

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

UNITED STATES OF AMERICA,)	
)	
)	
)	
v.)	Case No. 1:21-cr-175
)	
ETHAN NORDEAN, et al.,)	Judge Timothy J. Kelly
)	
Defendants.)	

**DEFENDANT NORDEAN’S RESPONSE TO THE GOVERNMENT’S NOTICE OF
SEALED SUBMISSION OF EVIDENCE**

Defendant Nordean, through his counsel, files this brief response to the government’s notice of “under seal submission of exhibits.” ECF No. 131.

Nordean cannot respond to every misleading claim the government files in this case. However, because the government makes representations to the public in its notice about videos that it claims show his guilt and, at the same time, prevents the public from seeing evidence that contradicts its claims, a response must be made. The government represents that, after Nordean moved the Court for an order requiring the government to allow the public to see exculpatory evidence, it found it necessary to file an “immediate response” to “Defendant’s characterization of the events surrounding Nordean’s unlawful entrance into the Capitol.” ECF No. 131.

Yet, although Nordean’s description of four videos the government does not want the public to see took up about three pages, the government’s immediate response appears to consist of quibbling with (1) the word “propping” in Nordean’s characterization of a “Highly Sensitive” video in which a police officer holds a door as protestors enter the Capitol Building; and (2) the word “authorizing” in Nordean’s description of videos that show police officers standing aside as

Nordean and others peacefully file between them to enter the Capitol through doors which the officers themselves opened. ECF No. 131, p. 1.

What makes these public claims particularly inappropriate is that the government forbids Nordean from simply pasting images into this filing to show the government is making misleading claims. The government tells the public a police officer did not “move a box out of the way of protestors entering the building.” ECF No. 131, p. 1. Nordean simply points to the 2:36:02 p.m. mark in 0912 USCS 01 Upper West Terrace Door-2021-01-06_14h20min00s000ms.asf.¹

The government represents to the public that it is “false” to say that videos show officers holding or “propping” doors for protestors. Nordean points to the 2:37:08 p.m. mark in 0912 USCS 01 Upper West Terrace Door-2021-01-0614h20min00s000ms.asf.

Perhaps most damning, consider the following clips, in tandem, in weighing the truth of the government’s claim to the public that the videos it will not release show “outnumbered Capitol Police officers being overrun by rioters unlawfully breaching a Capitol entrance.” ECF No. 103, p. 1. Nordean asks the Court to first review 2:33:18 p.m. in 126 USC 01 Upper West Terrace - 2021-01-06_14h20min00s0000ms.asf; and then 2:33:42 p.m. in 0912 USCS 01 Upper West Terrace Door-2021-01-06_14h20min00s000ms.asf. In the first clip, police officers open an inner door to the Capitol, allowing protestors who are already in the

¹ The government did not copy the defense with the video files it provided to the Court under seal. Therefore, Nordean has no way of knowing whether the files the government submitted are the same as the first, highly edited ones he received; the second and longer versions; or something else the government created in response to Nordean’s motion to remove sensitivity designations. Moreover, all four videos at issue were produced to the defense in a format that prevents Nordean from placing them in a Dropbox link it can provide to the Court. Nordean therefore requests that the Court advise the parties if the video time citations in this filing do not align with the videos the Court received ex parte from the government.

building to enter a hallway leading to the Upper West Terrace Door. Seconds later, in the second clip, the protestors then open the Upper West Terrace Door to dozens or perhaps hundreds of protestors. With respect to the government's claim of officers being "overrun," and its claim that Nordean "falsely" represents that the videos show officers "authorizing" entry into the Capitol Building, Nordean asks the Court to view 2:37:28 p.m. in 126 USC 01 Upper West Terrace - 2021-01-06_14h37min00s0000ms.asf, showing Nordean and others peacefully walking between multiple police officers who permit them to enter. It also asks the Court to view 2:44:00 p.m. to 2:44:30 p.m. in 0912 USCS 01 Upper West Terrace Door-2021-01-06_14h20min00s0000ms.asf, in which police officers easily block a narrow entrance to the Capitol at the Upper West Terrace Door but then subsequently decide to permit protestors, who are not "overrunning" them, to enter.

Finally, Nordean asks the Court to notice that the government's immediate response does not provide any explanation for why the two truncated CCTV video clips of Nordean's entrance to the Capitol it initially produced to the defense were edited to exclude all of the law enforcement interactions described above.

Dated: July 29, 2021

Respectfully submitted,

/s/ David B. Smith

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Certificate of Service

I hereby certify that on the 29th day of July, 2021, I filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following CM/ECF user(s):

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And I hereby certify that I have mailed the document by United States mail, first class postage prepaid, to the following non-CM/ECF participant(s), addressed as follows: [none].

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