

DOJ MOVES TOWARDS PARALLEL CONSPIRACY PROSECUTIONS OF THE OATH KEEPERS AND PROUD BOYS

As noted, on January 27, DOJ indicted three Oath Keepers, Thomas Edward Caldwell, Donovan Ray Crowl, and Jessica Marie Watkins, in a conspiracy to hinder Congress' certification of the Electoral College vote. FBI seems to be working on identifying the other people who were marching in formation with Watkins and Crowl on January 6, as well as building out a larger prosecution team (which includes, among others, one of the women who worked the Russian side of the Mueller cases).

Meanwhile, yesterday, DOJ announced the arrest of yet another Proud Boy – Ethan Nordean – and the indictment of two other Proud Boys, Nicholas DeCarlo and Nicholas Ochs, in a conspiracy to hinder Congress' certification of the Electoral College vote. Of particular note, in DOJ's request for detention with Nordean, they invoked the list of crimes that can merit a terrorist enhancement. (h/t FM)

The United States moves for pretrial detention of the Defendant, pursuant to 18 U.S.C. § 3142(e) and (f)

1. **Eligibility of Case.** This case is eligible for a detention order because this case involves (check all that apply):

- ☐ Crime of violence (18 U.S.C. § 3156).
- ☒ Crime of Terrorism (18 U.S.C. § 2332b (g)(5)(B)) with a maximum sentence of ten years or more.

They don't say *which* of the terrorist enhancement crimes they have in mind, but several are possibilities:

- ~~351 (relating to congressional, cabinet, and Supreme Court assassination~~

~~and kidnaping)~~

- ~~844(f)(2) or (3) (relating to arson and bombing of Government property risking or causing death)~~
- ~~930(c) (relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon)~~
- ~~1114 (relating to killing or attempted killing of officers and employees of the United States)~~
- ~~1203 (relating to hostage taking)~~
- ~~1751(a), (b), (c), or (d) (relating to Presidential and Presidential staff assassination and kidnaping)~~
- ~~2332f (relating to bombing of public places and facilities)~~

Update, 2/6: The detention memo for Nordean explains they're using his 1361 charge to apply the terrorism enhancement.

That rebuttable presumption applies to Defendant because 18 U.S.C. § 1361 is specifically enumerated in 18 U.S.C. § 2332b(g)(5)(B) and carries a maximum sentence of ten years in prison where, as here, damage or attempted damage to property exceeds \$1,000.

All of which is to say the government is treating Nordean's arrest like he's part of a terrorist group.

As suggested above, the DeCarlo and Ochs conspiracy indictment parallels the one obtained against the Oath Keepers.

The Object of the conspiracy is the same: “to stop, delay, and hinder Congress’ certification of the Electoral College vote.” And several of the overt means are the same: agreeing to participate in a January 6 operation, taking planning steps together, and forcibly storming past the police barricades to enter the Capitol.

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| Proud Boys <i>Nicholas DeCarlo</i> <i>Nick Och</i> | Oath Keepers <i>Thomas Caldwell</i> <i>Donovan Crowl</i> <i>Jessica Watkins</i> |
| Stop, delay, hinder Congress’ certification of the Electoral College vote | Stop, delay, hinder Congress’ certification of the Electoral College vote |
| Agreeing to participate in Jan 6 operation (a) | Agreeing to participate in Jan 6 operation (a) |
| Taking steps to plan (b) | Coordinating in advance (c) |
| Forcibly storming past barricades and other LE officers (e) <i>William Pepe</i> <i>Dominic Pezzola</i> | Forcibly storming past barricades and other LE officers (g) |
| Fundraising (c) | Recruiting as large a following as possible (b) |
| Traveling from other states (d) | Using walkie-talkie-like application (d) |
| | Bringing paramilitary gear (f) |
| | Concealing evidence (h) |

The conspiracy indictment of Dominic Pezzola and William Pepe effectively charged they conspired to achieve one of the means in the DeCarlo and Ochs indictment, to,

obstruct, influence, impede, and interfere with law enforcement officers engaged in their official duties in protecting the U.S. Capitol and its grounds during the demonstrations planned for January 6, 2021.

The government has not, yet, charged Pepe with 18 USC 1512, obstructing an official proceeding

(meaning the vote certification).

Meanwhile, the Nordean complaint cites the charges against Pezzola, Joe Biggs, and Robert Gieswein, tying all their actions together without (yet) claiming an agreement to act together.

But you can see where this is heading: to two parallel conspiracy prosecutions, each sharing the same object – to halt the vote certification – and each also sharing several of the same overt acts.

These conspiracy indictments are, for now, based off personal communication between the co-conspirators, for example the Zello communications that Watkins sent. But as I noted in the Oath Keepers post, there is someone with whom both these groups agreed with and pursued some of the same steps as: Donald Trump. These conspiracy indictments may build little by little based off what each group has done among themselves, but the framework for a much broader conspiracy is already in place.