



U.S. Department of Justice

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*Judiciary Center
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Via Email

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Re: United States v. Ethan Nordean et al., Cr. No.: 21-cr-175 (TJK)

Dear Counsel:

We write pursuant to Fed. R. Evid. 404(b) to provide notice of uncharged crimes, wrongs, or acts, which the government may seek to introduce at trial.¹ As you are aware, “Rule 404(b) is a rule of inclusion rather than exclusion.” *United States v. Douglas*, 482 F.3d 591, 596 (D.C. Cir. 2007) (quoting *United States v. Bowie*, 232 F.3d 923, 929 (D.C. Cir. 2000)). Thus, evidence of other acts by a defendant are admissible under the rule unless they “lack[] any purpose but proving character.” *Bowie*, 232 F.3d at 930.

- On or about December 12, 2020, Henry “Enrique” Tarrio participated with a group that included members of the Proud Boys in the theft and destruction of a banner that read, “#BLACKLIVESMATTER,” which was property of Asbury United Methodist Church in Washington, D.C. Additionally, on or about January 4, 2021, Mr. Tarrio unlawfully possessed two high-capacity magazines that bore Proud Boys insignias. As a result of these actions, Mr. Tarrio entered a plea of guilty to one count of Attempted Possession of a Large Capacity Ammunition Feeding Device and one count of Destruction of Property in Superior Court for the District of Columbia, Case Nos. 2021 CF2 000105 and 2021 CMD 000106, on July 19,

¹ The information contained in this letter represents the information known to us currently. If we learn of additional information, we will notify you promptly.

2021. The government may seek to introduce evidence related to these two criminal acts committed by Mr. Tarrio at trial, along with his January 4, 2021 arrest. These criminal acts are inextricably intertwined with communications of the defendants on January 4 – 6, 2021, as the defendants and others prepared for the events of January 6. In addition, Mr. Tarrio's location and absence from Washington, D.C. on January 6 is a question that must be addressed at trial.

- On or about December 12, 2020, several members of the Proud Boys were involved in an altercation in the District of Columbia in which Proud Boys members were injured, including a knife wound suffered by Jeremy Bertino. The government may seek to introduce evidence of the events leading up to and immediately following that stabbing, in trial in this case. As with the incident involving Mr. Tarrio, these acts are inextricably intertwined with communications of the defendants on January 4 – 6 as the defendants and others prepared for the events of January 6. In addition, Mr. Bertino's location and absence from Washington, D.C. on January 6 is a question that must be addressed at trial.
- The government may seek to introduce evidence related to illegal drug use by the defendants in this case, specifically references in the Telegram chats previously provided to you in discovery related to drug use. This evidence is inextricably intertwined with evidence of the charged conduct that appears throughout the Telegram chats. We note that certain of these statements are made in the context of the Capitol. For example, as you know from discovery already provided, on January 6, 2021, Telegram user "Aaron of the Bloody East" stated in a chat involving all of these defendants, "I got some good shit, let's do a bump in the fucking capital," and later that same day in the same thread, defendant Donohoe stated, "I'm ready to do some cocaine, where do I meet you," and defendant Rehl stated, "OK I'm coked up, I'm gonna step away unless someone tags me."
- The government may seek to introduce evidence regarding the structure and organization of the Proud Boys, including the different "degree" rankings a member of the Proud Boys can attain, how they can attain those ranks, and how those rankings impact power dynamics between Proud Boys members. Such information is not 404(b) information; however, this evidence will include, for example, a description of how the rank of "Second Degree" is achieved, wherein a group of Proud Boys members assaults the member who seeks Second-Degree status, until that member is able to name five cereals, and a description of how the rank of "Fourth Degree" is achieved, which requires a member to get in a major fight for a cause.
- On or about December 21, 2020, a group of armed protestors broke windows and unlawfully entered the Oregon State Capitol. The government does not assert that these are bad acts attributable to the defendants; however, the government may use evidence of these events to establish that those who were aware of these events, through communications or media reports, were aware that a state capital building had been unlawfully breached as part of a protest after the December 19, 2020, announcement of events in Washington, D.C. on January 6, 2021.

We trust that this information will allow you to file any motions you believe necessary in advance of trial.

Sincerely yours,

MATTHEW M. GRAVES
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