

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

v.

ETHAN NORDEAN, et al.,

Defendants.

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) Case No. 1:21-cr-175-TJK
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**DEFENDANT NORDEAN’S NOTICE OF GOVERNMENT’S INTIMIDATION OF
DEFENSE WITNESS**

Recently, the government represented to the Court that undersigned counsel made baseless accusations about its intimidation of defense witnesses in this case. In the December 2, 2022 hearing, counsel had indicated that he wished to name “John Does” in Defendant Nordean’s witness list, as there was reason to believe that the government would attempt to threaten or intimidate defense witnesses to prevent or alter their testimony at trial.

On December 2, counsel added there was evidence that after one such witness informed the government that she did not agree with the government’s claim that Nordean and others had conspired to attack the Capitol or use violence on January 6, a government prosecutor only then announced—in the same November 2021 interview—that the witness would be prosecuted for an offense. Shortly thereafter, counsel continued, an agent called this witness to advise that the prosecutor’s charging threat was inflated. In response, AUSA Erik Kenerson stated in the December 2 hearing that the notion that the “[g]overnment has somehow pressured witnesses, threatened witnesses, gone to witnesses when they were represented by counsel without counsel present, all of that is just categorically false.” The government added, “there has been nothing that the Government -- that -- has done that would warrant putting John Does on a witness list.”

Attached is a statement from the witness in question, i.e., what the government refers to in derisive quotation marks as a “sworn declaration.” Exh. 1.

Early this afternoon, counsel again advised the government of the relevant facts he summarized in the December 2 hearing regarding witness intimidation and asked the government to confirm or deny their accuracy by the close of business hours, as Nordean would be making this filing on the subject. This is how counsel summarized the relevant facts:

An agent told [the witness] the government wanted to be “discreet” about her interviews. Ms. Moore, at the end of the November 2021 interview, told [the witness] she would be charged with obstruction. An agent named Trevor called [the witness] an hour after the November meeting and said that the obstruction threat was not accurate.

The government responded by providing its remarks from the December 2 hearing, quoted above, and contending that the facts emailed by Nordean were “inaccurate and incomplete.”

Also this afternoon, Nordean’s counsel asked the government to provide any written record of the witness’s November 2021 interview. The government duly provided an FD-302 reflecting the interview, which was first produced to the defense on June 17, 2022, as part of a much larger discovery production. Because the government has designated as “sensitive” hundreds or thousands of pages of discovery materials seemingly automatically—preventing them from being publicly filed—counsel submits the FD-302 directly to chambers. As the Court will see, it is consistent with, or at least not inconsistent with, the witness’s account.

Dated: December 8, 2022

Respectfully submitted,

/s/ David B. Smith

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Certificate of Service

I hereby certify that on the 8th day of December, 2022, I filed the foregoing filing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following CM/ECF user(s):

Jim Nelson
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And I hereby certify that I have mailed the document by United States mail, first class postage prepaid, to the following non-CM/ECF participant(s), addressed as follows: [none].

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