

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

**UNITED STATES OF AMERICA**

**v.**

**ETHAN NORDEAN,**

**Defendant.**

:  
:  
:  
:  
:  
:  
:

**Case Number 21-cr-175-1 (TJK)**

**GOVERNMENT’S RESPONSE TO DEFENDANT’S NOTICE OF SEPTEMBER 15, 2021**

The government hereby responds to Defendant Nordean’s Notice of Additional Unproduced Brady Material, filed on September 15, 2021 (ECF 166). Defendant’s filing relates to certain digital devices and evidence obtained by the government during the investigation underlying this case. This filing describes the government’s efforts to examine that evidence and, as appropriate, to produce it in discovery to defendants in this and other cases.

Shortly after January 6, 2021, the government identified a video published online that depicted events from that day in Washington, D.C. The video was recovered from a publicly available website by the Federal Bureau of Investigation (FBI). The video was taken by Eddie Block, who self-identifies as a member of the Proud Boys organization, and who was present in Washington, D.C. on January 6, 2021. A review of the video indicates that Block recorded events on that day using several recording devices, and that he live-streamed at least some of these recordings. (The portion of the video that was live streamed and made publicly available is hereafter referred to as the “Block Live Stream Video”).

The Block Live Stream Video is approximately 100 minutes and covers a period from approximately 11:17 a.m. to 12:57 p.m. on January 6. A copy of the Block Live Stream Video was produced to Nordean’s counsel on March 26, 2021, to defendants Joseph Biggs and Charles Donohoe’s counsel on March 29, 2021, and to defendant Zachary Rehl’s counsel on April 13,

2021. As noted by the government during the hearing on September 13, 2021, the Block Live Stream Video contains the video clip submitted by Nordean on September 7, 2021, entitled "Block Video B."

On January 22, 2021, pursuant to a search warrant, the FBI conducted a search of the residence of Eddie Block. During the search, FBI agents recovered 22 devices (including video cameras, computers, and cell phones, among other items) that are capable of holding electronic evidence. At least 11 of the devices are currently assessed by the FBI as requiring further analysis to identify evidence relevant to this case and the events of January 6, 2021. Those 11 devices contain approximately 9 terabytes of data. Until August 17, 2021, however, no relevant video footage or other media had been identified in the Block devices by the FBI. Indeed, prior to August 17, 2021, FBI had advised prosecutors that no additional footage beyond the Block Live Stream Video had been recovered from the devices.

On August 17, 2021, the government received the following information and request from counsel for defendant Nordean:

We believe the government has a number of January 6 videos made by Block containing Brady material that have not been produced. For the avoidance of doubt, 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.

(emphasis added). This information and request was immediately transmitted to the FBI, which, upon further examination of the mobile phone referenced by counsel, recovered 107 images and videos that the government then produced to counsel on August 24.

The following day, Nordean's counsel renewed his request for a search of Block's external hard drives. Nordean's counsel also requested that the government look for videos stored on an SD card:

Please confirm this week you have performed the following search. On top of Block's cell phone sits a **Go Pro 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 Go Pro videos, running from the Washington Monument to the Capitol.

(emphasis added). Based on this information from Nordean's counsel, the government directed FBI personnel to prioritize the search of the SD Cards recovered during the search.<sup>1</sup> The FBI did so, and the FBI located relevant files that were recorded or created on Block's GoPro on January 6. Based on this search, an additional 105 files were produced to counsel on August 31 and September 2.<sup>2</sup> Based on a review of the materials produced to date, undersigned counsel believes that defendants in this case now have footage recorded by the GoPro device of Eddie Block from at least approximately 9:30 a.m. (prior to Block's arrival at the Washington Monument) through after 1:00 p.m. when Block entered Capitol grounds.

---

<sup>1</sup> Given their smaller size relative to the external hard drives, the decision to prioritize the SD Cards (which can be inserted into the GoPro device) was made to identify potentially relevant media on an expedited timeline. As discussed herein, *infra*, the FBI's forensic review of the external hard drives is ongoing.

<sup>2</sup> One newly identified file scheduled for production on August 31 was inadvertently omitted from the production on August 31 and September 2. Specifically, on September 15, undersigned counsel discovered a potential gap in the sequencing of the GoPro files recovered from the SD Cards. Undersigned counsel identified the potential gap to FBI, and FBI responded by providing the omitted file on September 16. The file was produced to defense counsel the same day. Undersigned counsel notes that a substantively identical version of the recording was produced on August 31, 2021, in a different file format. Accordingly, defense counsel received the substance of the video on August 31, 2021.

In his Notice, Defendant Nordean notes that the government has not yet produced any files from the external hard drives recovered from the search of Block's residence. There were three such external hard drives recovered, and they each contain hundreds of thousands of files. As the government has repeatedly communicated to defense counsel, the FBI has not yet identified media from January 6 on these hard drives.

Delays in searching electronic evidence can result from the size and structure of such devices, which essentially function as a giant warehouse of electronic data that is stored in whatever manner (e.g., logical or illogical; password protected or not) the user may have elected. The FBI follows strict protocols for forensic processing, review, and analysis of electronic evidence. These protocols not only preserve chain-of-custody, but also serve to ensure the authenticity of evidence. These protocols include creating forensic copies of the evidence, hashing every file, and transferring the files to specialized forensics networks to ensure protection from malware and to allow controlled access to investigators. The FBI's efforts are resource-intensive and time-consuming in part because its process is designed to ensure files are not degraded, corrupted, or compromised, and that necessary scans for files that may have been deleted or hidden on devices are identified and recovered. As the government has repeatedly advised defense counsel, the FBI's review of the external hard drives is ongoing and not yet complete. Forensic review timelines are also dependent on the number of FBI forensic examiners, which is finite, and limitations on bandwidth, network, and computing power. In short, these processes take time, even where—as here—the review of certain evidence is prioritized. With respect to the FBI's ongoing review of the Block devices, as soon as any discoverable files are available, the government will provide them immediately.

Contrary to the suggestion in defendant's Notice, the government's discovery productions in response to counsel's requests in this case have been substantial and diligent. While the government would have preferred to identify, review, and produce video and other media contained within Block's devices sooner than it did, the government's diligence in providing substantial amounts of discovery in this case and its responsiveness to counsel's specific requests—including the requests regarding the Block devices—are well documented. These efforts, including efforts to respond to specific requests from defense counsel, will continue. As the government noted in its filing on May 13, 2021, given the size and scope of potentially discoverable information, "there can be little doubt that evidence, including some evidence arguably 'favorable' to the defendants, will continue to be produced in the leadup to trial." ECF 84 at \*2. The government will continue to produce evidence as expeditiously as possible, and the government continues to welcome input from the defendants on any areas that it would like the government to prioritize in its discovery productions.

Respectfully submitted,

CHANNING D. PHILLIPS  
Acting United States Attorney  
DC Bar No. 415793

By: /s/ Jason McCullough  
JASON B.A. MCCULLOUGH  
D.C. Bar No. 998006; NY Bar No. 4544953  
LUKE M. JONES  
VA Bar No. 75053  
Assistant United States Attorneys  
555 4th Street, N.W.  
Washington, D.C. 20530  
(202) 252-7233  
jason.mccullough2@usdoj.gov

Date: September 20, 2021