual Member Discipline.

The Fraternity recognizes that local chapters are in the best position to render disciplinary actions against members. For this reason, any disciplinary actions against individual members by the Elders Chapter is expressly prohibited.

Article IV

Organization and Conduct of Active Chapters

Section 1. General.

Each Chapter shall have the authority to create its own bylaws, which shall be the governing document for that chapter. The Elders Chapter shall have *no authority* to oversee the creation of bylaws for an individual chapter, except that it shall have the power to nullify any local chapter bylaw that conflicts with these bylaws.

Section 2. Active Chapter Officers.

Each chapter must, at a minimum, have a chapter president (or some person with a different title who fulfills the duties typical of a chapter president) for the purpose of receiving communications from the Elders Chapter concerning matters important to the fraternity. The bylaws of chapters may provide for such other additional officers as the chapters may desire. All officers of the active chapter shall be brothers.

Section 3. Selection of Active Chapter Officers

Officers of each chapter shall be elected periodically for a term set forth in the bylaws of that chapter, or by local custom. The procedures for the election of officers, filling officer vacancies, and removing officers are left to the discretion of each chapter. However, all chapter officers must be brothers.

Section 4. Scheduling of Active Chapter Meetings

Each chapter shall hold regular meetings at such a time, place, and frequency as the members of said chapter see fit, but at least once every sixty days. A “meeting” does not include any activity that occurs solely through electronic means.

Section 5. Conduct of Active Chapter Meeting.

The form of the meeting of a chapter shall be pursuant to the ritual attached as Exhibit “A” to these bylaws, with additional time permitted as necessary for initiation rituals and other matters to be discussed in that chapter’s meeting pursuant to the chapter’s bylaws or local custom. Under no circumstances shall any person that is not a probationer or member of this fraternity be permitted in chapter meetings.

Section 6. No Authority to Bind the Fraternity

No individual or group has the authority to legally bind the Fraternity in any manner unless taken pursuant to these bylaws or with the express written approval of the Elders Chapter by written resolution. This restriction includes, but is not limited to, any attempt to bind the Fraternity to an agreement or promise to indemnify a third party or accept liability on behalf of any other person or group.

Article V Membership

Section 1: Eligibility and Non-Discrimination.

- (a) Membership in the Fraternity shall be limited to persons who were born male, who currently identify as male, and who have been initiated through the *second degree* of initiation in accordance with these Bylaws.

- (b) No person eligible for membership in the Fraternity shall be discriminated against or denied membership in the Fraternity on the basis of race, color, creed, national origin, veteran status, disability, religion, marital status or sexual orientation.
- (c) A person that believes in the inherent supremacy of any one race over another, or who is a member of any organization promoting the supremacy of any one race over another, may not become or remain a member of this Fraternity. This includes, but is not limited to, any person who currently identifies as white nationalist, white supremacist, or alt-right (or any person who is a member of an organization identifying as such). Similarly, members of terrorist organizations or cells, including but not limited to Antifa, are prohibited from membership in the fraternity.

Section 2: Brotherhood for Life

Any person that has completed the second degree of initiation for the Fraternity becomes a brother for life, except that he may be expelled for good cause as provided for in Section 6 of this Article V.

Section 3. Probationers

- (a) The term “probationer” refers to a person that has completed the first degree of initiation as set forth in Section 1 of Article VI of these bylaws. The vetting of probationers to become brothers shall be at the discretion of the chapters, provided that the chapter complies with Section 1 of this Article V.
- (b) The vetting of probationers through forced consumption of drugs or alcohol, physical training, corporal punishment, involuntary labor, sexual conduct, or any type of initiation or hazing ritual other than those rituals approved by Article VI of these bylaws is strictly prohibited.
- (c) Probationers may be removed from the fraternity by their chapter in accordance with any bylaw or local custom of that chapter, except for such rules or local customs that may be inconsistent with these bylaws.

Section 4. Brothers.

- (a) All persons given the honors of the second degree of initiation shall be brothers for life as provided in Section 2 of this Article V.
- (b) A chapter may, but shall not have the obligation to, keep a list of active members of its chapter. In no event shall the membership list of a local chapter be disclosed to any person who is not a brother of the fraternity. A chapter shall immediately notify the Elders Chapter upon receipt of any legal process (summons, subpoena, discovery request, etc.) compelling the turnover of such lists.

- (c) Any brother who relocates from one geographical territory to another shall be entitled to have his membership transferred to that territory, provided that he was a member in good standing of the chapter of which he departed.

Section 5: Dues and Fees

An active chapter may, as a condition of membership, impose annual or monthly dues for membership in the chapter. If a chapter imposes monthly dues for membership, it shall not require the payment of dues by any brother who is indigent or who is otherwise unable to pay dues due to financial hardship.

Section 6: Discipline of Members

- (a) **Authority.** Except as provided in these bylaws, the sole and exclusive authority, as well as the responsibility, for the discipline of members rests with the individual chapters. It is strongly recommended, but not required, that each chapter develop its own written "Proud Boy Sharia Court" procedures.
- (b) **Authorized Discipline.** A brother may only be disciplined for violations of these bylaws, of his chapter's bylaws, or for a violation of state or federal law so grievous that a failure to discipline the brother would injure the name and reputation of the fraternity.
- (c) **Ex Post Facto Discipline Prohibited.** No brother may be disciplined for any violation of these bylaws, a chapter rule or bylaw, or other rules that occurred prior to the formal adoption and publication of said bylaw or rule.
- (d) **Methods of Chapter Discipline.** The following methods of discipline are approved for use by chapters of the Fraternity:
 - i. **Reprimand.** This is a formal warning under which a brother is notified that he has violated the bylaws or other rules, and that further violations will result in additional discipline.
 - ii. **Fine.** Misconduct by a brother may be punished by a fine. The amount of the fine should be commensurate with the offense committed and the disciplinary history of the brother.
 - iii. **Probation.** A chapter may place one of its brothers on probation for a period during which time the brother's activities (other than his right to vote), may be restricted.
 - iv. **Suspension.** A chapter may suspend a brother for a period of up to one year. During this time, the brother may not purport to be a member of the Fraternity and shall not be entitled to participate in any activities of the Fraternity. A brother that is suspended is no longer considered to be in good standing with the Fraternity and may not transfer his membership to another chapter.

- v. **Expulsion.** This is the ultimate sanction for a member and results in permanent separation from the Fraternity. Upon imposing this sanction, the chapter shall notify the Elders Chapter of the name of the brother who has been expelled and shall provide the Elders Chapter with a concise list of reasons for the expulsion. The chapter shall cooperate with any investigation of the Elders Chapter relating to expulsion.
- (e) **Disciplinary Appeals.** Unless the disciplinary action constituted a violation of these bylaws, the Elders Chapter lacks jurisdiction to consider appeals of reprimands, fine, probations, or suspensions. In the event of an expulsion, the Elders Chapter may, at its own discretion, consider the expulsion of the brother. If the Elders Chapter finds that the sanction was manifestly unjust and incompatible with the principles of fraternal brotherhood, it may pass a resolution censuring the chapter responsible for the expulsion and permit the brother to transfer to a different chapter.
- (f) **Automatic Suspension.** An active chapter may include provisions in its bylaws for automatic suspension of members who fail to meet chapter attendance standards or who fail to remain current on financial obligations to the chapter. An automatic suspension must permit automatic reinstatement of a member, with no further discipline, once noncompliance with the standard is cured.

Section 7. Voluntary Inactive Status

It is the policy of the Fraternity to accommodate members to the greatest extent possible. The Fraternity understands that it is possible that a brother could be placed in a position where his membership in the Fraternity could cause legal harm to the member or could be inconsistent with his legal obligations. For this reason, any member of the Fraternity who is a brother may request that his chapter place him on voluntary inactive status. A member seeking to return from voluntary inactive status must simply notify his prior chapter, or the president of any chapter to which he has transferred his membership, and pay any then due financial assessments of the chapter.

Section 8. Good Standing

A brother is considered in good standing unless he is suspended, expelled, or on voluntary inactive status.

Section 9. Privileges of Membership.

All brothers who are in good standing shall enjoy all of the privileges of membership granted by this Constitution and Bylaws or as may be granted by the Elders Chapter. They may attend any meeting of any Proud Boys chapter. They may address, vote, and hold office in their home chapter. They may purchase and wear the name, insignia, and colors of the Fraternity.

Article VI

Degrees of Initiation and Traditions

Section 1. Rites of Initiation

- (a) The first degree of initiation shall be a video or personal appearance at a meeting in which the probationer (a) states his true legal name; (b) states his desire to be a Proud Boy; and (c) recites the Fraternity Creed. Upon completion of the first degree of initiation, a person is considered a “probationer” and shall submit to his local chapter for vetting so as to ensure suitability for membership.
- (b) The second degree of initiation shall follow the following procedure:
 - i. The second degree of initiation shall be explained fully to the probationer. After an explanation of the second degree, the brother supervising the second degree will ask the probationer if he understands what is about to happen to him.
 - ii. Upon receiving an answer in the affirmative, the supervising brother shall inform the probationer that it is not the desire of any brother that he suffer physical injury during the second degree, but a possibility exists that he may be injured. He shall then ask the probationer if he understands.
 - iii. Upon receiving an answer in the affirmative, the supervising brother shall inform the probationer that, upon completion of his second degree, he will be a brother for life and shall ensure that the probationer understands the implications of this fact (including his continued obligation to obey these bylaws).
 - iv. Once probationer has responded in such a manner as to ensure that the probationer understands the second degree and the implications thereof, the probationer shall be surrounded by a minimum of five brothers, instructed to stand with his arms at his sides with his hands protecting his genitals, and to recite the Fraternity together with the supervising brother.
 - v. Immediately after reciting the Fraternity Creed, the supervising brother shall instruct to probationer to name five breakfast cereals. At that time, the five brothers surrounding the probationer shall begin punching the probationer *only* in the arms and torso area of his body until such a time as he recites the names of five breakfast cereals. The supervising brother shall count the cereals aloud and the punching shall immediately cease once either (a) the fifth breakfast cereal is reached; or (b) the probationer indicates through words or actions that he is unable to continue and wishes to withdraw from the Fraternity. It is the responsibility of the supervising brother to protect the probationer undergoing his second degree from serious injury.
 - vi. Immediately following the second degree, the new brother should get a hug from the supervising brother and told “Welcome Aboard”. The same should then be done by all others who participated in the ritual of the second degree.

- vii. A chapter is *strictly prohibited* from performing a second degree on such individuals and in such circumstances where the performance of the ritual would subject the probationer, or any other participant, to unreasonable danger or risk of physical injury. If a probationer suffers from a medical condition that would make the performance of a standard second degree ritual unreasonably dangerous, the chapter shall inform the Elders Chapter. Upon receipt of such notification, the Elders Chapter shall either proscribe an alternative ritual or enter an order exempting the probationer from the second degree of initiation.
- (c) The third degree of initiation shall be a tattoo stating "Proud Boy" or "Proud Boys". The *recommended* format for the tattoo is attached to these bylaws as Exhibit "B" and incorporated by reference herein. The third degree is meant to symbolize the commitment of a member to truly being a brother for life
- (d) No chapter shall add to or detract from the degrees of initiation set forth herein without the express written permission of the Elders Chapter. Permission for deviations shall only be granted in extraordinary circumstances.

Section 2. Fourth Degree of Initiation.

- (a) The fourth degree of initiation is purely honorary in nature. It symbolizes a formal recognition of a material sacrifice or service by a brother. The nature of such sacrifice or service may be for this Fraternity, for a brother in this Fraternity, or for the brother's country or community. Any requirement that a brother commit a violent or illegal act as a condition precedent to receiving a fourth degree is, by this bylaw, abolished.
- (b) Local chapters may award the fourth degree of initiation at their discretion, provided that their reasons for doing so are consistent with this Article VI, Section 2(a). No chapter may attempt to circumvent these bylaws by adopted a local requirement that any brother commit an illegal or violent act is a condition precedent to receiving the fourth degree.
- (c) As the founder of this fraternity, the fourth degree of initiation may be awarded *sua sponte* by Gavin McInnes at his discretion.

Section 3. Traditions

- (a) **Creed.** The Fraternity Creed is "I am a western chauvinist, and I refuse to apologize for creating the modern world"
- (b) **Colors.** The official fraternity colors shall be black and yellow.
- (c) **Crest.** The crest of the Fraternity shall be as shown on the document attached hereto as Exhibit "C" and incorporated by reference herein.
- (d) **Song.** The official song of the Fraternity is "Proud of Your Boy", with music by Alan Menken and lyrics by Howard Ashman.

- (e) **Dress Code.** The dress code for all brothers of the Fraternity shall be a black polo style shirt with two lines of yellow piping on the collar and the arms, long pants or jeans, and closed toe shoes or boots. Probationers shall dress in a “casual” manner, but may not wear a prohibited item.
- (f) **Prohibited Items.** No member of the Fraternity shall wear flip flops, fedoras, or cargo shorts at any meeting or function of the Fraternity.
- (g) **No Wanks.** No heterosexual brother of the Fraternity shall masturbate more than one time in any calendar month the act occurs during a consensual sexual contact with a female who is not a prostitute. All members shall abstain from pornography.
- (h) **Founder and Founder’s Day.** Gavin McInnes shall be recognized as the founder of our Fraternity. Each chapter shall observe Founder’s Day on the seventeenth (17th) day of July and shall hold a Founder’s Day celebration on or around that day in honor of our Founder, the Fraternity, and its ideals.

Article VII

Minimum Standards of Conduct

Section 1. Preamble.

Proud Boys is not a gang; it is a fraternity. Although the Elder’s Chapter has no right to discipline any member of the fraternity, it does have the right to set minimum standards of conduct for brothers in the fraternity. It also has the right to impose collective discipline on chapters that fail to discipline their members due to lack of proper vetting and/or poor Sharia Court procedures. Accordingly, the rules set forth in Article VII, Section 2 of these bylaws shall govern all chapters, members, and probationers of this fraternity.

Section 2. Proud Boy Law.

- (a) No member shall violate these bylaws.
- (b) No member shall assist another member in violating these bylaws.
- (c) No member shall engage in any conduct, or become a member of any group, that would make him ineligible for membership in this fraternity under Article V, Section 1 of these bylaws.
- (d) No member shall engage in sexual conduct with, or attempt to engage in sexual conduct, with the spouse, girlfriend, or boyfriend of any other member.
- (e) No member shall engage in any act of unlawful sexual contact or sexual misconduct.
- (f) No member shall cheat, steal from, or defraud any other member.

- (g) No member shall consume opiates, opioids, or crystalized methamphetamine. It is an exception to this bylaw if the brother is using the substance pursuant to a lawful prescription.
- (h) No member shall conspire with any other member to commit any criminal act against the laws of their state or country.
- (i) No member shall sell, use, or distribute illegal drugs at fraternity functions.
- (j) No member shall engage in any conduct that may reasonably be construed as an attack on another member's home, family, or employment.
- (k) No member shall unlawfully engage in violent conduct against a member or non-member. If a member is unlawfully attacked, that member and other members assisting him may only use such force as is reasonable and necessary under the circumstances to stop the other's unlawful use of force against the member who was attacked.
- (l) Members who are attending a fraternity function outside of their home state shall have a duty to attempt to retreat from any potentially violent situation, provided that they can do so without subjecting themselves to further danger.

Article VIII Miscellaneous

Section 1. Fiscal Year.

The fiscal year of the Company shall be from January 1 – December 31.

Section 2. Amendments.

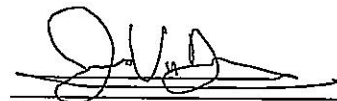
These Bylaws may be amended or supplemented by 3/4 vote of all members of the Elders Chapter then in office

Section 3. "10th Amendment" Provision.

Any matter not addressed by these bylaws is, by default, left to the discretion of the individual chapters with the intention that they operate as autonomously as possible.

IT IS HEREBY RESOLVED that, on the 25th day of November, 2018, these bylaws were ADOPTED with the votes tallied as follows;

86 - Aye
35 - Nay



Attorney for Proud Boys International LLC