

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Complainant,

v.

ZACHARY REHL

(Styled as USA v. NORDEAN incorporating cases
against four Defendants collectively)

Accused

Criminal Case No.

1:21-cr-00175-TJK-3

**ACCUSED ZACHARY REHL'S SUPPLEMENT AND INCLUDED MEMORANDUM OF
LAW AND NOTICE OF *BRADY* MATERIAL PRODUCED AFTER BAIL HEARING
ON SEPTEMBER 13 IN SUPPORT OF HIS RENEWED MOTION FOR RELEASE OF
ACCUSED ZACHARY REHL FROM PRE-TRIAL DETENTION
AND MOTION TO RE-OPEN DETENTION HEARING**

Comes now the Accused ZACHARY REHL, by counsel, and hereby ask leave to and files this Supplement to his renewed motion for release on bail from pre-trial detention, moving to reopen his detention hearing, pursuant to 18 U.S.C. § 3142(f), and for his grounds states as follows:

1. This Notice and Supplement is related to Defendant Nordean's Notice Of *Brady* Material Produced After Bail Hearing On September 13, filed at ECF Dkt. # 197. Undersigned counsel applies the recent *Brady* disclosures addressed there to Defendant Zachary Rehl's specific circumstances and further explains how those affect Rehl here.

2. Rehl's counsel will deliver a physical disk or disks containing these videos to the Court for routing to chambers. It should be noted that the Eddie Block video is public, but some of the other video clips from a third party's iPhone have been designated Sensitive due to

privacy concerns. Rehl's counsel intends to contest this designation, but at this point the iPhone video clips are currently Sensitive under the Protective Order.

3. The Government has simply charged the wrong people.

4. The Government convened a grand jury on January 8, 2021, concerning events only two days before on January 6, 2021, with no pressure under a statute of limitations.

5. With an estimated 500,000 to 1 million people in Washington, D.C. to demonstrate on January 6, 2021, it would be extraordinary to sort through what happened so quickly as to be able to charge these Defendants in advance of all the facts.

6. Without question, some criminals and thugs attacked U.S. Capitol Police officers and Metropolitan Police Department officers at the Capitol on January 6, 2021, as shown in video recordings and in news media reporting.

7. Not until video was released during the impeachment trial against former President Donald Trump did most people, including Zachary Rehl, know the full measure of what happened in other parts of a 751 foot long building and at different time coordinates stretched over a 5 hour period of time.

8. We all would assume that the FBI is focused on identifying those who are actually guilty of assaulting police as their # 1 priority. Perhaps processing of materials for this case is slow because the FBI is appropriately busy instead working on identifying and prosecuting those who actually attacked U.S. Capitol Police and Metropolitan Police Department officers.

9. But these Defendants had nothing to do with that.

10. In 1996, the FBI rushed to assume that Security Guard Richard Jewell who actually warned of finding the bomb before it went off was the bomber.

11. Indeed, will a mad rush to accuse Zachary Rehl as being a James Bond super-

villain mastermind end up *compromising* the Government's prosecution of those actually responsible for violent confrontations with police officers?

12. Here, Zachary Rehl – the son and grandson of police officers and activist supporting the “Back the Blue” movement – has started a GoFundMe (or similar platform) fund-raising campaign to raise money for any injured police officers injured at or around the U.S. Capitol on January 6, 2021. It is: www.HealCapitolPolice.com A Treasurer is being sought to be independent and give reliability.

13. The Court will recall upon discussion of the topic that in a hearing on September 13, 2021, on a motion by Ethan Nordean and Joseph Biggs seeking pre-trial release on bail from pre-trial detention counsel for Nordean and Biggs, Nicholas Smith and John Dan Hull, argued from a documentary filmmaker's video taken during the demonstrations on January 6, 2021, around the U.S. Capitol.

14. The Court expressed concern that neither the Court nor defense counsel actually had the video that was being discussed, which hampered the Court's useful discussion of a video not provided to be reviewed at that time. Counsel believes that the Court intended to continue and further the discussion of matters involving that video at a (then) later time so that the Court and everyone would have access to the video about which discussions were then attempted.

15. Through the tireless and persistent efforts of attorneys for Ethan Nordean, Nicholas D. Smith and David B. Smith, and for Joseph Biggs, John Dan Hull, IV, pressing for the production and release of these videos, the roughly “90 minutes” video (actually 1:40 hours) is now available.

16. The 1:40 hour segment filmed by Eddie Block is now publicly available at:

https://capitol-hill-riots.s3.us-east-1.wasabisys.com/User%20Submissions%20-%20UNSORTED/Content/Bad%20WiFi%20in%20dc_oSOsG5kN5wc_Channel_UCMo

[POI9EfzVREnO5YMUR0Gw Eddie%20Block%20Films .mp4](#)

(The undersigned cannot figure out whose website that is despite some familiarity with coding.)

17. Rehl is not remorseful of things he did not do, but regrets that anyone fought with, attacked, or injured police at the Capitol.

18. Assistant U.S. Attorney Jason McCullough confirmed by email in a clarifying response to my confusion over which videos had been designated sensitive, that the documentary video by Eddie Block *has not been designated* Sensitive and is publicly available. It appears from the filmmaker providing an affidavit on a related topic that Eddie Block agrees to the public availability of his raw video.

19. When we mention the documentary filmmaker's video, what we have is the raw nearly-continuous recording in what would be called "raw" video to be used by the filmmaker "Eddie" Block to later edit into a proper documentary final product.

20. In candor, undersigned counsel perceives that the 1:40 hour segment is not the only video taken by Eddie Block that day, and there must be video taken at the Ellipse demonstration before the 1:40 minute segment provided and video taken after that on the West face of the Capitol.

21. Any video before this segment at the Ellipse would show only peaceful, First Amendment demonstration. See similar videos taken for "NationalFile.com" of the 100% peaceful protests at the Ellipse posted at https://www.youtube.com/watch?v=0SsHKU_52X4, https://www.youtube.com/watch?v=rnn0t_sKBGA, <https://www.youtube.com/watch?v=GJGOIrPPYI> and <https://www.youtube.com/watch?v=q8MJpMeoCHw> (note the Christian hymn "Hallejuah" playing in the background from the rally organizer's bank of loudspeakers, chosen by the

organizers, while awaiting the next speaker).

22. Meanwhile, and independently, on September 21, 2021, the Government produced additional video and photographs including videos retrieved from a third party's iPhone, on a locked external hard drive. Counsel would further identify it but that might say too much about the type of locked, secure device used by the Government.¹ Counsel will burn a thumb drive or the like for Chambers and other counsel of only those media he refers to and argues from. (The Eddie Block segment is 2 Gigabytes just by itself.)

23. ZACHARY REHL remains in detention out of speculation that REHL might do again what he never did, that Defendants might boldly go where they have never gone before.

24. In the bail hearing for release of the Accused ZACHARY REHL, from pre-trial detention hearing in the U.S. District Court for the Eastern District of Pennsylvania, the prosecution conceded in proper candor:

To be sure, the indictment does not allege that Mr. Rehl engaged directly in violence against officers or destruction of property but there is, nonetheless, a presumption in favor of detention based on his liability for his co-conspirators destruction of property.

Assistant U.S. Attorney Luke M. Jones, Esq., Page 3, Transcript of Detention/Rule 5 Hearing Before Honorable Richard A. Lloret, United States Magistrate Judge, U.S. District Court for the Eastern District of Pennsylvania, March 26, 2021, Case No. 2:21-mj-526-1, filed publicly as ECF Docket # 9 in that Court.

25. Thus, the main question is whether REHL aided and abetted or conspired to get others to do what the Government conceded REHL himself did not do.

26. AVSL Systems at counsel's request optimized the audio from a video posted by a third party on Twitter, to screen out background noise and make the words spoken easier to hear,

¹ Counsel is a bit confused as to the wide diversity of methods for producing discovery material which seems to slow down the process for everyone. Maybe there's a benefit to changing delivery methods to avoid unauthorized access.

and added captions of what is being said. That adjusted video is visible at:

<https://youtu.be/rQDwsyFXYhg>

27. This shows Zachary Rehl, Jeffrey Finley, and about 3 or 4 others debating whether or not to go inside the U.S. Capitol, showing indecision, uncertainty, and obviously a lack of any advance planning or intention to enter the Capitol.

28. Similar to that, as new information, the Eddie Block video, also shows there was clearly no plan or conspiracy from the behavior of these Defendants. These Defendants are just wandering around making sure there aren't any ANTIFA thugs in the area. They "circle" (in a rectangle) the region around the Capitol to monitor the risk from counter-demonstrators.²

29. Showing this, they chant at D.C. police officers "***DO YOUR JOB!***"

30. Even if assumed that at a later time they did something different, they are clearly not pursuing any plan to attack the Capitol or any other crime. They have no intent or *mens rea*.

31. Defendant Zachary Rehl, by counsel, is strongly asking and insisting that the Court actually watch the 1:40 hour video segment. That is a significant investment of time and not much happens during the video.

32. Counsel really ought to cite to precise times in the video for the Court.

33. But what is most significant and important is for the Court to see what is NOT happening throughout the entirety of the video recording. It is the entire video wherein nothing

² Note that there are many comments such as "make a hole!" or "coming through!" which at first glance might suggest a commanding leader or leaders taking the lead. After watching the full video, however, it becomes clear that these refer to Eddie Block who is confined to a wheel chair. The comments are to make way for the man in a wheel chair. It is not about some leadership structure. The comments immediately precede the wheel chair making its way through the crowd, with the help of attentive Proud Boys. Note that Eddie Block filmed the video from his wheel chair, so the video does not show himself. But at one point near the end, the wheel chair gets stuck in the grass and can be seen in the video as demonstrators help Eddie Block by picking up the wheel chair and carrying it.

much is happening that shows the lack of any *mens rea*, the lack of any advance plan, the lack of any conspiracy, the lack of any violence, the lack of any interaction with police at least by Zachary Rehl, the lack of any intention that is most important.

34. Therefore, counsel insists that the Court view the entire video, fully aware of the demand on the Judge's time and workload, or perhaps a clerk can satisfy the Court.

35. Counsel believes that investing this 1:40 hour could save months of work by showing that the case against Zachary Rehl and the other Defendants should be terminated or significantly scaled back to fewer charges or maybe only one state-law charge.

36. But it is the "nothing much happening" that exonerates these Defendants.

37. The video documentary at the above link for 1:40 minutes shows Zachary Rehl sauntering slowly, calmly, and peacefully around doing what the Proud Boys do – patrolling against Left-wing violent thugs who for decades have shut down conservative speakers and demonstrations with Mussolini Black Shirt style violence.

38. One of the telling moments is Proud Boys walking away from the Capitol.

39. The video makes clear that the Proud Boys were focused on ANTIFA, on several occasions shouting repeatedly things like "F*** ANTIFA!" in unison (or responsive shouting). It is notable that the Proud Boys do not have any other message, and do not shout political slogans or messages, other than shouting at some police "**DO YOUR JOB !!!**"

40. The video shows Zachary Rehl meandering around – not as a leader or organizer.

41. The video shows Zachary Rehl standing at ease, relaxed, in the middle of the crowd, not at its head. He was not the James Bond super-villain that the U.S. Attorney's Office argued to the Court in opposing pre-trial bail. He is just standing around with the crowd, occasionally texting with his wife in Philadelphia to assure her that he is okay.

42. The video explodes the claims of the political class about the Proud Boys.

43. Needing a scapegoat, politicians have ignored the fact that the Proud Boys Club is a drinking club of men who like to watch sports. They got involved in defending Western civilization and its values like free speech in reaction to the long-running, chronic, deeply-disturbing violence from the Left.

44. Today, what the Proud Boys do is they go to conservative demonstrations and make sure that Left-wing agitators and thugs like Mussolini's Black Shirts do not shut down free speech by conservatives. The Proud Boys stand between the violence and the citizens exercising their free speech rights.

45. The political class just refuse to acknowledge what everyone knows: Defensive preparations do not equal preparing to attack the Capitol.

46. There has been a chronic, decades long practice of the Left to attack and shut down conservative demonstrations and speeches, the Left even committing violence inside college auditoriums to stop conservative speakers and bust up speeches, meetings, conventions, conferences on the right.

47. The Proud Boys call their mission "We don't start anything, but we'll finish it."

48. In the separately released videos and photographs sent on September 21, 2021:

49. In a 696 MB long Quicktime video titled, ML_DC_20210106_A6500_C0041, covering only about a minute of real time, retrieved from a person's IPHONE, Zachary Rehl is shown walking calmly with a group away from the Washington Monument / Ellipse area, with the Washington Monument visible in the background, in the direction of the U.S. Capitol.

50. In the Government's Motion For Revocation Of Release Order And For Pretrial Detention at ECF Dkt. #37, the Government presents a misleading photograph on Page 4.

51. The photo is cropped to make it look like Zachary Rehl, Ethan Nordean, and Joseph Biggs are leading a column of demonstrators storming the U.S. Capitol.

52. Counsel does not know if the Government knew at the time that the photograph was misleading when including it in the Motion, but now with the release of these new disclosures of video showing the same scene in a wider view, the Court should reconsider release of Zachary Rehl on pre-trial bail. And continued use of and reliance upon the photograph would be lacking in candor to the Court and honesty.

53. But Video ML_DC_20210106_A6500_C0041 shows that in fact the crowd was about 25 to 30 men wide and perhaps 4 or 5 rows deep.

54. ML_DC_20210106_A6500_C0041 shows that Zachary Rehl, Joseph Biggs and Ethan Nordean were not leading a crowd, unless owning a bull horn makes one in charge. (True, later, when only the Proud Boys are walking around the Capitol, Biggs seems to be at the head of a small, very small, group of his own friends and associates, in the Eddie Block video. But in terms of leading a large group of others to go storm the Capitol, the video does not show that.)

55. ML_DC_20210106_A6500_C0041 shows that Rehl, Biggs, and Nordean were merely walking along a line of people 25 to 30 wide and not leading any one.

56. The assumption that everyone in the group is a Proud Boys member is unfounded.

57. Also, the photograph suggests the group marching rapidly toward the Capitol.

58. ML_DC_20210106_A6500_C0041 shows that the group was actually walking quite slowly and calmly.

59. ML_DC_20210106_A6500_C0045 reinforces both points.

60. Then (clearly after the “march) video ML_DC_20210106_A6500_C0042 shows the group just standing around, some retrieving and drinking from water bottles, etc.

61. ML_DC_20210106_A6500_C0046 shows also shows them just standing around, though here posing for pictures with the Washington Monument in the background.

62. Later near the Capitol, ML_DC_20210106_A6500_C0048 shows the same standing around.

63. Furthermore, what is missing?

64. ML_DC_20210106_A6500_C0041, ML_DC_20210106_A6500_C0045, ML_DC_20210106_A6500_C0046, and ML_DC_20210106_A6500_C0048 *fail* to show something very important.

65. **There is no** “paramilitary gear and supplies-including concealed tactical vests, attack [equipment]; protective equipment,” visible as alleged in Paragraph 28(c) of the First Superseding Indictment. (There could be radios, but we don’t see any. The clothing shown could not have any such equipment concealed underneath. The idea of “concealed tactical vests” does not invoke supernatural magic that defies the laws of physics and of clothing. With one or two exceptions of men who are not quite as trim as the others, most of the well-fitted casual wear is not suitable for concealing any tactical vests underneath.)

66. Since the videos show the Defendants and others continuing on this walk toward the U.S. Capitol, if the group did not have “paramilitary gear and supplies-including concealed tactical vests, attack [equipment]; protective equipment,” they did not have them approaching the U.S. Capitol either.

67. The same thing is shown in the Eddie Block documentary, the 1:40 hour segment at https://capitol-hill-riots.s3.us-east-1.wasabisys.com/User%20Submissions%20-%20UNSORTED/Content/Bad%20WiFi%20in%20dc_oSOsG5kN5wc_Channel_UCMoPOI9EfzVREnO5YMUR0Gw_Eddie%20Block%20Films_.mp4 except where the Proud Boys marching

around the area encounter others a few of those others are wearing paramilitary vests. But it is not these Defendants who are wearing or have with them any “paramilitary gear and supplies-including concealed tactical vests, attack [equipment]; protective equipment.”

68. The Eddie Block video shows the contrast between some other people who are clearly wearing paramilitary gear and concealed tactical vests, and these Defendants are not.

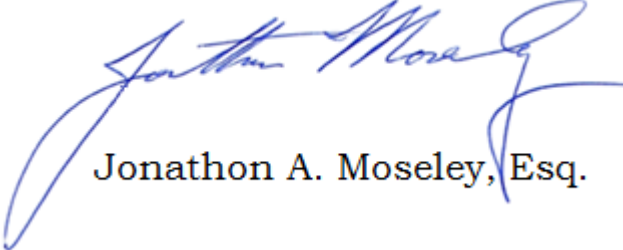
69. It is clear from videos – some of them a surprise and shock to what counsel was aware of before reviewing the evidence in this case that both innocent (First Amendment) and horrible (criminally violent) things happened at and around the U.S. Capitol on January 6, 2021.

70. But the Government merely has the wrong people in their sight in this case, unless we indiscriminately include everyone as collective punishment.

CONCLUSION: As stated in his original motion, Rehl requests that the Court reverse the order revoking the bail set by the Magistrate Judge in the Eastern District of Pennsylvania and set reasonable conditions for pre-trial release on bail.

Dated: October 6, 2021

RESPECTFULLY SUBMITTED
ZACHARY REHL, *By Counsel*



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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2021, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following CM/ECF participant(s), and also mailed a copy to the following by first class U.S. mail, postage prepaid, one single copy to the prosecution for distribution internally to all counsel involved for the prosecution. From my review of the PACER / ECF docket records for this case that the following attorneys will receive notice through the ECF system of the U.S. District Court for the District of Columbia.

Mr. Luke Matthew Jones, Esq.

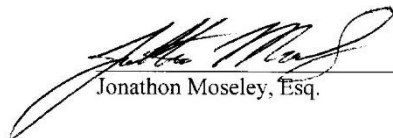
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