UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Case No. 21-cr-28 (APM)**
	:	
KENNETH HARRELSON	:	
	:	
Defendant.	:	
	:	

DEFENDANT HARRELSON'S REPLY MOTION FOR RECONSIDERATION OF CONDITIONS OF RELEASE

1. COMES NOW, the Defendant, Kenneth Harrelson, by and through counsel, Bradford L. Geyer, in Reply to the Government's Opposition to Defendant's Third Motion For Release (ECF 499). Government now appallingly argues that its own presentation of false information [that prior defense counsels could never have known about] that condemned Defendant Harrelson—a disabled veteran with no criminal history or passport—to many months of solitary and unlawful conditions of confinement—notwithstanding that he engaged in no vandalism or violence before, during, or after January 6th—signifies that Harrelson's pre-trial detention must continue. Government has also delegated custody to the District of Columbia, while continuing to benefit from having made proper defense collaboration impossible (ECF 493 pages 3-4, paragraph 8).

2. There is new evidence and information that was unavailable during previous motions for release from detention on bail. Just yesterday, the Government released two FBI 302 interviews with unindicted Oath Keeper member "PERSON TEN," wherein his statements debunk almost every charge against Kenneth Harrelson.[1] (Recall that these

[1] The Court is encouraged to *read both properly redacted sets of FBI 302's in full* in light of how the Court has been encouraged to view Defendant and his conduct as it relates to risk. Most notably in

Defendants are not charged with ordinary trespass.) The Government confirms that it possessed independent proof of Harrelson's innocence, which it failed to disclose for whatever reasons. It now appears that the Government and undersigned counsel agree that Kenneth Harrelson is in fact innocent of the charges in the indictment.[2] Harrelson had intended to rely upon a witness whom the Government subsequently charged, even though that person never entered the Capitol, and with whom Harrelson shared a conversation proving that neither of these men had intent to enter the Capitol. Harrelson reasonably assumes this would-be witness was charged in order to obstruct the truth finding process by preventing him from testifying.

3. Last week, the Government issued a Sixth Superseding Indictment. Although that does not appear to affect Defendant Harrelson, it shows the government once again doubling down on falsities that the Government knew, since May 4, 2021, to be false. This calls for dismissal of all charges because the harm could not be more significant or prejudicial (citations omitted).

4. However, the confirmation that Kenneth Harrelson is in fact innocent of

---

Attachment One **from May 4, 2021—seven months ago**: "PERSON 10 responded negatively to the following questions:

> *To your knowledge, was there was ever any discussion, by you or anyone you know (to include OKs), to take violent action on January 6, 2021, or after, if the Presidential election did not produce the desired result?*
> *Was there ever any pre-planning, or planning on January 6th, by the OKs to incite riots at the U.S. Capitol?*
> *Was there ever any pre-planning, or planning on January 6th, by the OKs to forcibly enter to U.S. Capitol?*
> *Was there ever an pre-planning, or planning on January 6th, by the OKs to disrupt the transition of the Presidency?*
> *Regarding these questions, did you take any of these actions on January 6th?*
> *To your knowledge, did any members of the OKs take any of these actions on January 6th?"*

[2] See 5th Superseding Indictment paragraphs 11 through 14 that show PERSON ONE and PERSON TWO to be leaders of the Oath Keepers.

anything more substantive than possibly trespassing (with which he has not been charged, and which has substantial defenses that may apply) is new information and a change in circumstances for the purpose of rehearing his motion for release on bail. Furthermore, issuance of the Sixth Superseding Indictment is a legally distinct event. When the Fifth Superseding Indictment was issued (filed with the Court on August 4, 2021), Defendants were arraigned all over again. That is, the prosecution under the Fifth Superseding Indictment, complete with new arraignments, is technically—and we are dealing in technicalities here—a new legal case. We were denied this discovery about there being no planning to the January 5-6 "operation."

5. Much of the above can be attributed to the gargantuan coordinated effort by the Government, and undersigned counsel makes no claims of bad faith, but this information is new and Government's reliance on United States v. Lee, 451 F. Supp. 3d 1, 5 (D.D.C. 2020) was misplaced even before it stopped sitting on last week's discovery disclosure.

6. In this new dystopian world that undersigned counsel has no intention of being dragged into without a fuss, failures of reviewing courts or defense counsels arising from misplaced reliance upon Government assertions that, in time, on proper examination, prove patently false, now become the "failures of the Defense" that justify continued incarceration. Disturbingly, the Government reasserted and persisted in this unsettling tendency to push inaccurate information in Indictments up through and now including this 6th Superseding Indictment.

7. First, after we demonstrated in ECF 483 (pages 9 through 18) that there was, to put it charitably, a paucity of evidence suggesting the Oath Keepers are extremist, the Government responded with silence. From this silence, we must infer the Government's acknowledgment that in fact, such membership is not just arbitrary in the light of the

Constitution, but also, in this case, thoroughly protected and exculpatory. Furthermore, there are no gun charges in this case because guns were not brought into the District, since they were legally stored in Virginia, and the Oath Keepers have a long track record of abiding by all laws. Unlike *actual* extremist organizations, there is also no string of serial or pathological felonies committed by Oath Keepers leading up to January 6th, and Harrelson's membership in the Oath Keepers, far from implying automatic culpability in any alleged crime, presents the Honorable Court just one more clear indication that he is utterly law abiding.

8. Second, even before last week's bombshell disclosure that the Oath Keepers never planned to engage or engaged in violence, nor had a plan to obstruct the peaceful transition of power on January 6th, there have been other egregious instances wherein the Government's billing, as soon as subjected to ordinary challenges, *proves a mirage*. Revelations through yesterday's discovery are inconsistent with numerous egregiously incorrect allegations by prosecutors that prejudiced this Court's detention analysis as relating to Defendant Harrelson's continued, unjustified incarceration.

9. This latest belated disclosure underscores the thorough disconnection between the Government's usage of certain words and their actual meaning. The Government's usage of words today also has no apparent connection to what those words meant on January 6th, 2021. Much of this damage as to semantics occurred prior to the filing of these cases, and can be attributed to this District's geography, the long shadow of Congress and the District being caught in a crossfire of interplay among politicians, commentators, and relentless, "around the clock, hotbox" media coverage that, through incessant repetition and constant replays of the worst moments and prejudicial phrases, deliberately attempted to incite and induce in residents—to much success—perceptions of being aggrieved, and of being under threat and

attack.[3] These undisputed aspects of the country's response to the January 6th mostly peaceful gathering make the notion of a fair jury trial in the District increasingly unsupportable.

10. Let's take the Government's use of the word "operation" which we now know from PERSON 10 has been falsely used for quite some time, up through Indictment 6. The Government alleges that the word "operation" denotes sedition and subversion, even though it is a highly repetitive in Oath Keeper communications. When uttered in the context of Oath Keeper missions and doctrine, the utter dullness and insignificance of this word is borne out not only by the fact that it is so oft repeated—and certainly not just on January 6th—but also by an unbiased examination of much of the discovery now having been introduced to the Honorable Court.

While sitting on discovery incontrovertibly showing that the word "operation" signifies—to Oath Keepers generally and Defendant Harrelson particularly—the most innocuous of meanings, the Government nevertheless continues to assert, over and over, false significance. The word "operation" meant something entirely different prior to its being "hotboxed" in the District. Contemporary understanding and interpretation of the word "operation" is a far cry from what "operation" was understood to mean by Oath Keepers on or around January 6th. On honest examination, the two meanings are found to be thoroughly divorced one from another.

9. Leading up to January 6th, Oath Keepers engaged in "operations" where they made legal, defensive use of firearms as a display of force to deter mass violence. Where

[3] This deceitful campaign of shaping public perception generally, and public perception in the District particularly, succeeded despite the total absence of arson, the swinging of baseball bats, the brandishing of firearms, the assault of business owners, the kneecapping or killing of police officers or innocents, or the hurling of bricks.

open or concealed carry was not legal, they performed unarmed security and/or escort operations. Projecting a strong defensive posture in the face of rioters and looters burning down city blocks tends deters violence and save lives; that is the point. So it is not—or should not be—surprising that such nonviolent posture was combined with identifiable clothing to project strength and legitimate authority. While ultimate legitimacy of authority to maintain public order is held by peace officers, Oath Keepers engaged in the civilian equivalent of what, in the Armed Forces of the United States, is called general military authority—the doctrine wherein any Soldier or Marine, even the lowliest private, can take action in the absence of a unit leader or other designated authority. This does not mean that Oath Keepers' public safety and peacekeeping mission was principally spurred by a perception that police were not on hand in sufficient numbers: The principal condition that Oath Keepers looked to as signifying that their presence could be of assistance was very simply and plainly a large crowd, just as they have rendered peacekeeping and physical security assistance in countless other large crowds, at diverse venues, times and seasons.

The Oath Keeper mission was very plainly to deter violence and attacks, not cause them. This was recognized by victims seeking protection, and law enforcement seeking backup, all of whom saw Oath Keepers as additional resources to maintain the peace when there was a breakdown in civility and good order and discipline. Through this Oath Keeper strategy of projecting strength—completely defensive in nature—they protected communities and businesses from violent protests, always taking great care to maintain an entirely defensive posture.[4] Any effort, prior to January 6th, to identify an Oath Keeper "operation"

[4] https://www.thedailybeast.com/protesters-confront-armed-oath-keeper-militia-in-louisville; last accessed: December 2, 2021
https://www.washingtonpost.com/national/behind-the-armor-men-seek-purpose-in-protecting-property-despite-charges-of-racism/2020/10/05/b8496fec-001e-11eb-9ceb-061d646d9c67_story.html; last accessed: December 2, 2021

that did not involve projected force operating on *exclusively legal and defensive* footings would be sorely frustrating. The fact that there are no obvious examples of Oath Keepers having to engage in lawful self-defense authenticates the foundational theory that the purpose of *projecting* a strong defense is to prevent violence.

10. Notwithstanding the Government's propensity for imagining fanciful things, and to encourage others to participate in such imagination, pre-January 6th planning just did not feature any intentions of attacking anything or anyone, nor expressions centering on or even hinting at insurrection. The Government, while sitting on information from PERSON 10 proving no evidence of even encouraging—let alone engaging in—civil unrest or aggression (or indeed anything alleged in the Government's means and methods) nevertheless intentionally stoked judicial expectations about what nefarious, conspiratorial, insurrectionist words may've been contained and exchanged in "encrypted chats" (as if phone companies and other big media companies used chalkboards). In the dystopian system of legal analysis and shockingly flawed logic apparently favored by the government, not taking well to unlawful government or private sector surveillance by deputized private companies conducting illegal searches and seizures is now evidence of a crime.

11. Surplusage in the Fifth Superseding Indictment (5thSI) about people who were engaged in completely legal firearms use and training is rooted in a deliberate distortion of such words as "operation,"[5] and "military stacks" (albeit without guns which are colloquially signified by the word),[6] and "forcibly entering."[7] Innocuous clothing choices[8] were also

[5] 5thSI Paragraph 38 B. "teach and learn paramilitary combat tactics in advance of January 6 operation." which any reader is encouraged to conclude involved attacking the Capitol and worse.
[6] Id. Paragraph 38i "Moving together in a military stack…" while "utilizing hand signals…"
[7] Id. Paragraph 11 "Oath Keepers were among…"who *forcibly* entered…" except the videotape shows they were let in. (italics added)
[8] Id. Paragraph 127 "*battle* apparel and gear." "*combat* shirt" "paracord attachment" "black neck gaitor" (italics added)

problematic in view of the Government, which fanned the flames of misperceptions by its constant references to (legal) firearms, and falsely framing everything falsely around an "operation"[9] to attack Congress that never existed. Even where the Government does not guild the lily—as when accurately describing the Oath Keepers getting dressed on the morning of January 6th (as they have done on countless other security details and/or defensive "operations")—the Government still nonetheless encourages the reader *with reasonably inferred intention* to assume, from its peculiar misrepresentations, that this was a hostile "operation" of the aggressive and menacing "attack on the Capitol" variety.[10] Again, none of this is true, and had undersigned counsel had the opportunity to piece together and fully appreciate the appalling scale of the embellishments, he would have pointed it out earlier.

12. Foremost among Oath Keeper concerns was that in the event of a contested election, continued Antifa unrest and attacks on communities and monuments may be observed. The Oath Keepers weren't unlike everyone else who shared opinions regarding what the outcome a contested election should be. Unless, unbeknownst to undersigned counsel, we have been invaded by North Korea and are living our daily lives under the North Korean flag, the act of openly expressing opinions—by voice, pen, electronic text, or any other means—is perfectly reasonable and protected by the First Amendment.

13. From Kelly Megg's statement cited in ECF 499 page 5 ("Now we *aren't talking about crossing the [legal] line*") to PERSON ONE's response ("But I don't think they *will listen*") (obviously referring to a Congressional response to a lawful protest, which is the First Amendment protected lawful function and purpose of protest)(italics and brackets

---

[9] In Paragraph 38j. "*Forcibly* storming pasty exterior barricades, Capitol Police, and other law enforcement officers, and entering the Capitol *in executing the January 6th operation.*" P. 9 (italics added)

[10] Para.38g "Donning clothes with the Oath Keepers Insignia *for the January 6th operation*."P. 9

provided) illustrate PERSON ONE's and presumably Oath Keepers' view that the country was headed for a Civil War, whose violence and "unnecessary rivers of blood"—obviously metaphorical—*were to be avoided*.

14. As overheated and exaggerated as we might find these comments to be, and regardless of whether we might perceive elected leaders and/or the judiciary itself lacking faith in Constitutional systems to address any such challenges, the Government continues to refer to these statements out of context and then imputes them—dangerously getting near the borders of good faith—to Defendant Harrelson, even though Harrelson *never made nor was privy to any such statements* let alone received or agreed with any of other people's statements. Among these are the Government's incessant use of the word "operation" as if the Oath Keepers planned to "storm" Congress, attack police and burn or destroy property. But the videotapes under seal inside Congress and late disclosed discovery *show the opposite*. Thus the Honorable Court is presented with two conflicting stories—one a fairytale, and one a story told by CCTV. Since undersigned counsel is committed to the truth, he believes that the CCTV story is the better one upon which to base any legal decisions.

15. Paragraph 39 in 5thSI shows that PERSON ONE was concerned about averting a prospective Civil War, and "being prepared to fight Antifa." The Oath Keepers had been lawfully engaged (at least through January 6th, 2021) in honorable efforts to protect innocent persons and business owners around the country from lawless rioting and looting, while also escorting speakers to and from podiums through crowds, often in venues where local governments starved these events of security. When Oath Keeper (or any organization's or individual's) conduct is plainly honorable, it is thoroughly despicable and inexcusable to frame it otherwise, especially in an Honorable Court.

16. Statements alleged by the Government actually show compliance with the law.

PERSON ONE continues: "So our posture's gonna be that we're posted outside DC, um, *awaiting the President's orders… We hope he will give us the orders. We want him to declare an insurrection, and to call us up as militia*."[11] The Government then states that "Watkins and Kelly Meggs asked questions and made comments about *what kinds of weapons were legal in the District of Columbia*" and the unstated result of these discussions was that the Oath Keepers concluded no firearms were legal in the District which is why they stored them legally in Virginia, and never brought them to the District. Again, everything is consistent with a desire to comply with the law.—functionally the opposite of mens rea—and yet this is what the Oath Keepers are Indicted on!

17. Later in 5thSI Paragraph 50, Meggs states "DC is no guns. So mace and gas masks, some batons; if you have armor that's good." Throughout the 5thSI, the Government encouraged conflation of lawful protest with the substance of an all-out Conspiracy. This began with the novel use of 18 USC 1512, as undersigned counsel laid out extensively in ECF 465. But here, the false inference which the Government hopes any Court or Jury will make from Meggs' comments was that his purpose was that he planned to attack the Congress and police with mace and batons. Not only is this a clearly a misrepresentation by the Government, at this point how can it not know it? Subsequent events, now observable on video, where virtually all subsequent events can only be described as meaningless from a criminal law perspective, any good faith analysis must find that Meggs and Harrelson engaged in no violence of any kind. Prior to walking up the Capitol steps in "the stack" (without guns and without Harrelson), in a crowd of people singing the American National Anthem (which

---

[11] Setting aside its applicability, this phrase clearly refers 10 U.S. Code Chapter 13 - INSURRECTION. § 251: https://uscode.house.gov/view.xhtml?path=/prelim@title10/subtitleA/part1/chapter13&edition=prelim; last accessed: December 2, 2021

is not illegal either), Meggs instructed celebrating protestors to get off of police vehicles. Later, Meggs and Harrelson diffused a dangerous situation with Officer Dunn, which makes it glaringly obvious that Meggs' comment was an expression of (a) compliance with all District of Columbia laws; and (b) endorsement of means of self-defense protection **against Antifa**, not against police.[12] All of this was in the context of providing security, which the Oath Keepers did on January 5th and 6th—completely consistent with all communications prior to and during those days; consistent with the Oath Keeper tradition of the same lawful conducts at many other events featuring large gatherings, and consistent with "Stop the Steal" Park Service and Capitol demonstration permits.

18. Defendant Harrelson **had no Facebook or Twitter accounts**, and conspicuously absent from the record are any statements by Harrelson that can be interpreted as "anti-government" (whatever relevance to law enforcers such utterances could conceivably and reasonably hold, *coming from free citizens in the United States, not North Korea*). Even if anti-government musings were not in fact protected speech, they would still be thoroughly irrelevant in this or any other case wherein such musings were not demonstrably coupled with violence. In the last detention hearing, the Government admitted that Harrelson engaged in no vandalism on January 6th, and thus the Government has come to rely on conspiracy and on an

[12] The Government acts as if the Antifa threat never existed if you were seeking to engage in First Amendment protected association and expression from the other side, but these Antifa threats had been on-going and continuous leading up to the January 6th rally. Take the example of Senator Rand Paul. In 2017 he was attacked by Antifa. https://newspunch.com/jury-awards-sen-rand-paul-580000-paid-antifa-assaulted-him; last accessed: December 2, 2021. He was attacked by an angy Antifa mob after the Republican National Convention https://www.nbcnews.com/politics/congress/sen-rand-paul-says-he-was-attacked-angry-mob-after-n1238670. Getting a handle on who is responsible for what excesses is not easy, but it is clear that there was a reasonable basis for Oath Keeper concerns about Antifa. https://www.newsweek.com/antifa-far-left-violence-extremism-deadly-year-opnion-1477065; last accessed: December 2, 2021.

aiding and abetting theory.[13] Yet all discovered and reviewed video shows not a single instance of even potential proclivity to violence or vandalism.[14] Recently discovered videotape, taken by Stephen Horn, a charged journalist,[15] confirms that, rather than suddenly going rogue and attacking or countenancing violence against police or members of Congress, or committing vandalism—which was alleged repeatedly by seemingly everyone—the Oath Keepers were protecting Officer Dunn. The videotape Horn took corroborates the inescapable conclusion that Harrelson did what Oath Keepers do, which is to put themselves in harm's way, at the epicenter of conflict, to diffuse tense situations through techniques that they train for where an officer was visibly agitated and making threatening gestures with a semi-automatic weapon. One can clearly see and hear corroboration for this truthful presentation in the video.[16]

[13] "we don't believe there's any further inquiry that needs to be made about whether there's sufficient evidence that Mr. Harrelson is responsible, either as a principal or as an aider and abettor or under a conspiracy theory, for damage caused to the doors **or to the remainder of the Capitol**. (italics provided April 14, 2021 Detention hearing, page 9. References to all other damage to all other areas of the Capitol based on conspiracy and aiding and abetting theories stretched like Flubber seem to run counter to this Court's subsequent minute order on November 24, 2021.

[14] Government prosecutor at ECF 152-1 "…***the defendant…planned to use violence to breach*** the Capitol…." P 31 lines 20-24 and "***these co-conspirators planned to storm*** the capitol … co-conspirators who agreed to serve as a quick reaction force to monitor the attack at the Capitol from a distance and be prepared to travel to the Capitol in the event they were called upon, possibly while armed." Id. page 32 lines 8 to 13. Notice none of this is true and the prosecutor left out that all this would only have happened if they were lawfully authorized is a law was passed making in legal in their eyes.

[15] There is a growing appearance that some charging decisions may be motivated at least in part by a desire to deny defendants access to defense witness testimony. Journalists that can authenticate important video evidence have been charged or notified that they will be charged. Undersigned counsel has a hard time reconciling wide berths and deference the Department of Justice historically afforded journalists with charging decisions of late regarding people like Stephen Horn and Steve Baker https://thepragmaticconstitutionalist.locals.com/post/1331483/press-release-regarding-tpcs-upcoming-prosecution; last accessed: December 2, 2021

[16] https://twitter.com/stephenehorn/status/1436080929336877058?s=20; last accessed: December 2, 2021.

19. Obviously, this underlying theory for keeping Harrelson detained runs afoul of this Court's recent note order whereby he is no longer being held responsible for actions of violence and damage based on Pinkerton or aiding and abetting.[17] Prior reviews of risks Harrelson posed were skewed by perhaps understandable government mistakes alleging that he planned or engaged in violence,[18] or that he was a leader[19] shouting orders to a "storming" military "stack" (without guns) when he was singing, while dressed in a ball cap and shirt (not the most convincing military fashion), or that he engaged in violence against police or "breached" the Capitol. Any of such conduct, if Harrelson had actually engaged in it, could have been sufficient to cause a reasonable court to conclude that he posed a serious risk to the community. Here is the only problem: Not <u>some</u> evidence, but positively <u>all</u> of the evidence shows that no such conduct (and corresponding risk) ever existed.

20. Harrelson had no plan to breach the Capitol, nor to engage in Insurrection as alleged. In IMG 1396, as the people peaceably walk across the foreground (notice the woman with two small children beyond the bike racks @1 second and a bystander says "they are storming the Capitol" and a crowd including Mom and a toddler daughter and an older girl

[17] Note Order November 24, 2021 "The security footage described has no apparent relevance to the charges against Mr. Harrelson…"

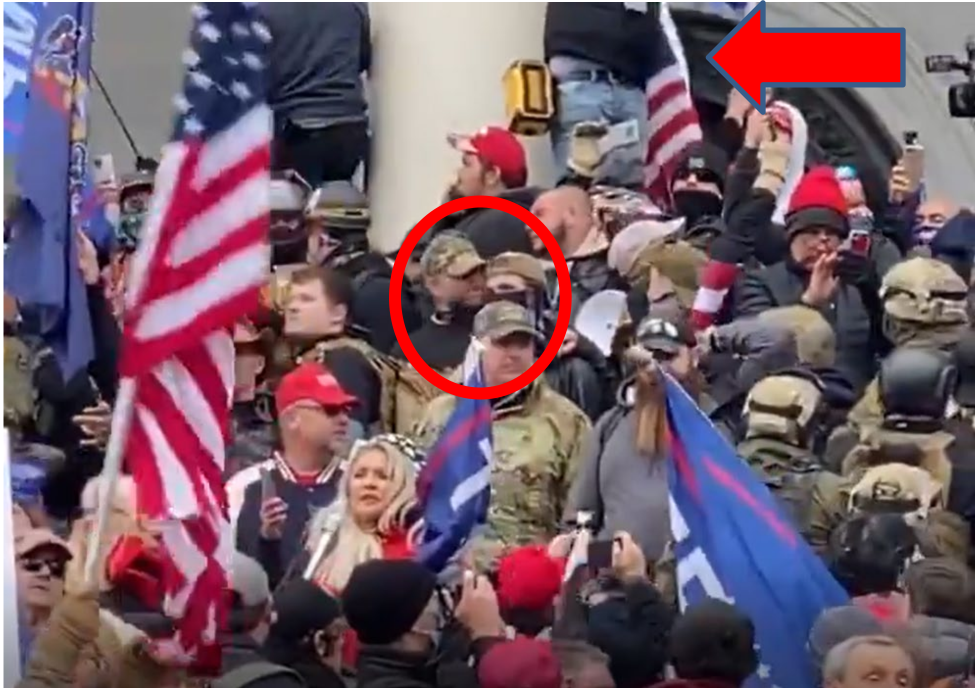
[18] ECF 152-1 Lines 20-21; ECF 152-1 Lines 14-19, We now know that he was there were permits issued for rallies and that Harrelson was there to provide security providing him with a legitimate purpose

[19] "…we see that Mr. Harrelson here is one of the planners, leaders, organizers of the group of individuals, in this case, the Oath Keepers, who stormed the Capitol and intended to disrupt Congress's proceedings and delay or stop the certification of the Electoral College vote count on January 6th. We see from the Signal chats, Your Honor, that Mr. Harrelson was "running the ground team," and we are largely to believe that the ground team would be the team that was there on the ground **trying to go inside**, rather than the team that was the QRF which was hanging back with the weapons or other members of leadership who would be monitoring the situation from afar and potentially giving direction, Mr. Harrelson was there running the ground team. April 14, 2021 Detention hearing, page 12.

make their way towards the Capitol), [20] can the Honorable Court, or anyone, reasonably conclude from Harrelson's "huh?" at the conclusion of the video that this sounds like a man with insurrection on his mind? However they came to be initially formed, false presumptions of Harrelson's *mens rea* do not withstand ordinary questions and challenges.

21. In IMG 1398, in looking at a peaceful crowd of thousands, is the Government's "one size fits all" view of the case plausible? Is it a reasonable theory to conclude that this many presumably law-abiding Americans were knowingly engaging in law breaking and insurrection en masse? Isn't it more plausible that the thousands of people believed they had a lawful right to be there? Would the Government hold the thousands visible on this video accountable on an aiding and abetting theory for acts of vandals as they have Harrelson? Again, in IMG 1398, does the Honorable Court notice anything amiss with the Government's theory when Ken Harrelson's camera, extended above his head, from an elevated position, points at the door? Not only is there no sign of vandalism or violence at seconds 7-14, but there are no police officers in sight. Harrelson, not in Oath Keepers gear (and not, as we now know from Twitter Video, a part of the "stack"), was in a ball cap and singing the National Anthem. Look how far away from and below the door Harrelson is, where a pillar blocks him from the door.

[20] It looks like police officers may have waived them in on the East Side explaining why thousands of presumably otherwise law-abiding Americans trespassed. https://twitter.com/gregkellyusa/status/1393993461951602688?s=20; last accessed: December 2, 2021; See also: https://twitter.com/AngyGardner/status/1346901997367095296?s=20; last accessed: December 2, 2021



22. Defendant Harrelson can be clearly seen in the middle of a poorly managed, but peaceful crowd, being carried over the threshold into the Capitol.[21] Much is made of the Constitutionally protected use of the word "treason" by some around Harrelson as an inflammatory talisman to distort the Court's risk analysis. But use of this word as a chant is protected here as it is protected elsewhere. Only now are we beginning to see evidence that those opening the door used by the Oath Keepers may have been let in by Capitol Police—with some entering the Capitol who at least that do not seem to be obviously skirmishers.[22] This is a new development demanding the Honorable Court's attention. The fact that prior Courts would have reasonably inferred based on court filings and inaccurate (and potentially

[21] IMG 1399 does not show Harrelson or the OathKeepers visible in the clip to be pushing, or pushing against doors, nor do we see chemical irritants or police officers at all. "Mr. Harrelson was part of the group of people who were pushing up against the doors, such that some of the rioters were spraying chemical irritants and some of the police officers were spraying it back." April 14, 2021 Detention hearing, pages 8-9.

[22] 7029 USCS 02 Rotunda Door Interior-2021-01-06_14h35min00s000ms

worse) representations by government that the door was "breached" by Defendant, even though it was opened from the inside by people who do not appear to be skirmishers and may actually be legally classified as "invitees," is important for recognizing that the prosecution's assertions are built on a foundation of sand and perhaps worse. Under those circumstances, when a zero pressure door opens with a "whoosh," is it unreasonable to think that one has permission to enter, when everyone else—senior citizens, women, children, etc.—seems to be believe they have permission to enter, and thus act accordingly?[23] Has anyone else been to a rock concert or a football game?

23. On some level, undersigned counsel does not blame the government—we are all struggling to comprehend and understand the events of January 6th—and there are terabytes of data which the government has in fact been working hard to make available in discovery, but technology, resources, and Department of Corrections conditions of confinement being what they are, the significance of much of what is contained in ECF 483 must be considered anew, because it is all new in form and context. We allege as it relates to the risk posed by Harrelson that the entire meaning of ostensibly established objective truth as suggested in the 5th Superseding Indictment (5thSI) is flat out wrong. One can conclude as much from video evidence, much of it recently discovered and/or under seal, and providing critically important new context. Previously reviewed video was released in a seemingly highly selective manner, to lend false credence to charging documents. Those documents, and the highly selective video footage organized around them, ensured that all concerned parties would fail in their attempt to gain a true and accurate understanding of the facts. Insofar as any Government entity decrees that certain of the video

---

[23] New Capitol Surveillance Footage Shows A Breach By Jan. 6 Rioters From Start To Finish; https://www.buzzfeednews.com/article/zoetillman/capitol-footage-police-trump-insurrection-mob; last accessed: December 2, 2021

evidence ought not to be released, it is engaged in obstruction of discovery, and obstruction of justice, and the Honorable Court can certainly recognize that such precisely are the conditions crying out to any guardian of the human rights that I thought we honored and revered in this republic: "Here is a charged pretrial defendant being deliberately deprived of his Constitutional rights." We are being overwhelmed by exculpatory evidence which must be recognized for what it is—even if such confession of reality is politically unpopular and makes us unpopular.

24. I continue in my defense of my esteemed former colleagues in Government. I do not admire their task of discerning meaning and having to assign responsibility for all the bewildering events that happened on January 6th, 2021. I know they faced a weighty sense of obligation and duty to protect not only our Capitol, but also career civil servants and elected officials—a concern that undersigned counsel fervently shares, and a view that any reasonable jury will conclude Defendant Harrelson shared as well. As someone who has repeatedly discovered how a video clip can be viewed multiple times only to be surprised by something that was missed on the 7th, 8th or 9th viewing, I sympathize with the Government insofar as it has been saddled, in critical aspects, with reasonable but wrongful legacy decisions based on incomplete information.

25. Regarding that which the government has released and is not obscured by mass volume, we can all focus on the actual evidence now, which for many reasons was ambiguous and difficult to properly learn about in an imposing mountain of discovery being studied by all parties ***except defendants Harrelson and Meggs***. But we now have within our grasp an opportunity—and a moral imperative—to take a fresh look at a defendant who poses no risk to the community nor as to flight, yet continues to be confined in conditions that make it impossible to prepare for trial. This defendant is also receiving unlawful punishments for not volunteering to accept experimental drug therapies that are not lawful under federal or

international law on a separate pending motion. The remedy is immediate release with conditions and, possibly, dismissal of the Indictment.

26. One can see the Government's dilemma in desperately hunting around for any tenable theory to keep Harrelson in a **"conspiracy that wasn't**." It framed the ECF 152 p. 23-30 around "ineffective withdrawal," back when it assumed membership or association with Oath Keepers was a crime. It is not. The fact that files were manipulated or deleted might be relevant if Harrelson were a member of La Cosa Nostra, but the Oath Keepers is not "extremist" any more than it is an organized crime enterprise. Even if it were extremist, freedom of association is a protected First Amendment Right. Furthermore, prior to his arrest, any change Harrelson made to his text, video or other telephone files—changes which millions of Americans routinely engage in, while recognizing as a matter of common knowledge that *no files can ever be deleted to the point where they cannot be retrieved*—is arbitrary and should be viewed in the light of also being very likely exculpatory.

L. Conclusion

It is respectfully requested that this Honorable Court reconsider its earlier release decisions based on the new information in the underlying motion that no defense counsel could have known about along with this bombshell disclosure last week.

How the Government could claim that information in the underlying filing was not "new" and contained "outlandish" arguments (ECF 499 page 1) while it sat on the indisputably new Brady information of the most exculpatory nature, for seven months, (Attachment One) releasing it a day after the Reply was due on this motion, when it in essence fundamentally dismantles the foundational architecture of its Indictment series, now realleged in a 6th Superseding Indictment just last week, re-alleging the same embellishments, the same inaccurate descriptions and language usage, over and over again, letting this Court believe terrible unfounded, dehumanizing and

dangerous things about Defendant Harrelson, Doing this while simultaneously pretending that undersigned counsel violated this Court's note order in another motion before the Court is beyond the pale (ECF 502, 530). Defendant has been betrayed by this nation and its Justice system. He deserves to not to spend another day in prison. He should be released on his own recognizance on this Motion immediately so that he can properly assist in his defense to clear his name.

Dated: December 8, 2021 RESPECTFULLY SUBMITTED

/s/ Brad Geyer
Bradford L. Geyer, PHV
PA 62998
NJ 022751991
Suite 141 Route 130 S.
303
Cinnaminson, NJ 08077
Brad@FormerFedsGroup.Com
(856) 607-5708

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2021, a true and accurate copy of the forgoing was electronically filed and served through the ECF system of the U.S. District Court for the District of Columbia.

/s/ Brad Geyer
Bradford L. Geyer, PHV
PA 62998
NJ 022751991
Suite 141 Route 130 S.
303
Cinnaminson, NJ 08077
Brad@FormerFedsGroup.Com
(856) 607-5708