

### **Ethan Nordean Additional Sentencing Arguments**

The evidence at trial showed that Ethan Nordean embraced his role as the leader of the “rally boys” in the leadup to January 6 and, critically, following Tarrio’s arrest on January 4. Nordean’s prominence in the group was the result of his large stature and reputation for doling out physical violence. Nordean embraced that reputation.

Nordean led a group of nearly 200 men to the Capitol and onto Capitol grounds. He immediately moved to the front of the throng and took action by tearing down the fence, which permitted the rioters to proceed further into the restricted area. He defied law enforcement’s calls to disperse, and he ignored calls from his own men to leave. Nordean was there to use force against the government and lead what he viewed as a second American Revolution—or as Nordean would call it, “seventeen-seventy-fucking-six.”

Nordean’s guidelines range—after the application of the adjustment for Nordean’s crime of terrorism—rightly reflects the seriousness of his assault on our government and Nordean’s leadership role in it. If the Court were to calculate the guidelines differently (by, for example, declining to apply the Terrorism adjustment under U.S.S.G. §3A1.4), it should depart and vary upward to impose a sentence that complies with the law as set forth in 18 U.S.C. § 3553(a). Nordean’s conduct warrants a sentence of 27 years of incarceration.

#### **I. Sentencing Guidelines Analysis**

Nordean was convicted of Counts One through Six. The Sentencing Guidelines are applied for each of the convictions as follows:

**Count One (Seditious Conspiracy)**

**Count Two (Conspiracy to Obstruct an Official Proceeding)**

**Count Three (Obstruction of an Official Proceeding)**

**Count Four (Conspiracy to Use Force, Intimidation, or Threats to Prevent Officers of the United States from Discharging Their Duties)**

Base Offense Level:	14	§2J1.2(a)
Specific Offense Characteristic	+8	§2J1.2(b)(1)(B) (physical injury)
Specific Offense Characteristic	+3	§2J1.2(b)(2) (substantial interference)
Specific Offense Characteristic	+2	§2J1.2(b)(3)(C) (extensive in scope, planning, or preparation)
Adjustment	+4	§3B1.1(a) (aggravating role—organizer or leader)
Total	31	

**Count Five (Interference with Law Enforcement During a Civil Disorder)**

Base Offense Level:	14	§2A2.4(c) → §2A2.2
Specific Offense Characteristic	+2	§2A2.2(b)(1) (more than minimal planning)
Specific Offense Characteristic	+6	§3A1.2(b) (official victim)
Adjustment	+4	§3B1.1(a) (aggravating role—organizer or leader)
Total	26	

**Count Six (Destruction of Government Property)**

Base Offense Level:	6	§2B1.1
Adjustment	+26 → 32	§3A1.4 (terrorism) (increase by +12 or to level 32)
Adjustment	+4	§3B1.1(a) (aggravating role—organizer or leader)
Total	36	

All of these counts group. Accordingly, the total adjusted offense level for Nordean is 36 for the federal crime of terrorism in Count Six. As explained in the Government’s Sentencing Memorandum, under Section 3A1.4(b), Nordean’s Criminal History Category is increased to VI, which results in Guidelines range of 324 – 405 months (27 – 33.75 years) of incarceration.

The application of the terrorism enhancement under Section 3A1.4 captures the severity of Nordean's actions and the danger posed by Nordean and his co-conspirators' conduct on January 6. A sentence within these Guidelines would be justified and entirely appropriate.

***A. Nordean's Sentence Should Reflect the Adjustment for a Federal Crime of Terrorism***

Nordean's crimes were "calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct." U.S.S.G. §3A1.4. Nordean arrived at the Capitol to lead a revolution against a government that he viewed as illegitimate. Like Tarrío and Biggs, Nordean viewed himself and his movement as a second American revolution where he and the other "patriots" would retake the government by force.

The jury's guilty verdicts on Count One (seditious conspiracy) constitute a specific finding—beyond a reasonable doubt—that Tarrío, Nordean, Biggs, and Rehl "conspired or agreed with at least one other person with the goal of opposing by force the authority of the Government of the United States" and of "preventing, hindering, or delaying the execution of any law of the United States by force." ECF 767 (Jury Instructions) at 21; ECF 804 (Verdict Form) at 1. This finding, consistent with the facts accurately summarized in the draft presentence report, plainly establishes that the defendants' crimes were calculated to influence or retaliate against the government by force or coercion. *See United States v. Dowell*, 430 F.3d 1100, 1110 (10th Cir. 2005).

Nordean's radicalization did not happen overnight. Nordean steadily built towards a call for revolt against the government on January 6. On October 4, 2020, Nordean suggested to his fellow Elders that it was time for the Proud Boys to "fash the fuck out." Ex. 500-15. Nordean went on to explain that "Politics ain't workin . . . the left [i]s destroying our culture and mind fucking our children, our rights are being stripped away . . . our cities are burning down . . . it's time to

fuckin rage, not play tea time with rhinos.” *Id.* Nordean espoused this same view in his public comments after the election. On November 11, 2020, Nordean expressed frustration with “traditional party labels” and advocated for a new party—the Rebels of America Party—that would “privatize everything and limit the government to protection of its citizens only.” Ex. 601-1. When an individual told Nordean that he would sign up if “all politicians we ha[v]e currently are lynched on your inauguration day and all bureaucrats are summarily shot on sight,” Nordean replied “Deal.” *Id.*

Nordean’s approval of political violence was not an aberration. Just one week later, during an episode of the “Warboys” podcast with Tarrío and Biggs, Biggs demonized the “party” that was telling the public to accept the result of the election. Biggs closed his diatribe by saying that “they are evil scum and they all deserve to die a traitor’s death.” Nordean Ex. 1. Nordean calmly leaned toward his microphone and said, “the day of the rope.” *Id.* Nordean’s suggestion of violence is plain on its face; however, the term “day of the rope” has a deeper meaning, which originated in novel, *The Turner Diaries*. The “day of the rope” refers to the day when enemies of the movement are hanged. *See* Encyclopedia Britannica, *The Turner Diaries*, available at <https://www.britannica.com/topic/The-Turner-Diaries> (accessed Aug. 17, 2023).

Nordean’s threats to the perceived “traitors” of the country continued throughout the fall. On the day after Thanksgiving, Nordean posted a menacing message on his social media in which he declared that the “spirit of 1776 has resurfaced and has created groups like the Proudboys.” Ex. 601-10. Nordean declared that they were “unstoppable, unrelenting and now...unforgiving.” *Id.* Nordean closed his message by wishing “good luck to all you traitors of this country we so deeply love . . . you’re going to need it.” *Id.* In the following months, in the wake of the banner burning and stabbings on December 12, Nordean continued to voice his anger at the “government.”

Nordean posted a message advising the police to “think hard and long about why they joined and if what they are being ordered to do is ‘protecting and serving.’” Ex. 601-22. Nordean went on to declare that “[o]ur government puts more priority on protecting federal property[] than they do it’s own people.” *Id.*

In the final countdown to January 6, Nordean began to advocate for the use of force against the government more openly. On December 28, 2020, Nordean released an episode of his podcast in which he explained that when negotiation with the government fails, “the only thing left is force.” Ex. 608-C. Nordean explained that he did not want to have to “use force against the government” because the “repercussions” were “unknown.” *Id.* But Nordean made clear that he was ready to do it, saying “here’s the thing, we will replace you . . . we will assemble an army that will literally just replace you like that.” *Id.* Just three days later, Nordean repeated this call in a second podcast. This time, Nordean was even more explicit: “When police officers or government officials are breaking the law, what are we supposed to do as the people? Discourse? [] are we supposed to debate? No. you have to use force. This is the organized militia part of our Constitution here.” Ex. 609-B.

These statements reflect Nordean’s mindset—the time for force had arrived. Nordean’s calls for the use of “force” against government officials and law enforcement who were, he claimed, “breaking the law,” were not simply rhetoric from a keyboard warrior. When Nordean was making those statements, he knew that he was returning to Washington, D.C. on January 6 with a group of violent, hand-selected “rally boys” who had sworn to follow the commands of leadership. Nordean knew that he was leading those men into a conflict with the government itself.

Nordean’s comments in the days before January 6 left no doubt as to the nature of the fight and the nature of the enemy, and it was not Antifa. On December 31, 2020, Nordean posted a

video to social media that featured images of the Proud Boys with a caption on the video that read, “Back the YELLOW” (as opposed to back the blue). Ex. 601-36. Nordean added the comment, “Let them remember the day they decided to make war with us.” *Id.* Here again, the “them” was an arm of government, *i.e.*, law enforcement. On January 4, 2021, Nordean again called for action against the government, telling his followers that “[i]t is apparent now more than ever, that if you are a patriot, you will be targeted and they will come after you, funny thing is that they don’t realize is, is we are coming for them.” Ex. 601-40.

The man who posted these calls to violence on his influential Parler account led a group of nearly 200, *away* from the speeches on the Ellipse on January 6 and directly to the Capitol where a joint session of Congress was underway. Nordean’s goal and purpose on January 6 was clear as he mustered the men at the food trucks and directed them to the Peace Monument at 1 p.m. Nordean was prepared to use any means necessary, including force, to stop the peaceful transition of power in this county. And Nordean personally brought that force to bear on the Capitol.

Throughout the march to the Capitol, Nordean repeatedly identified the enemy for his men. The enemy on January 6 was not Antifa, it was the government and law enforcement that Nordean viewed as traitors:

- At approximately 10:43 a.m., Nordean told his men that they had put their “lives and [] safety and everything on the line and *these people* put us in jail” and then Nordean encouraged his men to “back the yellow.” Ex. 1000 at 4:05 et seq. (emphasis added)
- As they crossed approached the Peace Monument the first time that day, Nordean declared that “real men are here” and that those men know that the “oath” is to “defend the Constitution . . . against foreign enemies and domestic.” Nordean directed his men to “remind those who have forgotten what that means.” Ex. 1000 at 10:20 et seq.
- As they approached the east side of the Capitol, Nordean directed a comment at law enforcement, telling the officers that they “took our boy in and [] let the stabber go” and that they needed to “prove your shit to us now.” Ex. 1000 at 12:35.

- As Nordean marched the Proud Boys onto the lawn on the east side of the Capitol at approximately 11:33 a.m., Nordean directed another comment at law enforcement, telling them that “we don’t owe you anything” and that law enforcement’s “job is to protect and serve the people, not property or bureaucrats.” Ex. 1000 at 13:21 et seq.

When the time for action came, at 12:53 p.m., Nordean led his men across the trampled barricades. Ex. 1001 at 11:57. Nordean charged up the Pennsylvania Walkway and flashed the Proud Boys sign at Biggs. Ex. 1001 at 12:30. Nordean and Biggs moved to the front of their men and stood opposite a line of officers who were fighting to restore order. Nordean stalked the front of the line, marching back and forth as though he was the general of an army. *See, e.g.*, Nordean Ex. 2; Ex. 447 at 13:10, 13:55 et seq. He and Biggs congratulated one another with a high five. Ex. 145-Ax at 0:18. None of this was a mistake. None of this was simply a misunderstanding. Nordean later summed up his assault on the Capitol by declaring it, “Seventeen-seventy-fucking-six, bitch!” Ex. 407-B and -C.

For Nordean, the fight did not end on January 6. In the weeks after January 6 and before his arrest, Nordean celebrated the attack and encouraged continued action against the government. On January 11, Nordean posted a private, encrypted message to other Proud Boys presidents in which he told them, “I might get arrested when I land, but I regret nothing.” Ex. 514-60. Just a few days later, on January 13, 2021, former President Trump release a five-minute long statement concerning what he called the “political violence” at the Capitol, which included the following condemnation of those who had committed crimes:<sup>1</sup>

No true supporter of mine could ever endorse political violence. No true supporter of mine could ever disrespect law enforcement or our great American flag. No true supporter of mine could ever threaten

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<sup>1</sup> Available at <https://millercenter.org/the-presidency/presidential-speeches/january-13-2021-statement-about-violence-capitol#:~:text=Every%20American%20deserves%20to%20have,the%20instructions%20of%20law%20enforcement.>

or harass their fellow Americans. If you do any of these things, you are not supporting our movement. You are attacking it, and you are attacking our country.

Nordean disagreed. In a private, encrypted communication with a small group of those he had attacked the Capitol with, Nordean remarked, “No excuse for violence? Ever? Nah I’m good[.]” Ex. 515-4. Nordean also recorded a video of himself mocking former President Trump’s words with an unflattering imitation of the speech in which Nordean said, “I condemn the actions of the few last week and the violence. We are a nation of laws.” Ex. 407-D. Nordean then went on to make a noise like he was vomiting. As most of the country reacted in horror at the lawlessness of January 6, Nordean rejected one of the foundational principles of our country.

When others in the Proud Boys encouraged Nordean to cease his activities, Nordean told his men that he would never stop and he explained the stakes. In a message to other Proud Boys presidents on January 12, 2021, Nordean put it plainly—they needed to continue their fight against the government:

Ok so let’s let the *government* take our lives away and do nothing...stunning and Brave[.] *They’re* coming for you no matter what you [guys]. Wake the hell up. I’m not gunna be sitting on my ass waiting for the end[.]

Nordean Ex. 3 (emphasis added). The fight to Nordean was always about bringing force to bear against the government to advance his political views.

Nordean committed a crime of terrorism on January 6, and the Court should not hesitate to impose a sentence that reflects the seriousness of the crime and its threat to our nation—as reflected in the Sentencing Guidelines.

***B. Nordean’s Sentence Should Reflect a Four Point Leadership Adjustment***

The Court has ample evidence to apply a four-level enhancement to Nordean as a leader of the criminal enterprise. Tarrío hand-selected Nordean and Biggs to act as the leaders of the newly-

created Ministry of Self Defense. Nordean and Biggs took command of the MOSD following Tarrío's arrest, with Nordean providing guidance about scrubbing chats that involved Tarrío and encouraging the group to stick together.

More importantly, Nordean understood that he was the leader and embraced that role in the organization. And Nordean understood the power that his position wielded. Indeed, in his podcast just a week before January 6, Nordean recounted squaring off against a line of officers in Washington, D.C. Nordean explained that he and the other "monsters" on the front line were prepared to storm through the line of law enforcement. As Nordean explained, "You're putting me in a position as a leader with almost 1,000 people that I'm responsible for behind me" and those people would be wondering why Nordean was not doing anything. Ex. 608-B.

Nordean and Biggs were the unequivocal leaders on the ground on January 6. In advance of the events, he issued a message to the men that they were going to meet at the Washington Monument and then "from there" they would be "marching to the Capitol." Ex. 551. The next day, he organized his men into formation and marched them away from the speeches and directly to the Capitol. Nordean was very clear in his instruction—nobody goes past me. Ex. 1000 at 1:55.

Nordean chose the time and the place for the attack—directing his men back to the First Street gate shortly before 1 p.m. Ex. 1000 at 19:05 et seq. As the crowd became violent, Nordean calmly put his fist in the air. He gathered his men, and he led his men onto Capitol grounds. Ex. 1001 at 8:10 et seq. As Travis Nugent explained at trial, when the crowd became violent, he and the men in the marching group simply fell back on the chain of command—just as they had been instructed by Nordean and the other leaders. Tr. 14643:24-14645:4 (Nugent). And Nordean, knowing that he had a force of nearly 200 with him, led his men in an assault on the Capitol and democracy itself.

## **II. The Section 3553(a) Factors Counsel in Favor of a Sentence Consistent with the Terrorism Enhancement**

### ***A. Nature and Circumstances of the Offense***

The nature and the circumstances of the offense are the most serious that this Court will encounter in relation to January 6. Nordean and his co-conspirators planned and led an attack on the Capitol on January 6. As Nordean explained in the leadup to January 6, Nordean did so because he believed that “government officials” and “law enforcement” were “breaking the law.” Nordean led a force to the Capitol for the purpose of taking the fight to the people that he viewed as the “traitors” who were stealing the election—the lawfully elected representatives of the people of the United States.

Nordean organized and led an act of political violence. Nordean did not go the Capitol to engage in “discourse” and he did not come to Washington, D.C. to “debate”—as he saw it, the only thing left for Nordean was “force” or what Nordean called the “organized militia part of our Constitution.” Nordean’s calculated action to bring violence against the government threatened the foundation of our country.

### ***B. Nordean’s History and Characteristics***

Since at least as early as 2018, Nordean has held himself out as a man ready to dole out violence to anyone who opposes him. Nordean embraced this role. Well before the violence of summer 2020 and the stabbing of Jeremy Bertino in December 2020, Nordean was presenting himself at public rallies outfitted for battle. Here, Nordean is shown at a rally in 2017 dressed in combat attire with the word, “Uhuru” on his plate carrier.



Nordean became known above all else for violence. After joining the Proud Boys in 2017, Nordean rose to national prominence for his role in an altercation, a video of which went viral in June 2018. During a rally in Portland, Oregon that devolved into a melee, Nordean knocked multiple counter-protestors unconscious with one punch. In a media appearance on InfoWars, a site operated by Alex Jones, following his dramatic punch, Alex Jones referred to Nordean as a “folk hero.” Nordean Ex. 4 at 2:44. When asked how he felt when he saw the other man’s head hit the pavement, Nordean invoked the words of the Proud Boys founder, “like Gavin McInnes says, [] violence isn’t great, but justified violence is amazing.” *Id.* at 6:20 et seq.<sup>2</sup> Nordean was celebrated for this action, and he was thereafter promoted to a role in the Proud Boys “Elders.” *See* Ex. 500 et seq. Nordean embraced this role and relied on it in his self-promotion. For example,

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<sup>2</sup> *See also* The Guardian, Who are the Proud Boys, ‘western chauvinists’ involved in political violence?, *available at* <https://www.theguardian.com/world/2018/jul/14/proud-boys-far-right-portland-oregon> (last accessed Aug. 17, 2023).

on his Parler page, Nordean prominently displayed “Punch heard around the world” as part of his bio. Ex. 600-C.

Nordean’s street violence was not limited to that single punch. During another altercation in Portland, Nordean and his men advanced on counter protestors; Nordean then charged forward and punched a retreating man to the ground.<sup>3</sup> Nordean Ex. 5 at 3:00 *et seq.* Nordean and his men continued to advance on the retreating crowd with Nordean and others continuing their attack. *Id.* On August 9, 2020, Nordean responded to a private message from his friend, Paul Rae, who posted a story about “leftist rioters” who “fucked around and found out.” Nordean responded, “I got bear maced real good, but I put one in the hospital[.]” Nordean Ex. 6.

Nordean embraced this life despite a wealth of other options. Nordean had a comfortable childhood in what he called a “peaceful and rural” environment. Throughout his childhood, Nordean’s parents operated restaurants that were well-known in the suburbs of Seattle, Washington. From 2016 to 2019, Nordean was a manager at his parents’ restaurant, where he earned a comfortable living. However, Nordean’s involvement with the Proud Boys generated controversy for the restaurant. Forced to choose between his family and his newfound fame, Nordean chose the Proud Boys.

By 2020, Nordean’s father came to “recognize how radical and violent the group” was, and Nordean’s father issued a public announcement that Nordean no longer worked at the family

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<sup>3</sup> Battle of Portland, *available at* <https://www.youtube.com/watch?v=-pvf8ftpRWg> (last accessed Aug. 17, 2023).

restaurants. Nordean Ex. 7.<sup>4</sup> Nordean's father told the public that was "disappointed and appalled that [Nordean] had chosen this path."

Nordean continued on his path, and even after January 6, Nordean vowed that he would never quit. Nordean saw firsthand the violence that law enforcement had withstood. But even with those images fresh in his mind, Nordean continued to celebrate January 6 as a glorious event. Just two days after the attack, Nordean posted an altered photograph<sup>5</sup> of a law enforcement officer deploying mace against a rioter. Ex. 601-41. Nordean then directed a comment at the "honorable oath breakers" and told the public that if they "feel bad for the police, [they] are part of the problem." *Id.*

Nordean encouraged his fellow Proud Boys to continue the fight after January 6. By January 12, 2021, individuals in the group advocated for a "stand down" for rallies. Nordean rejected those calls, emphasizing that he "would not be sitting on [his] ass waiting for the end." Rather, Nodean vowed that he would "never stop":

Ok so let's let the government take our lives away and do nothing...stunning and Brave

They're coming for you no matter what you [guys]. Wake the hell up. I'm not gunna be sitting on my ass waiting for the end

I'm gunna press on with some smart level headed non emotional guys and create a game plan for how to approach this year, we aren't gunna stop getting involved in the community, especially with the momentum we have and if your worried about getting arrested and think that doing nothing will remove that threat you're fooling yourselves. I've had this conversation with guys like this for 3 years and every year you all get worked up and wanna hide. We can be

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<sup>4</sup> See also LATimes.com, A Proud Boys leader, shame of his town, available at [https://enewspaper.latimes.com/infinity/article\\_share.aspx?guid=6515565e-bf1c-4330-8904-ae4af7d97e4d](https://enewspaper.latimes.com/infinity/article_share.aspx?guid=6515565e-bf1c-4330-8904-ae4af7d97e4d) (last accessed Aug. 17, 2023).

<sup>5</sup> The photograph was altered to make it appear that the officer that deployed the spray was grinning. Tr. 13990 – 13992 (Dubrowski).

smarter, train, plan etc...but we will never stop. Get on board or move aside.

Nordean Ex. 3.

During this same time period, Nordean was making plans to meet with his chapter to discuss future plans. Writing on January 20, 2021, Nordean set out an agenda for a proposed meeting on February 6 and noted that “we are on the brink of absolute war.” Nordean Ex. 8. On January 21, Nordean proposed a bulk order of equipment that would include “Med kits, boots, pants, shirts (stab proof) vests, gloves(cut proof) masks etc[.]” Nordean Ex. 9. On January 27, Nordean listed the agenda items for the upcoming officer’s meeting as: “Pictures and video of activity[,] Setting up regional training every 3 months[,] Regional bulk orders of gear[,] Communications[,] Rally’s[,] Uniform[,] SHTF protocol [Sh\*\* Hits The Fan protocol].” Nordean Ex. 10.

These communications plainly show that Nordean was not deterred by the events of January 6—he was emboldened. Nordean continued planning for a “war.” Finally, in the days before his arrest, Nordean declared that his parents had given him an ultimatum once again to discontinue his activities as a member of the Proud Boys. In response, Nordean posted a message to Proud Boys in which he shared his plan to “cut[] ties with everyone in [his] family and move away.” Nordean Ex. 11. Nordean was prepared to leave his parents, leave his wife, and leave his daughter behind in Washington state because Nordean was committed to remaining a member of the Proud Boys.

Nordean’s choices underscore the need for a lengthy period of incarceration. Nordean’s history and characteristics indicate that he will relentlessly pursue his misguided objectives even at great personal cost. True to his word, Nordean is “unstoppable, unrelenting and now...unforgiving.”

***C. Need for the Sentence to Afford Adequate Deterrence and the Protect the Public from Further Crimes of the Defendant***

As this Court recognized from the outset of this case, the election may be over, but all politics is not. Free and democratic elections are a bedrock principle of this country, and a significant sentence furthers legitimate goals of general and specific deterrence of political violence. An organized assault like the one led by Nordean cannot simply be treated like all other crimes on January 6. By intentionally and systematically overwhelming officers with their force, Nordean and his co-conspirators re-established the outer limit for political violence. Any individual or group that would consider an organized attack on our government in the future must know that these are crimes that will result in a significant prison sentence.

Likewise, there is a need to deter Nordean individually. Nordean has demonstrated a relentless commitment to his cause even in the face of the threat of arrest for his actions on January 6. Indeed, *after* January 6, Nordean was making plans to accumulate tactical gear and engage in regional “training” every three months in anticipation of a “war.”

As a leader on January 6, Nordean played a central role in unleashing the violence and destruction at the U.S. Capitol. Nordean’s ability and willingness to lead others to engage in political violence, and his continued commitment to the same beliefs that animated that leadership and led to that violence on January 6, pose a continuing threat to our nation.

**Conclusion**

Considering all of the factors and the nature and circumstances of Nordean’s crime, Nordean should be sentenced to 27 years of incarceration.