

# WHAT ELIEL ROSA SAW AT THE PRECISE MOMENT ETHAN NORDEAN WAS NOT SEEING OFFICERS OPEN THE UPPER WEST TERRACE DOOR

Yesterday, Eliel Rosa pled guilty to a misdemeanor charge of trespassing, even as his co-defendant, Jenny Cudd (the woman who famously got permission to fly on a pre-arranged trip to Mexico), continued to fight to get the obstruction count both were charged with dismissed as part of her own plea. (Rosa, who is a Brazilian citizen, faces a significant risk of deportation upon sentencing.)

Within an hour of that time, Ethan Nordean filed a motion to de-designate two 40-minute lengths of video designated highly sensitive so he can publicly release it. Nordean is trying to get video of something he *didn't witness personally* released, showing that at 2:33PM on January 6, four minutes before Nordean entered the Upper West Terrace door at 2:37, two cops there opened the door and then, three minutes before he entered the door, one of those cops held the door open for an insurrectionist.

Second Upper West Terrace Video. This clip is 40 minutes in length, running from 2:20 p.m. Eastern Time on January 6 to 3:00 p.m. The video is from the same camera responsible for the First Upper West Terrace Video. Except, unlike in the shorter First Upper West Terrace Video, at 2:33 p.m., just a few minutes before Nordean enters the building, two police officers open the doors leading from the entry hallway into the Capitol

Building. One officer holds the door open as the first protestor enters the building through the Upper West Terrace Door at 2:34 p.m. At 2:35 p.m., two minutes before the clip begins in the First Upper West Terrace Video, a police officer holds a conversation with a line of protestors. Then the officer permits them to enter the building.

Nordean also wants to get a video showing that, one minute before he entered through that door, a cop propped the door open, and then, seven minutes after he went through the door, cops let a far bigger mob of people in.

[L]ess than a minute before Nordean enters the door, a police officer props the door open and moves a box out of the way of protestors entering the building. At 2:43 p.m., a time also outside the scope of the First Upper West Terrace Door Video, a group of officers large enough to block the narrow door to the Capitol Building confer with one another, as the line of protestors calmly waiting to enter grows outside. At 2:44:18 p.m., one of the officers appears to hear something in an earpiece. He then places his hand on the shoulder of a second officer who is speaking to the protestors and leans in to say something to him. The group of officers then permit more protestors to enter the building.

None of these things show up in the clips Nordean has been given, and none of these things would have been visible to Nordean in the minute during which he entered the building after assembling a violent mob to get to the door in the first place.

First Upper West Terrace Video. This clip is exactly one minute in length, running from 2:37 p.m. Eastern Time on

January 6, to 2:38 p.m. Eastern Time. It depicts Nordean passing through a Capitol Building entryway hall. Two law enforcement officers stand aside as Nordean and others proceed into the building.

First Upper West Terrace Door Video. This clip is also exactly one minute in length, running from 2:37 p.m. Eastern Time on January 6, to 2:38 p.m. Eastern Time. However, this video is from a camera facing the door through which Nordean entered the Capitol Building before passing through the hall seen in the First Upper West Terrace Video. No law enforcement officers can be seen in this one-minute clip.

Don't get me wrong: eventually, those 40-minute videos should come out, along with explanations of why those cops did what they did and whether they're among the cops who were suspended for investigation after the insurrection. But the videos don't help Nordean prove that, when he crossed into the Capitol from a terrace that was already well inside the restricted area that day, when he entered backed by thousands of men – many violent – that he had a key role in assembling, he knew what had happened four minutes earlier or what would happen seven minutes later. The only way he would have known what happened four minutes earlier and what would happen seven minutes later at the moment he himself crossed the threshold is if those cops were collaborators that he knew would open the door before the insurrection started.

If that's the argument Nordean wants to make to get these videos released, by all means I'd love to hear it.

As I said, within an hour of the time that Nordean filing posted to PACER, Eliel Rosa was pleading guilty. He didn't read his allocution during the plea, but it has been posted since. And it shows another coincidence in the lives of

Ethan Nordean and Eliel Rosa. On January 6, Rosa was approaching the Capitol at the same time as Nordean was. And what he saw and heard is that people with bullhorns – like Nordean had – were shouting “Go, Go, Go,” as police set off pepper spray in an effort to hold them back. Rosa, who entered the Capitol just as it was opened (meaning the video Nordean wants *would* be helpful to Rosa and may be why Rosa got to plead to a misdemeanor) and two minutes before Nordean, knew that the police didn’t want him or the people yelling through the bullhorns to get people to move toward that door, because the cops were deploying pepper spray to get them to fall back.

10. On January 6, 2021, prior to 2:35 p.m., Eliel Rosa and Jenny Cudd approached the United States Capitol from the West.

11. In front of them, Mr. Rosa observed a large group of individuals shouting and Mr. Rosa heard people with megaphones shouting, “Go, Go, Go.” Mr. Rosa heard bangs and acknowledged the smell and presence of pepper spray that had been deployed. Because of these observations, he knew law enforcement was present and in front of the advancing group.

12. At approximately 2:35 p.m., Eliel Rosa and Jenny Cudd walked into the U.S. Capitol through the Upper West Terrace Door.

Mind you, Rosa is not the only misdemeanor plea that would include such evidence about what Nordean would have been seeing at the moment he was not seeing cops leave the door. By the time Nordean would go to trial there’d be a big handful of such statements of the offense, one after another January 6 defendant who knew, well before they entered the Capitol building, that they were not welcome in the building.

But even while Nordean's alleged co-conspirator Zack Rehl seems to be getting chatty with prosecutors, Nordean is filing motions that would be most helpful if he wanted to prove he knew [hypothetically—I'm not arguing he did] there'd be collaborator cops waiting at that specific door of the Capitol, but otherwise would be useless to show what Nordean knew or saw when he crossed into the Capitol. Particularly as the government begins to collect sworn allocutions from people like Rosa making it clear what Nordean would have seen before he got to that door.

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Update: In response to this motion, the government delivered the video in question to Judge Tim Kelly so he could see – the government contends – how Nordean misrepresented the video.

The Government's Opposition to Defendant Nordean's Motion for Removal of Sensitivity Designation (ECF 129) will be filed separately; however, the Government found it necessary to provide an immediate response to Defendant's characterization of rioters' entrance to the Capitol. The Government disputes Defendant Nordean's characterization of the events surrounding Nordean's unlawful entrance into the Capitol. Among other things, the surveillance footage does not "show[] a law enforcement officer authorizing Nordean's entrance." (ECF 113). Likewise, the footage does not show a police officer "prop[ping] the door open and mov[ing] a box out of the way of protestors entering the building." (ECF 129) (emphasis added). The video depicts outnumbered Capitol Police officers being overrun by rioters unlawfully breaching a Capitol entrance.

And then Nordean's attorneys responded, providing a new description of the video in

question, one that adds a detail they didn't include the first time: that the cops in question were already dealing with insurrectionists inside the building.

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\_14h20min00s0000ms.asf. In the first clip, police officers open an inner door to the Capitol, allowing protestors who are already in the 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. [my emphasis]

That description of the other rioters didn't appear in their original description. It changes the meaning of it, because it offers other plausible explanations why cops at one post let rioters in as they were facing down rioters already in the building.

Again, I look forward to one day seeing videos showing what Ethan Nordean had no way of seeing before he entered the building. But thus far, Ethan Nordean has proven that Ethan Nordean provided an incomplete description of videos that depict what Ethan Nordean could not have seen happen just before he entered the Capitol.

It bears noting that Nordean's larger argument, likening this dispute to one that was resolved in favor of John Anderson hours before Nordean's own filing, resulting in the release of video *that showed Anderson*, is inapt and probably designed to impress gullible reporters or maybe complicit Congressmen like Paul Gosar. Nordean is pointing to the release of video that shows a defendant to argue for release of video that doesn't show Nordean.

Update: Let me restate what Nordean is trying to argue.

By the time he got to the West Terrace door, he had passed at least three barricades. At each, he witnessed assaults, including – the first one – an assault that hospitalized a cop. In one of those cases, he reined in Christopher Quaglin, but Quaglin's actions were still part of the collective action that allowed Nordean to even get to the West Terrace door. Nordean is trying to argue that, if at one of four barriers he passed to enter the Capitol, no cop was hospitalized as rioters passed, it's proof he had no way of knowing he wasn't welcome inside.