

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

BENNIE G. THOMPSON *et al.*,
Plaintiffs,

v.

DONALD J. TRUMP *et al.*,
Defendants.

Civil Action No. 1:21-cv-400-APM

ERIC SWALWELL,
Plaintiff,

v.

DONALD J. TRUMP *et al.*,
Defendants.

Civil Action No. 1:21-cv-586-APM

JAMES BLASSINGAME and SIDNEY
HEMBY,
Plaintiffs,

v.

DONALD J. TRUMP *et al.*,
Defendants.

Civil Action No. 1:21-cv-858-APM

**JARED HOLT'S MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF IN
SUPPORT OF THE PLAINTIFFS**

Jared Holt moves under LCvR 7(o) for leave to file the attached amicus curiae brief in support of the plaintiffs in the three above-captioned cases. In support, Mr. Holt states:

1. Mr. Holt is a resident fellow of the Atlantic Council's Digital Forensic Research Lab (DFRLab), where he oversees research into domestic extremism.
2. Based on his research, Mr. Holt's proposed brief recounts some of the history of President Trump's words inspiring extremist violence and Trump's pattern of encouraging and

even bragging about some of his supporters' capacity for violence. Focusing specifically on the period leading to January 6, Mr. Holt's brief documents the public expression of willingness to commit violence on Trump's behalf among the groups that attacked the Capitol, actual violence by Trump's supporters after the 2020 election, and Trump's continued courting of his base's most violent and conspiratorially minded elements up to the moment that they stormed the Capitol.

3. At the motion-to-dismiss stage, the Court faces the "context-specific" task of determining, based on "experience and common sense," whether the complaints' allegations that Trump intended to cause his supporters to violently disrupt Congress's proceedings on January 6 are plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Given the unprecedented nature of the facts alleged, Mr. Holt's "unique . . . perspective" as a non-party who has studied the extraordinary relationship between violent extremists and former President Trump gives him a "familiarity and knowledge of the issues" that the Court may find helpful as it applies Rule 12(b)(6) to the unique circumstances of this case. *Wash. Alliance of Tech. Workers v. U.S. Dep't of Homeland Sec.*, Civ. A. No. 16-1170 (RBW), --- F. Supp. 3d ----, 2021 WL 329847, at *1 n.2 (D.D.C. Jan. 28, 2021) (allowing an amicus curiae brief that presented additional facts not presented by the parties as the court evaluated the "record against the applicable legal standard").

4. This motion is timely filed such that it will not "unduly delay the Court's ability to rule on any pending manner." *See* LCvR 7(o). The defendants' deadline to file their replies in support of their motions to dismiss are nearly three weeks away on August 16, and the Court will have ample time to review the attached brief before it rules.

5. As required by LCvR 7(m) and (o), undersigned counsel conferred with counsel for the parties about the relief requested. The plaintiffs in these three cases do not oppose the

filing of the attached brief, nor does Defendant Rudolph Giuliani. Defendant Oath Keepers opposes the relief sought in *Thompson*. Defendant Mo Brooks opposes the relief sought in *Swalwell*. Undersigned counsel sought the position of Defendants Donald J. Trump and Donald J. Trump, Jr. by email on Monday, July 26, at 11:21 a.m. eastern, and on Tuesday, July 27, at 4:41 p.m. eastern, but received no response before filing this motion.

6. Pursuant to LCvR 7(c), a proposed order is attached to this motion.

For these reasons, Mr. Holt requests that the Court grant him leave to file the attached amicus curiae brief in the above-captioned cases.

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CERTIFICATE OF SERVICE

I certify that on July 28, 2021 the foregoing document was served on all counsel of record by filing it using the CM/ECF system and on the following non-ECF participant by U.S.

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**BRIEF OF AMICUS CURIAE JARED HOLT
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INTEREST OF AMICUS CURIAE¹

Jared Holt is a resident fellow of the Digital Forensic Research Lab (DFRLab) at the Atlantic Council, where he oversees research into domestic extremism. Among other missions, DFRLab seeks to monitor and combat online disinformation campaigns by domestic violent extremists. For several years, Mr. Holt has carefully studied and reported on the activities of domestic extremists who have supported former President Trump, including during the period leading to January 6. DFRLab's work related to the issues in this case includes publishing a timeline of key events leading to the January 6 insurrection. *See* DFRLab, *#StopTheSteal: Timeline of Social Media and Extremist Activities Leading to 1/6 Insurrection*, JUST SECURITY, <https://bit.ly/3hyU5kA> (Feb. 10, 2021). Mr. Holt is widely recognized as an expert in domestic extremism. His work has been published in various outlets, including the *Washington Post*, *Right Wing Watch*, and the *Columbia Journalism Review*.

As a result of his work and expertise, Mr. Holt has an interest in enhancing public understanding of former President Trump's cultivation of domestic violent extremists, particularly in the run-up to the violent insurrection on January 6.

¹ No party's counsel authored this brief, in whole or in part, and no party's counsel made a monetary contribution to fund the preparation or submission of this brief. No person or entity other than amicus curiae or his counsel contributed money that was intended to fund preparing or submitting the brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The insurrectionist attack on the U.S. Capitol on January 6 was not spontaneous. The assault that unfolded as Congress convened a joint session to certify Joe Biden’s victory in the 2020 election was the direct result of a months-long disinformation campaign promoted by then-President Donald Trump; coordinated by some of his most fervent, conspiratorial supporters; and executed by groups that had publicly declared their willingness to commit violence on Trump’s behalf.

The plaintiffs in these three cases allege that former President Trump intended for his supporters to unlawfully disrupt Congress’s constitutionally mandated count of the Electoral College votes on January 6. Trump contends, however, that his “words and actions . . . show that he wanted nothing more than an effective, peaceful, and patriotic demonstration in support of election integrity” and seeks dismissal on this basis.² The Court should reject this argument.

A lawsuit should proceed past the motion-to-dismiss stage when its allegations are plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When undertaking this “context-specific” task of assessing whether the complaints’ allegations that Trump intended the historic violence that occurred, the Court is entitled to use its “experience and common sense.” *Id.* at 679. It need only conclude that there is “a reasonable expectation that discovery will reveal” evidence of culpable conduct. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

In conducting this analysis, the Court may find it helpful to consider the complaints’ allegations in the context of Trump’s long—and public—embrace of his most extreme supporters’ violence. This history, which I and many others whose work is cited here have carefully documented since before Trump became president, confirms that the plaintiffs’

² *See, e.g.*, Mem. Supp. Mot. Dismiss 32, *Blassingame v. Trump*, Civ. A. No. 1:21-cv-858-APM (Doc. 10-1).

allegations that former President Trump intended to incite the violent events of January 6 are more than plausible. From asserting that there were “good people on both sides” in Charlottesville, to praising the “tough people” among his supporters who can turn “very bad, very bad” if needed, Trump has, for years, consistently and openly showed these supporters that he approves of them and their violence. As documented below, in the weeks leading to January 6, Trump continued to court these most violent elements of his base while inundating them with false claims of election fraud. He did this knowing that his most extreme supporters were publicly pledging to use violence to keep Trump in office and actively demonstrating that commitment by participating in armed and violent demonstrations across the country after the 2020 election. Indeed, given Trump’s increasingly desperate efforts to block the election results, it is more than plausible that Trump intended for those attendees to do whatever it took to disrupt the last step before Joe Biden’s victory became official—Congress’s January 6 count of the Electoral College votes—including committing the violence they said they were prepared to commit.

These unprecedented acts support the plausibility of the plaintiffs’ detailed allegations that Trump intended for his supporters to violently disrupt Congress’s proceedings on January 6. The Court should allow discovery to proceed on those allegations.

ARGUMENT

The January 6 attack on the Capitol was carried out by a collection of violent extremists, including the Oath Keepers, the Proud Boys, the Three Percenters, and adherents of the QAnon conspiracy theory.³ Since Trump began his campaign, he has carefully cultivated these elements

³ See, e.g., Fourth Superseding Indictment, *United States v. Caldwell*, Case No. 21-cv-28-APM (D.D.C. filed May 30, 2021) (Doc. 210) (charging members of the Oath Keepers); Statement of Facts, *United States v. Schaffer*, Crim. No. 1:21-cr-306-APM (D.D.C. filed Jan. 16,

of his base, elevating them to unprecedented prominence and embracing them when they committed violence. When Trump engaged in a relentless, deceitful campaign to overturn the results of an election he lost, these extremist supporters announced that they stood ready to commit violence on Trump's behalf. And on January 6, after Trump summoned them to Washington, they did just that.

I. Trump has embraced his supporters' willingness to commit acts of violence on his behalf.

The story of January 6 begins well before that day or even the 2020 election. January 6 was not the first time that Trump's words inspired violent action—far from it. Trump supporters' record of violence dates to at least the beginning of Trump's campaign in 2015. Since then, Trump has repeatedly encouraged his supporters' willingness to fight. January 6 was merely the latest iteration of this phenomenon.

A. Trump's most extreme supporters have long taken his words as inspiration for violence.

Since the beginning of his campaign, Trump's words have led his supporters to commit violence. Trump launched his campaign by denouncing Mexican immigrants, claiming, "They're bringing drugs, they're bringing crime. They're rapists and some, I assume, are good people."⁴ Months later, Trump supporters in Boston attacked a Hispanic homeless man they believed to be undocumented, urinating on him, beating him with a metal bar, and yelling, "Donald Trump was

2021) (Doc. 1-1) (factual stipulation accompanying guilty plea of Oath Keepers member); Aff. Supp. Crim. Compl. ¶¶ 25-30, *United States v. Biggs*, Crim. No. 1:21-mj-126-RMM (D.D.C. filed Jan. 19, 2021) (Doc. 1-1) (attesting to Proud Boys members' coordinated breach of the Capitol); Statement of Facts 1-2, *United States v. Jensen*, Crim. No. 1:21-cv-6-TJK (D.D.C. filed Jan. 8, 2021) (Doc. 1-1) (charging a knife-wielding QAnon adherent who led a mob of insurgents chasing a Capitol Police officer).

⁴ Suzanne Gamboa, *Donald Trump Announces Presidential Bid by Trashing Mexico, Mexicans*, NBC NEWS, <https://nbcnews.to/3z8LLOf> (June 16, 2015).

right.”⁵ Shortly before the 2016 election, three Kansans inspired by Trump’s anti-Muslim rhetoric plotted to bomb an apartment and Mosque frequented by Somalis.⁶ At trial, prosecutors played recordings of the defendants planning to kill Muslims with weapons dipped in pigs’ blood, echoing an apocryphal story about General John Pershing that Trump had recounted on the campaign trail.⁷ In 2017, two Trump supporters claimed that they were acting at Trump’s behest after allegedly assaulting a protestor at a Trump rally in Kentucky.⁸ In 2018, another supporter and QAnon adherent got into an armed standoff with law enforcement after becoming disappointed with Trump’s failure to “lock certain people up if you were elected.”⁹ That same year, another Trump supporter mailed bombs to prominent Trump critics across the country.¹⁰ And in 2019, after echoing Trump’s rhetoric about an immigrant invasion in a post to a far-right online bulletin board, another Trump supporter murdered 22 people (mostly Hispanic) and wounded 25 others in El Paso.¹¹ From these and other incidents, it was clear long before January 6 that Trump’s words could inspire his supporters to commit violence.

⁵ Alan Rappeport, *A Beating in Boston, Said to Be Inspired by Trump’s Immigrant Comments*, N.Y. TIMES, <https://nyti.ms/3yPItPX> (Aug. 20, 2015).

⁶ Antonia Noori Farzan, *Pointing to Trump’s Rhetoric, Attorneys for Kansas Militiamen Convicted of Mosque Bomb Plot Ask for More Lenient Sentence*, WASH. POST, <https://wapo.st/2U2WWey> (Oct. 30, 2018).

⁷ *Id.*

⁸ Kenneth P. Vogel, *White Nationalist Claims Trump Directed Rally Violence*, POLITICO, <https://politi.co/2T4sbmX> (Apr. 17, 2017).

⁹ Will Somner, *QAnon, the Crazy Pro-Trump Conspiracy, Melts Down Over OIG Report*, DAILY BEAST, <https://bit.ly/3zfQkGN> (June 19, 2018).

¹⁰ Luke Mullins, *Inside the Mind of the MAGA Bomber, the Trump Superfan Who Tried to Wreak Havoc on the Last National Election*, WASHINGTONIAN, <https://bit.ly/3r4M4XG> (Aug. 13, 2020).

¹¹ Lauren Villagran, *El Paso Shooting Suspect’s Hate-Filled Writing Used Similar Language as Trump Campaign*, EL PASO TIMES, <https://bit.ly/3r2IqO6> (Aug. 6, 2019).

B. Trump didn't just know about his most extreme supporters' capacity for violence; he celebrated it.

It is one thing to have supporters who commit violent acts. It is another to encourage their violence—whether by declining to roundly condemn the violence, or openly praising those supporters for their violence, as Trump has done repeatedly. Indeed, Trump's praise of his violent supporters provides a strong foundation for the plaintiffs' allegations that Trump intended violence to occur on January 6.¹²

A few examples illustrate this pattern. Asked about his supporters' 2015 assault of the homeless Hispanic man in Boston mentioned above, Trump praised his supporters as "very passionate" people who "love this country and want this country to be great again."¹³ During his 2016 campaign, Trump pledged to pay legal fees of people who "knock[ed] the crap" out of protestors at his rallies; they did.¹⁴ After the white supremacist Unite the Right rally in Charlottesville, Virginia disintegrated into violence, Trump famously insisted in a series of statements that there was "blame on both sides."¹⁵ Even though Trump eventually criticized the violence in passing, white supremacist leaders celebrated the remarks, with users on the social-media platform Gab "fist-pumping" and cheering that Trump "came through for us."¹⁶

Despite the widespread criticism of his Charlottesville remarks, Trump continued to celebrate his supporters' violent tendencies. In 2019, he told alt-right outlet *Breitbart News* that

¹² Cf. FED. R. EVID. 404(b)(2) (permitting prior acts evidence to show intent, plan, and knowledge, among other facts).

¹³ Rappeport, *supra* note 5.

¹⁴ Michelle Ye Hee Lee, *Trump 'Looking into' Paying Legal Fees for Man Charged with Assault at Rally*, WASH. POST., <https://wapo.st/3yNf0WE> (Mar. 13, 2016); Eric Levitz, *Trump on His Supporters Attacking Protesters: 'That's What We Need More of'*, NEW YORK, <https://nym.ag/2VTiJ78> (Mar. 11, 2016).

¹⁵ Jon Sharman, *'This Is More Like It': White Supremacists React to Trump's 'Blame on Both Sides' Press Conference*, THE INDEPENDENT, <https://bit.ly/36BhxqU> (Aug. 16, 2017).

¹⁶ *Id.*

his supporters included “tough people” who “don’t play it tough—until they go to a certain point, and then it would be very bad, very bad.”¹⁷ When armed militia members and other extremists occupied Michigan’s capitol in spring 2020, Trump sided with them. They were “very good people” who were “angry”; Governor Gretchen Whitmer—who was the target of a kidnapping plot by a right-wing militia months later—should “give a little,” he wrote, to “put out the fire.”¹⁸ After the kidnapping plot was revealed, Governor Whitmer faulted Trump’s rhetoric: “Every time the president ramps up this violent rhetoric, every time he fires up Twitter to launch another broadside against me, my family and I see a surge of vicious attacks sent our way. This is no coincidence, and the President knows it.”¹⁹ After supporters surrounded and slowed a Biden-Harris campaign bus on a Texas interstate in 2020, Trump did not condemn their actions or express concern for those affected. Instead, he praised those supporters, tweeting a video of the incident with the text “I LOVE TEXAS!” Trump would later claim that his supporters were “protecting” the bus and criticize the FBI’s investigation of the incident, chiding it to focus instead on “Antifa,” a consistent target of Trump’s deflections.²⁰

After repeatedly evading requests to condemn white supremacists during the 2020 campaign, Trump told one such group, the Proud Boys, to “stand back and stand by” before a

¹⁷ Alexander Marlow *et al.*, *Exclusive—President Trump: Paul Ryan Blocked Subpoenas of Democrats*, BREITBART NEWS, <https://bit.ly/3hBRWVe> (Mar. 13, 2019); Sarah Posner, *How Donald Trump’s New Campaign Chief Created an Online Haven for White Nationalists*, MOTHER JONES, <https://bit.ly/2Uu7XE7> (Aug. 22, 2016).

¹⁸ Jared Holt, *Trump Sides with Armed Protesters in Michigan: A ‘Very Fine People’ Sequel*, RIGHT WING WATCH, <https://bit.ly/3rbiK1y> (May 1, 2020); Nicholas Bogel-Burroughs *et al.*, *F.B.I. Says Michigan Anti-Government Group Plotted to Kidnap Gov. Gretchen Whitmer*, N.Y. TIMES, <https://nyti.ms/3reYRXx> (Oct. 8, 2020).

¹⁹ Maegan Vazquez and Nikki Carvajal, *Trump Appears to Give a Pass to the Domestic Kidnapping Plot Against Whitmer*, CNN, <https://cnn.it/3rjqqiz> (Oct. 27, 2020).

²⁰ Katie Shepherd, *Trump Cheers Supporters Who Swamped a Biden Bus in Texas*, WASH. POST, <https://wapo.st/3kbgp5j> (Nov. 2, 2020).

national debate audience in September 2020.²¹ To the Proud Boys, the message was clear. The group celebrated amid a surge in membership interest, hawking T-shirts with Trump's phrase.²² One Proud Boys leader, Joe Biggs, broadcast to his followers on the social-media platform Parler that Trump's remarks were an invitation to commit violence against "Antifa"—to "go fuck them up," in Biggs's words.²³ Months later, Biggs was among those storming the Capitol.²⁴

When evaluating the allegations that former President Trump intended to cause violence on January 6, it is critical to recognize just how unprecedented his actions are compared to those of his predecessors. Rather than unequivocally condemning political violence, Trump has publicly encouraged his supporters' violence for years. This record, unique to former President Trump, reinforces the plaintiffs' allegations that he intended unlawful violence to occur on January 6.

C. Trump has cultivated connections to extreme elements of his base that have spawned violence.

Trump's praise of his supporters' willingness to commit violence exists in the context of his ongoing support for people and movements whose conspiratorial views have prompted violence. These actors, in turn, were key to the violence on January 6.

Most significant is Trump's engagement with the QAnon movement since its emergence in 2018. This increasingly influential movement claims that a "corrupt cabal of 'global elites' and 'deep state' actors run a Satan-worshiping international child sex trafficking ring."²⁵ In

²¹ Jane Lytvynenko & Christopher Miller, *The Proud Boys Got a Bunch of New Followers After Trump Said to "Stand By"*, BUZZFEED, <https://bit.ly/3r6gAAq> (Sept. 30, 2020).

²² *Id.*

²³ Hannah Trudo *et al.*, *Far-Right Proud Boys Rally After Trump's Debate Defense: 'Fuck Them Up'*, DAILY BEAST, <https://bit.ly/3B4sb7R> (Sept. 30, 2020).

²⁴ Aff. Supp. Crim. Compl., *United States v. Biggs*, Crim. No. 1:21-mj-126-RMM (D.D.C. filed Jan. 19, 2021) (Doc. 1-1).

²⁵ FBI, *Adherence to QAnon Conspiracy Theory by Some Domestic Violent Extremists* (June 4, 2021), available at <https://bit.ly/2TYtZP6>.

August 2019, the FBI identified QAnon and other “conspiracy-theory driven domestic extremists” as “very likely” to commit violence.²⁶ In each of the three years since QAnon emerged, QAnon-inspired violence has increased.²⁷ While Trump claimed that he does not “know anything about [QAnon],” he has praised its followers as “people that love our country.”²⁸ In fact, in 2018 a leading QAnon proponent, Lionel Lebron, was photographed with Trump in the Oval Office.²⁹ Another leading QAnon proponent, Bill Mitchell, was invited to the White House in 2019, along with other far-right social-media personalities.³⁰ Indeed, Trump has repeatedly retweeted QAnon supporters, as many as 14 times in one day.³¹ Other Trump family members have done the same.³² And Trump’s long-time confidant Roger Stone even appeared on a pro-QAnon YouTube channel to say that he “hope[s] Q is real” and that QAnon has been “of enormous value in this fight for freedom.”³³

QAnon is not the only source of violent extremism that Trump has praised. Early in his candidacy, Trump appeared on conspiracy theorist Alex Jones’s *InfoWars* program, a den of far-

²⁶ Jana Winter, *Exclusive: FBI Document Warns Conspiracy Theories Are a New Domestic Terrorism Threat*, YAHOO! NEWS, <https://yhoo.it/3z9H07f> (Aug. 1, 2019).

²⁷ James Suber, Ctr. for Strategic & Int’l Studies, *Examining Extremism: QAnon*, <https://bit.ly/3xP2J4a> (June 10, 2021).

²⁸ Catherine Lucey, *Trump Praises QAnon Followers as “People That Love Our Country”*, WALL. ST. J., <https://on.wsj.com/3kcH6GU> (Aug. 19, 2020).

²⁹ Will Sommer & Asawin Suebsaeng, *Trump Meets QAnon Kook Who Believes Democrats Run Pedophile Cult*, DAILY BEAST, <https://bit.ly/3wwSujz> (Aug. 25, 2018).

³⁰ Marie C. Baca, *Who Was at Trump’s Social Media Summit*, WASH. POST., <https://wapo.st/3hBz1Kj> (July 11, 2019).

³¹ Tina Nguyen, *Trump Isn’t Secretly Winking at QAnon. He’s Retweeting Its Followers*, POLITICO, <https://politi.co/36z3XVa> (July 12, 2020).

³² Jack Brewster, *Eric Trump Promotes QAnon Conspiracy on Instagram While Plugging Tulsa Rally*, FORBES, <https://bit.ly/3AYnz36> (June 20, 2020); Alex Kaplan, *Lara Trump Shared a Video from One of the Biggest QAnon Accounts on the Internet*, MEDIA MATTERS FOR AM., <https://bit.ly/3i270KY> (Mar. 13, 2020).

³³ Jared Holt, *Longtime Trump Ally Roger Stone: “I Certainly Hope Q Is Real”*, RIGHT WING WATCH, <https://bit.ly/3xPQhRI> (July 2, 2020).

right conspiracy mongering, declaring that Jones’s “reputation is amazing” and promising not to “let [him] down.”³⁴ Jones by then had established his reputation through wild anti-government conspiracy theories: that the 2012 Sandy Hook Elementary School mass shooting was part of a government plan to confiscate firearms; that then-U.S. Representative Gabby Giffords’s assailant was the victim of government brainwashing; and that U.S. intelligence agencies carried out the Oklahoma City bombing, among others.³⁵ By the time Trump appeared on his program, Jones’s conspiracies had animated several acts of political violence, including an assassination plot against Barack Obama in 2011 and a 2014 mass shooting in Las Vegas.³⁶ Trump went on to repeat Jones’s conspiracy theories, such as the notion that Senator Ted Cruz’s father was an associate of Lee Harvey Oswald or that then-President Obama planned to sign an executive order to seize people’s guns.³⁷ Jones, long on the fringe of American politics, found it surreal to hear his ideas emerge from the president’s lips and bragged about his access to Trump.³⁸

Jones and *InfoWars* functioned as a center of the violent, conspiratorially minded right. During the 2015 protests in Ferguson, Missouri, for example, Oath Keepers members served as protection for then-*InfoWars* correspondent Joe Briggs, who became an important organizer for

³⁴ Frontline, *Alex Jones and Donald Trump: How the Candidate Echoed the Conspiracy Theorist on the Campaign Trail*, <https://to.pbs.org/3yQmEzQ> (July 28, 2020); Jared Holt, *Alex Jones and Eric Bolling Flaunt Their Access to Trump*, RIGHT WING WATCH, <https://bit.ly/3i2vBzf> (Sept. 13, 2018).

³⁵ Elizabeth Williamson, *How Alex Jones and Infowars Helped a Florida Man Torment Sandy Hook Families*, N.Y. TIMES, <https://nyti.ms/2UUJwv4> (Mar. 29, 2019); Anti-Defamation League, *CNN Gives Platform to Conspiracy Theorist Alex Jones*, <https://bit.ly/3erYOCA> (Jan. 9, 2013).

³⁶ Stephanie Mencimer, *PizzaGate Shooter Read Alex Jones. Here Are Some Other Fans Who Perpetrated Violent Acts.*, MOTHER JONES, <https://bit.ly/3ripTgC> (Dec. 12, 2016).

³⁷ Frontline, *supra* note 34; Holt, *supra* note 34.

³⁸ Frontline, *supra* note 34.

the Proud Boys and participant in the January 6 insurrection.³⁹ The Oath Keepers' leader, Stewart Rhodes, became a repeat guest on the *InfoWars* program.⁴⁰ For his part, Jones has frequently told listeners to prepare for civil war, and he helped organize post-election protests that turned violent, including the events of January 6.⁴¹

Trump also elevated a message board ("subreddit") on the Reddit website, /r/The_Donald, retweeting its content from his own account.⁴² Trump personally appeared on the subreddit to conduct a question and answer session, and Trump's Deputy Chief of Staff for Communications Daniel Scavino regularly monitored the subreddit.⁴³ Posts on /r/The_Donald frequently celebrated politically motivated violence, including calls for violence against government officials, leading Reddit to limit access and ultimately remove it in 2020.⁴⁴ Trump even invited a Reddit user known as CarpeDonktum, who frequently posted memes to /r/The_Donald, to the White House for a social-media summit and a meet and greet in the Oval

³⁹ Victoria Bekiempis, *Who Are the Oath Keepers and Why Are They in Ferguson with an Inforwars.com Reporter?*, NEWSWEEK, <https://bit.ly/3zaLmuR> (Aug. 11, 2015).

⁴⁰ Mike Giglio, *A Pro-Trump Militant Group Has Recruited Thousands of Police, Soldiers, and Veterans*, THE ATLANTIC, <https://bit.ly/36CIT0Z> (Nov. 2020).

⁴¹ Paul P. Murphy, *InfoWars' Alex Jones Helped Jumpstart January 6 Rally Organization Efforts*, CNN, <https://cnn.it/36EWi7z> (Jan. 31, 2021); Abby Ohlheiser, *A Short History of Alex Jones Claiming that the Left Is About to Start a Second Civil War*, WASH. POST, <https://wapo.st/3hBljqT> (July 3, 2018).

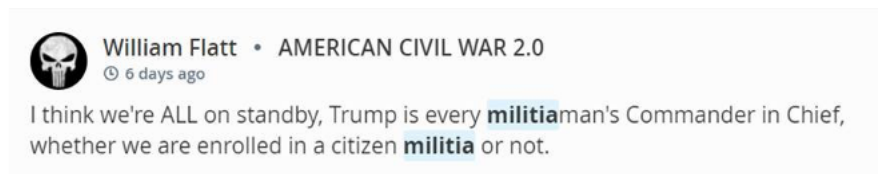
⁴² Madison Malone Kircher, *Is Donald Trump Getting His News from Reddit?*, NEW YORK, <https://nym.ag/2UHLcMv> (May 11, 2017); DFRLab, *#StopTheSteal: Timeline of Social Media and Extremist Activities Leading to 1/6 Insurrection*, JUST SECURITY, <https://bit.ly/3hyU5kA> (Feb. 10, 2021).

⁴³ Andrew Restrucchia *et al.*, *'Get Scavino in Here': Trump's Twitter Guru Is the Ultimate Insider*, POLITICO, <https://politi.co/3B0rix6> (May 6, 2019); Andrew McGill, *How Donald Trump Beat Reddit*, THE ATLANTIC, <https://bit.ly/3rgB3Tn> (July 27, 2016).

⁴⁴ Alex Kaplan, *A Pro-Trump Subreddit Is Full of Calls for Violence in Support of Oregon Republicans*, MEDIA MATTERS FOR AM., <https://bit.ly/3kBNzvr> (June 24, 2019).

Office.⁴⁵ Once Reddit removed the /r/The_Donald, its users and administrators migrated to a website they created, TheDonald.win, which promoted many pre-January 6 calls for violence based on false claims of fraud.⁴⁶

One need not speculate about the impact of Trump’s public appreciation on his most extreme supporters. Their loyalty was no secret. White nationalists seized on Trump’s opposition to athletes’ kneeling during the national anthem as a recruiting tool.⁴⁷ When Trump warned that the country could be headed for civil war at the start of his first impeachment, the Oath Keepers’ founder tweeted his agreement.⁴⁸ And militia members have voiced their loyalty on message boards:



Trump, for his part, has long flaunted his supporters’ loyalty, as when he famously bragged in 2016 that he could “stand in the middle of Fifth Avenue and shoot someone, and I wouldn’t lose any voters.”⁴⁹

In short, the 2016 campaign, Trump’s presidency, and the aftermath of the 2020 election were all marked by significant incidents of pro-Trump violence. Trump knew about the violence,

⁴⁵ Eliza Relman, *Carpe Donktum, the Pro-Trump ‘Mememith’ Who Visited the White House, Is Working with the Creator of the Fake Trump Church Massacre Video*, BUS. INSIDER, <https://bit.ly/3AZhcMS> (Oct. 14, 2019).

⁴⁶ Jane Lytvynenko & Molly Hensley-Clancy, *The Rioters Who Took Over the Capitol Have Been Planning Online in the Open for Weeks*, BUZZFEED, <https://bit.ly/3BitWyn> (Jan. 6, 2021).

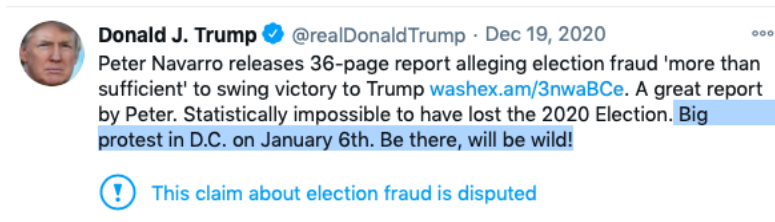
⁴⁷ Michael Edison Hayden, *Neo-Nazis and White Nationalists Are Recruiting Trump Supporters Who Are Mad at Colin Kaepernick*, NEWSWEEK, <https://bit.ly/3hEhoJS> (Oct. 12, 2017).

⁴⁸ Giglio, *supra* note 40.

⁴⁹ Colin Dwyer, *Donald Trump: ‘I Could ... Shoot Somebody, and I Wouldn’t Lose Any Voters*, NPR, <https://n.pr/3ehTC44> (Jan. 23, 2016).

but rather than condemn the violence outright, he praised his supporters' enthusiasm, bragged about their willingness to fight for him, and cultivated the extreme movements from which they emerged. This long-standing relationship between Trump and his most extreme supporters is important context for evaluating Trump's intent surrounding the events of January 6.

II. Responding to his baseless fraud accusations, Trump's most extreme supporters promised to take up arms if asked. On January 6, they did.



It was against this backdrop—after bragging about his extremist supporters' loyalty and actively courting that loyalty; after years of pro-Trump violence whose perpetrators Trump had often praised and only grudgingly faulted; and after a month and a half of whipping his supporters into a frenzy over false claims of a stolen election—that Trump enlisted his supporters to come to Washington, D.C. on January 6. It “will be wild,” he tweeted.

To many Americans, the tweet may have appeared as nothing more than a bizarre prediction. But his most extreme supporters recognized it as something more. To Kelly Meggs, an Oath Keeper indicted for storming the Capitol on January 6, the message was clear: “Trump said It’s gonna be wild!!!!!! . . . He wants us to make it WILD that’s what he’s saying.”⁵⁰ Acknowledging D.C.’s strict gun laws, Meggs encouraged other Oath Keepers to bring mace,

⁵⁰ First Superseding Indictment ¶ 35.a, *United States v. Caldwell*, Crim. No. 1:21-cr-28-APM (filed Feb. 19, 2021) (Doc. 27).

batons, and body armor.⁵¹ And on January 6, Meggs and other Oath Keepers violently forced their way into the Capitol, interrupting Congress’s count of the Electoral College votes.⁵²

The Oath Keepers had publicly signaled their willingness to engage in violence for Trump even before the election. Appearing on Alex Jones’s *InfoWars*—the same program Trump had appeared on when seeking election—Oath Keepers leader Stewart Rhodes promised that the group would “protect” Trump voters at the polls and was prepared to post members near D.C. to avert a “Benghazi-style” attack on the White House.⁵³ After the election, the Oath Keepers sent out appeals to join the November 14 Million MAGA March to “back-up and defend President Trump as he fights the ongoing coup that is attempting to steal the election.”⁵⁴ Echoing Trump’s earlier “stand by” message to the Proud Boys, Oath Keepers leader Stewart Rhodes posted on the group’s website on November 10 that the Oath Keepers were ready to commit violence, but only if Trump approved: “Our men will be standing by, awaiting the President’s orders to call us up as the militia, which would override D.C.’s ridiculous anti-gun laws.”⁵⁵ With his December 19 tweet to descend on Washington for a “wild” day, Trump finally provided the invitation that the Oath Keepers had said they were waiting for.

Similarly, the website of the Three Percenters, whose members also attacked the Capitol January 6, publicly announced that the group was “standing by” to “enter battle,” but only “if we

⁵¹ *Id.* ¶ 37.

⁵² *Id.* ¶ 69.

⁵³ Timothy Johnson, *Militia Leader Stewart Rhodes Says That His Group Will Be at Polling Locations and Is Ready to Kill Democrats*, MEDIA MATTERS FOR AM., <https://bit.ly/2UMUWVE> (Oct. 28, 2020).

⁵⁴ Oath Keepers, *Call to Action! March on DC, Stop the Steal, Defend the President, & Defeat the Deep State*, <https://archive.is/ZRvMC#selection-1135.0-1135.143> (archived Nov. 17, 2020).

⁵⁵ *Id.*

are told to.”⁵⁶ Echoing Trump’s spurious fraud claims, the post began, “The 2020 presidential election has undoubtedly unveiled that there was widespread election fraud perpetrated against the American people.”⁵⁷ Plans for pro-Trump violence proliferated across various far-right platforms on TheDonald.win, Parler, Telegram, Twitter, and Facebook.⁵⁸ One commenter on TheDonald.win forecast that it would “be a literal war on that day,” “[w]here we’ll storm offices and physically remove and kill all the D.C. traitors and reclaim the country.”⁵⁹

To be clear, these calls for violence to remedy a supposedly fraudulent election traced directly back to former President Trump. When asked in September 2020 if he would commit to a peaceful transfer of power if he lost, he refused: “[W]e’re going to have to see what happens,” he responded, adding “You know that I’ve been complaining very strongly about the ballots, and the ballots are a disaster.”⁶⁰ Thus, long before January 6, Trump suggested that there would be violence if he lost.

Trump’s campaign to challenge the election also cultivated QAnon and its supporters, who would also be among those who attacked the Capitol. Again and again, Trump retweeted conspiratorial tweets by long-time QAnon proponent Ron Watkins, who claimed that Dominion had rigged its machines to cause Trump’s loss.⁶¹ Just days before January 6, Lin Wood—a lawyer who filed fruitless lawsuits contesting the election, met many times with Trump, and enthusiastically embraced the QAnon conspiracy—called for Mike Pence to “face execution by

⁵⁶ See The Three Percenter – Original, *TTPO Stance on Election Fraud*, <https://archive.is/YemCC> (archived Dec. 16, 2020) (emphasis added).

⁵⁷ *Id.*

⁵⁸ Jane Lytvynenko & Christopher Miller, *supra* note 21.

⁵⁹ *Id.*

⁶⁰ DFRLab, *supra* note 42.

⁶¹ Rachel E. Greenspan, *Trump Continues to Promote Conspiracy Theories from a Rapidly Rising QAnon Star*, BUS. INSIDER, <https://bit.ly/3r8cJCQ> (Dec. 15, 2020).

firing squad” for opposing a lawsuit that would have allowed Pence to reject Joe Biden’s victory.⁶² Ashli Babbitt, whom Capitol Police shot as she forced her way through a window inside the Capitol on January 6, was an avid QAnon follower who believed that the day would be “the storm”—the date that QAnon mythology posits that Trump would execute his enemies.⁶³ Another QAnon follower, Douglas Jensen, pushed his way to the front of the crowd to be among the first in the Capitol.⁶⁴ Wearing a t-shirt emblazoned with a large “Q,” Jensen wanted to be among the first to inside so that QAnon could “get the credit.”⁶⁵

By January 6, pro-Trump extremists had surrounded the Michigan secretary of state’s home brandishing weapons and chanting “Stop the Steal”; they had they had displayed weapons while protesting at the Pennsylvania Capitol; they had gathered heavily armed at the Georgia Capitol to denounce the “treason” that they claimed was underway; and they had been arrested with illegal concealed weapons near vote-counting sites in key states after echoing Trump’s false fraud claims.⁶⁶ Those same claims, repeated again and again, prompted violent threats against elections officials across the country just for doing their jobs.⁶⁷ In a preview of what was to come, Trump’s supporters gathered in Washington, D.C. on November 14, 2020 and clashed

⁶² Adam Rawnsley, *Trump Team Backs Away from Lin Wood After Pence Tweets*, DAILY BEAST, <https://bit.ly/3yPHShc> (Jan. 1, 2021); Alison Durkee, *Trump Turns on Controversial Attorney Lin Wood and Endorses Opponent*, FORBES, <https://bit.ly/3hBLDkC> (Mar. 30, 2021).

⁶³ Peter Jamison *et al.*, ‘The storm is here’: Ashli Babbitt’s Journey from Capital ‘Guardian’ to Invader, WASH. POST., <https://wapo.st/36HM6eH> (Jan. 10, 2021).

⁶⁴ Statement of Facts 1-2, *United States v. Jensen*, Crim. No. 1:21-cv-6-TJK (D.D.C. filed Jan. 8, 2021).

⁶⁵ *Id.* at 2.

⁶⁶ DFRLab, *supra* note 42; Christopher Mathias, *After Trump’s Defeat, His Supporters Held a Heavily Armed Pity Party*, HUFFINGTON POST, <https://bit.ly/3AZ2gOV> (Nov. 8, 2020); *Armed Men Arrested Near Phila. Vote Counting Location*, AP, <https://bit.ly/3B6jKsm> (Nov. 5, 2020); Katie Shepherd, *Armed Protesters Alleging Voter Fraud Surrounded the Home of Michigan’s Secretary of State*, WASH. POST, <https://wapo.st/3yXBRip> (Dec. 7, 2020).

⁶⁷ Linda So, *Trump-Inspired Death Threats Are Terrorizing Election Workers*, REUTERS <https://reut.rs/36D3CRa> (June 11, 2021).

violently with counter-protestors.⁶⁸ On Twitter, Trump blamed the counter-protestors and praised his supporters, who “aggressively fought back.”⁶⁹ Again on December 12, Proud Boys and other Trump supporters engaged in violence in the D.C. streets. One of that day’s speakers was Oath Keepers leader Stewart Rhodes, who promised that his organization was prepared to engage in a “desperate” and “bloody war” to keep Trump in power.⁷⁰

At the same time, Trump’s many attempts to overturn the election results had failed. Despite intense pressure from Trump, Republican officials in Arizona and Georgia certified their states’ pro-Biden election results.⁷¹ More than 60 lawsuits had failed to change the results.⁷² The Supreme Court rejected Texas’s unprecedented attempt to invalidate the results in Georgia, Michigan, Pennsylvania, and Wisconsin.⁷³ And Vice President Mike Pence had refused Trump’s entreaties to unilaterally reject the Electoral College results on January 6.⁷⁴

Thus, when Trump hyped his supporters on January 6 in the Ellipse with claims of an “egregious assault on our democracy” and told them that “you will never take our country back with weakness,” he stood before them a man who had cultivated his most extreme supporters’ willingness to commit violence for years and who was speaking to a crowd that had already

⁶⁸ Marissa J. Lang *et al.*, *After Thousands of Trump Supporters Rally in D.C., Violence Erupts When Night Falls*, WASH. POST, <https://wapo.st/3hPMnT5> (Nov. 15, 2020).

⁶⁹ DFRLab, *supra* note 42.

⁷⁰ Adele M. Stan, *Oath Keepers’ Stewart Rhodes Calls for ‘Bloody War’ if Trump Doesn’t Invoke Insurrection Act*, RIGHT WING WATCH, <https://bit.ly/2VWpLrz> (Dec. 14, 2020).

⁷¹ Amy Gardner, *‘I Just Want to Find 11,780 Votes’: In Extraordinary Hour-Long Call, Trump Pressures Georgia Secretary of State to Recalculate the Vote in His Favor*, WASH. POST., <https://wapo.st/3wYfyI4> (Jan. 3, 2021); Amy Gardner, *Wisconsin and Arizona Make It Official as Trump Fails To Stop Vote Certification in All Six States Where He Contested His Defeat*, WASH. POST, <https://wapo.st/3BAV7o6> (Nov. 30, 2020).

⁷² William Cummings *et al.*, *By the numbers: President Donald Trump’s Failed Efforts to Overturn the Election*, USA TODAY, <https://bit.ly/3rxbYDH> (Jan. 6, 2021).

⁷³ *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020).

⁷⁴ Ltr. from V.P. Mike Pence to Congress (Jan. 6, 2021).

promised to commit violence to stop the coup Trump had led them to believe was occurring.⁷⁵ And he stood before them a man fast running out of options.

As his supporters attacked the Capitol, Trump reportedly responded to House Republican leader Kevin McCarthy's plea for help not with an promise of immediate action or even with alarm, but with praise for his supporters' commitment: "I guess these people are more upset about the election than you are."⁷⁶ And when Trump finally did tell his supporters to go home after they had breached the Capitol, he told them they were "very special," and "we love you"—echoing the appreciative sentiments that followed previous incidents of pro-Trump violence.⁷⁷ Remarkably, Trump and his lawyer, Rudy Giuliani, would reportedly try to capitalize on this violent disruption to further delay Congress's certification of President Biden's victory, urging Congressional allies to obstruct certification through the end of the next day.⁷⁸

In short, Trump's most violent supporters, who had declared their readiness to commit violence for Trump only if he asked them to do so, came to Washington on January 6 at Trump's behest for a "wild" day and violently attacked the Capitol. Trump, along with the rest of America, knew his supporters were capable of violence, because they had been committing violent acts in his name since even before he was elected. He knew it because they continued to commit violence and participate in armed demonstrations after the election, as Trump promoted baseless conspiracy theories about a stolen election. And he knew it because he repeatedly

⁷⁵ Annie Karni & Maggie Haberman, *Trump Openly Condoned Supporters Who Violently stormed the Capitol, prompting Twitter to lock his account*, N.Y. TIMES, <https://nyti.ms/2VxGOjx> (Jan. 6, 2021).

⁷⁶ Jamie Gangel *et al.*, *New Details About Trump-McCarthy Shouting Match Show Trump Refused to Call off the Rioters*, CNN, <https://cnn.it/3kn4qSm> (Feb. 12, 2021).

⁷⁷ Karni & Haberman, *supra* note 75.

⁷⁸ Sunlen Serfaty *et al.*, *As Riot Raged at Capitol, Trump Tried to Call Senators to Overturn Election*, CNN, <https://cnn.it/3wXgCvD> (Jan. 8, 2021).

praised his supporters' violent tendencies and even asked them to commit violence on his behalf. The case that Trump intended the violent disruption of Congress's declaration of Joe Biden's victory is made even more plausible by his response to that insurrection. All of this together makes it—at the very least—plausible that Trump intended to violently disrupt Congress's proceedings in a last-ditch effort to avoid the reality that Joe Biden had been elected the next president.

CONCLUSION

The issue before the Court now is whether to permit the January 6 cases to proceed to discovery. Insofar as that issue turns on the plausibility of the plaintiffs' allegations that Trump intended for his supporters to violently disrupt Congress's proceedings on January 6, there is ample, publicly available information to reinforce that the allegations clear that bar.

Respectfully submitted:

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