

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

UNITED STATES OF AMERICA

v.

ETHAN NORDEAN,

Defendant.

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Case No. 21-CR-175-1 (TJK)

**THE UNITED STATES' RESPONSE TO NORDEAN'S
NOTICE OF GOVERNMENT'S ALLEGED VIOLATION OF THE
DUE PROCESS PROTECTIONS ACT AND LOCAL CRIMINAL RULE 5.1**

The government has complied with and will continue to comply with the Due Process Protections Act and Local Criminal Rule 5.1. Defendant Nordean's notice alleging a violation of those provisions (ECF 79) seeks no relief, and no relief or further action by the Court is necessary or appropriate. In compliance with the Court's order on May 4, 2021, the government provides this response to the notice.

As an initial matter, to the extent the notice suggests that the Court should reconsider the defendant's pre-trial detention, the Bail Reform Act provides a clear mechanism for seeking such relief. Specifically, the BRA permits the reopening of a detention hearing when new information has a "material bearing on the issue" as to whether a defendant should be subject to detention. 18 U.S.C. § 3142(f). The defendant has not sought to reopen the hearing, and there is no reason for the Court to consider doing so here. As explained below, the information provided in the notice does not have a "material bearing on the issue" of detention and as such does not provide a basis to reopen the detention hearing.

In addition, the government has engaged and continues to engage in discovery productions with diligence and in good faith. Between the unsealing of the superseding indictment on March 19

and the detention hearing on April 6, the government made a series of discovery productions, which included 1,500 pages of Telegram messages, 43 pages of text messages, and several hours of video footage that depicted the defendants in and around the Capitol on January 6. Productions have continued since the detention hearing. These ongoing efforts run counter to the allegations in defendant Nordean's notice. Indeed, given that the investigation and prosecution of the events at the Capitol is one of the largest in American history, both in terms of the nature and volume of the evidence and the number of defendants prosecuted, 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. The government will continue to provide such information, along with all other discoverable material, as quickly as possible to ensure compliance with its obligations.

A. The Government is Actively Complying with its Disclosure Obligations

Pursuant to Local Criminal Rule 5.1(a), the government shall disclose all information "favorable to an accused" that is "material either to guilt or to punishment" and that is known to the government. LCrR 5.1(a) (quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). The rule further provides that the government "shall make good-faith efforts to disclose such information to the defense as soon as reasonably possible after its existence is known." *Id.* The government has complied with its obligations here. As noted above, the government produced over 1,500 pages of Telegram chat threads to the defendant prior to the detention hearing. On April 29, 2021, the government produced to defendant Nordean eleven (11) strings of text messages, totaling over 5,000 pages, that contained the terms "Ministry of Self-Defense" or "MOSD," and that were recovered from defendant Nordean's phone.

Thereafter, on April 30, 2021, a full copy of an extraction from defendant Nordean's phone was produced to Nordean's counsel. That production included approximately 1,172 Telegram message strings (totaling over 1.3 million messages). The extracted text of the Telegram messages

in Nordean's phone runs over 204,000 pages when printed in .pdf format, which does not include any of the images, audio, or video files that are associated with the message strings. In addition to the Telegram messages, the phone contains hundreds of other communications using other platforms, including other encrypted platforms such as Signal and WhatsApp. The government's review of these message strings, hundreds of which contained communications between December 2020 and January 2021, is ongoing, and all of this information is in defendant Nordean's possession.

B. Far from Being Exculpatory, the Telegram Messages Produced to Defendant Contain Additional Evidence of Criminal Conduct

Defendant Nordean alleges that the Telegram messages disclosed to him contain exculpatory information, specifically that they contain evidence that (1) defendant Nordean had no connection to Dominic Pezzola (who is separately indicted, and whom the government has identified as a coconspirator) (ECF 79 at *3); (2) indicates that the attack on the Capitol was not planned (*Id.* at *3-5); and (3) defendant Nordean had foresworn politics, rallying, and marching on capitol buildings (*Id.* at *5-7). Far from being exculpatory, when placed in context, these and other Telegram messages produced to defendant Nordean contain additional evidence of the criminal conduct.

On December 29, 2020, the Proud Boys Chairman announced the leadership and structure of the Ministry of Self-Defense. The leadership and structure included an "upper tier leadership" of six people, which included Proud Boys Chairman, Nordean, Biggs, and Rehl. Later that evening, Donohoe explained the structure with reference to the upcoming trip to Washington, D.C. Among other things, Donohoe explained that the MOSD was a "special chapter" within the organization. The "special chapter" was not to have any interaction with other Proud Boys attending the event.

Other Proud Boys attending the event were to coordinate with their own chapters and “do whatever you guys want.”¹

A video call was held with prospective members of the MOSD on December 30, 2020. The self-proclaimed leadership of the MOSD introduced the chapter and explained the expectations, including the strict chain of command. As one member (“Person-1”) of the upper tier leadership explained:

[Directions] could come from any single person that you see on your screen right now²...but the one thing that everyone has to understand, is, yes, you might be getting told things from different people, but it’s all information from the same plan. [Joe] Biggs is not going to tell you something different than I’m gonna tell you. [Proud Boys Chairman] is not going to tell you something different than Zach [Rehl] is going to tell you. It’s all one operational plan, so don’t get hung up on the delivery. The information is all the same.

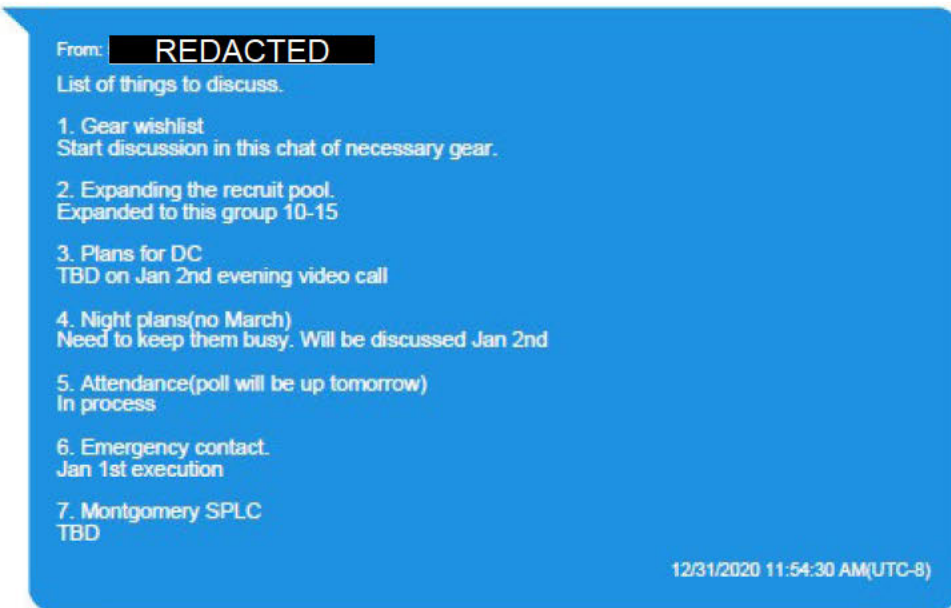
Co-defendant Rehl explained that the operation in Washington, D.C. did not include plans for an evening march.

It’s not gonna be the same thing. We’re not gonna be doing like a proud boy fuckin’ 8 o’clock at night march and flexing our [arms] and shit. So, you guys gotta understand that. We’re not doing that this time. We’re doing a completely different operation. And there’s gonna be a lot of contingencies and plans that are laid out. And there’s gonna be teams that are going to be put together.

The next day, on December 31, 2020, Proud Boys Chairman posted a “list of things to discuss,” which indicated that plans for D.C. were “TBD on Jan 2nd evening video call” and that there was “no March” to be planned for the evenings.

¹ The government continues to investigate whether this separation was strictly enforced on January 6.

² Nordean was not visible on the screen during the video call; however, Person-2 was visible on the screen at the time the statement was made.



Source Info:
e577462c3126f65117148d47ebb1077cdcd3691e_files_full.zip/private/var/mobile/Containers/Shared/AppGroup/237A30D0-FE51-47D7-84D1-511A2D9881FB/telegram-data/account-8138281883108468013/postbox/db/db_sqlite : 0x2F53B3F2 (Size: 873086976 bytes)

On January 4, prior to his arrival in Washington, D.C., Proud Boys Chairman communicated his expectation that he would be arrested upon entering Washington, D.C. Shortly thereafter, UCC-1 wrote, “We should tell our guys and double down.” Another member of MOSD leadership (“Person-2”) subsequently wrote, “I say fuck it. Let’s set it off[.]” Person-2 then posted “J20” and then “Drag them out by the fucking hair” and then “If they steal it[.]”

Notably, Person-1 and Person-2 were the same participants in the Telegram message chats on January 6 who expressed their hope that the “normies” would “burn that city to ash” and suggested that those on the ground should “turn them loose.” In addition, Person-2 was the individual who posted an alert in the Telegram messages: “Storming the Capitol now” and directed participants to “Get there.”

Finally, at 2:28 p.m. on January 6, shortly after the Capitol building was breached, a participant in a separate message string directed a message at the Proud Boys Chairman, writing “I told you we should have rushed the police line on the 12th...This could have been us.” Proud

Boys Chairman responded, “This is so much better[.]” Proud Boys Chairman then wrote, “Make no mistake...” and then “We did this...”

1. Dominic Pezzola’s Membership in the MOSD

In his notice at *3-4, the Defendant suggests that members of the conspiracy were unaware of or unfamiliar with Dominic Pezzola. In fact, Pezzola is included as a participant in a Telegram message string for the Ministry of Self Defense. Also, as described in the government’s detention memorandum for co-defendant Donohoe, Donohoe was seen carrying a riot shield with Pezzola around the same time Donohoe reported in the Telegram messages, “Got a riot shield.” Members in the Telegram messages, including Donohoe, recognized Pezzola as a member of the group prior to media reporting. Moreover, in the Telegram messages recently produced to Defendant, Person-2 and others shared links to online fundraisers for Pezzola following his arrest.

2. Commentary About Joseph Biggs’ Affidavit

The Defendant points to a self-serving statement in response to news of the arrest of co-defendant Joseph Biggs on January 20, 2021. The statement was actually made by co-defendant Rehl and then later reposted by Nordean. Specifically, at 1:37 p.m. on January 20, co-defendant Rehl posted the affidavit with the comment “This FBI affidavit for Biggs, its of course a steaming pile of dog shit that tries to make it seem like the capital shit was planned[.]” Nordean responded by directing everyone to keep quiet. Specifically, about 30 minutes later, Nordean responded, “What the fuck” and then “Everyone needs to just shut the fuck up” and then “There’s way too many videos and pictures and words being shared[.]” Rehl responded, “Yeah, exactly.”

Nordean later posted co-defendant Rehl’s statement, verbatim, in a different Telegram message string. However, before reposting Rehl’s message, Nordean provided his own commentary: “They’re making Biggs look like he was leading the crew into the capital. At this point everyone just needs to stop talking about shit[.]” Nordean’s commentary reveals that his

objection to Biggs' Complaint was the suggestion that Biggs had "led the crew into" (*i.e.*, inside of) the Capitol building. Moreover, these comments were made weeks after the event, when discussion of "sedition" and "seditious conspiracy" had flooded the media.

Statements made contemporaneous to the event, however, revealed a plan to storm the Capitol and to let the crowd loose, *e.g.*:

UCC-1: I want to see thousands of normies burn that city to ash today
 Person-2: Would be epic
 UCC-1: The state is the enemy of the people
 Person-2: We are the people
 UCC-1: Fuck yea
 Person-1: God let it happen . . . I will settle with seeing them smash some pigs to dust
 Person-2: Fuck these commie traitors
 Person-1: It's going to happen. These normiecons have no adrenaline control . . . They are like a pack of wild dogs
 DONOHOE: I'm leaving with a crew of about 15 at 0830 to hoof it to the monument no colors
 Person-2: Fuck it let them loose
 Person-1: I agree . . . They went too far when the [sic] arrested [Proud Boys Chairman] as a scare tactic

Participants in the group celebrated their collective accomplishment (*e.g.*, Rehl: "I'm proud as fuck at what we accomplished yesterday") and the decision to forego colors at the rally (*e.g.*, Donohoe: "Thank God we were not wearing colors. We should never wear colors ever again for any event"). Participants in the group also revealed that disruption of the Electoral College certification was at least one goal of the conspiracy (*e.g.*, Person-2: "We failed. The house is meeting again." and "We accomplished our mission today. Even if they helped.").

Moreover, even in sharing his reaction to the Biggs' affidavit on January 20, 2021, the defendant appeared to acknowledge his responsibility for exposing others to potential criminal consequences. Specifically, shortly after posting the link to the Biggs affidavit, defendant Nordean posted a series of messages that read:

Alright I'm gunna say it. FUCK TRUMP! Fuck him more than Biden. I've followed this guy for 4 years and given everything and lost it all. Yes he woke us up, but he led us to believe some great justice was upon us...and it never happened, *now I've got some of my good friends and myself facing jail time cuz we followed this guys lead and never questioned it.* We are now and always have been on our own. So glad he was able to pardon a bunch of degenerates as his last move and shit on us on the way out. Fuck you trump you left us on [t]he battle field bloody and alone.

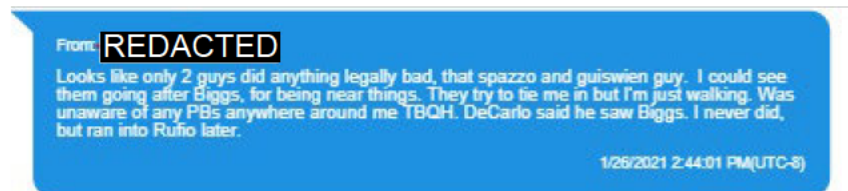
(emphasis added).

3. Rehl's Comment About Leading "the Trump rally to the Capit[o]l "

Defendant Nordean points to another statement by co-defendant Rehl in which Rehl posted a message that read, "They were trying to make it out like we led the Trump rally to the capital, which obviously couldn't be further from the truth." Rehl's statement was written in response to a media report that featured video of the Proud Boys at the Washington Monument and the food trucks. Rehl states, in effect, that the Proud Boys had not "led the Trump rally to the capital[.]" Rehl's statement is unremarkable. As the government has repeatedly noted and specifically alleged, the Proud Boys under the defendants' command did not attend the "Trump rally." Rather, they marched around the U.S. Capitol and specifically marched to the First Street pedestrian gate while former President Trump was still speaking.

4. Nicholas Ochs' Commentary About A Media Outlet's Investigative Journalism

The Defendant also highlights a series of statements by Nicholas Ochs concerning a media outlet's video report on the Proud Boys involvement at the Capitol.



At the time of his statements, Ochs had been charged with a misdemeanor charge of unlawful entry into the U.S. Capitol. Notwithstanding his apparent belief that he had not done anything “legally bad,” a federal grand jury later approved an indictment charging Ochs along with Nicholas DeCarlo, with a conspiracy to obstruct Congress and misdemeanor destruction of federal property for defacing the Memorial Door of the U.S. Capitol. *United States v. Nicholas DeCarlo and Nicholas Ochs*, 21-cr-73 (BAH). In other words, Ochs’ self-serving assessment of what constitutes something “legally bad” is ill-informed and unpersuasive.

5. Nordean “Forswearing” Rallying

The Defendant claimed that the message strings “show repeated comments from Nordean and others forswearing (1) politics generally, (2) rallying, and (3) ‘marching on capital buildings[.]’”³ Based on the plain text of defendant’s own examples in his notice, defendant Nordean did not forswear rallying, he merely indicated that he had agreed to put a three-month pause on rallies. In fact, the defendant’s apparent agreement to do so—if it was to be honored—was both reluctant and temporary. At least as early as January 12, 2021, individuals began to advocate for a “stand down” for rallies through May 1. Far from expressing agreement, defendant Nordean emphasized that he “would not be sitting on [his] ass waiting for the end” but would come up with a “game plan” for the year in a series of messages posted in response:

Nordean: Guys who don’t rally creating rules for those who do. We will handle the optics and future rallies, if we continue them or if not. It will not be the decision of those who have never set foot on the ground.

Participant: If they do lol, u won’t, shit is real now, people our going to go to jail and be charged with sedition, rally it up! Punching purple haired faggots, brave and stunning

³ The government notes that rallies and participation in the political process, including running for public office, is not unlawful.

- Nordean: Ok so let's let the government take our lives away and do nothing...stunning and Brave
- Nordean: They're coming for you no matter what you [guys]. Wake the hell up. I'm not gunna be sitting on my ass waiting for the end
- Nordean: I'm gunna press on with some smart level headed non emotional guys and create a game plan for how to approach this year, we aren't gunna stop getting involved in the community, especially with the momentum we have and if your worried about getting arrested and think that doing nothing will remove that threat you're fooling yourselves. I've had this conversation with guys like this for 3 years and every year you all get worked up and wanna hide. We can be smarter, train, plan etc...but we will never stop. Get on board or move aside.

During this same time period, defendant Nordean was making plans to meet with other members of the Proud Boys in the Pacific Northwest to discuss future plans, including “Bulk armor deals” and “Uniform change (at rally's) [sic]”. Writing on January 20, 2021, the Defendant set out an agenda for a proposed meeting on February 6 and noted that “we are on the brink of absolute war”:

From: 573782641 Rufio Panman (owner)

OFFICERS MEET FEB 6th LEAVENWORTH, WA

This meeting we will go over:

Secure Vetting

Communications

Bugout bags

SHTF safe locations

MOSD (ministry of self defense)

Bulk armor deals

6month-1yr plans

Uniform change (at rally's)

There will be more to discuss that I'm not going to put up here for obvious reasons. This is a very fragile time for the club, but we must be more vigilant than ever, not just for those who look up to us in this club, but for our. Oh try as well. We are on the brink of absolute war...uhuru

I figure each chapter could bring food items and we can cook our own food and maybe go out for drinks on the town. (Covid willing) it's looking to be about \$2,000-\$3,000 total for a cabin. Which we could easily split. I'll have something up by tonight.

1/20/2021 8:14:22 AM(UTC-8)

On January 21, the defendant proposed to the group an idea for bulk orders of uniforms that would include “Med kits, boots, pants, shirts (stab proof) vests, gloves(cut proof) masks etc[.]”

On January 27, the defendant again listed the agenda items for the officer's meeting as: "Pictures and video of activity[,] Setting up regional training every 3 months[,] Regional bulk orders of gear[,] Communications[,] Rally's[,] Uniform[,] SHTF protocol [Sh** Hits The Fan protocol]."

Indeed, one of the examples cited by the defendant is made in the context of a discussion of the possibility of future rallies. The defendant included a post from co-defendant Donohoe for the proposition that rallies would end (*i.e.*, "Almost none of my guys want to do rallies now.") The defendant did not include Donohoe's message that immediately preceded it, which puts Donohoe's statement in context—*i.e.*, that the only people who might still rally were those who were in the Ministry of Self Defense.



Defendant Nordean responded to Donohoe by writing, "Yeah, this is just to organize and prepare for when we do decide to get active again. At the very least there's lots of good excuses to just get out and do meet n greets with the public, raise money, community service, security for events etc...but we can work on an effective process so we look more organized and have properly vetted members who are representing the club[.]"

The suggestion that defendant Nordean had foresworn politics is equally dubious. On January 21, 2021, defendant Nordean had an exchange with UCC-1 in which defendant Nordean bemoaned that the “Patriot movement is full of whiney [] virtue signaling [people] who hate violence[.]” UCC-1 noted that “there’s some of us who simply will never quit, ever. Maybe I’m just insane, but I will fight until my dying breath no matter what situation we’re in, and I think every man in this room will too . . . And that [is] something our founding fathers would be proud to see[.]” Defendant Nordean then responded, in part, “I’m gunna take over a small city in Florida and run it. I’ll be the mayor and my boys will be in city council.”

Finally, defendant’s assertion that he forswore marching on capitol buildings is out of context. Nordean’s message asserting that “PROUD BOYS ARE NOT MARCHING ON CAPITAL BUILDINGS” was actually the reposting of a message posted earlier in the day by another member. That post followed an incident in which several Proud Boys appeared at a protest at the Richmond Capitol on January 18, 2021. Notably, the defendant asserts in his post that the Proud Boys appearance at the Ohio Capitol was a “false flag” operation, *i.e.*, the Proud Boys were not there. Tellingly, the defendant’s post about not marching on Capitol buildings was made on January 21—the day after the inauguration. Particularly in light his other messages concerning plans for “bulk orders of gear” and uniforms at rallies, the defendant’s message on January 21 is properly read as an attempt to distance the Proud Boys from alleged conduct that would undoubtedly lead to more scrutiny.

CONCLUSION

The defendant’s notice is a false flag. The government has fully complied with its discovery obligations and there is no basis to reconsider the detention decision. The notice seeks no relief because defendant is entitled to no relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of this pleading to be served upon defense counsel via the Electronic Case Filing (ECF) system, on May 13, 2021.

By:

/s/ Jason McCullough

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