

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	Case No. 1:21-cr-175
v.	)	
	)	<b>Judge Timothy J. Kelly</b>
CHARLES DONOHOE,	)	
	)	
Defendant.	)	

**DEFENDANT DONOHOE’S REPLY TO THE GOVERNMENT’S OPPOSITION TO  
DEFENDANT’S MOTION FOR REVOCATION OF DETENTION ORDER**

Now comes the Defendant, Charles Donohoe by and through counsel and files this reply in response to the Government’s opposition to his Motion for Revocation of Detention Order, ECF No. 81. In support of his motion, Mr. Donohoe submits the following:

A. Background

The factual and procedural background of this case are recited in Mr. Donohoe’s Motion for Revocation of Detention Order. ECF 81. On May 5, 2021, a status conference was held. At the status conference, the Court ordered the Government to file a response to Mr. Donohoe’s motion by May 17, 2021 and the Defendant to file a Reply by May 24, 2021. On May 17, 2021, the Government filed a response opposing the revocation of the detention order. ECF 87.

B. Argument

1. The Defendant’s Role in the Offense

In their Response, the Government posts several Telegram messages that they contend support their theory that Mr. Donohoe intended to “create mayhem and disrupt the proceedings at the Capitol.” ECF 87 The Telegram messages do not support this theory. Prior to January 6, there were extensive conversations between members of the Telegram channel, and the upcoming rally was discussed. However, there were no conversations concerning any plans to cause an insurrection at the Capitol. The fact that the leader of the Proud Boys announced the leadership of a new chapter is no evidence that Mr. Donohoe intended to attack the Capitol. Notably, Mr. Donohoe is not named as one of the leaders. Mr. Donohoe did post the message pasted in the Government’s response (ECF 87 at 4), but the message does not mention any intent to commit acts of violence or plan to storm the Capitol. The quote from the video call on December 30 concerning the chain of command (ECF 87 at 4-5) did not come from Mr. Donohoe. The list of “things to discuss” posted in Telegram on December 31 (ECF 87 at 5) came from the Proud Boy’s Chairman, not Mr. Donohoe. Co-defendant Biggs, not Mr. Donohoe posted the statement on January 5 telling members not to get into any trouble. *Id.* The “intelligence” posted by Donohoe on January 4, appears to be a copied and pasted tweet sent out by a reporter, Barbara Starr. *Id.* With respect to the creation of the new channel on Telegram, the Government has provided no messages from Mr. Donohoe or anyone else directing members to commit acts of violence or invade the Capitol on January 6.

In support of their argument, the Government emphasizes the Telegram messages not to wear colors. However, this plan was not a secret, that was only uncovered when the Government gained access to the Telegram messages after January 6. An article in the

Washingtonian dated December 31, 2020 reported that the Proud Boys did not intend to wear their traditional colors on January 6.<sup>1</sup> In the article, the decision not to wear colors is explained - the Proud Boys wanted to blend in with the antifascist groups and counterprotesters for self-protection. The article recounts that the Proud Boys had been involved in violence at previous gatherings, specifically that four members of the Proud Boys had been stabbed at a prior rally. This fits with the dialogue in the Telegram chats. There is no discussion about going incognito to avoid detection while storming the Capitol.

On January 6, Mr. Donohoe forwarded messages from the Proud Boys leadership to the group about where to meet and not to wear colors. He does say that he “had the keys” until Nordean and Rehl arrived, but there is no evidence that he was in an active leadership role or involved in any discussion with the group concerning committing acts of violence or a plan to take over the Capitol.

When Mr. Donohoe walked past the barriers, they had already been trampled by others. There is no evidence that the trampling happened at the direction of Mr. Donohoe or that he had anything to do with their destruction. Most of the Telegram discussions recounted by the Government in their Response involve others, not Mr. Donohoe. The comment attributed to Mr. Donohoe “we’re trying,” does not necessarily relate to the direction of UCC-1 to “push inside!” In fact, Mr. Donohoe never went inside the Capitol, and there is no evidence that he tried to do so. Looking at the Telegram messages, it is difficult to determine which message Mr. Donohoe is responding to. The responses are not

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<sup>1</sup> [Proud Boys Say They’ll “Be Incognito” During January 6 Trump Rallies in DC](https://www.washingtonian.com/2020/12/31/proud-boys-say-theyll-be-incognito-during-january-6-trump-rallies-in-dc/), The Washingtonian (accessed May 21, 2021)

nested in a way that shows conversational threads, so it is anyone's guess as to which post the "we're trying" comment was directed.

With respect to the shield utilized by Dominic Pezzola to break a window at the Capitol, there is no evidence that Mr. Donohoe had anything to do with how Pezzola obtained it or how he used it later. Mr. Donohoe is on camera for a few seconds with his hand on the shield. There is no video showing Mr. Donohoe helping Pezzola transport the shield to the west terrace of the Capitol building. The video evidence shows the two men in different places and when the crowd pushes up the stairs, they are not together and they go in separate directions. The presence of "Milkshake" does not change this. The Government has not put forth any evidence of communication between Mr. Donohoe and Milkshake, much less a plan devised by the two men to do anything on January 6.

As stated before, Mr. Donohoe's braggadocio after the events of January 6 was just that. Caught up in the moment, Mr. Donohoe exaggerated his actions. He did not come in with a "second force." There is no evidence that "he stood on the line the entire time and pushed it twice." Despite his statements concerning the Telegram channel after January 6, he did not in fact "nuke" it.

## 2. Nature and Circumstances of the Offenses Charged

In their Response, the Government discusses the messages on the Telegram message group regarding an alleged plan to storm the Capitol. ECF 87 at 10-12. Mr. Donohoe is not a contributor to the discussions that took place prior to January 6. As discussed earlier, it is difficult to determine what he was responding to when he posted on January 6, "We are

trying.” Mr. Donohoe’s braggadocio after January 6 should not be regarded as evidence of his participation or knowledge of a plan to invade the Capitol.

There is no video of Donohoe leading a charge on the Capitol on January 6. The brief video of him walking with Pezzola and holding the shield does not support the argument that Mr. Donohoe provided any assistance which enabled Pezzola to carry out the ultimate action of using the shield to break a window at the Capitol. Other than that brief video, Mr. Donohoe is never seen that close to Pezzola again.

The push up the stairs of the West Terrace took Mr. Donohoe with the crowd. He did not lead the push, nor did he actively push anyone or confront any security officers. The fact that he had a gaiter on his face could also have been due to the mace and pepper spray in the air. When Mr. Donohoe reached the top of the stairs, he exited to the left and left the Capitol.

With respect to Mr. Donohoe’s Telegram posts about incoming law enforcement, a more reasonable interpretation is that Donohoe was letting others know so that they would cease their destructive behavior and leave the Capitol. He was not participating in the attack and was trying to dissuade others from continuing to do so. If he were in fact a leader with authority over the members, why did he not order them to stop? He did not order them to stop because he had no such authority. Mr. Donohoe did what he could to try to persuade others to cease their behavior, including forwarding Vice President Pence’s message asking everyone to leave the Capitol.

## 2. The Weight of the Evidence

The Government has provided video and Telegram chats, none of which prove that Mr. Donohoe was involved in the planning of the attack on the Capitol on January 6.

3. History and Characteristics of the Defendant

Mr. Donohoe has provided the Court with extensive evidence concerning his military service, his ties to the community and his lack of criminal history. The Government urges the Court to find that Mr. Donohoe's Telegram messages and actions on January 6 cancel 33 years of good behavior. To suggest that if Mr. Donohoe were to be released on home incarceration with electronic monitoring, he would somehow be able to plan and carry out an overthrow of the government is not reasonable, given his personal history and the very restrictive conditions of release that have been recommended.

4. Nature and Seriousness of the Danger Posed by Release

Mr. Donohoe is not a threat to an individual or the community. He does not have the "wherewithal to help plan and lead a large group of men in a violent attack." ECF 87 at 15. There is no evidence that he helped to plan the events of Jan 6, and based on his history and characteristics, there is certainly no evidence that he could or would do this while on pretrial release. The two Telegram messages in the Government's Response are not evidence that he "remains committed to efforts resist." ECF 87 at 16 If anything, they are evidence that he and other Proud Boys are no longer interested in participating in any more rallies. The fact that Mr. Donohoe discussed a "bug out bag" on Telegram is also not evidence of any intent to evade prosecution or commit acts of violence. When Mr. Donohoe was arrested, he was living and working in his hometown of Kernersville, North Carolina, where he had been before and after January 6. He was at work when he was taken into custody. No contraband was located on Mr. Donohoe or in his home. No "bug out bag" was seized by

authorities. Clearly Mr. Donohoe was not planning to escape law enforcement or surreptitiously attack the government, nor was he assisting anyone else to do so.

In light of the above, the recommendation by Pretrial Services that Mr. Donohoe be placed on pretrial release, with the conditions of home incarceration with his grandmother serving as third party custodian, and electronic monitoring is appropriate and complies with the mandate of the Bail Reform Act.

C. Conclusion

For the foregoing reasons, Mr. Donohoe respectfully requests that the detention order be revoked and that he be granted pretrial release.

DATED: May 24, 2021.

BY:

/s/ Lisa S. Costner

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jason McCullough  
Luke Jones  
Assistant United States Attorneys

Respectfully Submitted,

/s/ Lisa S. Costner

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