

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

UNITED STATES OF AMERICA

v.

ZACHARY REHL

*
*
*
*
*

Case No. 21-cr-00175-TJK-3

**ZACHARY REHL’S RESPONSE TO BIGGS’ MOTION TO CONTINUE
AND MOTION TO ADOPT NORDEAN RESPONSE**

Zachary Rehl, through undersigned counsel, hereby responds to Mr. Biggs’ Motion to Continue (ECF 403). First, Mr. Rehl agrees with the the substance of the motion – that there has been extraordinary, inflammatory and unfairly prejudicial publicity focused on the Proud Boys during the past two weeks. In fact, Mr. Rehl submits below additional examples of the continuing prejudicial publicity which has filled the airwaves since June 6, when the government belatedly filed its Third Superseding Indictment.¹ Second, Mr. Rehl agrees that such unfairly prejudicial publicity, has painted the Proud Boys and by extension Mr. Rehl, who did not commit any violence on January 6, in a horribly negative and inaccurate light. Third, Mr. Rehl agrees that a continuance of the trial date in light of the unduly prejudicial pretrial publicity is warranted under binding case law.

However, Mr. Rehl respectfully requests additional time until June 24, 2022, to determine whether he will join Mr. Biggs’ motion to continue. The additional time is necessary to allow him time to consult with his counsel. Mr. Rehl’s hesitation in joining Biggs’ Motion to Continue is solely based on his desire not to prolong the time he spends in pretrial detention.

Mr. Rehl also respectfully moves to adopt the response filed by Mr. Nordean (ECF 409).

¹ See Rehl Motion For Leave to Respond to DOJ Press Release (ECF 377).

Additional Unfairly Prejudicial Publicity

The focus by the Congressional Committee on the Proud Boys has been called “striking” by CBS’ Congressional correspondent, who has been following the January 6 prosecutions. The Proud Boys have also been mentioned prominently on various television shows and print reporting. They have been unfairly labeled a “violent domestic extremist” group and sensational allegations about their participation on January 6 have been made. Some examples follow:

A. January 6 Committee Hearing, June 16, 2022.

After Mr. Biggs filed his motion on June 16, 2022, while the Court was holding a status conference in the instant case, the J6 Committee held a hearing. Among other things, one of the members of the Committee, Congressman Pete Aguilar, read and introduced into the record an allegation from the Complaint filed against Mr. Pezzola, wherein an unidentified witness has alleged that sometime “after the events at the Capitol” the witness had a conversation with Pezzola and a group of other persons. The witness alleged that someone in the group said that “they would have killed [Vice President] Mike Pence if given the chance.”² See “8 revelations from Day 3 of the Jan. 6 committee hearings” at <https://tinyurl.com/2dtcbcys>. This explosive allegation is not cited in the Third Superseding Indictment in the instant case. Mr. Rehl was not present at the time the statement was allegedly made.

A number of articles and twitter comments picked up on this explosive allegation.³

² *United States v. Pezzola*, No. 21-cr-00052 (ECF 1-1 at ¶ 17).

³ The story was carried by multiple other media outlets. See, e.g. NY Times, “Jan. 6 Hearings Day 3: Panel Says Trump Brought Nation to the Verge of a Constitutional Crisis” at <https://www.nytimes.com/live/2022/06/16/us/jan-6-hearings>; Washington Post, Opinion *Trump’s pressure campaign on Pence was more vindictive than anyone imagined* at <https://tinyurl.com/4apkwycp>; Daily Beast, *Informant Told Feds Proud Boys ‘Would Have Killed’*

B. Cable and Television Shows

Face the Nation, (CBS) Sunday, June 12, 2022 at <https://tinyurl.com/myc2wptn>

JOHN DICKERSON [host]: One of the other disclosures in the -- in the hearings on Thursday night was the role of the Proud Boys, quite a lot that -- that was painstakingly put forward.

Some people have said, well, one of the things you proved is the Proud Boys were on the march before President Trump gave his speech on January 6. So, if they were already off to march, how could President Trump have incited them?

What's your -- what's your response to that comment?

REPRESENTATIVE ADAM KINZINGER [Republican Committee Member]: Well, again, I think what we wanted to do Thursday is show the top lines of what happened with some kind of overall things to be aware of. More information will come out on that.

. . .

JOHN DICKERSON: . . .

Scott, at the end of this -- at the end of the hearing, the chairman, Thompson, said something tantalizing about the Proud Boys and the administration. What did you make of that?

SCOTT MACFARLANE⁴: Absolutely struck by how much time was spent Thursday talking about the Proud Boys by this committee.

The revelation at the end was that the Proud Boys, according to the committee, was doing reconnaissance the morning of January 6, before President Trump ever spoke, and that they were looking for vulnerabilities, places to lead the mob into the Capitol.

Now, the Justice Department has charged the Proud Boys with seditious conspiracy. In fact, they were in court that morning to plead not guilty. That the January 6 Committee is so interested in them is

Pence on Jan. 6 at <https://tinyurl.com/2w94ycsz>

⁴ Mr. MacFarlane is CBS' Congressional Correspondent, who has been reporting on the January 6 prosecutions daily.

striking. That they were referenced a half-dozen times in the opening hearing is striking, because it's clear this committee is going to draw some kind of line between the Proud Boys and the organizers of the rally, potentially President Trump.

Meet the Press, (NBC) Sunday, June 19, 2020 at <https://tinyurl.com/3vk36new>

CHUCK TODD [host]: And joining me now is a member of the January 6th select committee, Democratic Congressman Jamie Raskin of Maryland. He, of course, was the lead impeachment manager during the second impeachment. Congressman Raskin, welcome back to Meet the Press.

...

REP. JAMIE RASKIN: . . . You know, we sort of divided up the labor. And I'm working on the mobilization of the mob and the domestic violent extremist groups, like the Proud Boys, the Oath Keepers, the Three Percenters and so on. So that's not a particular detail that I've been following.

New Day (CNN), June 16, 2022, weekday news show⁵

BERMAN [host]: Again, focusing on some of the new reporting overnight, "The Times" reports that Eastman was saying what he believed to be happening within the Supreme Court. He was telling people he knew what was happening in the Supreme Court with regards to one possible case. What are the implications of that?

RASKIN [Congressman]: Well, I mean, the first thing to understand, of course, is that we are only putting things out there that we understand to be evidence. And so if there is evidence that he said that, we will report that he said that. That doesn't necessarily mean it's true. He could have been lying about what he knew on the inside.

On the other hand, perhaps he had some backchannel connection to the Supreme Court, and we want to ferret that out if that's true, to determine whether the same people who were establishing a backchannel to the Proud Boys, the Oath Keepers, the Three Percenters, and the domestic violent extremist movement, also had a backchannel somehow to the Supreme Court of the United States of America.

⁵ Transcript at <https://transcripts.cnn.com/show/nday/date/2022-06-16/segment/05>

BERMAN: I'm sorry who was in Trump world establishing a backchannel to the Proud Boys and Oath Keepers?

RASKIN: Well, all of that is to come soon. This is actually the hearing that I'm working on is about the relationship between this whole effort and the domestic violent extremist groups, and how the mob was actually mobilized and put into action.



C. New York Times Video.

On June 17, 2022, the New York Times published a video montage titled “How the Proud Boys Breached the Capitol On January 6.”⁶ The 17-minute video begins with Mr. Biggs speaking into the camera and features Mr. Tarrío, Mr. Biggs, Mr. Pezzola, and other Proud Boys, including Mr. Rehl, prominently. The montage includes video footage allegedly taken on January 6 as well as

⁶ <https://tinyurl.com/ytktwr63>

videos allegedly from earlier Proud Boys rallies in other cities. Throughout the video, a chyron at the bottom of the screen reads: “A Times investigation of court documents, text messages and hundreds of videos shows how the Proud Boys coordinated to instigate multiple breaches of the U.S. Capitol on Jan. 6.”

D. Late Night Comedy Shows

The late night comedy shows not only picked up on the January 6 committee allegations, one of the shows mocked the idea that the jury pool might be tainted by the unfairly prejudicial coverage to big laughs from the audience.⁷

CONCLUSION

England, from whom the Western World has largely taken its concepts of individual liberty and of the dignity and worth of every man, has bequeathed to us safeguards for their preservation, the most priceless of which is that of trial by jury. This right has become as much American as it was once the most English. . . . The failure to accord an accused a fair hearing violates even the minimal standards of due process. ‘A fair trial in a fair tribunal is a basic requirement of due process.’ In the ultimate analysis, only the jury can strip a man of his liberty or his life.

Irvin v. Dowd, 366 U.S. 717, 721-22 (1961) (internal citations omitted). Unfortunately, the inflammatory and unfairly prejudicial publicity that is attending this case so close to trial is reaching a pervasive “carnival atmosphere” that persuaded the Supreme Court to overturn the murder conviction in *Sheppard v. Maxwell*, 384 U.S. 333 (1966).

⁷ *The Late Show with Stephen Colbert* at <https://www.youtube.com/watch?v=ncxCXzYrd0k>

For Mr. Rehl, a husband and father, who served his country honorably and who did not force his way into the Capitol, did not destroy or vandalize any property, did not battle law enforcement or use violence against any other person and did not conspire with anyone to do any of those things, his continued detention while the media is filled with unfairly prejudicial publicity is disheartening. It is difficult to see how the broad brush being used to paint him in such an unfair light will not result in violating his constitutional rights to a fair trial by an impartial jury.

Respectfully submitted,

/s/ Carmen D. Hernandez

Carmen D. Hernandez

Trial Bar No. 03366

7166 Mink Hollow Road

Highland, MD 20777

(240) 472-3391; (301) 854-0076 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum was served on all counsel of record via ECF this 20th day of June, 2022.

/s/ Carmen D. Hernandez

Carmen D. Hernandez