

**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 ONGOING DISCOVERY DISPUTE
CONCERNING MATERIAL BEARING ON PENDING BAIL MOTION**

Defendant Nordean, through his counsel, files this notice to alert the Court to an ongoing discovery dispute that materially bears on his pending motion to reopen bail proceedings.

Seven months ago, in January, the government conducted a search of the home of Hendrick “Eddie” Block, one of the protesters who walked from the Washington Monument to the Capitol on January 6 with Nordean and others. As they made their way to the Capitol, Block continuously filmed the group with a GoPro camera mounted on his mobile phone. During its January search of his home, the government seized Block’s mobile phone, hard drives, and other devices.

Early on in this matter, the government produced to the defense one of Block's video clips. However, although Block began filming near the Washington Monument, the clip originally produced to Nordean only featured scenes in close proximity to the Capitol Building. Nordean's counsel subsequently came to learn that the Block video produced by the government was incomplete. Specifically, he learned that Block likely filmed a moment closer to the Washington Monument where Nordean announces to the group the purpose of their walk toward the Capitol.

The purpose: “We’re going to go to the Capitol; make a presence, guys; hang out for a second; then we’re going to go back to the [Trump] rally, okay? Every chance you get, eat and drink.” Additional evidence corroborates this statement.

Evidence depicts Block filming Nordean stating the group’s “plan” for the day. On August 17, Nordean asked the government to produce any Block-made films from January 6 in its possession, custody or control that had not been provided. He specifically asked the government to perform the following search:

Please produce all “prism” program videos from 1/6/21 on the mobile phone seized from Hendrick “Eddie” Block; please search prism on the phone and the GoPro app for those videos and produce them. Please also search the external hard drive the government seized from Block, searching by the date January 6 and as well as in folders named “DC” or “new media,” and please produce all January 6 videos found there.

On August 20, the government replied, “We have been in contact with the FBI, and we have identified other Block videos, but as of now not the video [where Nordean says the purpose of going to the Capitol is to “hang out for a second” and turn around]. . . We will continue to look for any other videos and will produce any that we find.”

On August 24, the government made a production of 107 photo and video files Block made on January 6 but which had not been produced to date. However, the government’s discovery letter stated that the photos and videos “were recovered from the iPhone 12 of Eddie Block.” Although Nordean had requested that the government search an external hard drive seized from Block, the government’s production did not indicate whether the government searched that device. It did not indicate whether the government had searched for GoPro camera videos. The government’s August 24 production did not include the videos Block made of Nordean and others near the Washington Monument.

On August 25, Nordean asked the government why the production did not reference

Block's external hard drive. "For the avoidance of doubt," Nordean asked the government to confirm this week it had performed the following search:

On top of Block's cell phone sits a GoPro action camera. On 1/6, it was continuously recording, even when Block lost mobile service. The video is recorded on an SD card in 4 MB clips. These are long 30-40 minute clips, not like the short ones you produced last night.

USG seized two or more external hard drives from Block. They are wrapped in an orange color. On one of the hard drives is a folder with the GoPro videos, running from the Washington Monument to the Capitol.

Those folders contain *Brady* evidence in this case. Please produce all 1/6 videos filmed by Block in those folders. Please confirm this week you have performed that search and please produce the videos.

Nordean advises the Court of these developments to preserve the record in case the government does not produce the evidence before a decision is made on his pending motion to reopen bail proceedings.

Dated: August 25, 2021

Respectfully submitted,

/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

Nicholas D. Smith, D.C. Bar No. 1029802
David B. Smith, PLLC
7 East 20th Street, Suite 4R
New York, NY 10003
(917) 722-1096
nds@davidbsmithpllc.com

Counsel to Ethan Nordean

Certificate of Service

I hereby certify that on the 25th day of August, 2021, I filed the foregoing notice with the Clerk of Court using the CM/ECF system using the SEALED function. Copies of this notice were emailed to counsel of record.

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