

ZACH REHL'S SUBPOENA FOR PORT-A-JOHN DETAILS FROM THE NON-EXISTENT ONE NATION UNDER GOD

The fourth defendant in the Proud Boy Leader indictment, Zach Rehl, has finally made an aggressive appearance in the docket.

How he got here is a matter of significant interest – and some dispute. On September 9, Aram Rostom (who keeps getting these great scoops), reported that Enrique Tarrío released a recording in July reassuring everyone that Rehl would not flip. “If there’s anyone that will hold fast, it’s fucking Zach.”

In the July audio, a copy of which was reviewed by Reuters, Tarrío said that “we are trying to f–ing avoid” a situation in which the senior members facing charges would cooperate with prosecutors. The four, who are jailed without bond, have pleaded not guilty.

Raising the possibility that one of the four leaders may have been cooperating with authorities, Tarrío told fellow Proud Boy leadership he didn’t believe that the man was doing so – and said he had spoken about the matter directly with that leader’s wife.

“The bigger problem with that is the guys that are in prison right now are holding on to hope that everybody is f–ing staying put because they didn’t do anything wrong,” Tarrío said. “The moment that they think one of the guys flipped, it throws everything off and it makes everybody turn on each other, and that’s what we are trying to f–ing avoid.”

When the message leaked, Tarrío released another recording saying that it's hard enough to fight the government without having to fight, "not just a regular felony, like a serious felony."

"You know it's hard enough to fight a f-ing entire government...," Tarrío said in the Aug. 27 message, "to have to worry about dudes in here f-ing putting you in felony territory. Not just regular felony, like a serious felony."

On September 19, Ethan Nordean included the following allegations in a filing, noting that in August (so after Tarrío called Rehl's wife), Rehl had asked Judge Amit Mehta for help firing his attorney, citing what sound like real complaints with his representation. Nordean went on, describing an incident in which prosecutor Seth Jones met with Rehl outside the presence of his counsel and threatened Rehl with transfer to DC if he didn't flip.

In the bail hearing on September 13, counsel to Defendant Biggs alerted the Court to information concerning the government's attempts to transfer Defendant Rehl to the D.C. jail. Specifically, Biggs' counsel advised that the government's attorneys may have threatened to transfer Rehl to D.C. from a Philadelphia jail if he did not agree to cooperate with the government against the other Defendants. Counsel have subsequently gathered additional information about this episode. It significantly bears on Nordean's and Biggs' pending bail motions in several respects. These matters should be investigated by the Court, as it appears that the government's constitutional violations here are not limited to the improper withholding of exculpatory material beyond the point at which Defendants may make timely use of it. Counsel are working on obtaining sworn declarations for the Court but advise it

here about what they have learned in the meantime.

On August 13, Defendant Rehl mailed a letter to the Court. Exh. 1. He was writing from his cell in FDC Philadelphia. Rehl formally requested that he be allowed to terminate his thencounsel, "effective immediately, due to ineffective counsel." Among other reasons given, Rehl noted that his counsel was taking actions on his behalf without his knowledge and ignoring virtually all requests to discuss the case. "In five months, I have met with [counsel] once in the middle of May for approximately 30 minutes," Rehl wrote. Exh. 1. As this letter was never filed on the docket, it is not clear when the government became aware of it. However, as inmate nonlegal mail is reviewed, particularly in a case such as this, there is a presumption that the government gained knowledge of the letter at some point.

Sometime after he mailed that message to the Court, Rehl was removed from his cell by federal agents, likely U.S. Marshals. Rehl did not know where he was being taken. The agents told him he was headed to a court appearance. That was not true. Rehl was then moved through an underground tunnel to what appeared to be the Philadelphia federal courthouse. He was then steered not to a courtroom but to an office. There he was greeted by assistant U.S. Attorney Luke Jones. Rehl apparently waited with the government's prosecutor, without counsel present, for approximately an hour and a half. At that point, an individual who works in the office of Rehl's former counsel appeared. Rehl had never retained this person to be his counsel and knew her only as an assistant to his former lawyer.³ At that point, AUSA

Jones began to converse with Rehl about this case. It is our understanding that Rehl's retained counsel was not then present. Neither was an FBI agent, according to those in the room.

Among other matters, AUSA Jones apparently told Rehl that if he did not cooperate with the government, he would likely be transferred from FDC Philadelphia to the D.C. jail, where he would not be able to see his wife and child, at least until after his "conviction."⁴ It is our understanding that when Rehl said there was nothing to cooperate about, AUSA Jones responded that, in that case, Rehl could "wear a wire" when talking to others. Rehl's then-counsel arrived much later—approximately three hours behind schedule. At that point the lawyers agreed to continue the meeting to the following day.

So unusual were these proceedings that the Marshals who transported Rehl back to the jail expressed their concern to him about his apparent total lack of legal representation. "Did you know that interview was going to happen? Did your lawyer set that up for you?" When jail staff returned to Rehl's cell the next day, he refused to meet with AUSA Jones again. [link added]

Nordean made all this public based on a claim that this meant the government was holding them – last I checked, in Florida and Washington – because they wanted Rehl to wear a wire on them.

In response, Jones said the claims were bullshit and inappropriate for Biggs and Nordean to raise in any case.

The allegations of government misconduct are false. It would be improper for the government to address these allegations

with counsel for defendants Nordean or Biggs, neither of whom represent defendant Rehl, or to address them further in a public filing. Defendant Rehl is represented by counsel, with whom the government has conferred regarding these allegations.

Contrary to defendant Nordean's suggestion (ECF No. 174 at 4-7), the allegations have no bearing on his or defendant Biggs' pending motions to reopen bail hearings. Moreover, the allegations are spurious and should not be countenanced by the Court.

At the most recent hearing, prosecutors attributed the earlier delay on moving Rehl to detention motions and said the Marshals were responsible for the decision to move him. Who knows who is telling the truth, but Judge Tim Kelly agreed that it really is irrelevant to Biggs and Nordean's bids to get out of jail. He also had a separate hearing where Rehl informed him that Jonathon Moseley is now representing him and he's quite happy with the relationship thus far.

That's how we got here, to Rehl's second substantive motion, in which Moseley moved to request for a subpoena for information on the permits authorizing the Wild Protest rally at the location advertised on the East side of the Capitol. Or, if he can't get that, he wants policies on port-a-johns because (the motion shows) there were port-a-johns where the rally advertisement said a rally would be held.

ZACHARY REHL, by counsel, requests the issuance of a subpoena to the U.S. Capitol Police, c/o Thomas Manger, [new] Chief of Police and/or Custodian of Records, for

(1) Any and all documents relating in any way to any application for –

(2) Any and all documents relating in

any way to –

(3) Any and all documents relating in any way to the denial of –

(4) Any and all documents relating in any way to any revocation of – any permit to demonstrate or assemble on the grounds of the U.S. Capitol, especially in the Northeast corner of the grounds across 2nd Street, NE from the U.S. Supreme Court, on January 6, 2021, or for any time period including January 6, 2021. Or:

(5) Any and all documents relating in any way to the placement of temporary toilets (commonly described as porta-potties) on the grounds of the U.S. Capitol, in the Northeast corner of the grounds across 2nd Street, NE from the U.S. Supreme Court, on January 6, 2021, or for any time period including January 6, 2021. (Please do not confuse the facilities set up on the other side of the Capitol very far away for assembly of stands for the inauguration on January 20, 2021, which could not explain the porta-potties across Second Street from the U.S. Supreme Court.)

(6) Any and all documents relating in any way to general policies and procedures at any time concerning restrictions on the placement of equipment such as porta-potties on the grass of the U.S. Capitol grounds (i) without a permit or (ii) without the employment of contractors approved by the U.S. Capitol Police to do the work.

There's a lot of word games about how what the indictment really alleges (the object of the conspiracy notwithstanding) is that Rehl conspired to argue in favor of the Electoral College.

15. Indeed, the First Superseding Indictment alleges that:

36. On December 23, 2020, REHL posted on social media describing January 6, 2021, Congress gets to argue the legitimacy of the [E]lectoral [C]ollege votes, and as “the day where yes, there will be a big rally on that day.”

16. Thus, the grand jury by indictment and the prosecution assisting in the drafting of the indictment admits and confesses that REHL’s goal was to get Congress “to argue the legitimacy of the [E]lectoral [C]ollege votes, and – for THAT purpose ” yes, there will be a big rally on that day.”

17. The government admits and confesses within the four corners of the indictment that the goal of the alleged “conspiracy” (which would require a criminal goal) was to get Congress “to argue the legitimacy of the [E]lectoral [C]ollege votes,” and not to stop, obstruct, delay or hinder the Electoral College certification.

18. The government admits and confesses within the four corners of the indictment that the goal of the alleged “conspiracy” was to demand that Congress do not just half of its job but all of its job in certifying the Electoral College vote.

19. Congress plainly could not “argue” the “legitimacy” of the Electoral College votes IF CONGRESS WERE NOT IN SESSION.

But the request itself, for proof that the underlying protest was permitted, is a reasonable basis to try to argue he didn’t plan to prevent the peaceful transfer of power that day.

The problem for Rehl – and the reason this move may backfire – is that the permits are already public and they likely say far more than Rehl wants them to say; BuzzFeed liberated them (in a fairly historic bit of Jason Leopold and Jeffrey Light FOIA magic).

The documents show that when Capitol Police received the permit application for the specific port-a-john location that Rehl wants to subpoena, an officer responding to the permits judged that the application was an attempt to hide the role of Stop the Steal in the rally.

On Dec. 21, 2020, a group called One Nation Under God filed an application with the Capitol Police’s special events section to stage a protest over “election fraud in swing states” at the Senate East Front grassy area on Jan. 6 between 9 a.m. and 6 p.m.

The officer who reviewed the application noticed some irregularities. For one thing, the officer wrote in an intelligence assessment, “One Nation Under God is not an organization and does not maintain social media accounts or webpages.” For another, one of the people listed as a confirmed speaker was Alexander, a leader of Stop the Steal, which was planning a major rally at Freedom Plaza that same day.

been received as of this writing.

One Nation Under God is not an organization and does not maintain social media accounts or webpages per the spokesperson. Mr. Stephen Brown, (863) [REDACTED], is the point of contact for the upcoming event.

Obtained via Capitol Police

“I explained,” the officer wrote, “that it appears that the Stop the Steal and the One Nation Under God is one in the same due to the similarities and the affiliation with Ali Alexander.” In an email on Dec. 31, 2020, another officer mentioned concerns about the approval of “certain permits,” specifically that “the permit requests ... are being used as

proxies for Stop the Steal” and “may also be involved with organizations that may be planning trouble.”

The officer did some follow up only to find that the guy who applied for the permit couldn’t answer basic questions about the event.

The permit application listed Nathan Martin of Shelby, Ohio, as a representative of One Nation Under God. According to the documents, a Capitol Police officer spoke with him on Dec. 28, 2020. The officer’s notes suggest that Martin was not forthcoming about the group’s plans.

U.S. CAPITOL POLICE BOARD 119 D Street, N.E. Washington, D.C. 20510					
1. Organization and/or Spokesperson: One Nation Under God			2. Date of Application: 12/21/2020		
3. Address: ██████████		4. Telephone: Business 561-██████████	5. Mobile: 561-██████████	6. Email address: nathanmartin25@gmail.com	
7. Date(s) of Event: 01/06/2021	8. Day(s) of Week: Wednesday	9. Start Time (including set-up): 8-9am setup, 9-5pm Rally	10. End Time (including clean-up): 5pm Finish, 5-6pm strike	11. Total Duration: 10 hours	
12. Specific area of U.S. Capitol Grounds requested to be utilized: (i.e., West Front Grassy Area, Upper Senate Park, Tall Memorial Park, etc.) US Capitol ground area 8 from USCP map					
13. Estimated number of participants: 50		14. Additional Point of Contact / Spokesperson Sieva Brown Event Planners Telephone: 863-██████████ Email address: sbrown@██████████			
13a. Nature of Event (Check appropriate box best describing the nature of your activity)					

Obtained via Capitol Police

A permit application listing Nathan Martin as the contact for One Nation Under God

“I inquired if he has any additional information he could give me for the event. Mr. Martin said there are a few events that they have going on and he does not know which one I was referring,” the officer wrote. “When I asked about the ‘few events’, he stated that the events were in the hotels.”

And when BuzzFeed called Martin, he admitted the tie between the group on the permit and Stop the Steal – effectively confirming that One Nation was a front for Stop the Steal.

Brown, who did not respond to emails and phone calls requesting comment, told the

officer Martin “is associated with Stop the Steal and travels with Ali Alexander.” Martin “does not seem to have an official title but he deals with the daily operations to include hotel books and car rentals.”

[snip]

In an interview with BuzzFeed News, Martin acknowledged his affiliation with the two groups but said he could not explain what One Nation Under God’s mission was, how it was formed, and for what purpose. He said he had not seen the permit, could not explain why his name was on it, and was unaware that the demonstration had been capped at 50 people.

The permit also says the purpose of the demonstration is “demonstration for election fraud in swing states,” which doesn’t sound particularly legal. And BuzzFeed learned that the sound equipment (which Alex Jones may have used to lure bodies to the East side of the Capitol) was never used.

Now maybe Rehl knows all this. Maybe this is what he thinks he’ll get. He first started pursuing this subpoena on September 11, two days after BuzzFeed released these records. So maybe the proof that the Capitol Police approved this permit even after recognizing it was all just a front is what he’s after.

But effectively what he’s doing is soliciting records that show Stop the Steal, with which the Proud Boys seem to have coordinated, engaged in a kind of fraud on the Capitol Police to obtain more permits and spread out their obviously false claim that each protest would only have 50 participants.

Effectively, he risks opening up a whole big can of fraud exposure for any co-conspirators, and any reliance the Proud Boys made on having this permit (and the port-a-johns) to legitimize

their mob rests on the shell games that Ali Alexander's people were playing.

Update: Rehl didn't know about the BuzzFeed liberation, but neither did he credit me for informing him when he learned of it (the third time the Proud Boy leaders have not credited my reporting in their filings).

4. However, in response to the filing of counsel's Motion, a news blog noticed the Motion and commented on it, and the blog entry was forwarded to me as counsel.

5. It seems that BUZZFEED filed suit for this information and the permits were released to the public on September 9, 2021. The documents produced are attached hereto.

The admission that he didn't know that the permits had been liberated (and therefore didn't know that they show Ali Alexander playing a shell game to obtain permits) may be why his attorney wants to get a good look at these permits for "demonstration for election fraud in swing states" before he relies on them for a new bid to be released.

THEREFORE, the Motion may be moot and counsel asks the Court to delay any consideration of the Motion until counsel can decipher these documents and determine if anything further is still needed.