ADL | Never Is Now 2019

After Charlottesville: Litigating Against Violent White Supremacy

November 21, 2019, 2:00pm-3:00pm

Jacob K. Javits Convention Center

429 11th Avenue

New York, NY 10001

After Charlottesville: Litigating Against Violent White Supremacy

AGENDA

November 21, 2019, 2:00pm-3:00pm

Moderator:	**Amy Spitalnick**
Panelists:	**Karen Dunn**
	Roberta Kaplan
	Mary McCord

Topics: The "Litigating Against Violent White Supremacy" panel will review the history of civil litigation against extremist groups and individuals in the United States and will emphasize the requirements for bringing successful litigation. The moderator and panelists are all experienced litigators who have long been involved in civil rights litigation and, in particular, in combating extremist groups through the courts. A focus will be on the litigation coming out of the 2017 Charlottesville, Virginia Unite the Right rally and march.

2:00 pm **Introduction**

2:10 pm ***City of Charlottesville v. Pennsylvania Light Foot Militia***

2:25 pm ***Sines v. Kessler***

2:45 pm **Q&A**

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Speaker Biographies

Karen Dunn
Partner
Boies Schiller Flexner

As one of the country's top litigators, Karen focuses her practice on complex civil litigation as well as crisis management—helping her clients solve their biggest problems both in and out of the courtroom. Karen was named a 2017 Litigator of the Year by The American Lawyer magazine, for her work in "high-stakes, high-profile and hard-fought" cases.

In the past several years alone, Karen has secured important trial wins for some of the country's most prominent companies, including Apple, Uber and Oracle. Karen led the all-female BSF team that prevailed in a seven-day trial on behalf of Uber in a case in federal court involving Boston's largest taxi conglomerate seeking $750 million in damages. She led BSF's defense of Uber in a billion-dollar trade secrets case brought by Waymo regarding the future of self-driving cars. And she secured a $3 billion summary judgment win on behalf of Apple against Qualcomm. As part of her commitment to public service, she fought and won a two-year legal battle in local and federal courts to secure budget autonomy for the District of Columbia. And she is co-lead counsel in a lawsuit against the neo-Nazis and white supremacists responsible for the deadly violence in Charlottesville, VA. Karen is also a prior recipient of the ADL SHEILD award for her role in a prosecution of three men who conspired to use a website as a platform to solicit murder and promote violent extremism.

Prior to joining the firm, Karen served in all three branches of government. As an Assistant U.S. Attorney in the Eastern District of Virginia, she tried to jury verdict numerous multi-defendant cases and led complex investigations. She served as Associate White House Counsel, representing the Executive Office of the President in congressional investigations and overseeing litigation. Karen served as a law clerk to Judge Merrick B. Garland of the D.C. Circuit Court of Appeals and to Justice Stephen G. Breyer of the U.S. Supreme Court. Earlier in her career, Karen served as communications director and senior advisor to then-Senator Hillary Clinton. Her work preparing candidates for political debates, including President Barack Obama and Hillary Clinton, has received extensive media coverage.

Karen has been named one of the National Law Journal's Outstanding Women Lawyers, a Litigator of the Week three times by The American Lawyer and once by Global Competition Review, one of Elle Magazine's Most Compelling Women in Washington D.C., and has been recognized as one of the

country's top ten female litigators by Benchmark Litigation. Karen is a member of the firm's Executive and Management Committees.

Roberta Kaplan
Founding Partner
Kaplan Hecker & Fink

Roberta ("Robbie") Kaplan is the founding partner at Kaplan Hecker & Fink, a boutique law firm founded in 2017 fusing a high-stakes litigation practice with a groundbreaking public interest practice.

A formidable litigator with decades of experience in both commercial and civil rights litigation, Kaplan has quickly emerged as an unparalleled force for obtaining equal dignity for all. In the past two years, she co-founded the Time's Up Legal Defense Fund, filed a lawsuit under the KKK Act of 1871 against twenty-four neo-Nazi and white supremacist leaders responsible for the violence in Charlottesville in August 2017, successfully challenged the City of Starkville's refusal to allow a LGBT Pride Parade, and is currently representing Moira Donegan in a defamation lawsuit relating to the publication of what became known as the "Shitty Media Men" list. Kaplan also represents clients like Uber, Airbnb, Columbia University, Sydell Group, and Fitch Ratings in some of their most high-stakes, complex legal challenges.

Prior to launching her own law firm, Kaplan was best known for successfully representing Edith Windsor in United States v. Windsor, ultimately arguing that case before the United States Supreme Court. In Windsor, the Supreme Court ruled that a key provision of the Defense of Marriage Act (DOMA) violated the U.S. Constitution by barring legally married same-sex couples from enjoying the benefits of marriage conferred under federal law. The consequences of the Windsor decision were both rapid and profound, leading to marriage equality nationwide only two years later. Kaplan is the author of the book "Then Comes Marriage: United States v. Windsor and the Defeat of DOMA" (W.W. Norton), which was chosen by several publications as one of the top books of 2015.

Kaplan has received numerous honors and recognitions for her work, including being named "Most Innovative Lawyer of the Year" by the Financial Times, "Litigator of the Year" by The American Lawyer, and "Lawyer of the Year" by Above the Law. She has also been recognized as a Top 100 Trial Lawyer and Top 10 Female Litigator by Benchmark Litigation, and has received a Lifetime Achievement Award from the New York Law Journal and the Gold Medal Award from the New York State Bar Association. This past spring, Kaplan was chosen by representatives of Harvard Law

School's class of 2019 to be their Class Day speaker. She is probably most proud, however, of receiving an honorary doctorate from the Jewish Theological Seminary.

Mary McCord
Legal Director, Institute for Constitutional Advocacy and Protection and Visiting Professor of Law, Georgetown University Law Center

Mary McCord is Legal Director at the Institute for Constitutional Advocacy and Protection (ICAP) and Visiting Professor of Law at Georgetown University Law Center. At ICAP, McCord leads a team that brings constitutional impact litigation at all levels of the federal and state courts across a wide variety of areas including First Amendment rights, immigration, criminal justice reform, and combating the rise of private paramilitaries.

McCord was the Acting Assistant Attorney General for National Security at the U.S. Department of Justice from 2016 to 2017 and Principal Deputy Assistant Attorney General for the National Security Division from 2014 to 2016.

Previously, McCord was an Assistant U.S. Attorney for nearly 20 years at the U.S. Attorney's Office for the District of Columbia. Among other positions, she served as a Deputy Chief in the Appellate Division, overseeing and arguing hundreds of cases in the U.S. and District of Columbia Courts of Appeals, and Chief of the Criminal Division, where she oversaw all criminal prosecutions in federal district court.

McCord graduated from Georgetown University Law School and served as a law clerk for Judge Thomas Hogan of the U.S. District Court for the District of Columbia.

Moderator:
Amy Spitalnick
Executive Director, Integrity First for America

Amy Spitalnick is the Executive Director of Integrity First for America, a nonpartisan nonprofit organization dedicated to holding those accountable who threaten longstanding principles of our democracy - including our country's commitment to civil rights and equal justice. IFA is backing *Sines v. Kessler*, the landmark federal lawsuit filed by a coalition of Charlottesville community members against the neo-Nazis, white supremacists, and hate groups responsible for the August 2017 violence.

Amy joins IFA with extensive experience in government, politics, and advocacy. She previously served as Communications Director and Senior Policy Advisor to the New York Attorney General; Communications Advisor and Spokesperson for the New York City Mayor; and Communications Director in the New York State Senate. She has also worked on a number of federal, state, and local campaigns and advocacy organizations. Amy is a Truman National Security Project Partner; a New Leaders Council faculty member, providing media and communications trainings to activists around the country; a former Women in Power Fellow at the 92nd Street Y; and the 2008 Dutko Fellow for Policy and Public Service. In 2013, she was named a City & State 40 Under 40 Rising Star. She graduated from Tufts University.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendant Jason Kessler have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendant Jason Kessler.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendant Jason Kessler is hereby permanently enjoined from:

   a. returning or soliciting other individuals or groups to return to Charlottesville, Virginia, as part of a unit of two or more persons acting in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march;

b. instructing or facilitating the instruction of individuals or groups in the use of any weapon or technique capable of causing injury or death, knowing or intending that the weapon or technique will be used at any demonstration, rally, protest, or march, in Charlottesville, Virginia; and

c. issuing any commands, instructions, or directives to any group of two or more persons armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, which commands, instructions, or directives are related to the use of such weapons or any techniques capable of causing injury or death, at any demonstration, rally, protest, or march, in Charlottesville, Virginia.

2. With respect to any future demonstration, rally, protest, or march in Charlottesville, Virginia, Defendant Jason Kessler hereby agrees to use best efforts to ensure that attendees do not, as part of a unit of two or more persons, act in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm. Best efforts shall include:

a. Communicating in all promotional materials and advertisements for such event, including but not limited to social-media posts, podcasts, videos, speeches, and posters, that attendees shall not, as part of a unit of two or more persons, act in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm;

b. Announcing, verbally and through signage, at any such event that attendees shall not, as part of a unit of two or more persons, act in concert while armed

with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm; and

c. Requesting that any individuals or groups at any such event who are unwilling to comply with these requirements must leave the event.

d. For purposes of subsections a. and b., above, communicating or announcing that attendees shall not bring any weapons to any such event shall constitute best efforts.

3. Nothing in this Consent Decree shall be construed to prohibit the otherwise lawful carrying of a firearm for one's individual self-protection; infringe the right to self-defense or defense of others as recognized under Virginia law; or prohibit the otherwise lawful organizing of a political rally.

4. A violation of this Consent Decree shall be punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.

5. This Consent Decree may be modified only by order of this Court.

6. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

7. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

ENTERED: 7/29/18

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
QUALITY PIE
ALAKAZAM TOYS AND GIFTS
HAYS + EWING DESIGN STUDIO, PC
WOLF ACKERMAN DESIGN, LLC

By: Kyle McNew w/permission EBoyar

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
DOUGLAS N. LETTER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

JASON KESSLER

By: _____
JAMES KOLENICH*
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
Tel: (513) 444-2150

ELMER WOODARD (VSB #27734)
5661 US Hwy. 29
Blairs, VA 24527
Tel: (434) 878-3422

Counsel for Defendant Jason Kessler

*Admitted *pro hac vice*.

Jason Kessler

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendant Elliott Kline have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendant Elliott Kline.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendant Elliott Kline is hereby permanently enjoined from:

   a. returning or soliciting other individuals or groups to return to Charlottesville, Virginia, as part of a unit of two or more persons acting in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march;

b. instructing or facilitating the instruction of individuals or groups in the use of any weapon or technique capable of causing injury or death, knowing or intending that the weapon or technique will be used at any demonstration, rally, protest, or march, in Charlottesville, Virginia; and

c. Issuing any commands, instructions, or directives to any group of two or more persons armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march, in Charlottesville, Virginia.

2. With respect to any future demonstration, rally, protest, or march in Charlottesville, Virginia, Defendant Elliott Kline hereby agrees to use best efforts to ensure that attendees do not, as part of a unit of two or more persons, act in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm. Best efforts shall include:

a. Communicating in all promotional materials and advertisements for such event, including but not limited to social-media posts, podcasts, videos, speeches, and posters, that attendees shall not, as part of a unit of two or more persons, act in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm;

b. Announcing, verbally and through signage, at any such event that attendees shall not, as part of a unit of two or more persons, act in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm; and

c. Requesting that any individuals or groups at any such event who are unwilling to comply with these requirements must leave the event.

d. For purposes of subsections a. and b., above, communicating or announcing that attendees shall not bring any weapons to any such event shall constitute best efforts.

3. Nothing in this Consent Decree shall be construed to prohibit the otherwise lawful carrying of a firearm for one's individual self-protection. Nor shall this Consent Decree be construed to infringe the right to self-defense or defense of others as recognized under Virginia law.

4. A violation of this Consent Decree shall be punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.

5. This Consent Decree may be modified only by order of this Court.

6. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

7. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

ENTERED: 6 / 14 / 18

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
ESCAFÉ
IRON PAFFLES AND COFFEE
MAS TAPAS
MAYA RESTAURANT
QUALITY PIE
RAPTURE RESTAURANT AND NIGHT CLUB
ALAKAZAM TOYS AND GIFTS
ALIGHT FUND LLC
ANGELO JEWELRY
HAYS + EWING DESIGN STUDIO, PC
WOLF ACKERMAN DESIGN, LLC
WILLIAMS PENTAGRAM CORPORATION
BELMONT-CARLTON NEIGHBORHOOD ASSOCIATION
LITTLE HIGH NEIGHBORHOOD ASSOCIATION
WOOLEN MILLS NEIGHBORHOOD ASSOCIATION

By: _____

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
DOUGLAS N. LETTER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

ELLIOTT KLINE

By: _____
JAMES KOLENICH*
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
Tel: (513) 444-2150

ELMER WOODARD (VSB #27734)
5661 US Hwy. 29
Blairs, VA 24527
Tel: (434) 878-3422

Counsel for Defendant Elliott Kline

*Admitted *pro hac vice*.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendants League of the South, Inc., Michael Tubbs, and Spencer Borum have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendants League of the South, Inc., Michael Tubbs, and Spencer Borum.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendants (1) League of the South, Inc., and its directors, officers, members, and agents; (2) Michael Tubbs; and (3) Spencer Borum are hereby permanently enjoined from returning to Charlottesville, Virginia, as part of a unit of two or more persons acting in concert

while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march.

2. A violation of this Consent Decree shall be punishable by contempt and may subject the entity or person in violation to all penalties and sanctions allowed by law.

3. This Consent Decree may be modified only by order of this Court.

4. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

5. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

ENTERED: 3/14/18

Richard E. Moore

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
ESCAFÉ
IRON PAFFLES AND COFFEE
MAS TAPAS
MAYA RESTAURANT
QUALITY PIE
RAPTURE RESTAURANT AND NIGHT CULB
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LITTLE HIGH NEIGHBORHOOD ASSOCIATION
WOOLEN MILLS NEIGHBORHOOD ASSOCIATION

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KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
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Tel: (434) 951-7200

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DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

LEAGUE OF THE SOUTH, INC.
MICHAEL TUBBS
SPENCER BORUM

By: _____

BRYAN JONES (VSB No. 87675)
106 W. South St. Suite 211
Charlottesville, VA 22902
Tel: (540) 623-6952

Counsel for Defendants League of the South, Inc., Michael Tubbs, and Spencer Borum

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendant Vanguard America have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendant Vanguard America.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendant Vanguard America and its directors, officers, members, and successors are hereby permanently enjoined from returning to Charlottesville, Virginia, as part of a unit of two or more persons acting in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march.

2. Nothing in this Consent Decree shall be construed to prohibit the otherwise lawful carrying of a firearm for one's individual self-protection. Nor shall this Consent Decree be construed to infringe the right to self-defense or defense of others as recognized under Virginia law.

3. A violation of this Consent Decree shall be punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.

4. This Consent Decree may be modified only by order of this Court.

5. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

6. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

ENTERED: 6/14/18

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
ESCAFÉ
IRON PAFFLES AND COFFEE
MAS TAPAS

MAYA RESTAURANT
QUALITY PIE
RAPTURE RESTAURANT AND NIGHT CLUB
ALAKAZAM TOYS AND GIFTS
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BELMONT-CARLTON NEIGHBORHOOD ASSOCIATION
LITTLE HIGH NEIGHBORHOOD ASSOCIATION
WOOLEN MILLS NEIGHBORHOOD ASSOCIATION

By: _____

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
DOUGLAS N. LETTER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

VANGUARD AMERICA

By: _____

JAMES KOLENICH*
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
Tel: (513) 444-2150

ELMER WOODARD (VSB #27734)
5661 US Hwy. 29
Blairs, VA 24527
Tel: (434) 878-3422

Counsel for Defendant Vanguard America

*Admitted *pro hac vice*.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendants National Socialist Movement and Jeff Schoep have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendants National Socialist Movement and Jeff Schoep.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendants (1) National Socialist Movement and its directors, officers, members, agents, and successors and (2) Jeff Schoep are hereby permanently enjoined from returning to Charlottesville, Virginia, as part of a unit of two or more persons acting in concert while armed

with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march.

2. A violation of this Consent Decree shall by punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.

3. This Consent Decree may be modified only by order of this Court.

4. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

5. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

6. This Consent Decree conclusively resolves and is final with respect to all claims arising out of the events of August 12, 2017, between the parties.

ENTERED: 4 / 11 / 18

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
ESCAFÉ
IRON PAFFLES AND COFFEE
MAS TAPAS

MAYA RESTAURANT
QUALITY PIE
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WOOLEN MILLS NEIGHBORHOOD ASSOCIATION

By: _____

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
DOUGLAS N. LETTER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

NATIONAL SOCIALIST MOVEMENT
JEFF SCHOEP

By: _____
JAMES KOLENICH*
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
Tel: (513) 444-2150

ELMER WOODARD (VSB #27734)
5661 US Hwy. 29
Blairs, VA 24527
Tel: (434) 878-3422

Counsel for Defendants National Socialist Movement and Jeff Schoep

*Admitted *pro hac vice*.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendant Traditionalist Worker Party have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendant Traditionalist Worker Party.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendant Traditionalist Worker Party and its directors, officers, members, and successors are hereby permanently enjoined from returning to Charlottesville, Virginia, as part of a unit of two or more persons acting in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march.

2. Nothing in this Consent Decree shall be construed to prohibit the otherwise lawful carrying of a firearm for one's individual self-protection. Nor shall this Consent Decree be construed to infringe the right to self-defense or defense of others as recognized under Virginia law.

3. A violation of this Consent Decree shall be punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.

4. This Consent Decree may be modified only by order of this Court.

5. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

6. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

ENTERED: 6/14/18

Richard E. Moore

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
ESCAFÉ
IRON PAFFLES AND COFFEE
MAS TAPAS

MAYA RESTAURANT
QUALITY PIE
RAPTURE RESTAURANT AND NIGHT CLUB
ALAKAZAM TOYS AND GIFTS
ALIGHT FUND LLC
ANGELO JEWELRY
HAYS + EWING DESIGN STUDIO, PC
WOLF ACKERMAN DESIGN, LLC
WILLIAMS PENTAGRAM CORPORATION
BELMONT-CARLTON NEIGHBORHOOD ASSOCIATION
LITTLE HIGH NEIGHBORHOOD ASSOCIATION
WOOLEN MILLS NEIGHBORHOOD ASSOCIATION

By: _____

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
DOUGLAS N. LETTER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

TRADITIONALIST WORKER PARTY

By: _____

JAMES KOLENICH*
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
Tel: (513) 444-2150

ELMER WOODARD (VSB #27734)
5661 US Hwy. 29
Blairs, VA 24527
Tel: (434) 878-3422

Counsel for Defendant Traditionalist Worker Party

*Admitted *pro hac vice.*

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendant Matthew Heimbach have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendant Matthew Heimbach.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendant Matthew Heimbach is hereby permanently enjoined from returning to Charlottesville, Virginia, as part of a unit of two or more persons acting in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march.

2. Nothing in this Consent Decree shall be construed to prohibit the otherwise lawful carrying of a firearm for one's individual self-protection. Nor shall this Consent Decree be construed to infringe the right to self-defense or defense of others as recognized under Virginia law.

3. A violation of this Consent Decree shall be punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.

4. This Consent Decree may be modified only by order of this Court.

5. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

6. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

ENTERED: 6/14/18

Richard E. Moore

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
ESCAFÉ
IRON PAFFLES AND COFFEE
MAS TAPAS

MAYA RESTAURANT
QUALITY PIE
RAPTURE RESTAURANT AND NIGHT CLUB
ALAKAZAM TOYS AND GIFTS
ALIGHT FUND LLC
ANGELO JEWELRY
HAYS + EWING DESIGN STUDIO, PC
WOLF ACKERMAN DESIGN, LLC
WILLIAMS PENTAGRAM CORPORATION
BELMONT-CARLTON NEIGHBORHOOD ASSOCIATION
LITTLE HIGH NEIGHBORHOOD ASSOCIATION
WOOLEN MILLS NEIGHBORHOOD ASSOCIATION

By: _____

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
DOUGLAS N. LETTER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

MATTHEW HEIMBACH

By: _____
JAMES KOLENICH*
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
Tel: (513) 444-2150

ELMER WOODARD (VSB #27734)
5661 US Hwy. 29
Blairs, VA 24527
Tel: (434) 878-3422

Counsel for Defendant Matthew Heimbach

*Admitted *pro hac vice*.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendants Christian Yingling and Pennsylvania Light Foot Militia have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendants Christian Yingling and Pennsylvania Light Foot Militia.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendants (1) Christian Yingling and (2) Pennsylvania Light Foot Militia and its directors, officers, members, agents, and successors are hereby permanently enjoined from returning to Charlottesville, Virginia, as part of a unit of two or more persons acting in concert

while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march.

2. A violation of this Consent Decree shall by punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.

3. This Consent Decree may be modified only by order of this Court.

4. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

5. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

6. This Consent Decree conclusively resolves and is final with respect to all claims arising out of the events of August 12, 2017, between the parties.

ENTERED: 5/24/18

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
ESCAFÉ
IRON PAFFLES AND COFFEE
MAS TAPAS

MAYA RESTAURANT
QUALITY PIE
RAPTURE RESTAURANT AND NIGHT CLUB
ALAKAZAM TOYS AND GIFTS
ALIGHT FUND LLC
ANGELO JEWELRY
HAYS + EWING DESIGN STUDIO, PC
WOLF ACKERMAN DESIGN, LLC
WILLIAMS PENTAGRAM CORPORATION
BELMONT-CARLTON NEIGHBORHOOD ASSOCIATION
LITTLE HIGH NEIGHBORHOOD ASSOCIATION
WOOLEN MILLS NEIGHBORHOOD ASSOCIATION

By: _____

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
DOUGLAS N. LETTER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

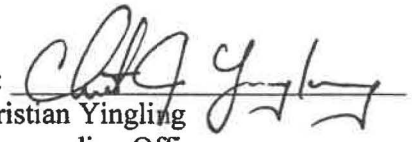
Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

Christian Yingling
Pennsylvania Light Foot Militia

By: 
Christian Yingling
Commanding Officer
Pennsylvania Light Foot Militia
129th Battalion Lauren Highlands Ghost Company
610 Longview Ct.
New Derry, PA 15671

Pro se

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendants George Curbelo and New York Light Foot Militia have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendants George Curbelo and New York Light Foot Militia.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendants (1) George Curbelo and (2) New York Light Foot Militia and its directors, officers, members, agents, and successors are hereby permanently enjoined from returning to Charlottesville, Virginia, as part of a unit of two or more persons acting in concert

while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march.

2. A violation of this Consent Decree shall by punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.

3. This Consent Decree may be modified only by order of this Court.

4. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

5. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

6. This Consent Decree conclusively resolves and is final with respect to all claims arising out of the events of August 12, 2017, between the parties.

ENTERED: 5/24/18

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
ESCAFÉ
IRON PAFFLES AND COFFEE
MAS TAPAS

MAYA RESTAURANT
QUALITY PIE
RAPTURE RESTAURANT AND NIGHT CLUB
ALAKAZAM TOYS AND GIFTS
ALIGHT FUND LLC
ANGELO JEWELRY
HAYS + EWING DESIGN STUDIO, PC
WOLF ACKERMAN DESIGN, LLC
WILLIAMS PENTAGRAM CORPORATION
BELMONT-CARLTON NEIGHBORHOOD ASSOCIATION
LITTLE HIGH NEIGHBORHOOD ASSOCIATION
WOOLEN MILLS NEIGHBORHOOD ASSOCIATION

By: _____

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
DOUGLAS N. LETTER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

George Curbelo
New York Light Foot Militia

By: _____
George Curbelo
Commanding Officer
New York Light Foot Militia
21 Prospect St.
Stamford, NY 12167

Pro se

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendants Gary Sigler and III% People's Militia of Maryland have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendants Gary Sigler and III% People's Militia of Maryland.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendants (1) Gary Sigler and (2) III% People's Militia of Maryland and its directors, officers, members, agents, and successors are hereby permanently enjoined from returning to Charlottesville, Virginia, as part of a unit of two or more persons acting in concert

while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march.

2. A violation of this Consent Decree shall by punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.

3. This Consent Decree may be modified only by order of this Court.

4. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

5. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

6. This Consent Decree conclusively resolves and is final with respect to all claims arising out of the events of August 12, 2017, between the parties.

ENTERED: 5 / 24 / 18

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
ESCAFÉ
IRON PAFFLES AND COFFEE
MAS TAPAS

MAYA RESTAURANT
QUALITY PIE
RAPTURE RESTAURANT AND NIGHT CLUB
ALAKAZAM TOYS AND GIFTS
ALIGHT FUND LLC
ANGELO JEWELRY
HAYS + EWING DESIGN STUDIO, PC
WOLF ACKERMAN DESIGN, LLC
WILLIAMS PENTAGRAM CORPORATION
BELMONT-CARLTON NEIGHBORHOOD ASSOCIATION
LITTLE HIGH NEIGHBORHOOD ASSOCIATION
WOOLEN MILLS NEIGHBORHOOD ASSOCIATION

By: _____

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
DOUGLAS N. LETTER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

Gary Sigler
III% People's Militia of Maryland

By:
Gary Sigler
Commanding Officer
III% People's Militia of Maryland
5100 Geeting Rd.
Westminster, MD 21158

Pro se

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendants Joshua Shoaff, aka Ace Baker, and American Warrior Revolution have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendants Joshua Shoaff, aka Ace Baker, and American Warrior Revolution.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendants (1) Joshua Shoaff, aka Ace Baker and (2) American Warrior Revolution and its directors, officers, members, agents, and successors are hereby permanently enjoined from returning to Charlottesville, Virginia, as part of a unit of two or more persons

acting in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march.

2. A violation of this Consent Decree shall by punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.

3. This Consent Decree may be modified only by order of this Court.

4. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

5. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

6. This Consent Decree conclusively resolves and is final with respect to all claims arising out of the events of August 12, 2017, between the parties.

ENTERED: 5/30/18

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
ESCAFÉ
IRON PAFFLES AND COFFEE
MAS TAPAS

MAYA RESTAURANT
QUALITY PIE
RAPTURE RESTAURANT AND NIGHT CLUB
ALAKAZAM TOYS AND GIFTS
ALIGHT FUND LLC
ANGELO JEWELRY
HAYS + EWING DESIGN STUDIO, PC
WOLF ACKERMAN DESIGN, LLC
WILLIAMS PENTAGRAM CORPORATION
BELMONT-CARLTON NEIGHBORHOOD ASSOCIATION
LITTLE HIGH NEIGHBORHOOD ASSOCIATION
WOOLEN MILLS NEIGHBORHOOD ASSOCIATION

By: _____

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
DOUGLAS N. LETTER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

Joshua Shoaff, aka Ace Baker
American Warrior Revolution

By: _____
Joshua Shoaff, aka Ace Baker
Commanding Officer
American Warrior Revolution
833 Cox Hollow Road
Dover, TN 37058

Pro se

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendants Richard Wilson and American Freedom Keepers, LLC, have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendants Richard Wilson and American Freedom Keepers, LLC.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendants (1) Richard Wilson and (2) American Freedom Keepers, LLC, and its directors, officers, members, agents, and successors are hereby permanently enjoined from returning to Charlottesville, Virginia, as part of a unit of two or more persons acting in concert

while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march.

2. A violation of this Consent Decree shall be punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.

3. This Consent Decree may be modified only by order of this Court.

4. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

5. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

6. This Consent Decree conclusively resolves and is final with respect to all claims arising out of the events of August 12, 2017, between the parties.

ENTERED: 8 / 2 / 18

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
QUALITY PIE
ALAKAZAM TOYS AND GIFTS
HAYS + EWING DESIGN STUDIO, PC

WOLF ACKERMAN DESIGN, LLC

By: _____

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
DOUGLAS N. LETTER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

RICHARD WILSON
AMERICAN FREEDOM KEEPERS, LLC

By: _____

Richard Wilson
112 NE 14th St.
Battle Ground, WA 98604

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*,

Plaintiffs,

v.

PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*,

Defendants.

Case No. 17000560-00

ORDER

Upon consideration of Plaintiffs' Motion for Default Judgment, it is hereby

ORDERED that the Motion is **GRANTED**; and it is further

ORDERED that Defendant Eugene Wells is hereby permanently **ENJOINED** from:

1. returning or soliciting other individuals or groups to return to Virginia, as part of a unit of two or more persons acting in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march;
2. instructing or facilitating the instruction of individuals or groups in the use of any weapon or technique capable of causing injury or death, knowing or intending that the weapon or technique will be used at any demonstration, rally, protest, or march, in Virginia;

3. issuing any commands, instructions, or directives to any group of two or more persons armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march, in Virginia.

SO ORDERED this 14th day of June, 2018.

Judge, Circuit Court for the
City of Charlottesville

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

ORDER

Upon consideration of Plaintiffs' Motion for Default Judgment, it is hereby

ORDERED that the Motion is **GRANTED**; and it is further

ORDERED that Defendant Virginia Minutemen Militia and its directors, officers, members, and successors are hereby permanently **ENJOINED** from:

1. returning or soliciting other individuals or groups to return to Virginia, as part of a unit of two or more persons acting in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march;
2. instructing or facilitating the instruction of individuals or groups in the use of any weapon or technique capable of causing injury or death, knowing or intending that the weapon or technique will be used at any demonstration, rally, protest, or march, in Virginia;

3. issuing any commands, instructions, or directives to any group of two or more persons armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march, in Virginia.

SO ORDERED this 14th day of June, 2018.

Judge, Circuit Court for the
City of Charlottesville

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

CONSENT DECREE

The Plaintiffs in this matter and Defendant Redneck Revolt have resolved the issues in controversy between them and have agreed to the terms of this Consent Decree, as follows:

I. STIPULATED RECITALS

1. This Consent Decree constitutes the entire agreement between Plaintiffs and Defendant Redneck Revolt.

2. This Consent Decree does not constitute evidence or admission of any issues of fact or law and is not an admission of civil or criminal liability.

3. Each party has entered into this Consent Decree voluntarily.

II. ORDER

1. Defendant Redneck Revolt and its chapters, branches, and John Brown Gun Clubs; and their directors, officers, members, and successors (collectively, "Redneck Revolt"), are hereby permanently enjoined from returning to Charlottesville, Virginia, as part of a unit of two or more persons acting in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march.

2. Nothing in this Consent Decree shall be construed to infringe the right to self-defense or defense of others as recognized under Virginia law.

3. A violation of this Consent Decree shall be punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.

4. This Consent Decree may be modified only by order of this Court.

5. The failure of any party to exercise any right under this Consent Decree shall not be deemed a waiver of any right or any future rights.

6. If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Decree, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

ENTERED: 7/23/18

Judge, Circuit Court for the City of Charlottesville

WE ASK FOR THIS:

CITY OF CHARLOTTESVILLE
DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE
CHAMPION BREWING COMPANY, LLC
QUALITY PIE
ALAKAZAM TOYS AND GIFTS
HAYS + EWING DESIGN STUDIO, PC
WOLF ACKERMAN DESIGN, LLC

By: _____

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
DOUGLAS N. LETTER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

REDNECK REVOLT

By: _____

PAMELA R. STARSIA (VSB #88657)
1801 E. 51st Street, Suite 365-472
Austin, TX 78723
Tel: (518) 441-2695

JEFFREY E. FOGEL (VSB #76345)
913 E. Jefferson Street
Charlottesville, VA 22902
Tel: (434) 984-0300

Counsel for Defendant Redneck Revolt

COMMONWEALTH OF VIRGINIA

Daniel R. Bouton
P.O. Box 230
Orange, Virginia 22960
(540) 672-2433
(540) 672-2189 (fax)

Timothy K. Sanner
P.O. Box 799
Louisa, Virginia 23093
(540) 967-5300
(540) 967-5681 (fax)

Sixteenth Judicial Court

Albemarle Culpeper Fluvanna Goochland
Greene Louisa Madison Orange Charlottesville

Cheryl V. Higgins
501 E. Jefferson St., 3rd Floor
Charlottesville, Virginia 22902
(434) 972-4015
(434) 972-4071 (fax)

Susan L. Whitlock
135 West Cameron Street
Culpeper, Virginia 22701
(540) 727-3440
(540) 727-7535 (fax)

Richard E. Moore
315 E. High Street
Charlottesville, Virginia 22902
(434) 970-3760
(434) 970-3038 (fax)

July 7, 2018

Lisa Robertson, Deputy City Attorney
Charlottesville City Attorney's Office
P.O. Box 911
Charlottesville, Va. 22902

R. Lee Livingston, Esq.
Kyle McNew, Esq.
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, Va. 22902

Mary B. McCord, Esq.
Institute for Constitutional Advocacy
Georgetown Univ. Law Center
600 New Jersey Ave., N.W.
Washington, D.C. 20001

Jeffrey E. Fogel, Esq.
911 E. Jefferson Street
Charlottesville, Va. 22902

Pamela R. Starsia, Esq.
31801 E. 51st Street, Suite 365-472
Austin, Texas 78723

Elmer Woodard, Esq.
5661 U.S. Highway 29
Blairs, Va. 24527

James Kolenich, Esq.
Jek318@gmail.com

Re: City of Charlottesville, et al. v, Pa. Light Foot Militia, et al. — Ruling on Demurrer
Circuit Court file no. CL 17–560; Hearing date: June 12, 2018

Dear Counsel:

This case is before the Court on Defendants' Demurrers to the Complaint, and a Motion to Dismiss. The matter was argued by counsel on June 12, 2018. I have considered at length the issues raised, the arguments of counsel, and the various authorities cited.

I have read the First Amended Complaint for Injunctive and Declaratory Relief, the Demurrer of Defendants Kessler and others[1], the Demurrer of Defendant Redneck Revolt, the Brief in Support of Redneck Revolt's Demurrer, the Memorandum in Support of the Demurrer of Kessler et al., Plaintiffs' Brief in Opposition to Defendants' Demurrers, the Rebuttal Brief of Defendant Redneck Revolt in Reply to Plaintiffs' Opposition, as well as some of the cases cited.

[1] There were originally 25 defendants (12 organizations and 13 individuals), all but two of whom have reached settlement agreements with Plaintiffs, but of whom several were still in the case at the time the Demurrers were filed. At this point, only Jason Kessler and Redneck Revolt remain.

Procedural Background

Plaintiffs City of Charlottesville, thirteen businesses, one business association, and three neighborhood associations filed a Complaint, and then, with leave of court, an Amended Complaint, seeking an injunction and declaratory judgment against numerous groups, organizations, and individuals to keep any non-state sanctioned militia or paramilitary groups from appearing as such in the City of Charlottesville to take part in a civil disturbance on August 12, 2018, or at any other time. Plaintiffs' Complaint is based in 1) the "strict subordination" clause of Article I Section 13 of the Constitution of the Commonwealth of Virginia, 2) the anti-paramilitary statute (Va. Code §18.2-433.2), 3) the falsely assuming the role of law enforcement statute (§18.2-174), and 4) public nuisance.

Defendants respond that Plaintiffs have no standing, and that there is no cause of action under the subordination clause, the paramilitary statute, the falsely assuming law enforcement role, or public nuisance. Among other things, Defendants assert that there is no private right of action for any of these, that the constitutional section is not self-executing, that the violation of the two criminal statutes does not provide the remedy of an injunction, and that the event is isolated and sporadic and not a public nuisance.

For reasons discussed fully below, I find that some, though not all (or even most), of the plaintiffs do have standing, and I will sustain the Demurrer in part and overrule it in part. At the outset, it is important in this case to note that the two defendants at issue here are not similarly situated, there are different factual allegations as to each, and they are not both included in each of the counts in the Complaint.

Legal Authority and Standard for Considering Demurrer

A demurrer tests the legal sufficiency of a pleading—not whether Plaintiffs will or should prevail at trial, but whether they may possibly prevail as pleaded. The issue is whether the Complaint states a cause of action for which relief may be granted. Pendleton v. Newsome, 290 Va. 162, 171, 772 S.E. 2d 759 (2015); Welding, Inc. v. Bland County Service Auth., 261 Va. 218, 226, 541 S.E.2d 909, 913 (2001); Grossman v. Saunders, 237 Va. 113, 119, 376 S.E.2d 66, 69 (1989). A Demurrer asserts that Plaintiffs cannot possibly prevail in the matter as pleaded. Virginia is, however, a notice pleading state. The question is: does the Complaint contain sufficient legal grounds and factual recitations or allegations to support or sustain the granting of the relief requested and put the defendants on adequate notice to properly defend? If the court accepts all Plaintiff says as true, does Plaintiff then prevail? If so, the demurrer should be overruled. Put another way, given all that is alleged, is this a case where a jury or judge ought to be allowed to decide whether the allegations are true or have been proved?

In considering a demurrer the Court should not engage in evaluating evidence outside of the pleadings. A demurrer is not concerned with or dependent on the evidence—neither its strength nor a determination of whether the plaintiff can prove its case. In ruling on a demurrer the Court does not consider the anticipated proof but only the legal sufficiency of the pleadings, and it considers the facts and allegations in the light most favorable to the plaintiff. Glazebrook v. Board of Supervisors of Spotsylvania County, 266 Va. 550, 554, 587 S.E.2d 589, 591 (2003); Welding, above, 261 Va. at 226, 541 S.E.2d at 913; Luckett v. Jennings, 246 Va. 303, 307, 435 S.E.2d 400, 402 (1993). A demurrer accepts as true and considers as admitted all facts expressly or impliedly alleged or that may fairly and justly be inferred from the facts alleged. Glazebrook, Luckett, Grossman, above; Cox Cable Hampt., Rds. v. City of Norfolk, 242 Va. 394, 397 (1991). So it is the facts as pleaded upon which the court must make its ruling.

If the pleading is insufficient to give proper notice to Defendants as to the nature or basis of the claim, then the Demurrer should be sustained but Plaintiffs may be allowed the opportunity to plead more specifically to give Defendants adequate notice if the deficiency can be cured. Bibber v. McCreary, 194 Va. 394, 396-97 (1952); Va. Code §8.01-273.B.; Rule 1:8 of the Rules of the Virginia Supreme Court; see Pennsylvania-Little Creek v. Cobb, 215 Va. 44, 45 (1974). If the Complaint, even if well-pleaded, fails as a matter of law to state a cause of action upon which Plaintiffs can prevail, then the Court may sustain the Demurrer with prejudice and enter a dismissal of the case, without leave to re-plead.

In either event, the Demurrer asserts that the Complaint is not pleaded well enough to allow for or require a trial on the pleading. A Demurrer serves the purpose of eliminating the need and time for a trial, or at least postponing such until the matter is properly pleaded, with adequate notice necessary for the defendant or respondent to prepare. For that same reason, since it prevents or postpones a matter from going to trial, such should be sustained cautiously.

Standing

The one preliminary issue before the Court is whether the plaintiffs have standing to bring this action and seek the relief or remedy requested, and enforce the rights pursued.

Both Defendants demur to Plaintiffs' standing, asserting that, with one exception, none of them are so situated that they can properly bring this matter before the court.

The issue of standing is a basic one. It is concerned with who has a right and the ability to bring a matter before the courts. In simplest terms it has to do with who has an interest, legally, in the dispute. Stated another way, it has to do with whose rights are at stake.

In Howell v. McAuliffe, 292 Va. 320 (2016), two state legislators (the Speaker of the House and Senate Majority Leader) and four other registered voters filed suit against the Governor challenging and seeking mandamus relating to the Governor's granting of voting rights *en masse* to convicted felons, without individual consideration or a listing of the persons being restored. Calling standing a "threshold issue", the Court there stated, "[s]tanding concerns itself with the characteristics of the individuals who file suit and their interest in the subject matter of the case." 292 Va. at 330. It goes on to articulate that "standing can be established if a party alleges he or she has a 'legal interest' that has been harmed by another's actions." Id. "As a general rule, without a 'statutory right, a citizen or taxpayer does not have standing to seek ... relief...unless he [or she] can demonstrate a direct interest, pecuniary or otherwise, in the outcome of the controversy that is separate and distinct from the interest of the public at large." Id., *c*iting Goldman v. Landsidle, 262 VA. 364, 373 (2001).

In Howell, the defendants, also as here, argued that the plaintiffs were not situated any differently than other voters or taxpayers in the general public, and that their rights were not separate and distinct from the public at large. However, the Virginia Supreme Court rejected that argument finding that the plaintiffs would in fact be harmed by the action of the Governor, if improper. Their votes would be diluted. In explicating their ruling (and rule) on standing, the Court stated, "a litigant has standing if he has 'a sufficient interest in the subject matter of the case so that the parties will be actual adversaries and the issue will be fully and faithfully developed."[2] 292 Va. at 332. Stated this way, it is clear that many of the complainants here have standing. Many of the plaintiffs were affected by the events of August 12, 2017. One can hardly say that in this situation, taken as a group, the complainants' interest is insufficient to guarantee that issues will be fully developed and argued, given their position as the municipality in which these events occurred or will occur, and as businesses or associations of residents of the downtown and adjacent areas. See Howell, 292 Va. at 335. The court in Howell determined that plaintiffs had standing even though other voters were similarly situated, ruling that each would be "directly affected" by such action. *Id.* at 332-33. Here, while many citizens and residents of the City of Charlottesville were affected by the events of August 2017, and will be affected by

[2] This phrasing of the essence of standing makes it seem that the principle is to prevent people from injecting themselves into a dispute that they really have no part in, or no real interest in. Such interest can be a mere "trifle" so long as it is real.

any such future events, many of the plaintiffs are in a position different than the public in general, based on facts pleaded in the Complaint.

In Lafferty v. School Board of Fairfax County, 293 Va. 354 (2017), the action by a school board changing its non-discrimination policy affected no legal rights of the minor plaintiff (by his parents as next friends), and any damage or harm (which would give rise to his interest) was speculative at best. The plaintiff there alleged "disappointment, anxiety, confusion, or distress," over the action of the school board, but such alone was not a cognizable legal interest, and such concerns were over possible future impacts or effects that were speculative. There was "no...articulated injury". Id. at 361-62.

But in this case the very dispute has to do with events and activities (past and future) in and near a public park in downtown Charlottesville, near where many of these businesses operate and individuals reside. This by itself sets them apart from the public in general.

Such basis for standing, however, has to be pleaded, and cannot be assumed. In this case, the Complaint states of the various plaintiffs:

> The City of Charlottesville is the municipality where these incidents occurred and are expected to occur. The City has expended hundreds of thousands of dollars in personnel and legal expenses, particularly in planning, police, and security for its citizens and residents.
>
> Champion Brewing, Escafé, Iron Paffles, Maya Restaurant, Rapture, Alakazam Toys, Alight Fund, Angelo Jewelry, Hays + Ewing Design, Wolf Ackerman Design, and Williams Pentagram, are businesses in the downtown area of Charlottesville.
>
> Mas Tapas and Quality Pie are businesses in the nearby Belmont area of Charlottesville.
>
> The Downtown Business Association (DBA) is a not-for-profit organization with over 75 members, dedicated to promoting commerce in downtown Charlottesville. The DBA and its members have spent time and resources to protect property from harm, hiring legitimate private security, and modification to premises, members closing early or not coming to work for fear of safety, losing thousands of dollars. This includes Hays + Ewing (fear to come downtown), Quality Pie (delaying construction and opening), Alakazam (locking business due to militia members being right outside), Champion Brewing (allotting additional resources to advertising and tourism support), and Wells Ackerman (business drop-off because of rally-related distractions to the company).

The Belmont Carlton Neighborhood Association, Little High Association, and Woolen Mills Neighborhood Association are all neighborhood associations of areas bordering or near to the downtown area.

Having considered the principles articulated in Howell and Lafferty, I find that the City of Charlottesville and the six individual plaintiffs Hays + Ewing, Quality Pie, Alakazam, Champion Brewing, Wells Ackerman, and the DBA have standing under the Amended Complaint as pleaded. None of the others (eight individuals and three neighborhood associations) have pleaded sufficient direct harm or interest apart from the general negative impact of the events on City residents and the general public.

The Circuit Court opinion of this Court from 2009, Judge Jay T. Swett sitting, in Coalition to Preserve McIntyre Park, et al. v. City of Charlottesville, et al., 97 Va. Cir. 364 (2009), also is instructive and consistent with my ruling. In that case several citizens and a couple organizations brought suit relating to the Meadowcreek Parkway. Standing of the plaintiffs was challenged, as here, by Defendants. After reviewing several cases on standing, the Court reiterated that standing required "sufficient interest in a particular matter to ensure the parties will be actual adversaries and that the issues in the case will be fully and faithfully developed," Id. at 368, citing Andrews v. American Health and Life, 236 Va. 221, 226 (1988), and a determination that "they are the proper parties to proceed with the suit". Id., citing Cupp v. Board of Supervisors of Fairfax County, 227 Va. 580, 589 (1984). The Court pointed out that use and enjoyment, and aesthetic and recreational values, can be the basis for a finding of standing, but it has to be that particular plaintiff's (whether an individual or group) rights that would be affected and harmed, not just a general displeasure or disagreement with an action of the governing body, and not just an allegation of general injury to the environment, for there to be a justiciable interest to sustain a declaratory judgment action. In so reasoning, the Court found that several of the plaintiffs there had a sufficient interest, from their actual use of or involvement with the subject property, to support standing, but that some of them did not and so lacked standing. The conduct of a business in the vicinity of an area, where a direct negative impact is pleaded, is no different, in principle, than use of a recreational area that is threatened by governmental action. I cannot conclude that the specified plaintiffs are not interested parties or that their interests are not protected.

It would be an unfortunate thing if citizens would have the right to ask for damages after the fact, but the same citizens would not have the ability to attempt to stop the damage in the first place. That has no logic. See Lynchburg R. St. Ry. Co. v. Dameron et al., 95 Va. 545 (1898). In a different context, but pertinent: "One does not have to await the consummation of threatened injury to obtain preventive relief". Chesapeake Bay Foundation, above, 52 Va. at 823.

The Downtown Business Association has representative standing because some of its members have standing. However, Plaintiffs have not pleaded sufficient facts to show that the neighborhood associations have standing. They have not pleaded their proximity to the downtown area or how the fear, anxiety, and confusion differs from that of the general citizenry of Charlottesville.

I will now address the substantive portions of the demurrer.

Adequacy of Pleading as to the Subordination Clause (Count 1)

Defendants assert that Count 1 does not, and cannot, state a cause of action. Plaintiffs rely on the Virginia Constitutional provision Article I, Section 13,[3] to argue that private armies, unauthorized militia, and private police forces are not allowed in the Commonwealth and are inconsistent with this constitutional provision. On this general point, the Court agrees. There appears to be no place or authority for private armies or militia apart from the civil authorities and not subject to and regulated by the federal, state, or local authorities.

Article I, Section 13 of the Virginia Constitution says, in pertinent part, that "a well regulated militia...is...proper...; and ...the military should be under strict subordination to, and governed by, the civil power." Va. Const., Art I § 13.

The two key issues here are 1) whether this constitutional provision is self-executing and, 2) whether it creates a private right of action, or only a right of enforcement in the Governor or Attorney General.

An initial question is: exactly what does this provision say and do? It certainly is aspirational language, stating principles that the military *should* be subject to the civil authorities, and that the militia ought to be "well-regulated". It is significant that the provision does not use the terms "shall", "must", or "is". However, it is not disputed that there is no statute enacted based on this provision. The fact that there has not been any statute so enacted in over 200 years logically leads to the conclusion that such is not necessary and that the provision is in fact self-executing, like so many other cited provisions in the national or state constitutions; it is not reasonable that a principle important enough to be enshrined in the constitution was never important enough to support legislation necessary to implement it. See Gray v. Virginia Sec'y of

[3] The full text of the Section reads: That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under the strict subordination to, and governed by, the civil power.

Transp., 276 Va. 93, 103 (2008) (ruling that "constitutional provisions in the bill of rights...are usually considered self-executing."). I do not believe that under this provision such unregulated or independent militia or armies are permissible unless and until a bill is passed or a statute enacted. It is the Court's view that under this constitutional provision, no private army or militia would have any justified existence or authority apart from the federal, state, or local authorities.

But even if the prohibition or limitation in this provision is self-executing, as Plaintiffs claim, the remaining question is: who may enforce this self-executing provision? Clearly it refers to the civil authority. Since it is the state constitution, the highest official—the commander in chief of the armed forces and the chief executive—is the Governor. So presumptively it would be the Governor's responsibility, duty, and obligation to assure that this constitutional provision is not violated. There is insufficient basis in the law to conclude that an individual citizen or a group of citizens may act to enforce this constitutional provision.

However, in this case, while I find that this provision by itself does not create any private right of action in any individual or citizen, it is a different question as to whether the City, as the local authority, may nevertheless act in accordance with and to enforce this constitutional provision. In this case, the Governor has not issued any executive order forbidding such groups to assemble for such unlawful purposes, nor has the Attorney General filed any petition or complaint, nor moved to intervene in this pending matter. In the absence of such, I cannot find that the City must sit idly by and wait for such groups to show up and break the law and cause (or increase the risk of) harm, fear, injury, or death. The City does not need to sit on its hands and wait for someone else to act. There clearly is too much chance, as pleaded, of more violence, injury, or death. It is a difficult enough job for the local or state police, or the National Guard for that matter, to control crowds at events such as the Unite the Right rally last August. With armed but unauthorized militia groups on both sides of the dispute, bringing weapons and other military equipment into the fray, law enforcement's job is much more difficult and dangerous. This may have been part of the impetus for the constitutional provision at issue.

If there is no authority for such illegitimate militia groups—unregulated by any civil authority—the City must be able to act to keep them out of its boundaries, as such, for the safety and peace of mind of its citizens.

Dillon's Rule

Both Defendants cite the Dillon Rule (hereinafter "Dillon's Rule") as limiting the City's

authority over this matter. The Court disagrees. While the City of Charlottesville is a municipal corporation, it nevertheless has the power and authority conferred by the General Assembly in Va. Code §15.2-1102, which includes

> all other powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are **necessary or desirable** to secure and promote **the general welfare** of the inhabitants of the municipality and the **safety**, health, **peace**, good **order**, **comfort**, convenience, morals, trade, **commerce** and industry of the municipality and the inhabitants thereof, and the enumeration of specific powers shall not be construed or held to be exclusive or as a limitation upon any general grant of power, but shall be construed and held to be **in addition to any general grant of power**.

[emphasis added]. I am hard pressed to see why this provision does not grant the authority for the City to do exactly what it has done: file suit to attempt to keep armed, organized, but unauthorized military-like groups out of the city for the peace, order, safety, and welfare of its citizens as envisioned by the state constitution. While discussing Dillon's Rule, the Supreme Court of Virginia ruled that municipal governments in Virginia have, besides those powers expressly granted, also "those powers ...necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable." Board of Zoning Appeals of Fairfax County v. Board of Supervisors of Fairfax County, 276 Va. 550, 554 (2008); City of Richmond v. Confrere Club, 239 Va. 77 (1990). If the Governor had issued an executive order, or the Attorney General had filed a lawsuit, or even intervened to join the pending matter as a plaintiff, it might be hard to say in this situation that it would be "necessary" or "essential" for the City to be able to pursue this matter. But I do not agree or believe that the City must stand by when unjustified and unauthorized pseudo-military or -police activity is threatening the community. I find that keeping the unauthorized, unregulated (by the civil authorities) militia out of the City by seeking a judicial remedy is indeed a "necessary *or desirable*" power, to "promote the general welfare, safety, peace, order, comfort and commerce" of the inhabitants of the municipality. I do not see that this effort is foreclosed by Dillon's Rule. (I am not asked to decide whether the City could exercise the same power if the Governor had acted.)

So while I find that the individual plaintiffs do not have a private right of action, the City of Charlottesville, as the municipality and local government responsible for the peace, safety, order, and welfare of the community and citizens within its bounds, and authority over the law enforcement agency who will be dealing with this situation, does have the right and authority to

seek the relief requested under this first count. So I sustain the demurrer as to all of the individual plaintiffs as to Count 1, but I overrule the demurrer as to the City of Charlottesville on Count 1.

The Paramilitary Statute—Virginia Code §18.2-433.2 (Count 2) [4]

Virginia Code section 18.2-433.2 (1) says that it is unlawful paramilitary activity if a person

> [t]eaches or demonstrates to any other person the use, application, or making of any firearm, explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that such training will be employed for use in, or in furtherance of, a civil disorder.

Since the Complaint alleges that Defendant Kessler "knew or intended" that various techniques taught or demonstrated would be used in a civil disorder, and he facilitated the presence of such groups to instruct, demonstrate, and carry out such techniques, this states a cause of action against Kessler. See Am. Compl. ¶240.

Plaintiffs have pleaded adequate facts to show that Mr. Kessler was engaged and involved in the solicitation, training, and command of such paramilitary units. See Am. Compl. ¶¶ 109, 233. He may deny that they were paramilitary units under the statute, or that they were involved in unlawful activities under the statute, or that he was involved with them, but those are factual questions, subject to evidence, and such cannot be factors in considering a demurrer.

The next question is a matter of standing. First, the City has standing to sue under Va. Code §15.2-1102 discussed above. If the trier of fact determines that Va. Code §18.2-433.2 (1) has been violated by Defendant Kessler, the grant of authority to the City to protect to a desirable degree the "general welfare...safety....peace, good order, [etc]" also vests in the City the right to bring suit to prevent further violations.

There is an issue as to whether there can be a private right of action based on violations of statutes. Clearly the City has such a right, but on this count I find that the individual plaintiffs for whom I have found standing also have such a right as well. They must show that they are

[4] Note that Defendant Redneck Revolt is not included in Count Two, but Defendant Kessler is.

directly affected, in a way different from the general citizenry, and that they have some "special damages" that are difficult to determine or quantify, in order to seek injunctive relief based on the violation of a statute. Black and White Cars v. Groome Transportation, 247 Va. 426 (1994). I find that Black and White Cars is applicable to this case and instructive here, and that Plaintiffs have pleaded sufficient facts to support this count and present a case for the trier of fact. The same Plaintiffs that have standing (page six this letter, above) have also allegedly suffered special damages, as the Amended Complaint clearly discussed those Plaintiffs' particularized harms that are different from the general public. See Am. Compl. ¶¶ 135-151. As to the causal connection, Plaintiffs have alleged enough facts to put Defendant Kessler on notice and to create an issue of fact for the trier as to whether Kessler's actions caused the harm to plaintiffs. . At various times in the Amended Complaint, Plaintiffs reference a causal connection to the Rally.[5] The Plaintiffs also allege that Defendant Kessler caused, at least in part, the civil disorder of the Rally. See Am. Compl. ¶ 240. Therefore, there is an issue of proximate cause sufficiently pleaded. The Court finds that harms alleged in ¶¶ 135-151 are sufficiently difficult to quantify. Therefore, the individual Plaintiffs listed above also have standing.

So I overrule the Demurrer as to Count 2, as to Kessler, in favor of the City and the six non-City plaintiffs who have standing. I sustain it as to the other eleven plaintiffs.

The Paramilitary Statute--Virginia Code §18.2-433.2 (Count 3)[6]

Virginia Code section 18.2-433.2 (2) says it is unlawful paramilitary activity if a person

> [a]ssembles with one or more persons for the purpose of training with, practicing with, or being instructed in the use of any firearm, explosive or incendiary device, or technique capable of causing injury or death to persons intending to employ such training for use in, or in furtherance or, a civil disorder.

Plaintiffs assert that Redneck Revolt along with the various other militia-type groups, assembled with the purpose of training, practicing with, and/or being instructed in the use of firearms and other techniques…capable of causing injury or death. Plaintiffs also allege that Redneck Revolt's intent was that its actions would be used in the context of and in furtherance of

[5] See Am. Compl. ¶ 141 (Alakazam); Am. Compl. ¶ 142 (Hays + Ewing and Wolf Ackerman); Am. Compl. ¶ 143 (Quality Pie); Am. Compl. ¶ 146 (Champion Brewing).
[6] Note that Jason Kessler is not a defendant as to Count 3 (or Count 4), but Redneck Revolt is.

a civil disorder, and such is planned in the future. Since this would be violative of 18.2-433.2 (2), Plaintiffs seek an injunction, alleging that no adequate remedy at law exists, and that without an injunction there would be irreparable harm. See 1-51 Va. Remedies § 51-2 Under Black and White Cars, above, Plaintiffs must show special damages. Defendants argue that Plaintiffs have not pleaded sufficient facts specific to Redneck Revolt to support a conclusion that they were engaged in paramilitary activity, nor that there is a causal connection between Redneck Revolt's actions and the various plaintiffs' special damages, and in any event such activity falls within a statutory exception. These are all factual issues. But forming a security perimeter while carrying tactical rifles makes out a sufficient claim of paramilitary activity under this provision.

So while it is a factual issue for the trier of fact whether those special damages were proximately caused by Redneck Revolt, I believe that Plaintiffs have pleaded enough to withstand a demurrer on this point. The City "expended hundreds of thousands of dollars in preparing for and responding to the Unite the Right rally which included overtime for city employees and legal costs." Am. Compl. ¶ 135. The presence of the "paramilitary activity" increased costs by heightening the risk of violence which necessitated "additional police and security resources." Am. Compl. ¶ 135. The City has pleaded enough to create a factual issue as to whether Redneck Revolt's presence and actions, if unlawful, contributed to their special damages. But I also find that the non-City plaintiffs with standing have pleaded sufficient facts to show, as with Count 2, a sufficient causal connection between the actions of Redneck Revolt and the special damages suffered by non-City plaintiffs in regard to Count 3. While this connection may not be pleaded as strongly as with Mr. Kessler in Count 2, or as to the City in Count 3, I do find that the Complaint pleads sufficient facts, taking the Complaint as a whole, to put Defendant Redneck Revolt on notice that Plaintiffs intend to prove that their activity in violation of §18.2-433.2(2) caused or contributed to the damages alleged by those plaintiffs.

Also, I find that none of the statutory exceptions (Va. Code §18.2-433.3) are reasons to sustain the demurrer. Only ¶ 2 might apply, but such does not have to be negatived by Plaintiffs in the pleading; rather it is an affirmative defense, and as such is an evidentiary issue for trial. However, Redneck Revolt would have to show that its actions were "undertaken without knowledge of or intent to cause or further a civil disorder."

So I will overrule the Demurrer as to Count 3, as to Redneck Revolt in favor of the City and the non-City plaintiffs with standing, and sustain it as to the other plaintiffs.

Assuming a Law-Enforcement Function—Va. Code §18.2-174 (Count 4)

I find essentially the same with regard to the law enforcement statute, at least as to the City.

Virginia Code §18.2-174 states

> Any person who falsely assumes or exercises the functions, powers, duties, and privileges incident to the office of sheriff, police officer, marshal, or other peace officer, or any local, city, county, state, or federal law-enforcement office or who falsely assumes or pretend to be any such officer, is guilty of a Class 1 misdemeanor.

There are sufficient facts pleaded to support a finding that Redneck Revolt was involved in assuming the functions and duties of law enforcement, and that they were appearing to "keep the peace" and did not want the police to be anywhere around. State law specifies that "the police force of a locality…is responsible for…the safeguard of life and property" and "the preservation of peace." Va. Code § 15.2-1704. The members of Redneck Revolt were open-carrying tactical rifles in a "security perimeter" for the purpose of the defense of the community. See Am. Compl. ¶ 51, 79. This act of preservation of the peace is a police function which, it is pleaded, Redneck Revolt has taken into their own hands is an attempt to displace the police. Redneck Revolt makes the argument that it is fundamental to defend oneself and the community, in a direct contradiction to the sole prerogative of the state. Rebuttal Br. Def. Redneck Revolt Reply Pls.'s Opp. Dem., 13. However, this is unpersuasive as Redneck Revolt volunteered to perform this function, not out of necessity, but in order to "not allow the state to have a direct monopoly on the use of force." Am. Compl. ¶ 79. This is enough to put Defendant Redneck Revolt on notice as to this claim.

The City has pleaded enough facts to show it was harmed by Redneck Revolt's actions of assuming the functions of law enforcement. Preservation of the peace is a function of the City which Redneck Revolt has affected causing the City to expend time and effort on police and security resources. See Am. Compl. ¶ 135. However, unlike Count 2, the non-City plaintiffs have not pleaded sufficient facts to show that Redneck Revolt's actions of assuming the function of law enforcement were a cause of the non-City plaintiffs' damages. I view that slightly differently from Count 3, in that the allegations involving the paramilitary presence and actions of all Defendants differs in the Court's estimation, from the allegations of assuming the role and function of law enforcement, in producing the damages claimed. The City has a greater interest

in maintaining the peace and order, and supervising its police force is one of its main responsibilities and duties, so it is more harmed by a violation of §18.2-174 than the individual plaintiffs are, and I find such less of a basis of a cause of action for the non-City plaintiffs. For example, if it had been pleaded that any of them failed to call the police because they thought that Redneck Revolt was the police, and as a result direct harm occurred, that would be sufficient. But there is nothing pleaded to connect the damages specifically with a violation of this statute.

The very nature of the chaos and injury, the difficulties the police had, and the expressed intention of Redneck Revolt to preempt the police in and of itself constitutes a substantial threat to the peace, safety, and order in the event of another such rally and counter-protest. Thus they are a danger to the public.

So I overrule the Demurrer as to Count 4 as to the City, but sustain it as to all other plaintiffs.

Public Nuisance (Count 5)

I find that Plaintiffs have pleaded sufficient facts to withstand the Demurrer as to Count 5 (as to the City). In order for a public nuisance to be proceeded on, Plaintiff must show some risk of danger or harm to the safety of the community. I believe the facts pleaded do this adequately. The legal standard for public nuisance in Virginia is that "more than sporadic and isolated conditions" must be shown and it must be "substantial." Breeding ex. rel. Breeding, 258 Va. at 213. In determining whether particular conduct would present a danger to the public, a court may consider "whether it is proscribed by a statute," among other factors. Restatement (Second) of Torts § 821B(2)(b). Here, unlawful paramilitary activity and assuming the function of peace officers are both proscribed by statute as a danger to the public. See Va. Code § 18.2-433.2(2); Va. Code § 18.2-174. The City has standing and a right of action to pursue this. Under §15.2-900 the City may bring an action to abate this public nuisance.

The City pled sufficient facts to allege that due to past incidents and anticipated future events involving Defendants Redneck Revolt and Kessler, Defendants' actions present a substantial possibility or likelihood of public danger.[7] The City "expended hundreds of thousands of dollars in preparing for and responding to the Unite the Right rally which included overtime for city employees and legal costs." Am. Compl. ¶ 135. The presence of the

[7] This is not an unreasonable or unjustified conclusion in light of the fact that one person was killed and several others wounded or injured in the events of the day of the rally.

"paramilitary activity" increased costs by heightening the risk of violence which necessitated "additional police and security resources." Am. Compl. ¶ 135. The damages are a proximate result to Defendant Kessler's Count 2 action and Defendant Redneck Revolt's Count 3 and 4 actions.

Plaintiffs have pleaded sufficient facts to show the City has standing. In Ritholz v. Commonwealth, 184 Va. 339, 349-51 (1945), the Court stressed that the Commonwealth was ordinarily charged with criminal enforcement of the penal statute at issue. Ritholz created an exception which is available to the sovereign charged with the enforcement of the underlying criminal conduct. In its exercise of this enforcement authority, the Commonwealth had determined that enforcement via multiple misdemeanor prosecutions would not have been adequate to protect the public health. See Id. The injunction by the Commonwealth was found to be proper as it was an extension of the Commonwealth's ordinary enforcement authority of the penal statute at hand. Defendant Redneck Revolt states that this exception should not apply as it is a municipality, and not the Commonwealth, that is seeking the injunction, and that it has no enforcement authority. Br. Supp. Def. Dem., 26. However, in Thomas, the court found that an injunction for public nuisance by the municipality was available as "it is well settled that a court of equity has jurisdiction upon the application of the State or a *governmental subdivision* to restrain by injunction acts which are a menace to the public rights or welfare." 207 Va. at 661 (*italics* emphasis). This exception would allow the City to seek an injunction against both Defendant Kessler and Defendant Redneck Revolt as part of its enforcement authority of the public nuisance statute, Va. Code §15.2-900.

Because Plaintiffs have stated "it is unnecessary to consider the argument that non-City Plaintiffs cannot demonstrate the harm required to sustain a public-nuisance claim," this Court will not consider non-City plaintiffs standing on the public nuisance claim, and will find only that the City had standing to pursue this public nuisance claim. See Pl.s Br. Opp. Def. Dem., 43 n. 12.

The Plaintiffs have pleaded sufficient facts to support "an unreasonable interference with a right common to the general public", in this case to be free to visit and use the downtown area without fear or intimidation from organized, armed, uniformed, but unofficial military-like groups. Clearly enough facts have been pled to sufficiently allege a situation that constitutes a danger to the public.

Also, as pleaded, the activity is not "isolated and sporadic". It was planned, and is expected to occur on another specific occasion in the near future, on a date related to last year's events.[8] It is also a substantial interference. The very nature of the chaos and injury, the difficulties the police had, and the expressed intention of Redneck Revolt to preempt the police in and of itself constitutes a substantial threat to the peace, safety, and order in the event of another such rally and counter-protest. Thus they are a danger to the public.

I overrule the Demurrer on Count 5 as to the City and sustain the Demurrer on Count 5 as to all non-City plaintiffs.

Injunctive Relief

For injunctive relief to be appropriate, there must be a violation of right, inadequate remedy at law, irreparable harm if not granted, and more harm to the requesting party if not granted than to the responding party if such is not granted. Kent Sinclair, Sinclair on Virginia Remedies § 51-2 (2017). Sufficient facts have been pleaded on each of these points.

If the militia or paramilitary activity, and Defendants' presence at the public event that results in a civil disturbance, are in violation of the Virginia Constitution and at least two statutes, and if such is, causes, or contributed to a public nuisance or damages suffered by the plaintiffs, then there has been a violation of right.

I find that there is not an adequate remedy at law to prevent such before it happens, unless the Court can and does grant an injunction. The Court strongly disagrees that there is an adequate remedy at law here, if Plaintiffs are relegated to reacting after the fact, after further harm is done— after someone else if beaten, stabbed, shot, or killed. If this equitable remedy could stop or prevent such, then not to do so would be no remedy to the harm committed. It is often articulated in a murder case or wrongful death case that putting someone in prison or granting a monetary award will not make things right and or bring the person back to life. That is exactly what an inadequate remedy at law is.

I do find that there is a great risk of irreparable harm if such is not granted. This factor is satisfied in part because there is not an adequate remedy at law, as these two concepts tend to

[8] Taking into account the overall picture, there was a previous incident on July 8, 2017, then incidents on August 11 and 12, 2017, and then another on October ?, 2017, and now events are planned or anticipated on August 11 and 12 of this year. Taken as a whole, these are connected and not isolated or sporadic events.

rise and fall together, and are sometimes considered to be the same. See Sinclair on Virginia Remedies § 51-2 (2017); see also Black & White Cars, supra, 247 Va. 426 (1994) (in deciding whether to grant an injunction, the Supreme Court of Virginia analyzed these two factors as if they were one.). For example, if a person should die or be seriously injured, or a company, store, or restaurant go out of business, that would be irreparable. One can receive a monetary award, but that would not put Plaintiffs in the same position as if it had never happened, and is not adequate.

The City has pleaded enough to support a compelling interest in ensuring the peace and welfare of the community and its citizens that outweighs the hardship on the Defendants. This Court has jurisdiction "upon the application of the State or a governmental subdivision to restrain by injunction acts which are a menace to the public rights or welfare." Thomas v. Danville, 207 Va. 656, 661 (1967). Plaintiffs have alleged a wide array of harms associated with the Unite the Right Rally in August of 2017. Preventing another rally would undoubtedly be a large benefit to the plaintiffs. Furthermore, there is little harm to Defendants. This injunction would not prevent the parties from being in Charlottesville, having firearms, conveying their message, or even assembling in a non-militia manner. Therefore, the injunction would only slightly impede the interests of Defendants, making the benefit to Plaintiffs outweigh the harms.

Pursuant to the discussions above, the City and certain other plaintiffs would have standing to sue for injunctive relief under the paramilitary statute (Counts 2 and 3); only the City may seek such under the Strict Subordination Clause (Count 1), the law enforcement statute (Count 4) and public nuisance (Count 5). So I will overrule the Demurrer as to injunctive relief.

Declaratory Relief

A declaratory judgment is designed and intended to define the rights and obligations of the litigants in an actual controversy. "Declaratory judgments provide relief from the uncertainties stemming from controversies over legal rights." Green v. Goodman-Gable-Gould Co., 268 Va. 102, 107 (2004). Declaratory judgments are forward looking. But "[t]he purpose of declaratory judgments... is to 'supplement rather than to supersede ordinary causes of action and to relieve litigants of the common law rule that no declaration of rights may be judicially adjudged until a right has been violated." Id. at 106-07 (citing Williams v. Southern Bank of Norfolk, 203 Va. 657 (1962)). Finally, when "a declaratory judgment as to a disputed fact would be determinative of issues, rather than a construction of definite stated rights, status, and other relations, commonly expressed in written instruments, the case is not one for declaratory

judgment." Williams v. Southern Bank of Norfolk, 203 Va. 657, 663 (1962). Therefore, declaratory judgment is intended to be used by the courts when litigants need guidance as to legal rights, relationships, and duties, and when the issue reaches into the underlying suit as to be dispositive, declaratory relief is not appropriate.

Therefore, the only issues that it seems are appropriate for declaratory relief are as to Counts 1 and 5. There is a conflict in the asserted rights of the Defendants to assemble as private militia, and the City and the other Plaintiffs saying they do not have such a right, and the City has a right to keep them from assembling as such, either as forbidden by the state constitution, or as constituting a public nuisance. This poses a true conflict of rights as to future action. I do not think the Court should be entering a declaratory judgment as to past action (whether events of August 12, 2017, violated the criminal statutes), and I do not think that I should make pronouncements as to whether such would violate the two criminal statutes cited if done in the future.

Impact of the First and Second Amendments

Both Defendants argue that by granting Plaintiffs the relief requested, the Court would be infringing on their First Amendment (right to free speech, freedom of assembly) and Second Amendment (right to possess firearms). Redneck Revolt Demurrer ¶¶ 11,13; Redneck Revolt Brief in Support of Demurrer pg. 20; Redneck Revolt Rebuttal Brief pg. 20; Kessler Memorandum in Support of Demurrer, Part VII. I reject this argument. If the relief requested is granted, the individual defendants will still be able to come exercise their free speech rights, and assemble with each other, as well as carry a firearm, so long as such is openly carried (unless the person has a concealed weapon permit), and not concealed or brandished or used in a threatening way. See discussions in Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan, 543 F.Supp 198, 209-210, 216 (1982); Presser v. Illinois, 116 U.S. 252, 264-65, 267, 6 S.Ct. 580, 584, 585 (1886). Redneck Revolt contends that they were included in the suit only because of their views, to "balance things out". There is no basis for concluding that. It is true that the Alt-Right defendants numbered more in number of organizations present and sheer number of persons--there were 12 defendant organizations, two of which were with the counter protesters, and thirteen individual defendants, none of which were with the counter protesters.[9] However, the Plaintiffs, particularly the City, cannot favor one similarly behaving group over another because of point of view. There is no basis for them to oppose one set and not the other.

[9] All of the Alt right groups and all but one of the individual defendants have reached a settlement agreement and are no longer in the suit.

No one is being denied their right to speak, to assemble and protest, or even to bear firearms. But when a group comes as a unit, in uniform, with military or law enforcement weapons, equipment, tactics, and appearance, under a clear chain of command authority, looking like the police or military, and they are neither a part of or subject to the local, state, or federal military or police, and are subject to neither, this is a legitimate concern and question as to whether they may, in a specific situation, do so.

Conclusion

So I will sustain the demurrer as to standing as to several of the plaintiffs[10]. I overrule the demurrer on Counts 1, 4, and 5 as to the City, and sustain it as to all other 17 plaintiffs. I overrule the demurrer as to Counts 2 and 3 as to the City and the six other plaintiffs with standing, and sustain it as to the other 11 plaintiffs. Since we are just under three weeks to trial, I will not grant leave to file an amended complaint as to any plaintiffs found not to have standing. On each count the matter may go forward with one or more plaintiffs, and justice does not require granting leave to amend in this regard. The Motion to Dismiss is also denied.

To be clear, as you know, this decision on the Demurrer does not dictate the outcome of the case. It simply allows the case to proceed to trial upon evidence, or for further proceedings.

Trial is now set for July 30. I just entered the pre-trail scheduling order, which the parties shall keep to.

I thank you for your excellent and thorough presentations and briefs in this novel matter. I ask either Mr. McNew, Ms. McCord, or Ms. Robertson (as they elect) to prepare an order reflecting the rulings in this letter, and then to circulate it for endorsement to Mr. Woodard, Mr. Fogel, and Ms. Starsia. Please indicate the parties' objections to all adverse rulings. Exceptions to the rulings of the court are noted.

Very Truly Yours,

Richard E. Moore

Richard E. Moore

[10] Escafé, Iron Paffles, Maya Restaurant, Rapture, Alight Fund, Angelo Jewelry, Williams Pentagram, Mas Tapas and the three neighborhood associations have no standing at all on any count.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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Plaintiffs, by counsel, respectfully submit this Memorandum in support of their Motion for Preliminary Injunction.

PRELIMINARY STATEMENT

Over the course of two days in August 2017, the City of Charlottesville was transformed from a peaceful college town into a battleground, with residents terrorized and any semblance of civic order destroyed. Defendants' movements, tactics, and uses of weapons and force were planned, coordinated, and executed with military precision. Defendants took their orders not from civic leaders, but from their own private commanders. And the ensuing lawlessness inflicted irreparable harms on the Charlottesville community that continue to be felt today. Now, those who organized last year's mayhem want to perpetuate and deepen those harms with an "anniversary" event. Without injunctive relief from this Court, there is a real and immediate threat that Plaintiffs—and the rest of the City's residents—will once again be irreparably injured by Defendants' disregard for the law.

Before last summer's "Unite the Right" rally, Charlottesville was known as a quiet university town, a home to members of a diverse and actively engaged community, and a thriving hub for small businesses and tourism. The rally changed all of that. The images of uniformed groups storming through the City's streets, parks, and public spaces, in formation, brandishing shields, assault rifles, and other weapons, have marred Charlottesville's reputation. People continue to "associate [Charlottesville] with white supremacists and with the violence that occurred" last year; the City's residents are still suffering from "communal PTSD." As one Plaintiff business owner aptly explained, last year's rally was like a "concussion" from which the City and its residents are only slowly recovering. And although last year's event caused serious harm, suffering similar trauma again this year—while Plaintiffs and others are still healing—would cause "damage [that] would be more lasting, if not permanent." Through this suit, Plaintiffs seek

only to prevent Defendants from further upending ordinary life by once again flooding the streets of Charlottesville with private armies—conduct that Virginia's Constitution, criminal laws, and common-law tort doctrine prohibit. All four factors governing preliminary relief favor an injunction barring Defendants from violating these state-law guarantees.

First, Plaintiffs—the City of Charlottesville, the Downtown Business Association of Charlottesville, several individual businesses, and three residential associations—are likely to prevail in this case. Several sources of Virginia law seek to ensure public safety by prohibiting the unregulated and coordinated use of force: The Strict Subordination Clause of Virginia's Constitution mandates that only persons authorized and controlled by the Commonwealth may perform military functions. Virginia's anti-paramilitary statute prohibits groups from training with and employing dangerous weapons and other techniques in, or in furtherance of, a civil disorder. Virginia's false-assumption statute bars private parties from assuming law-enforcement functions outside the reach of public accountability. And the common law of public nuisance prohibits any unreasonable interference with a right common to the general public, including the right to use public spaces free from the fear of organized violence. Defendants Jason Kessler, Elliott Kline, Traditionalist Worker Party, Matthew Heimbach, Vanguard America (collectively, the "Alt-Right Defendants"), and Redneck Revolt each violated one or more of these prohibitions at the Unite the Right rally last August. And, left unchecked, there is every reason to believe they will do so again at Defendant Kessler's planned anniversary event.

Last year, the rally's organizers, Kessler and Kline, distributed orders instructing "friendlies" how to use shields and other weapons in a coordinated manner against their perceived "enemies." Vanguard and TWP, including its former leader Heimbach, executed those orders, marching through the City's streets using their shields, flags, clubs, and fists to batter counter-protesters and seize control of Charlottesville's parks and public spaces. At Kessler's invitation,

heavily armed private militia groups in military uniform prowled the perimeter of Emancipation Park, bearing assault rifles and other weapons. And Redneck Revolt organized into "fire teams" and "skirmish lines," deploying with AR-15s and pistols, determined to keep alt-right groups and the civil authorities from entering Justice Park. There is little reason to expect a different result this year. Kessler has promised that his planned anniversary event will go forward whether or not he receives a permit. Kline has declared himself "ready for another Charlottesville." And Redneck Revolt has made clear that "[i]t is time to turn [their] guns on [their] real enemies," wherever and whenever members of the alt-right—including TWP and Vanguard—assemble.

Second, a repeat of last year's mayhem would only deepen the irreparable harms that the Unite the Right rally has already inflicted on the Charlottesville community. Rather than a place of learning and a community open to all, Charlottesville is now known just as well as a talisman to the alt-right—an ongoing flash point in a broader campaign of alt-right militarism. As Kline has explained, the rally sent a message that the alt-right will not give up "without a fight." Groups like TWP and Vanguard have heard that message loud and clear: Since the rally, TWP has exhorted its members to "be prepared at all times to fight," and Vanguard has declared that it "will not stop until total victory is achieved." For militant left-wing groups like Redneck Revolt, the prospect of the alt-right's return is a rallying call to "take the defense of our communities into our own hands," whether legally or not.

The looming threat that Charlottesville will once again be forced to play host to coordinated political violence has destroyed any semblance of regularity for the City's inhabitants, including Plaintiffs. The City has suffered reputational injuries that cannot be quantified merely by a loss of tourism and tax revenue. There is a more fundamental "lack of confidence that Charlottesville is a good place to retire, or a good place to open a business, or a safe place to send your kids to school." The City's businesses face an incalculable loss of customer goodwill. And its

homeowners and residents must live with the anxiety of knowing that the next event may result in even more violence, and more bloodshed. None of this is lost on Defendants. Kessler has boasted that his August 2017 event, and the prospect of a second Unite the Right rally, have subdued tourism and business and robbed Charlottesville's residents of a "normal life." And Redneck Revolt openly acknowledged after last year's rally that its coordinated display of force added to the anxiety of some of the City's residents.

Third, the balance of equities favors the injunctive relief Plaintiffs seek. An order from this Court prohibiting Defendants from reprising their coordinated use of force would neither rob them of a platform to voice their political views nor implicate their right to bear arms. By contrast, preparing for a repeat of last year's events would require the City to divert substantial additional resources to policing and crowd control. Local businesses could be forced to close their doors. Members of the community would feel compelled to take extraordinary measures to protect their lives and property. And the hope of recovering would be shattered, as residents would see their town once again besieged with military-style violence.

Finally, an injunction that would reduce the threat of future violence while preserving Charlottesville's public spaces for political discourse is plainly in the public interest. "The First Amendment does not protect violence." *N.A.A.C.P.* v. *Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982). An injunction that keeps the streets and parks of Charlottesville open for the free expression of ideas, allowing protestors and counter-protestors alike to speak freely without the threat of forcible suppression, would honor and serve that highest of civic values: that ideas, even bad ones, should be met with more and better ideas—not with violence.

In sum, Plaintiffs seek nothing more than to preserve the peace of the public square by preventing a recurrence of the unchecked use of coordinated force that plunged the City into chaos

last year. Plaintiffs respectfully request that the Court grant their Motion for Preliminary Injunction.

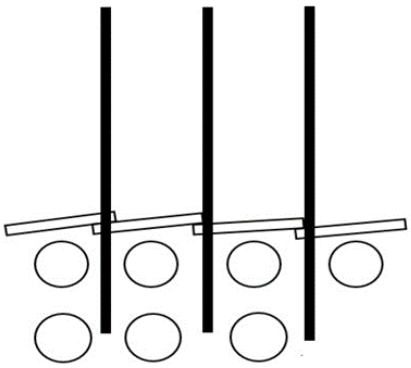
FACTUAL BACKGROUND

A. The Road to "Charlottesville 2.0"

Last year, Charlottesville became the focus of an increasingly tense discourse on race in America. In February, the Charlottesville City Council voted to remove statues of Robert E. Lee and Thomas J. Jackson from the grounds of what are now known as Emancipation Park and Justice Park, respectively. In response, alt-right leader Richard Spencer and others, including Defendants Jason Kessler, TWP, and Vanguard America, protested the Council's decision at an unplanned and unpermitted rally at Justice Park. Ex. 5-1 at 25–26. That evening, Spencer and his followers marched into Emancipation Park carrying lit torches, chanting "blood and soil"—a Nazi slogan—and arranging themselves in ranks five lines deep in front of the Lee statue. Ex. 5-1 at 27. These two events would come to be known by members of the alt-right as "Charlottesville 1.0." *See* Ex. 5-2 at 1.

Almost immediately thereafter, alt-right leaders began planning an encore. Defendant Kessler filed a request for a permit to hold an event at Emancipation Park on August 12, 2017—one he dubbed the "Unite the Right" rally. Using the online chat platform Discord, Defendants Kessler, Kline, and others began discussing and organizing the rally using the "Charlottesville 2.0" server. Ex. 5-3 at 19:15–33. As one user described it, the server was "for closed, top super secret communications intended for the elite inner circle of the alt-right," and not to be "distribute[d] widely." Ex. 5-4. Kessler and Kline moderated the discussion and controlled access. Exs. 5-5, Ex. 5-6. Other Defendants, including Heimbach, Vanguard, and TWP, also participated. Ex. 5-7 at 3.

As Plaintiffs have already shown, dozens of rank-and-file attendees used Discord to broadcast their eagerness to transform downtown Charlottesville into a battleground. *See* Pls.' Am. Compl. ¶ 176. The planning materials circulated by organizers were no less militarized. For example, on July 7, 2017, a document titled "Shields and Shield Tactics Primer," providing detailed instructions on the coordinated use of shields during combat, was uploaded to the Charlottesville 2.0 server. *See* Ex. 5-8. The document's purpose was to get each group "on the same page, so that we may present a squared away force to counter . . . our enemies." *Id.* at 1. The primer explained that rally attendees should stand in formation, with their feet staggered and shoulder-width apart, holding their shields with their left hands, leaving their right hands free to wield a "flag pole, stick, bludgeon, etc." *Id.* at 3. The shield walls would be composed of two lines: a defensive first line, and a second line to act as "the offensive component" armed with "longer weapons" that would "make up the teeth of [the] shield wall." *Id.* The primer illustrated how, as the shield wall advanced, the second line would "push people away from the wall" using poles or other long weapons:



This instructional document anticipated "4 or 5 lines of people with shields, so that the front line can be consistently refreshed." *Id.* at 4. The document closed by encouraging attendees to "practice as a solid group" after arriving in Charlottesville. *Id.* at 4–5.

In his capacity as a co-organizer of the rally, Defendant Kessler personally recruited attendees to participate in these formations. On July 16, he used Discord to issue a "general call for people to help with general event security" by forming "a large shield wall" in Emancipation Park. Ex. 5-9 at 133. "The more people we get," he explained, "the larger and more effective" this "highly organized" technique would be on August 12. *Id.* Kessler concluded by attaching a document—the "Shields and Shield Tactics Primer"—that "has all of the information needed to become familiar with what we will be doing." *Id.* at 134.

Defendant Kline transmitted similarly detailed instructions for what he called "Operation Unite the Right Charlottesville 2.0." *See* Ex. 5-10. He did so through two separate documents: "OpOrd" (i.e., "Operational Orders"), sent to group leaders on August 1, 2017; and "General Orders," circulated to all members of the Charlottesville 2.0 Discord group on August 10, just two days before the rally.[1] As Kline explained in the former document, "we see a high likelihood of violence during the rally." Ex. 5-10 at 9. He encouraged individual groups to "bring their own shields" for use in both a "Strong Shield Center" and a shield wall along the perimeter of Emancipation Park. *Id.* at 4, 9. Kline pledged to follow up with additional "rules of engagement," as well as "a list of High Value Targets" within the alt-right's "enemies." *Id.* at 2, 9.

The General Orders, too, were not an exercise in simple event planning, but rather a highly detailed operational directive to "be shared in EXTREMELY VETTED circles." Ex. 5-11 at 1. The document explained that "security forces in form of the shield wall will be deployed in whatever manner is most effective to reduce the threat" posed by the alt-right's "enemies." *Id.* at 1, 8. The General Orders explicitly contemplated "tak[ing] the ground by force." *Id.* at 3. Female attendees were urged to "stay off the front lines," given the expectation of violence. *Id.* at 2. Even

[1] The documents' file names are "OpOrd1_LeadershipOnly.pdf" and "OpOrd3_General.pdf," leading one to assume that an "OpOrd2" was issued, as well. Plaintiffs have not been provided with such a document in discovery.

leaving the rally was planned with military precision: The organizers would "run[] exfiltration convoys" and leave their security forces to "fight[] a rearguard action," if necessary. *Id.* at 8–9.

Defendants Vanguard America and TWP came to Charlottesville fully prepared to use organized force. As Vanguard's leader stated in advance of an earlier rally, "we want to be like ants—we're a colony, and we just go and destroy everything." Ex. 5-12 at 2:25. And according to TWP's internal "Event Coordination Notes," issued in advance of August 12, the group was "preparing for the worst" and "expected to take the lead if fighting is necessary." Ex. 5-13 at 6–7. To that end, TWP planned to deploy "a full shield squad" that would be "under direct command of a squad leader from our own ranks"—Defendant Cesar Hess.[2] *Id.* at 2. TWP members were to be divided into three tactical teams—Alpha, Bravo, and Charlie—with each member "assumed to be . . . willing and able to fight" as part of Bravo Team. *Id.* at 5. The leadership's military-style uniforms would enable "better command and control of situations on the ground." *Id.* at 2. To facilitate such coordination, TWP scheduled "an early morning of preparation" and "basic training" on August 12. *Id.* at 3.

Defendant Heimbach was instrumental in TWP's preparation to engage in coordinated force in Charlottesville. As he explained in the group's private Discord server, TWP purposefully equipped itself to be able to "win the fight" against "the enemy." Ex. 5-14 at 14. Heimbach informed TWP members that "[w]e will have shields, would love more." *Id.* at 13. On July 30, he estimated that TWP's "frontlines will have 12 riot shields." *Id.* at 50. "[A]longside our [L]eague of the [S]outh and [V]anguard [A]merica allies," he commented, "we'll have an unbreakable line." *Id.* Party members' dress was to correspond with the organization's hierarchy, for "everyone is gonna need to know who the officers are in order to be able to take orders." *Id.*

[2] Plaintiffs have been unable to serve process on Defendant Cesar Hess.

at 52. And the participation of women in non-combat capacities would "free[] up our fighting men." Ex. 5-15.

Defendant Redneck Revolt, a self-described "anti-racist, anti-fascist community defense formation," Ex. 5-16 at 1, issued a "Call to Arms for Charlottesville" in advance of the Unite the Right rally, *see* Ex. 5-17. The group pledged to "dust[] off the[ir] guns" in order to repel the "violence" and "power" of alt-right organizations expected to attend. Ex. 5-17 at 1, 3. An instructional document distributed to each Redneck Revolt branch, entitled "Introduction to Tactical Firearms," provides insight into the group's armed presence at public events. The document recommends a range of weapons suitable for a variety of purposes, including "battle pistol[s]" and rifles for "sharpshooting" and "combat." Ex. 5-18 at 19–22, 25. As "next steps," Redneck Revolt advises recipients to "[p]ractice shooting often," "[t]rain with a group," and "[o]rganize a fireteam." *Id.* at 39. A "fireteam," the document specifically instructs, consists of a group of four: a "breaching" element at the front armed with a handgun or shotgun; members carrying "standard rifles" in the second and fourth positions; and a member in the third position carrying a "long range or suppressive fire" weapon. *Id.* at 38. The document also provides tips for "firing in group situations." *Id.* at 37. Finally, Redneck Revolt's instructional document advises each branch to develop its own "rules of engagement" that determine "[w]hen and why . . . deadly force [may] be used." *Id.* at 40. Members are admonished that "[t]his is deadly serious work we are engaging in," for the slightest mistake could "accidentally kill" nearby persons. *Id.* at 30, 37.

These operational documents describe preparation for battle, not political debate. To be sure, some Defendants publicly disclaimed any intent to engage in violence at the rally. Defendant Kessler, for one, stated at a press conference on July 11 that "there is no expectation of violence—we are planning a peaceful rally." Ex. 5-19 at 11:45. Yet in his capacity as an organizer of the

rally, he conveyed precisely the opposite message to attendees. Kessler advised users of the "Charlottesville 2.0" Discord server to "bring picket signs that can be used as sticks to bludgeon our enemies if they get violent." Ex. 5-9 at 8. He instructed attendees not to openly carry firearms, given that "[w]e ultimately don't want to scare [counter-protestors] from laying hands on us." *Id.* at 7. Open-carry would thus deprive alt-right rallygoers of the "chance to crack some Antifa skulls in self-defense." *Id.* at 19. Kessler aimed to enlist "enough people to win a street fight"—to "whoop that Commie, anti-white ass all over God's green Earth." *Id.* at 47, 102. Kessler contacted a number of heavily armed militia groups, including the Virginia Three Percenters, to "provide a security presence" at the rally. Ex. 5-20 at 5. And he responded approvingly when his contact in the Three Percenters promised to "walk in there with a thousand men and crush these little cunt rags for good." Ex. 5-21 at 44.

The Defendants in this case came to Charlottesville equipped for a violent confrontation in public spaces. Unfortunately, that is exactly what materialized.

B. August 11: The Torchlit March

Any pretense that alt-right attendees intended to peacefully assemble was obliterated the night before the rally during a torchlit march through the University of Virginia campus. The march was not authorized by the University, and Defendant Kline and others had intended to keep it a secret, advising attendees that they should "NOT mention" the event "outside of extremely vetted circles," and should "NOT post about it on social media until after." Ex. 5-11 at 7. By the day of the march, however, Kline had learned that opponents of the alt-right "kn[e]w of the torchlight march" and were planning a "counter protest." Ex. 5-22. He nevertheless ordered attendees to assemble with their torches. *Id.*

Hundreds of torch-bearers streamed into the UVA campus, barking like dogs and chanting "Jews will not replace us!" and other intimidating slogans. Ex. 5-58 at 0:10, 0:24. Torchbearers

were organized into columns, two-by-two. Ex. 5-24 at 4:30–5:00. "Guards" were chosen to march alongside the columns based on their willingness to "get physical" with anyone who stood in their way. Ex. 5-1 at 117; *see also* Ex. 5-25 at 2 ("Organizers asked for all white men over 190 pounds marching not to carry torches, but to march at the side of [the] procession as its security detail."). But instead of an organized resistance, the marchers encountered only a small group of students and counter-protesters gathered around the Jefferson statue near the Rotunda. Ex. 5-24 at 4:28; *see also* Ex. 5-26 at 2–3.

The alt-right marchers moved in, encircled the Jefferson statue, and surrounded their opponents. Ex. 5-58 at 1:10–1:41; *see also* Ex. 5-24 at 6:10. The torchbearers then advanced, punching and kicking the small group of counter-protesters, and even hurling lit torches from within the crowd. Ex. 5-58 at 1:27–1:34; Ex. 5-24 at 6:08–6:27. As Richard Spencer remarked, the alt-right "flanked" and then "literally surrounded the enemy," outnumbering the counter-protesters at least "25-to-1," and occupied the space "in spades." Ex. 5-27 at 3:15–4:02. "We just got in there and cleaned that shit up," one marcher boasted the next day. Ex. 5-28 at 13:57. Another recalled having "kicked the shit out of a [counter-protestor] at [the] torchlit rally," even though "it probably isn't legally allowed." Ex. 5-29 at 31:30. Defendant Kessler tweeted that the evening's clashes were an "[i]ncredible moment for white people who've had it up to here & aren't going to take it anymore." Ex. 5-30. This violence was but a small preview of what was in store for the following day.

C. August 12: The Rally

The next day, the Alt-Right Defendants, along with hundreds of others, marched into Charlottesville and violently occupied Emancipation Park. Defendant Kline led a column of Vanguard America members dressed in matching uniforms, wearing helmets, and carrying shields and flags, toward the park. Exs. 5-31, 5-32. Along the way, the Vanguard contingent encountered

a small group of counter-protestors. Ex. 5-33. Kline ordered the column to halt and reformed the lines, organizing the Vanguard members into formation and calling shield carriers to the front. *Id.* He then led Vanguard forward as the shield carriers pushed through the counter-protesters, resulting in a clash that left two women badly bloodied. *Id.* Alt-right attendees carrying shields similarly rammed through a group of clergy standing passively on the steps of Emancipation Park. They did so after being ordered to "fuckin' go through them—right there! Walk through them! Shield wall—go! Go!" Ex. 5-29 at 6:40. Defendant Kessler, too, marched to Emancipation Park with a contingent of Vanguard America members. Ex. 5-34. He praised the alt-right shield carriers who plowed through the clergy line, exclaiming that "[w]e broke through Cornel West! . . . Cornel West thought he could stop us. Nothing can stop us!" Ex. 5-28 at 7:11, 7:34.

Once they reached Emancipation Park, Vanguard America members formed into shield walls, declaring that "we're taking this fucking field!" Ex. 5-35 at 2:30. The group used its shields to restrict access to the park to those they perceived as "friendlies," and excluded members of the public, including members of the press. Ex. 5-35 at 3:46–4:20. Asked whether he had any safety concerns, a Vanguard member gestured toward the counter-protesters assembled outside the park and replied that he did—for "some of those guys." Ex. 5-36 at 1:13. Vanguard members were key contributors to the multi-group shield wall that formed on the southern edge of Emancipation Park—just as Defendant Kline's operational instructions had envisioned. *See, e.g.*, Ex. 5-37. And throughout the morning, Vanguard members joined in coordinated attacks, charging out of the park to clash with counter-protesters in the streets below. In one particularly violent assault, attendees carrying Vanguard shields streamed down the stairs at the southeast corner of Emancipation Park, slamming into counter-protesters and beating them with their fists, shields, and other weapons. Ex. 5-36 at 4:35–5:00.

That morning, members of Defendant TWP exited the Market Street parking garage and marched westward toward Emancipation Park behind Defendant Heimbach, who served as TWP's leader on August 12. TWP members wore matching uniforms and helmets and carried clear riot shields, many of them bearing the insignia of "TradWorker." Heimbach shouted "shields up!" to his troops as they plowed through a line of counter-protesters standing on Market Street. Ex. 5-23 at 0:06. TWP's actions conformed precisely to the instruction provided in the "Shields and Shield Tactics Primer": Shield bearers formed a front line that slammed into counter-protesters, while a second line—the "teeth" of the shield wall—used flagpoles and other weapons to batter their opponents. Ex. 5-23 at 0:14–0:20. TWP entered Emancipation Park amid an instruction to "push through! Push through! . . . Push through! Don't stop! Go! Go!" Ex. 5-38 at 4:19.

Once inside Emancipation Park, Defendant Heimbach shouted, "form up the shields!" *Id.* at 5:12. TWP's "Commanding Officer," Defendant Cesar Hess, worked with two other alt-right groups to "create two shield walls"—one at the southeast steps of Emancipation Park, and one adjacent to the stairwell. Ex. 5-39 at 2. To this end, Hess exercised command authority over TWP members and other "fighters" sent to assist TWP. *Id.* Among his many orders were "hold the fucking line!" Ex. 5-40 at 9:00; "on the stairwell!" Ex. 5-41 at 21:10; "form the fucking line!" Ex. 5-42 at 3:27; and "get ready to fucking fight!" Ex. 5-40 at 9:19. TWP members complied with Hess's commands, repeatedly exiting the park in organized groups to attack counter-protesters with shields and clubs. It is no wonder that TWP's then-director later wrote that the group came "prepared to fight" in Charlottesville. Ex. 5-43 at 1.

A number of witnesses who recorded their experiences described these violent techniques in real time. One attendee described TWP's initial offensive as "pretty brutal"—"like barbarians on a battlefield with their . . . riot shields and sticks and billy clubs." Ex. 5-44 at 2:39. As a videographer explained, alt-right shield carriers "make this line, and then they'll approach the

[counter-protestors] in that aggressive posture with weapons-bearing, and instigate. They didn't come here to peacefully rally at all—they came here to battle, for war." Ex. 5-45 at 13:02. One reporter perceptively remarked that "it looks like the right wing has practiced these formations in advance"—ones that resembled a "battalion" or "phalanx." Ex. 5-46 at 8:03. Others characterized Emancipation Park as a "war zone," Ex. 5-47 at 0:55, and "a complete battleground," Ex. 5-48 at 12:46.

Two blocks away, Defendant Redneck Revolt was deploying at Justice Park. According to the group's own "Reportback," "[a]pproximately 20 Redneck Revolt members created a security perimeter around the park, most of them open-carrying tactical rifles." Ex. 5-49 at 2; *see also* Ex. 5-50 at 28:43 ("Redneck Revolt had 19 people deployed on the perimeter of Justice Park on that Saturday morning . . . with 12 of us carrying firearms, primarily AR-15s—semiautomatic weapons.").[3] The group "conduct[ed] [itself] with a hierarchy—with clear organization, with lots of intel, [and] huge amounts of planning." Ex. 5-50 at 32:04. As one of its members explained, Redneck Revolt had a "clear mission" on August 12: to ensure that "cops," "the State," and alt-right attendees were deterred from entering Justice Park due to the group's implicit threat to use organized force. Ex. 5-51 at 8:32. Redneck Revolt sought to "seize space" and make the park a "temporary autonomous zone" in which law enforcement could not operate. *Id.* at 31:30. The group's armed deployment represented a "struggle" against "state power." Ex. 5-50 at 35:22.

To that end, Redneck Revolt members dispersed into three "fire teams" around the perimeter of Justice Park. Ex. 5-49 at 2. Its members coordinated their positions by maintaining

[3] The group now claims that "approximately 14 – 18 Redneck Revolt members were in Charlottesville on August 12. Of those, approximately 9 – 11 members carried firearms . . . ; approximately 7 or 8 members carried some brand of the ArmaLite platform rifle ('AR-15'); and approximately 2 or 3 members carried pistols." Ex. 5-55 at 18. Plaintiffs expect the evidence to establish that at least 10 Redneck Revolt members carried semiautomatic weapons in Charlottesville on August 12, and that at least 2 others carried pistols.

radio communication throughout the day. *See* Ex. 5-52 at 0:52. In the course of "project[ing] . . . force and power," Ex. 5-51 at 9:05, Redneck Revolt had several "intense encounter[s] with the enemy," Ex. 5-53 at 35:23. The group's members repeatedly followed orders to "form[] a unified skirmish line" against alt-right demonstrators passing by. Ex. 5-49 at 2; *see also* Ex. 5-50 at 32:46 ("Throughout the day we faced off with various groups of Nazis."). As one Redneck Revolt member recounted, "[f]or eight hours we held off Nazis and kept cops out of the park." Ex. 5-54 at 5.

By 11:30 a.m., the Unite the Right rally was declared an unlawful assembly. But even the threat of arrest did not deter alt-right attendees from using their paramilitary tactics to continue exerting control over Charlottesville's public spaces through the coordinated use of force. TWP and Vanguard America continued participating in multi-group shield walls—in the vicinity of advancing riot police—which Defendant Kline took the lead in commanding. *See* Ex. 5-56 at 7:15; Ex. 5-57 at 21:21. (Kline had commented the night before that "I run this as a military operation. . . . I was in the army." Ex. 5-25 at 4.) Persons carrying Vanguard and TWP shields joined a group of attendees physically resisting law-enforcement efforts to clear the park. Ex. 5-45 at 19:20–19:45; Ex. 5-57 at 21:21–22:03. Defendant Kessler eventually ordered the alt-right attendees to begin marching to McIntire Park. Ex. 5-24 at 14:29. After arriving there, Kline threatened to send "at least 200 people with guns" back to Emancipation Park in defiance of police orders. Ex. 5-58 at 9:12. The day's mayhem culminated in death, when James Fields plowed his car into a crowd of counter-protesters, killing 32-year-old Heather Heyer and injuring many others. Fields had spent much of the morning carrying a Vanguard America shield within the ranks of imposing alt-right shield walls. *See, e.g.*, Exs. 5-59, 5-60, 5-61, 5-62.

D. The Aftermath and the Risk of Future Harms

The Alt-Right Defendants have celebrated the rally as both a success and a blueprint for future events. Defendant Heimbach declared that "[w]e achieved all of our objectives" and "did an incredibly impressive job." Ex. 5-63 at 2. Defendant TWP announced that it had "decisively won this battle." Ex. 5-64. Defendant Kline has stated, "I'm proud of what we did" on August 12. Ex. 5-65 at 4:15. He regards last summer's rally as "a positive thing"—"a golden era" in alt-right organizing. *Id.* at 3:49, 4:10. And Defendant Kessler has extolled the Unite the Right rally as "a defining moment in American history." *Id.* at 6:50.

The Alt-Right Defendants remain entirely untroubled by their coordinated aggression on August 12 because they have strategically distorted the legal concept of self-defense. Defendant Heimbach stated in the rally's aftermath that "[t]hese radical leftists truly are trying to kill anyone they disagree with," thereby ascribing murderous intent to attendees who did not share his political views. Ex. 5-66 at 5:56. Kessler continues to maintain that the alt-right's coordinated violence on August 12 was legally justified, insisting that "no one started violence on our side," Ex. 5-3 at 23:12—not even the shield-carriers who stormed out of Emancipation Park to clash with counter-protestors. *See also* Ex. 5-24 at 14:44 ("Our people were not being violent."). Kessler also considers the KKK leader who fired his pistol at a counter-protestor to be "a damn hero." Ex. 5-67 at 11:20.

What the Alt-Right Defendants considered a triumph was a disaster for the City and the other Plaintiffs, which include small businesses and neighborhood associations. The coordinated use of force on display during the rally undermined the sense of safety and security previously enjoyed by community residents, including the Plaintiffs. For some Plaintiffs, Defendants' conduct caused sleeplessness, acute anxiety, fear, and physical symptoms of emotional distress that, for some, continue to this day. *See* Decl. of Michael Rodi ("Rodi Decl.") Ex. 1, ¶ 6; Decl. of

Joan Fenton ("Fenton Decl.") Ex. 2, ¶ 5; Decl. of Kristin Clarens ("Clarens Decl.") Ex. 3, ¶ 4. Even "the sight of people open carrying firearms has been traumatic regardless of who is carrying the firearm." Fenton Decl. Ex. 2, ¶ 5.

Parents sent their children away in the days after the rally, Rodi Decl. Ex. 1, ¶ 6, and have changed the playgrounds where their children play, for fear that a "playground is too exposed," Clarens Decl. Ex. 3, ¶ 5. Since August 12, "[c]ommunity groups . . . have decided to move or cancel events . . . in public spaces near the downtown mall out of concerns for safety." *Id.* ¶ 6. One of these was a school-supply drive for elementary-age children originally scheduled for August 19, 2017. *See* Ex. 5-68 ("We cancelled because we started having a number of calls from parents, and their concerns for coming down on the pavilion, and especially on the mall giv[en] the past week['s] activities."). Members of Plaintiff residential associations wait anxiously, wondering when their communities will next be invaded by armed columns marching through and over their property. They "feel too scared to be supportive of their community in the ways they did before the rally." Clarens Decl. Ex. 3, ¶ 7. One Plaintiff neighborhood association has rescheduled its annual picnic because it had been set for the weekend of August 11 and 12, 2018. *See id.* ¶ 9. In short, "[i]t is like the city and its residents have communal PTSD." Fenton Decl. Ex. 2, ¶ 5.

Businesses that closed in anticipation of the rally incurred immediate costs, including expenditures on security measures and loss of business. But the long-term harm to Charlottesville's business community has been far more damaging. The reputational injury the City has suffered, and the associated loss of tourism and business, has led to incalculable financial losses and diminished goodwill. *See, e.g.*, Decl. of Allison Ewing ("Ewing Decl.") Ex. 4, ¶¶ 2–3; Rodi Decl. Ex. 1, ¶ 7 (describing "a tremendous dropoff in foot traffic" on the downtown mall). In the months following the rally, many people refused to come downtown, and "customers from

the counties neighboring the city" also stayed away. Fenton Decl. Ex. 2, ¶ 7. "Since the rally, there is a lack of confidence that Charlottesville is a good place to retire, or a good place to open a business, or a safe place to send your kids to school." Ewing Decl. Ex. 4, ¶ 5. Instead of thinking of Charlottesville as "one of the best small cities to live in," people "associate the town with white supremacists and with the violence that occurred at the rally." Ewing Decl. Ex. 4, ¶¶ 4–5.

None of this is lost on Defendants. Kessler has boasted that last summer's rally disrupted "normal life" in Charlottesville and that "businesses will recover, their tourism will recover" only once the alt-right ceases to return there. Ex. 5-65 at 1:11:25. And Dwayne Dixon, an outspoken Redneck Revolt member who patrolled the sidewalk outside Justice Park with an AR-15 during the rally, has acknowledged that the group's activities frightened and alarmed many members of the public. According to Dixon, although one local anarchist group "wanted us there, the other organizing groups didn't." Ex. 5-50 at 29:05; *see also* Ex. 5-69 at 17:31 ("We weren't necessarily a welcome presence."). Dixon has frankly acknowledged that Redneck Revolt created "a lot of anxiety and uncertainty"—that "we were just another component to add to the fear, presumably." Ex. 5-50 at 30:22, 30:31. But even though many people were "queasy with the fact that we were deploying arms," Ex. 5-51 at 14:06, Redneck Revolt "w[as]n't going to withdraw to soothe people's anxiety," Ex. 5-50 at 30:37. Dixon has acknowledged that "the risks were enormous," for any alt-right attendee "could have grabbed one of us," "g[otten] ahold of the gun and turn[ed] it back on us, or on anyone else around." Ex. 5-50 at 1:36:59. Another Redneck Revolt member present in Charlottesville recalled that "there were so many ways that something truly catastrophic could go wrong." Ex. 5-53 at 32:11. Such fears were warranted, given that Redneck Revolt "did not provide any training or instruction to members in preparation for August 12." Ex. 5-55 at 4.

Despite understanding the harm and damage that his actions have caused, Defendant Kessler has consistently maintained over a series of months that he plans to organize an

anniversary rally in Charlottesville on August 11 and 12, 2018. *See, e.g.*, Ex. 5-70 ("Everybody get ready cause we're doing another rally August 11–12th 2018."); Ex. 5-71 ("[W]e HAVE TO go #BackToCharlottesville . . . ."); Ex. 5-72 ("WE WON'T BE STOPPED"); Ex. 5-73 at 5:47 ("Whether there's a permit or not, we're still going to do it."); Ex. 5-74 at 3 ("[O]ne way or the other we're coming back.").

Defendant Kessler's upcoming rally, moreover, threatens to cause substantial additional harm. True enough, over the past few months, Kessler has publicly endorsed "non-violent resistance" in the mold of "Gandhi and Jesus Christ." Ex. 5-75 at 18:47, 23:46. But Kessler's peace-loving rhetoric cannot be taken at face value—just as he was assuring the public that last year's rally would remain non-violent, Kessler was privately offering advice on how to "crack some Antifa skulls" and "bludgeon our enemies." Ex. 5-9 at 8, 19. By his own admission, moreover, Kessler now seeks to drag Charlottesville "into the bowels of Hell." Ex. 5-76. He is in the process of recruiting "hardened veterans" from last year's rally who "have the traits that we need to be able to win this fight." Ex. 5-77 at 7:13; *see also* Ex. 5-65 at 38:05 (describing himself and others as "veteran soldiers"). Kessler has advised those in the alt-right to "get tough" and "do it quickly." Ex. 5-65 at 1:00:22. He believes that "we cannot trust law enforcement . . . to keep us safe"—"we have to build in safeguards." Ex. 5-78 at 9:40. Of course, among the security measures he selected last year were alt-right shield walls and the use of unauthorized militias—the very tactics that transformed Charlottesville into a battleground. On June 5, 2018, Kessler stated that he intends to employ shield carriers as a security force at his upcoming rally. *See* Ex. 5-95 at 15:20. He has remained in touch with the militia community, having attended a "Patriot

Summit" in April along with two Defendants in this suit (Joshua Shoaff and Richard Wilson[4]). Ex. 5-79 at 0:18; *see also* Ex. 5-96. Nor can there be any assurance that Kessler's planning will remain in the open, given his recent statement that, "as we move forward, perhaps we'll create a private forum or something where people can talk about the event." Ex. 5-75 at 32:52.

Defendant Kline, likewise, has left no doubt about his future intentions. After dusk on October 7, 2017, Kline led a contingent of 40 or 50 white nationalists in yet another torchlit procession to Emancipation Park. He concluded the event by repeatedly shouting into a megaphone, "We will be back!" Ex. 5-80 at 10:08. Since then, Kline has publicly stated that he is "ready for another Charlottesville," despite initial concerns about the fallout from last summer's rally. Ex. 5-65 at 4:40–5:00. He predicts that there will be "many more battles" at which "people are gonna lose life and limb"—"it's gonna be terrible." *Id.* at 59:17–59:37. His message to prospective attendees is that "you need to prepare. You need to toughen up—you need to harden up, because this is gonna be a lot worse moving forward. Charlottesville was nothing." *Id.* at 1:00:13. In Kline's view, returning to Charlottesville will convey to the alt-right's "enemies" that members of the movement will not give up "without a fight." *Id.* at 1:06:09, 1:08:07. He has warned that "we will go here every fucking year until there's a fucking ethno-state." *Id.* at 1:09:58.

As prominent participants in the first Unite the Right rally, members of Defendants TWP and Vanguard America are exactly the type of "veteran soldiers" Kessler is seeking to recruit for this year's event. And their own public statements strongly suggest a desire to return and initiate combat in Charlottesville once again. In the week after August 12, Defendant Heimbach declared, "We will be back Charlottesville, and we will be back with more men. More women." Ex. 5-81

[4] Defendant Shoaff (a.k.a. "Ace Baker") has entered into a consent decree along with his organization, American Warrior Revolution, and Plaintiffs' claims against Defendant Wilson (a.k.a. "Francis Marion") and his organization, American Freedom Keepers National Committee, Inc., are the subject of a pending motion for default judgment.

at 1. Notwithstanding the violence of last year's rally, TWP's former director announced that "I still stand with Jason Kessler." Ex. 5-82. Defendant Heimbach shared this post without comment. *Id.* Following the rally, TWP's then-director celebrated the alt-right's recent evolution into "a proven street fighting faction." Ex. 5-39 at 5. He even implored TWP members to "be prepared at all times to fight" with "shields, helmets, and black bloc uniforms." Ex. 5-83 at 2. Defendant Vanguard America has demonstrated similar enthusiasm for militarized action in the future. As the group's website explains, Vanguard members are "men of action" who "will not stop until total victory is achieved." Ex. 5-84 at 2. And Vanguard's leader, Dillon Hopper, stated in an interview two months after the Unite the Right rally that "you should be prepared for war at all times." Ex. 5-85 at 25:56.

Redneck Revolt has foreshadowed its upcoming conduct with even greater clarity. One of the group's central goals is to provide an organized armed presence at right-wing demonstrations, due to its antipathy toward authorized law enforcement. Redneck Revolt refuses to "allow the state to have a direct monopoly on the use of force," Ex. 5-86, and believes that "[w]e have to be prepared to take the defense of our communities into our own hands," Ex. 5-87; *see also* Ex. 5-88 at 2 (claiming that "defense of . . . community" is "not something you ask someone else to do for you"). Redneck Revolt member Dwayne Dixon has similarly insisted that "it's not the cops who are gonna keep us safe—it's us." Ex. 5-50 at 22:49; *see also* Ex. 5-51 at 15:16 ("Why would you trust the state? . . . The state is never gonna save you."). Accordingly, Redneck Revolt intends to continue "building stronger defense networks" with groups like Defendant Socialist Rifle Association.[5] Ex. 5-49 at 3. As one Redneck Revolt member explained on the organization's official podcast, "we're definitely tweaking our tactical models to be able to respond more

[5] Plaintiffs have been unable to serve process on Defendant Socialist Rifle Association.

effectively next time." Ex. 5-53 at 41:52.

Redneck Revolt openly acknowledges that its coordinated use of weaponry could result in bloodshed. In an interview on May 19, 2018, Redneck Revolt decried the political left's "fetishization of non-violence." Ex. 5-89 at 2. Among the group's core convictions is that "[i]t is time to turn our guns on our real enemies." Ex. 5-90 at 4. Redneck Revolt members "are not pacifists" and expect "to act militantly" in the future. *Id.* In the words of Dwayne Dixon, "it's time to fucking fight!" Ex. 5-51 at 3:24. He has even suggested that body armor would be a necessity for future events. *Id.* at 28:39.

In addition, Redneck Revolt avowedly pays no heed to whether its intentional displacement of law enforcement violates state law. The group acknowledges that its conduct "may not always conform to what is legal." Ex. 5-91. For Redneck Revolt, the ability to engage in the collective use of force trumps "the provisions of any law." Ex. 5-89 at 2. Dwayne Dixon, too, regards the notion of legality as "a useless question," because "I am not interested in how the law constrains . . . my anarchist politics." Ex. 5-92 at 5.

But Plaintiffs do care. For them, ensuring that Defendants do not engage in future lawlessness is critical. If Defendants "return to Charlottesville in the same capacity—as organized, coordinated, and armed groups—it would be like getting a second concussion while you're still healing from the first one: . . . the damage would be more lasting, if not permanent." Rodi Decl. Ex. 1, ¶ 8.

LEGAL STANDARD

Against this backdrop, Plaintiffs seek a narrow preliminary injunction to prevent Defendants from engaging in the coordinated use of weaponry in Charlottesville once again. For preliminary relief, a plaintiff must show "(1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of

equities tips in his favor, and (4) that an injunction is in the public interest." *Wings, LLC* v. *Capitol Leather, LLC*, No. CL–2014–9, 2014 WL 7686953, at *5 (Va. Cir. Mar. 6, 2014) (quoting *Winter* v. *Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

Because the "purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held[,] . . . a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *G.G. ex rel. Grimm* v. *Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 725 (4th Cir. 2016) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)), *vacated on other grounds*, 137 S.Ct. 1239 (2017). For instance, in ruling on a motion for preliminary injunction, courts may consider "hearsay or other inadmissible evidence," *id*. at 726, and assertions made by affidavit, *Wood* v. *City of Richmond*, 148 Va. 400, 408 (1927); *see also* Va. Code § 8.01-628 (providing that "[a]n application for a temporary injunction may be supported or opposed by an affidavit").

ARGUMENT

As Plaintiffs have shown, it is exceedingly likely that the remaining Defendants will return to Charlottesville in the future and engage in the coordinated use of weaponry, causing further irreparable harm to Plaintiffs. All four factors weigh in favor of issuing a preliminary injunction to prevent Charlottesville from becoming a military theater once again.

A. Plaintiffs Are Highly Likely to Succeed on the Merits

First and foremost, Plaintiffs are likely to succeed on the merits should this case proceed to trial. Plaintiffs have brought claims to enjoin Defendants from further (1) violating the Virginia Constitution's Strict Subordination Clause, Va. Const. art. I, § 13, which forbids engaging in military functions outside state authority; (2) violating Virginia's anti-paramilitary statute, which aims to ensure that private groups will not use "firearm[s] . . . or technique[s] capable of causing

injury or death . . . in, or in furtherance of, a civil disorder," Va. Code § 18.2-433.2; (3) violating Virginia's false-assumption statute, which limits the exercise of law-enforcement functions to those with statutory authority to do so, *id.* § 18.2-174; and (4) creating a public nuisance, which the Virginia Supreme Court has defined as "a condition that is a danger to the public," *Taylor* v. *City of Charlottesville*, 240 Va. 367, 372 (1990).

As Plaintiffs have discussed at some length in their demurrer opposition (incorporated by reference here), the Amended Complaint alleges sufficient facts that, if credited, would fully support these claims as a matter of law. This Memorandum supplies additional evidence—including photographs, videos, social-media postings, eyewitness reports, and Defendants' own admissions—that further strengthens Plaintiffs' legal arguments. This evidence is just a fraction of what Plaintiffs expect to produce at the hearing on this motion. As described in greater detail above, Defendants TWP and Vanguard America arrived in Charlottesville prepared to use organized force against persons who did not share their political views. They executed their plans with military precision, using shields, clubs, batons, and flagpoles to assault counter-protestors in a coordinated fashion. Defendant Heimbach was instrumental in preparing TWP's members for battle and directing their violent conduct on August 12. Defendants Kessler and Kline transmitted detailed operational instructions to alt-right attendees, including how and where to form shield walls. Kline personally took command of alt-right shield formations at the rally. Kessler solicited the presence of unauthorized militia groups to provide additional security and encouraged attendees to bludgeon counter-protestors in "self-defense." Finally, Redneck Revolt patrolled a public park with deadly semiautomatic weapons, with the avowed purpose of transforming the area into a "temporary autonomous zone" in which its members would substitute themselves for law enforcement.

These core facts are incontestable. Nor can Defendants seriously dispute that their actions severely disrupted many residents' sense of safety and the enjoyment of public spaces that their community has to offer. For the reasons expressed in this Memorandum and in Plaintiffs' demurrer opposition, Plaintiffs are likely to prevail on the merits of their legal claims.

B. Plaintiffs Would Suffer Irreparable Harm Absent a Preliminary Injunction

Should Defendants return to Charlottesville this August and engage in the coordinated use of force—or project the ability to do so—once again, Plaintiffs would suffer yet further irreparable harm. An irreparable harm is one that cannot be adequately compensated through damages. *See, e.g.*, *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 62 (2008); *see also Basicomputer Corp.* v. *Scott*, 973 F.2d 507, 511 (6th Cir. 1992) ("[A]n injury is not fully compensable by money damages if the nature of the plaintiff's loss would make damages difficult to calculate."). Although Plaintiffs did suffer some quantifiable damage from the first Unite the Right rally, their most serious injuries cannot readily be reduced to dollars and cents. Plaintiffs can expect to endure similar unquantifiable hardships if Defendants return to Charlottesville in a militarized fashion.[6]

For instance, reputational damages, such as "[t]he loss of customer goodwill[,] often amount[] to irreparable injury because the damages flowing from such losses are difficult to compute." *Basicomputer Corp.*, 973 F.2d at 512; *see also BellSouth Telecommc'ns, Inc.* v. *MCI Metro Access Transmission Servs., LLC*, 425 F.3d 964, 970 (11th Cir. 2005) ("[T]he loss of customers and goodwill is an irreparable injury.") (internal quotation marks omitted). Charlottesville businesses—and especially those in the downtown area—suffered just such an injury as a result of last year's rally. *See* Ex. 5-93 at 1 (noting a sharp decrease in local restaurant sales in September 2017). A local restaurant owner has stated that "[i]t was looking like a great

[6] Plaintiffs' demurrer opposition explains why the prospect of criminal prosecutions would be a meaningfully less effective remedy than injunctive relief. *See* Pls.' Opp'n to Defs.' Demurrer 37–39.

year until August. And then September was absolutely devastating." *Id.* The head of Plaintiff Downtown Business Association of Charlottesville's marketing committee has concluded that "when [people] keep seeing photographs and negative media, they are just a little leery about coming downtown." *See* Ex. 5-94 at 1. And the City's economic development director is "concern[ed] that investors and decision makers may think twice before committing to a project here . . . based on what they saw on the news over the summer." *Id.* at 2. These observations, though regrettable, are unsurprising—to this day, a Google Image search for "Charlottesville" yields a photographic patchwork of terror and organized violence.

Plaintiffs, particularly the small businesses, have experienced these difficulties in the wake of last year's rally. Referring to a drastic decline in revenue in September 2017, an owner of Plaintiff Maya Restaurant observed that "I have never seen such an interruption of sales on this level . . . for any given month in the last 21 years." Ex. 5-93 at 1. Plaintiff Hays + Ewing Design Studio has received markedly fewer inquiries for projects within the city limits. Ewing Decl. Ex. 4, ¶ 3. Other business owners have noted that "[c]ustomers throughout the fall, and to a lesser extent this spring, have repeatedly said they are not coming downtown anymore, and there has been a decrease in customers from the counties neighboring the city." Fenton Decl. Ex. 2, ¶ 7. The prospect of private armed forces occupying the City's streets and parks yet again would depress tourism even further, and would doubtless deter many families, business owners, students, and job applicants from planting roots in Charlottesville. *See, e.g.*, *id.* ¶ 8; Ewing Decl. Ex. 4, ¶¶ 5–7; Rodi Decl. Ex. 1, ¶ 8.

The loss of Charlottesville's well-established reputation for safety has inflicted lasting emotional and psychological injuries on many community members. *See* Rodi Decl. Ex. 1, ¶ 6 (describing sleeplessness and acute anxiety); Fenton Decl. Ex. 2, ¶ 5 (describing fear at the sight of weapons); Clarens Decl. Ex. 3, ¶ 4 (describing inability to enjoy Emancipation Park during

public events). The burden of seeing their community—including public parks and popular shopping districts—turned into a battlefield has significantly diminished Plaintiffs' ability to feel safe where they live and work. *See* Rodi Decl. Ex. 1, ¶ 6 ("For many weeks I was concerned about the safety of my family at our house (I sent my children to stay with their grandparents in the days immediately following the rally)."); Clarens Decl. Ex. 3, ¶ 5 ("I have changed which playgrounds I take my children to, because I now worry about whether a playground is too exposed."). Many residents, eager to avoid witnessing a re-militarization of their hometown, have rescheduled community events, *see* Clarens Decl. Ex. 3, ¶ 9, or made plans to leave the area in mid-August. Out-of-town visitors commonly ask Charlottesville residents to recall their experiences of August 12, or even to identify the location where Heather Heyer was killed, forcing them to relive these immensely painful moments. Members of Charlottesville's oldest synagogue, who watched in horror as rally attendees carrying shields marched by performing the Sieg Heil, now feel compelled to hire armed security to stand guard over the congregation's premises, including its preschool. *See* Fenton Decl. Ex. 2, ¶ 6. The University of Virginia football team has rented an entire hotel for the team's use over the weekend of the one-year anniversary of the Unite the Right rally, for fear that alt-right organizations might otherwise rent rooms in the hotel and threaten the safety of the student athletes. One local business owner has characterized residents' psychological adversity as "communal PTSD." *See* Fenton Decl. Ex. 2, ¶ 5. Another has analogized the present situation to a concussion—if the community were forced to relive last year's trauma before its psyche can fully heal, the resulting damage would be even more difficult to recover from. Rodi Decl. Ex. 1, ¶ 8.

Unfortunately, these incalculable harms threaten to recur without preliminary injunctive relief. As the Virginia Supreme Court has explained, "[w]hen there is reasonable cause to believe that [a] wrong . . . would cause irreparable injury" and is "apprehended with reasonable

probability, there is good cause for entry of a prohibitory injunction." *WTAR Radio-TV Corp. v. City Council of City of Virginia Beach*, 216 Va. 892, 895 (1976). As detailed above, it is more than reasonably probable that each Defendant will return to Charlottesville for Defendant Kessler's anniversary rally and engage in coordinated weapons-bearing once again, thereby causing further irreparable injury to Plaintiffs.

C. The Harm to Plaintiffs Outweighs the Minimal Burdens on Defendants

In addition to the harms described above, Plaintiffs would be subjected to additional burdens if their requested relief were denied. The City would need to expend considerable additional resources on law enforcement to guard against the Alt-Right Defendants' organized violence. For Redneck Revolt, civil authorities would be required to calibrate the proper response to a volatile public demonstration with no foreknowledge of the group's self-directed (and perhaps incompatible) security measures. Redneck Revolt had no contact with state or local police in advance of last year's rally, Ex. 5-55 at 4—likely because it views law enforcement as a "system[] of social control" and a "state construct that enslaves and oppresses." Ex. 5-90 at 2, 3. The mere movement of heavily armed groups to and from their vehicles may require a massive diversion of police resources, as well. At last year's rally, for example, the appearance of one private militia group in and around the Water Street parking lot so alarmed residents that the Virginia State Police moved in to secure the area with a full line of riot shields. Ex. 5-41 at 2:18:12.

Plaintiffs who own businesses would likely lose money as a result of either closing temporarily, making expenditures to safeguard their storefronts, or hiring private security to protect employees and customers alike. Plaintiff homeowners' associations would need to engage time and resources to limit traffic through their neighborhoods and communicate possible danger to their members, as well as to brace for potential property damage stemming from Defendants' coordinated use of force. And both sets of Plaintiffs would feel a renewed sense of alienation and

disorientation, seeing their hometown invaded once more by private militaristic units. In the absence of an injunction, Plaintiffs would be left to fear that their community could devolve into organized violence at any time. *See* Clarens Decl. Ex. 3, ¶ 4 (worrying that Kessler would appear at a public event held at Emancipation Park).

In contrast, Defendants would face no burden. The Alt-Right Defendants have argued that, somehow, *their* constitutional rights would be chilled if they were no longer allowed to engage in organized displays of force. *See* Alt-Right Demurrer Br. 19–20. Likewise, Redneck Revolt insists that an order enjoining its coordinated use of weaponry would "chill Redneck Revolt members' First Amendment right to assembly." Redneck Revolt Demurrer Reply Br. 20. But the proposed injunctive relief is narrowly tailored to protect and promote the free speech of all parties: Defendants will still be able to assemble publicly and proclaim their views. They will remain free to engage in lawful self-defense or defense of others, as necessity may require. They simply will not be permitted to escalate the threat of violence and coerce their opponents by engaging in the coordinated use or projection of force.[7] Speech should be met with speech, not with batons and firepower. *See In re White*, No. 2:07CV342, 2013 WL 5295652, at *63–64 (E.D. Va. Sept. 13, 2013) ("[I]n our democratic society, when presented with even caustic or abusive protected speech . . . the First Amendment demands that we confront those speakers with superior ideas . . . ."). "The First Amendment does not protect violence." *Claiborne Hardware Co.*, 458 U.S. at 916. It protects the free expression of ideas—and Plaintiffs' requested injunction will do the same.

[7] Virginia law provides a mechanism for private actors to augment the peacekeeping functions of law enforcement by serving as "special conservators of the peace." *See* Va. Code § 19.2-13 *et seq.* Redneck Revolt members remain free to find a local business or property owner or custodian to submit a petition for Redneck Revolt members to serve as so-called "S-Cops," assuming that they could satisfy all relevant state-law requirements. Rather than doing so in advance of August 12, 2017, however, Redneck Revolt took the law—and the policing of Justice Park—into its own hands.

D. A Preliminary Injunction Is in the Public Interest

At its core, Plaintiffs' request is simple: an order forbidding Defendants from violating certain state-law guarantees designed to promote public safety. As courts have recognized, "the public interest always lies with upholding the law." *See Pashby* v. *Delia*, 709 F.3d 307, 329 (4th Cir. 2013); *see also MFS Network Techs., Inc.* v. *Commonwealth*, No. HE-349-4, 1994 WL 1031152, at *4 (Va. Cir. Apr. 19, 1994) (concluding that the public interest lay in "know[ing] that Virginia's public procurement laws are being administered properly"). The public interest therefore counsels in favor of an injunction that will prevent Defendants from undermining the carefully crafted constitutional and statutory scheme governing the use of organized force in Virginia. *See* Pls.' Opp'n to Defs.' Demurrer 6–11. Eliminating the threat of violence posed by Defendants' coordinated, unsanctioned military activity will strongly benefit the public as well. *See Kolbe v. Hogan*, 849 F.3d 114, 139 (4th Cir. 2017) (en banc) (explaining that the government "has a compelling interest in protecting the public"); *Johnson* v. *Collins Entm't Co., Inc.*, 199 F. 3d 710, 720 (4th Cir. 1999) (noting "the state's paramount interest in the health, welfare, [and] safety . . . of its citizens").

In fact, these two imperatives are closely linked. Virginia has standardized the exercise of military and law-enforcement functions precisely because leaving those matters unregulated could prove catastrophic for public safety. The Defendants in this case perform such functions entirely outside the reach of public accountability. They pay no heed to the strict qualifications, training procedures, weaponry protocols, and codes of conduct that the General Assembly has prescribed for persons authorized to engage in the collective use of force. For instance, Redneck Revolt treats each of its branches as "autonomous," meaning that they are equipped and trained "according to . . . specific local context and needs." Ex. 5-55 at 11. The group's instruction manual invites each local branch to devise its own protocols for using deadly force in a coordinated fashion. *See* Ex.

5-18 at 40 ("What are your group's rules of engagement? When and why is deadly force to be used?"). And Redneck Revolt admits that it "did not provide any training or instruction to members in preparation for August 12." Ex. 5-55 at 4.

Finally, the injunction sought will serve the public interest by promoting opportunities for free and open expression without the chilling specter of armed groups bent on coercing others. Members of the public have a right to gather in Charlottesville's parks, and to join whatever protest or counter-protest they so choose, "without fearing for their lives." *State v. Spencer*, 876 P.2d 939, 942 (Wash. Ct. App. 1994). In any large-scale demonstration, moreover, law enforcement must strike a delicate balance between preserving community order and upholding constitutional rights. The need to ensure that law enforcement can overpower unauthorized paramilitary personnel, should hostilities ever arise, greatly complicates that challenging task by requiring formidable preparatory measures. For all of the reasons above, Plaintiffs' proposed injunction would plainly serve the public interest.

CONCLUSION

Plaintiffs respectfully request that this Court enter the attached proposed order granting a preliminary injunction to preclude Defendants from returning to Charlottesville in coordinated, armed groups in violation of Virginia law.

June 7, 2018

Respectfully submitted,

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
DOUGLAS N. LETTER*
JOSHUA A. GELTZER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*, Plaintiffs, v. PENNSYLVANIA LIGHT FOOT MILITIA, *et al.*, Defendants.	Case No. 17000560-00

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' DEMURRERS

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Plaintiffs, by counsel, submit the following Brief in Opposition to the Demurrers filed by (1) Defendants Jason Kessler, Elliott Kline, Vanguard America, Traditionalist Worker Party, and Matthew Heimbach ("Alt-Right Defendants")[1] and (2) Defendant Redneck Revolt.

INTRODUCTION

On August 12, 2017, the City of Charlottesville was transformed into a virtual combat zone. Far from exemplifying the constitutional tradition of peaceful protest, the Unite the Right rally instead featured highly coordinated violence by alt-right organizations in and around Emancipation Park. These groups employed clubs, flagpoles, matching shields, and other weapons to batter their ideological opponents. Also in attendance were several private militia groups that professed to provide security for protestors and counter-protestors. Heavily armed with semiautomatic weapons, these organizations were prepared to inflict massive harm on a moment's notice. But neither they nor the alt-right combatants fell under the command of civil authorities. These groups engaged in the collective use of force—or projected a willingness to do so—wholly outside the confines of public accountability.

This suit does not seek to assess blame or obtain monetary compensation for harms that occurred last August. The Plaintiffs in this case—the City of Charlottesville, the Downtown Business Association of Charlottesville, several individual businesses, and three nearby residential associations—instead seek only injunctive and declaratory relief to prevent a recurrence of such militaristic activity in the future. Named as Defendants were four alt-right organizations that engaged in coordinated violence on August 12, as well as their individual leaders; two organizers of the Unite the Right rally who facilitated alt-right protestors' armed aggression; and private

[1] Plaintiffs have separately moved to strike the Alt-Right Defendants' Memorandum in Support of Demurrer. As explained in Plaintiffs' Amended Motion to Strike, the Alt-Right Defendants' demurrer failed to "state specifically [any] grounds" for concluding that the Amended Complaint is deficient at law. Va. Code § 8.01-273(A). These Defendants also filed a supporting memorandum in excess of 20 pages without seeking leave of the Court, contrary to Rule 4:15(c) of the Rules of the Supreme Court of Virginia.

militia groups of all political stripes, along with their individual commanders.

Plaintiffs brought claims under four sources of Virginia law: (1) the Virginia Constitution's Strict Subordination Clause, which forbids the operation of private military forces outside state authority by providing that "in all cases the military should be under strict subordination to, and governed by, the civil power," Va. Const. art. I, § 13; (2) Virginia's anti-paramilitary statute, which aims to ensure that private groups will not use "firearm[s] . . . or technique[s] capable of causing injury or death . . . in, or in furtherance of, a civil disorder," Va. Code § 18.2-433.2; (3) Virginia's false-assumption statute, which prohibits the assumption or exercise of law-enforcement functions by those without statutory authority to do so, *id.* § 18.2-174; and (4) the common law of public nuisance, which permits the abatement of any "condition that is a danger to the public." *Taylor v. City of Charlottesville*, 240 Va. 367, 372 (1990).

A number of the Defendants have entered into consent decrees resolving the claims against them; others are in default. Thus, the actively litigating Defendants are Unite the Right co-organizers Jason Kessler and Elliott Kline (also known as "Eli Mosley"); alt-right organizations Vanguard America and Traditionalist Worker Party ("TWP"); one of TWP's then-leaders, Matthew Heimbach; and Redneck Revolt, whose members stood post with semiautomatic rifles on the perimeter of Justice Park, where counter-protestors were gathered on August 12. Both the Alt-Right Defendants and Redneck Revolt have filed demurrers to the Amended Complaint. Defendants contend that Plaintiffs have failed to state a claim for injunctive relief under any of the Amended Complaint's legal theories.

Defendants' arguments are not well founded. The Amended Complaint painstakingly recounts conduct by all six Defendants satisfying each of Plaintiffs' legal theories, and the circumstances of this case present a fitting occasion for injunctive relief. Although Plaintiffs urge the Court to enjoin Defendants from violating the Strict Subordination Clause, the anti-

paramilitary statute, and the false-assumption statute, the full relief Plaintiffs seek could be achieved most simply through a straightforward application of the common law of public nuisance. The coordinated use of firearms and other weapons at public events constitutes "an unreasonable interference with a right common to the general public," *Restatement (Second) of Torts* § 821B(1) (1979)—namely, the ability to enjoy the City's parks, streets, and sidewalks free from the danger of violence inflicted by Defendants' organized, unregulated use of weaponry. That is all the Court need decide in order for the Amended Complaint to survive Defendants' demurrers.

LEGAL STANDARD

As this Court has explained, "Virginia is a 'notice pleading' state. The key is adequate notice of the basis for the claim. As long as the claim contains sufficient allegations of material fact so as to inform the Defendant of the nature and character of the claim, it will withstand a demurrer." *VAP Union Square, L.L.P. v. Cardinal Point, Inc.*, 91 Va. Cir. 134, 2015 WL 13050055, at *2 (2015). A demurrer "admits the truth of all material facts" alleged in a complaint, including "those expressly alleged, those that are impliedly alleged, and those that may be fairly and justly inferred from the facts alleged." *Harris v. Kreutzer*, 271 Va. 188, 195 (2006). A complaint's factual allegations are to be "considered in the light most favorable to the plaintiff." *Welding v. Bland Cnty. Serv. Auth.*, 261 Va. 218, 226 (2001). A pleading will survive a demurrer if the "factual allegations pled and the reasonable inferences drawn therefrom are sufficient to state a cause of action." *Friends of the Rappahannock v. Caroline Cnty. Bd. of Supervisors*, 286 Va. 38, 44 (2013).

ARGUMENT

I. Plaintiffs Have Stated a Claim Under the Virginia Constitution's Strict Subordination Clause

Count I of Plaintiffs' Amended Complaint alleges that each Defendant has violated, and will continue to violate, the Strict Subordination Clause of Virginia's Constitution. That Clause

is contained within Article I, Section 13 of the Virginia Constitution, which reads in full:

> That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

Although Defendants argue otherwise, the Strict Subordination Clause regulates the conduct of *all* actors—governmental and private alike—who "would undercut the state's monopoly on the use of force." *Patrick v. Union State Bank*, 681 So.2d 1364, 1368 (Ala. 1996).

A. The Amended Complaint's Relevant Factual Allegations

Plaintiffs' Amended Complaint chronicles Defendants' armed mobilization on August 12, 2017. The Amended Complaint alleges that the Alt-Right Defendants engaged in highly coordinated military functions while bearing arms, having brought shields, batons, and clubs for that purpose. The following allegations exemplify their relevant conduct:

- Defendant TWP employed a "full shield squad" at the Unite the Right rally. Am. Compl. ¶ 97. As they approached Emancipation Park, TWP members used their shields to charge into counter-protestors. *Id.* ¶ 90. TWP members similarly "deployed their shields offensively—simply to ram into counter-protestors"—after arriving at the park. *Id.* ¶ 102. The group's members were prepared "to take the lead i[n] fighting" on August 12, and were presumed to be "willing and able to fight." *Id.* ¶ 169.

- Defendant TWP's Commanding Officer, Defendant Cesar Hess, took charge of the group's militaristic activity on August 12. He issued several commands to TWP members throughout the day, including "Let's go! Forward!," *id.* ¶ 90; "Form a line!," *id.* ¶ 97; and "[g]et ready to fucking fight!," *id.* Hess also "repeatedly grabbed TWP members, dragging them into his preferred formations." *Id.*

- As TWP's then-Chairman, Defendant Matthew Heimbach also "issu[e]d tactical commands" to TWP's shield-carriers on August 12. *Id.* ¶ 31. He shouted "shields up!" immediately before TWP members began ramming into counter-protestors. *Id.* ¶ 90. He also ordered TWP members to push down the metal police barricades separating two quadrants of Emancipation Park. *Id.* ¶ 105. In advance of the rally, Heimbach had publicly discussed ways to "free[] up our fighting men." *Id.* ¶ 170.

- In advance of the Unite the Right rally, Defendant Elliott Kline—a co-organizer of the event—circulated a set of "General Orders" to the alt-right attendees. *Id.* ¶ 159. These Orders explained that "the shield wall will be deployed . . . to reduce the threat" posed by

counter-protestors. *Id.* ¶ 160. On August 12, Kline marched at the head of Vanguard America's "military-style formation" as the group approached Emancipation Park. *Id.* ¶ 87. Once in the park, Kline repeatedly ordered alt-right attendees to form shield walls. *Id.* ¶¶ 101, 107. "I run this as a military operation," he explained. *Id.* ¶ 101.

- Members of Defendant Vanguard America carried matching shields at the Unite the Right rally and deployed them in a coordinated fashion—namely, by contributing to multi-group shield walls. *Id.* ¶¶ 102, 108. Vanguard's leader, Dillon Irizarry, had earlier stated that "[w]e want to be like ants. We're a colony and we just go and destroy everything in our way." *Id.* ¶ 209.

- As the primary organizer of the Unite the Right rally, Defendant Jason Kessler co-moderated the private "Charlottesville 2.0" Discord chat group. In it, Kessler advocated weaponizing shields should things "turn ugly." *Id.* ¶ 162. He also insisted that "[w]e . . . don't want to scare [Antifa] from laying hands on us." *Id.* ¶ 176. Kessler was well aware that many alt-right attendees were planning to engage in organized violence, having purposefully "t[aken] a very laissez faire approach" to the grim discussions unfolding on Discord. *Id.* ¶ 177. Kessler reached out to two private militia groups to provide a security presence at the rally, *id.* ¶ 28, and "liked" a Facebook post in which one militia leader proposed "crush[ing] these little cunt rags for good" on August 12, *id.* ¶ 180.

The Amended Complaint also alleges that Defendant Redneck Revolt—a self-described "militant formation," *id.* ¶ 51—formed a security perimeter around Justice Park on August 12, *id.* ¶ 79. Approximately 20 members participated, "most of them open-carrying tactical rifles" in coordination with one another. *Id.* Redneck Revolt sought to make Justice Park an "autonomous zone" by "keep[ing] cops" and "keep[ing] the state . . . out of the park." *Id.*

B. The Strict Subordination Clause Regulates the Conduct of Private Actors

The Alt-Right Defendants and Defendant Redneck Revolt maintain that the Strict Subordination Clause is inapplicable to the conduct of nongovernmental actors. *See* Alt-Right Br. 7; Redneck Revolt Br. 4–8. This position would defeat the purpose of strictly regulating those who perform military functions within the Commonwealth—a goal expressed vividly throughout the Virginia Code and in the Strict Subordination Clause itself.

That Clause undoubtedly prohibits governmental actors from severing the connection between military personnel and their democratically accountable superiors. For example, the

General Assembly could not pass a law transferring command of the Virginia National Guard to a private citizen. Defendant Redneck Revolt concedes, moreover, that the Clause applies to members of the "organized armed forces" who have rendered themselves insubordinate to the civil power. Redneck Revolt Br. 6. That is correct—precisely because, having stepped outside the established command structure, those persons no longer satisfy the state-law requirements for performing functions assigned to the institutionalized military.

The Strict Subordination Clause's application cannot turn on whether a person usurping regularized military functions is formally enrolled in the Commonwealth's armed forces. Such an arbitrary distinction would bear no relation to the Clause's manifest purpose: to ensure that *all* persons who engage in the coordinated use of force—or who project a willingness to do so—are answerable to elected officials, rather than free to coerce compliance with extralegal demands. Otherwise, a breakaway unit of the Commonwealth's armed forces could function as a vigilante military, entirely free of regulation under the Strict Subordination Clause, as long as it formally disassociated itself from established military institutions.

As explained below, the Strict Subordination Clause ensures that the Commonwealth's comprehensive system for regulating military activity will not be subverted by private actors performing the same functions. Reinforcing this conclusion are numerous state and federal constitutional provisions that courts have expressly deemed applicable to private conduct.

1. The Military Laws of Virginia Specify Key Mechanisms of Strict Subordination

The Strict Subordination Clause's mandate is so essential that an entire chapter of the Virginia Code was enacted to implement a well-functioning regime of civil–military relations. Title 44, Chapter 1, entitled "Military Laws of Virginia," facilitates judicial application of the Strict Subordination Clause in three distinct ways.

First, it clarifies the legal chain of command by specifying to whom, and how, military

personnel must remain "under strict subordination." Va. Const. art. I, § 13. In effect, the Strict Subordination Clause incorporates by reference the content of any later-enacted statutes specifying how command over the military is to be exercised. The Governor, as "commander-in-chief of the armed forces of the Commonwealth," Va. Const. art. V, § 7, cl. 2, is expressly authorized to issue orders to military officers, Va. Code § 44-77. The Governor's highest-ranking military subordinate is the Adjutant General. This officer leads Virginia's Department of Military Affairs, the entity responsible for "[a]dministering and employing" the Commonwealth's armed forces under the Governor's supervision. *Id.* § 44-11.1. The Adjutant General "shall have command of all of the militia of the Commonwealth, subject to the orders of the Governor as Commander in Chief." *Id.* § 44-13.

Second, Virginia's Military Laws indicate various functions that "the military" is authorized to perform. The Governor may use the Commonwealth's armed forces "to repel invasion, suppress insurrection, and enforce the execution of the laws." *Id.* § 44-8. Accordingly, he may call out the organized military to active duty "[w]hen any combination of persons becomes so powerful as to obstruct the execution of laws in any part of this Commonwealth" or "[w]hen . . . agencies having law-enforcement responsibilities are in need of assistance to perform particular law-enforcement functions," among other circumstances. *Id.* § 44-75.1. And Virginia's Department of Military Affairs is charged with "[p]roviding for the safety of citizens of the Commonwealth by maintaining order and public safety . . . in cooperation with Virginia State Police and local law-enforcement agencies." *Id.* § 44-11.1(A). These functions—all of which involve organized arms-bearing—supplement the Strict Subordination Clause's preexisting scope, including conceptions of combatant roles traditionally performed by "the military."

Third, all persons who conform to the Military Laws' strict requirements for using organized force are properly regarded as "the military," whose conduct is authorized by, and in

strict subordination to, the civil power. State law designates as "the militia" all persons liable to be called upon to render military service to the Commonwealth. *Id.* § 44-1. The militia is subdivided into three classes: (1) the National Guard, which is composed of the Army National Guard and the Air National Guard; (2) the Virginia Defense Force; and (3) the unorganized militia. *Id.* At every step, those who would perform functions appertaining to "the military," Va. Const. art. I, § 13, must do so in strict compliance with the Commonwealth's Military Laws. If they fail to do so, they operate outside the civil power and thus violate the Strict Subordination Clause.

All members of the Virginia National Guard, for instance, must satisfy an age requirement and other qualifications prescribed in regulations. Va. Code § 44-2. National Guard members must sign an enlistment contract and subscribe to an oath of enlistment. *Id.* § 44-36. Their uniforms, arms, equipment, discipline, training, and manner of organization are also carefully regulated by state law. *Id.* §§ 44-25, 39–41. While undergoing training, National Guard personnel "shall at all times be subject to the orders of their . . . commanders." *Id.* § 44-75.2.

The Virginia Defense Force, too, is extensively regulated by state law. Defense Force members are "subject to the control of the Department of Military Affairs," *id.* § 44-54.4, and must "serv[e] in conformity with regulations prescribed by the Adjutant General," *id.* § 44-54.6. Standardized regulations govern "[r]ecruiting, enlistment, retention, organization, administration, equipment, facilities, training, discipline, discharge, dismissal, wearing of the uniform, appearance, and standards of conduct" for all Virginia Defense Force members. *Id.* § 44-54.7.

The same pattern holds true for the unorganized militia. Although that class includes "all able-bodied residents of the Commonwealth" who fit certain age and citizenship parameters, *id.* § 44-1, resident civilians are not actually inducted into the Commonwealth's military forces unless the Governor formally "order[s] them out" pursuant to state law, *id.* § 44-87. When that happens, such persons are fully "incorporated into the Virginia Defense Force," *id.* § 44-88, and are to be

"governed by the same rules and regulations . . . as the National Guard," *id.* § 44-85.

2. These Legal Requirements Are Exclusive for All Who Would Perform Military Functions Within the Commonwealth

The manifest purpose of codifying such a detailed set of Military Laws was to ensure that everyone who performs functions reserved to the Virginia National Guard, Virginia Defense Force, and unorganized militia (when ordered out) conforms to the requirements imposed on these entities under state law. As implemented by Virginia's "comprehensive scheme" for regulating its military institutions, the Strict Subordination Clause functions to "prohibit the formation of any private military company or organization which would compete with the state military forces." *Vietnamese Fishermen's Ass'n v. Knights of the Ku Klux Klan*, 543 F. Supp. 198, 217 (S.D. Tex. 1982) (discussing the purpose of a state statute barring private military companies or organizations); *see also* John Kulewicz, *The Relationship Between Military and Civil Power in Ohio*, 28 Clev. St. L. Rev. 611, 612 (1979) (stating that Ohio's Strict Subordination Clause "prohibits the existence of an autonomous military force"). Permitting unaccountable groups to wield weapons in concert at public events would undercut "the myriad legislation establishing strict civilian oversight of the Commonwealth's armed forces." Redneck Revolt Br. 6.

This view is strongly supported by the writings of Professor A.E. Dick Howard, formerly the Executive Director of the Virginia Commission on Constitutional Revision. According to Professor Howard, the Strict Subordination Clause ensures that all exercises of "military authority" remain "integrated with the popular will," as filtered through the Commonwealth's duly elected officials. 1 A.E. Dick Howard, *Commentaries on the Constitution of Virginia*, at 274 (1974). The Clause "ensures the right of all citizens . . . to live free from the fear of an alien soldiery commanded by men who are not responsible to law and the political process." *Id.* at 277. In this way, the Strict Subordination Clause is "intertwined with the survival of representative government." *Id.*; *see also Vietnamese Fishermen's Ass'n*, 543 F. Supp. at 218 (observing that

unauthorized "[m]ilitary organizations are dangerous wherever they exist, because of their interference with the functioning of a democratic society").

As has been remarked in a different context, "[t]he very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct" in which a well-functioning society demands uniformity. *Cullum v. Faith Mission Home, Inc.*, 237 Va. 473, 482 (1989) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215–16 (1972)). Nowhere is that axiom more true than as concerns the collective use of force. Long ago, the U.S. Supreme Court upheld the constitutionality of a state statute forbidding private citizens to "associate themselves as a military company, or to drill or parade with arms without the license of the governor." *Presser v. Illinois*, 116 U.S. 252, 262 (1886). In doing so, the Court emphatically declared that

> [m]ilitary organization and military drill and parade under arms are subjects especially under the control of the government of every country. They cannot be claimed as a right independent of law. Under our political system they are subject to the regulation and control of the State and Federal governments, acting in due regard to their respective prerogatives and powers.

Id. at 267.

The Defendants in this case wrongly seek to "usurp[] . . . the State's right to the exclusive control of military force within its borders." *Vietnamese Fishermen's Ass'n*, 543 F. Supp. at 212. As courts have long made clear, under the American form of government, "no private individual has power to conscript or mobilize a private army with such authorities over persons as the Government vests in echelons of command." *Feres v. United States*, 340 U.S. 135, 141–42 (1950); *see also Hall v. United States*, 528 F. Supp. 963, 968 (D.N.J. 1981) (identifying "the maintenance of an army" and "the operation of combat instrumentalities" as activities that "private persons do not perform"); *Sulik v. Total Petroleum, Inc.*, 846 F. Supp. 747, 752 (D. Minn. 1994) (rejecting the notion of "private armies" as a "late-medieval" concept); *Matter of Cassidy*, 268 N.Y.S.2d 202, 205 (N.Y. App. 1944) (explaining that "the creation of . . . a private army" would be "incompatible

with the fundamental concept of our form of government").

It is no answer to observe that Virginia has not separately criminalized the unauthorized formation of military organizations, as some states have. *See* Redneck Revolt Br. 20. Consider, for example, the provision immediately following the Strict Subordination Clause. Article I, Section 14 of the Virginia Constitution provides that "no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof." The General Assembly has since proscribed materially identical conduct: the act of "[e]stablishing, without authority of the legislature, any government within its limits separate from the existing government." Va. Code § 18.2-481(3). Yet the Virginia Supreme Court recently held Article I, Section 14, to be self-executing, meaning that it is fully operative on its own terms, without regard to any parallel civil or criminal prohibitions. *See DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 138 (2011). The same is true of the Strict Subordination Clause. The fact that the General Assembly has not separately prohibited private military organizations as such, then, is hardly a reason to interpret the Clause as tolerating the unauthorized assumption of military functions.

3. The Strict Subordination Clause Is One of Many Constitutional Provisions Applicable to Private Actors

Holding that the Strict Subordination Clause regulates private conduct would break no new legal ground. The U.S. Supreme Court has naturally inferred a state-action requirement from many federal constitutional prohibitions—including Section 1 of the Fourteenth Amendment, whose text includes the phrase "[n]o State shall." *See United States v. Morrison*, 529 U.S. 598, 621 (2000). But whether a constitutional provision constrains private actors is entirely contingent on its text and purpose. Because the Thirteenth Amendment, for example, "is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States," it has been held to regulate private

conduct. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 438 (1968) (quoting *Civil Rights Cases*, 109 U.S. 3, 20 (1883)). Before its repeal, the Eighteenth Amendment operated in just this way; it "prohibited" the "manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States." U.S. Const. amend. XVIII, § 1. Its successor Amendment—the Twenty-First—is most naturally read as applying to private actors, as well. *See* U.S. Const. amend. XXI, § 2 ("The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."). And the Supreme Court has expressly concluded that other federal constitutional protections restrain private conduct. *See Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971) ("Our cases have firmly established that the right of interstate travel . . . is assertable against private as well as government interference."); *United States v. Classic*, 313 U.S. 299, 315 (1941) (concluding that the "right of qualified voters . . . to cast their ballots and have them counted at Congressional elections" is "secured against the action of individuals as well as of states").

This feature is even more common at the state level. As the New Jersey Supreme Court rightly remarked, "federal requirements concerning 'state action,' founded primarily in the language of the Fourteenth Amendment and in principles of federal-state relations, do not have the same force when applied to state-based constitutional rights." *State v. Schmid*, 84 N.J. 535, 559–60 (1980) (holding that "the rights of speech and assembly guaranteed by the [New Jersey] Constitution are protectable not only against governmental or public bodies, but under some circumstances against private persons as well."). Unsurprisingly, a multitude of state courts have found that particular state constitutional provisions regulate both private and governmental conduct. *See, e.g.*, *Moresi v. State*, 567 So.2d 1081, 1092 (La. 1990) (holding that Louisiana's constitutional protection against invasions of privacy "goes beyond limiting state action,"

especially since "the expression 'no law shall' was not used"); *Hartford Accident & Indemnity Co. Insurance Comm'r of Commonwealth*, 505 Pa. 571, 586 (1984) ("The rationale underlying the 'state action' doctrine is irrelevant to the interpretation of the scope of the Pennsylvania Equal Rights Amendment . . . ."); *Alderwood Assocs. v. Wash. Envtl. Council*, 96 Wash. 2d 230, 243 (1981) (interpreting two Washington constitutional provisions as "not requiring the same 'state action' as the Fourteenth Amendment").[2] And the prohibition immediately following Virginia's Strict Subordination Clause—that "no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof," Va. Const. art. I, § 14—plainly applies to persons who enjoy no governmental authority.

Defendants' proposed interpretation of the Strict Subordination Clause—a provision ratified to subject all forms of military power to direct civilian oversight—would permit private armies to impose their will on perceived political foes. This Court is empowered to prevent "the proliferation of private military organizations," which would "threaten[] to result in lawlessness and destructive chaos." *Vietnamese Fishermen's Ass'n*, 543 F. Supp. at 216.

C. The Strict Subordination Clause Is Suitable for Judicial Application

Defendants contend that Virginia's Strict Subordination Clause is too amorphous and

[2] Additional examples are legion. *See, e.g.*, *Wilkinson v. Times Mirror Corp.*, 215 Cal. App. 3d 1034, 1041 (1989) (holding that California's constitutional right to privacy "reach[es] both governmental and nongovernmental conduct"); *Cologne v. Westfarms Assocs.*, 37 Conn. Supp. 90, 114–15 (Conn. Super. 1982) (enjoining private actors from interfering with plaintiffs' free-speech and petition rights under the Connecticut Constitution); *Batchelder v. Allied Stores Int'l*, 388 Mass. 83, 88–89 (1983) (holding, in light of "the absence of State action language," that Massachusetts's constitutional right to "elect officers, and to be elected, for public employments" is not "directed exclusively toward restraining government action"); *Bellerive Country Club v. McVey*, 365 Mo. 477, 489–90 (1955) (explaining that private conduct can "bring about a violation of a provision of [Missouri's] constitution"—namely, the right of employees "to organize and to bargain collectively through representatives of their own choosing"); *Cooper v. Nutley Sun Printing Co.*, 36 N.J. 189, 196 (1961) (concluding that the New Jersey Constitution's right to organize and bargain collectively "reaches beyond governmental action," protecting against "the acts of individuals who would abridge these rights"); *Peper v. Princeton Univ. Bd. of Trs.*, 77 N.J. 55, 80 (1978) (holding that New Jersey's Constitution prohibits sex discrimination by private employers); *Commonwealth v. Tate*, 495 Pa. 158, 171 (1981) (concluding that "the rights of freedom of speech, assembly, and petition" guaranteed by Pennsylvania's Constitution function "not simply as restrictions on the powers of government").

indefinite for judicial application. *See* Alt-Right Br. 10–11; Redneck Revolt Br. 10–11. This concern is vastly overstated.

Although no published decision has expounded on the Clause's contours—likely because unauthorized military activity is not a common feature of modern life—the absence of judicial precedent is no reason to refrain from adjudicating properly presented legal claims. Plaintiffs' proposed application of the Strict Subordination Clause is based on sound and well-settled legal principles, and constitutional provisions do not become inoperative simply because no court has yet examined their reach. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (identifying several Bill of Rights provisions that "remained unilluminated for lengthy periods").

At this early juncture, moreover, "one should not expect [this Court] to clarify the entire field" of civil–military subordination. *Id.* at 635. The Court need decide only whether the Strict Subordination Clause prohibits private citizens from engaging in the coordinated use of force—or projecting a willingness to do so—at public events. "[T]here will be time enough" to consider the Strict Subordination Clause's full scope if and when other fact patterns arise. *Id.* Even so, any future line-drawing concerns are not nearly as severe as Defendants portray them to be, as one scholar has explained:

> The lines between the individual's constitutionally protected right to own and use firearms and to associate with like-minded others and the creation of private armies that the state is empowered to prohibit may not always be easy to draw. Yet . . . line-drawing here need not prove any more difficult than line-drawing in many other areas of constitutional law.

Thomas B. McAffee, *Constitutional Limits on Regulating Private Militia Groups*, 58 Mont. L. Rev. 45, 60–61 (1997). As Plaintiffs have already shown, the Military Laws of Virginia render this task even more manageable. The General Assembly has clarified how, and through whom, civilian command authority is to be exercised; which functions may be considered military in nature; and which requirements one must satisfy in order to participate in exercising them.

The Strict Subordination Clause plainly does not cover the conduct of "a hunting club," "civil war reenactors," or "a bowling club." Alt-Right Br. 10. Nor does the Clause forbid individuals from "openly carry[ing] legal firearms at public demonstrations," Redneck Revolt Br. 10, or attaining proficiency in firearms training. It comes nowhere close to regulating firearm-related activities typically engaged in by law-abiding Virginians (such as those included in the list of exceptions from Virginia's anti-paramilitary prohibition, *see* Va. Code § 18.2-433.3). But whatever the Strict Subordination Clause's exact parameters, it surely forbids private persons from engaging in the organized use of force at public events—or visibly threatening to do so—outside the strictures of state law. That is all the Court need decide on Count 1 of the Amended Complaint.

Adjudicating Plaintiffs' strict-subordination claim would not be a leap in the dark. Courts already have been called upon to conduct substantially similar inquiries. Twenty-eight states have criminalized the formation of unauthorized military organizations.[3] In upholding the constitutionality of one of these laws, the U.S. Supreme Court necessarily presumed that courts can competently ascertain the existence of private "military organizations" and "military compan[ies]." *Presser*, 116 U.S. at 264, 266. Other decisions have reinforced the manageability of this task, proceeding under the assumption that identical (or nearly identical) phrasing contains enforceable legal content. *See Heller*, 554 U.S. at 621 ("private paramilitary organizations"); *Person v. Miller*, 854 F.2d 656, 661 (4th Cir. 1988) ("paramilitary organization[s]"); *Vietnamese Fishermen's Ass'n*, 543 F. Supp. at 209 ("private armies," "military operations," and "military activities"); *Dunne v. People*, 94 Ill. 120, 140 (1879) ("military companies" and "military organizations"); *Commonwealth v. Murphy*, 166 Mass. 171, 172–73 (1896) ("military

[3] *See* Institute for Constitutional Advocacy and Protection, *Prohibiting Private Armies at Public Rallies: A Catalog of Relevant State Constitutional and Statutory Provisions*, at 4 (2018), *available at* http://www.law.georgetown.edu/academics/centers-institutes/constitutional-advocacy-protection/upload/prohibiting-private-armies-at-public-rallies.pdf.

organization[s]" and "independent military compan[ies]"); *State v. Gohl*, 46 Wash. 408, 410 (1907) ("armed bod[ies] of men").

D. The Strict Subordination Clause's Prohibition Is Self-Executing

The Alt-Right Defendants maintain that the Strict Subordination Clause is not "self-executing," claiming that it merely states an abstract principle that cannot give rise to cognizable legal claims. *See* Alt-Right Br. 6. This argument also falls short, largely for the same reasons that the Clause is suitable for judicial application.

According to the Virginia Supreme Court,

> [a] constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be employed and protected, or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.

DiGiacinto, 281 Va. at 138 (quoting *Gray v. Va. Sec'y of Transp.*, 276 Va. 93, 103–04 (2008)). The mark of a self-executing constitutional provision is that "no further legislation is required to make it operative." *Id.* (quoting *Gray*, 276 Va. at 103). In addition, "constitutional provisions in bills of rights . . . are usually considered self-executing." *Id.* (quoting *Gray*, 276 Va. at 103).

Again, the Strict Subordination Clause—which appears in Section 13 of Virginia's Bill of Rights—provides that "in all cases the military should be under strict subordination to, and governed by, the civil power." Va. Const. art. I, § 13. This language is hardly a standardless political aspiration, unlike several other Virginia constitutional provisions. *See, e.g.*, *Robb v. Shockoe Slip Found.*, 228 Va. 678, 682–83 (1985) (deeming to be non-self-executing a provision declaring it to "be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings"); Va. Const. art. I, § 15 ("That no free government, nor the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue . . . .").

The Strict Subordination Clause is plainly self-executing in at least some respects. It is, at a minimum, a self-contained prohibition on governmental action that would detach military personnel from civilian oversight. For example, the General Assembly could not assign control over military operations to a local chemistry professor. So the issue is not *whether* the Clause is self-executing, but *to what extent* its commands apply without need of further legislation. The answer to that question is entirely a function of whether the Strict Subordination Clause applies to private behavior. If it does—as Plaintiffs have shown—it prohibits such conduct of its own force, thereby supplying a judicially administrable tool for enjoining unauthorized military activity.

The Alt-Right Defendants observe that Section 13 speaks of a right to keep and bear arms that "shall" not be infringed, provides that standing armies "should" be avoided in times of peace, and specifies that the military "should" be strictly subordinated to the civil power. According to these Defendants, "[t]he drafters of the Constitution clearly knew they could use the word 'shall' . . . but they chose to use the word 'should.'" Alt-Right Br. 6. The Alt-Right Defendants further suggest that the Strict Subordination Clause cannot be self-executing, because if it were, Section 13's prohibition on standing armies in peacetime—which also uses the word "should"—would be violated by the existence of the Virginia National Guard. *See id.* Each point is meritless.

As to the first point, although most of Section 13 has remained unchanged since its original adoption in 1776, the phrase "the right of the people to keep and bear arms shall not be infringed" was not added until 1969. Howard, *Commentaries on the Constitution of Virginia*, at 270, 273. So Section 13's inconsistent phraseology did not result from the deliberate choices of a single set of Constitution-makers.

Drawing ironclad inferences from these sorts of distinctions could well upend much constitutional law in Virginia. Multiple Bill of Rights provisions are similarly structured, yet are undoubtedly self-executing in every respect. *See, e.g.*, Va. Const. art. I, § 9 ("That excessive bail

ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; that the privilege of the writ of habeas corpus *shall* not be suspended unless when, in cases of invasion or rebellion, the public safety may require; and that the General Assembly *shall* not pass any bill of attainder, or any ex post facto law.") (emphases added). One constitutional provision declares that the three departments of government "should" be separate and distinct, Va. Const. art. I, § 4, while another indicates that they "shall" be separate and distinct, Va. Const. art. III, § 1. And although the Governor is forbidden to suspend the laws, *see Howell v. McAuliffe*, 292 Va. 320, 326–27 (2016), the relevant constitutional provision merely provides that such suspensions "ought not" occur, Va. Const. art. I, § 7. Judicial inquiries into self-execution cannot be conducted in such a mechanized fashion.

As for the Alt-Right Defendants' second point, it is far from obvious that all provisions beginning with "should" must be treated identically for self-execution purposes. According to Professor Howard, Section 13's prohibition on standing armies is "exhortatory in nature," yet the Strict Subordination Clause "possesses more vitality." Howard, *Commentaries on the Constitution of Virginia*, at 273–74. But even granting the assumption, the Virginia National Guard cannot be characterized as a "standing army." It is composed of part-time citizen-soldiers who train and serve the Commonwealth at periodic intervals. For that reason, the National Guard is to be "distinguished from regular troops or a standing army." 6A C.J.S. Armed Services § 338 (2018) ("Militia, Generally").

Although the Military Laws of Virginia greatly channel judicial discretion in assessing Strict Subordination Clause claims, it does not follow that the Clause would have been inoperative without further legislative refinement. In other contexts, non-constitutional sources of law routinely shed light on the content of self-executing constitutional provisions. For example, the U.S. Constitution empowers Congress to "call[] forth the Militia," U.S. Const. art. I, § 8, cl. 15,

but the precise composition of "the Militia" is left to statutory regulation.

Lastly, because the Strict Subordination Clause is self-executing, no statutory private right of action is needed to render it judicially enforceable. The Alt-Right Defendants' contrary view (*see* Alt-Right Br. 10) ignores the very hallmark of self-executing constitutional provisions—that "no further legislation is required to make [them] operative." *DiGiacinto*, 281 Va. at 138 (quoting *Gray*, 276 Va. at 103); *cf. Cherrie v. Va. Health Servs., Inc.*, 292 Va. 309, 315 (2016) ("The claimed right here does not implicate any protected right under the Constitution of Virginia . . . . The existence of any viable right of action, therefore, must come from statutory law."). In fact, numerous state courts have ordered relief against private actors directly under a state constitutional provision.[4] Count 1 of Plaintiffs' Amended Complaint asks for nothing more.

E. Plaintiffs Have Standing to Sue Under the Strict Subordination Clause

The Alt-Right Defendants insist that, because "[n]o Plaintiff even alleges that it is the 'civil power,' . . . they have no standing to sue anyone for being 'insubordinate.'" Alt-Right Br. 13. Echoing this point, Defendant Redneck Revolt argues that "determinations of whether and when strict subordination has been violated [are] within the sole purview of the Governor in his capacity as Commander in Chief of the armed forces." Redneck Revolt Br. 9. On this theory, Plaintiffs are improperly seeking to "usurp such enforcement determinations from the Governor by appointing themselves the arbiters of who is and is not acting as 'the military.'" *Id.*

These assertions are entirely unexplained, and they do not follow logically from the fact of the Governor's empowerment. The act of assigning authority to a particular institution does not vest that institution with exclusive authority to ascertain encroachments on its prerogatives (and to seek judicial redress, if desired). Courts routinely adjudicate separation-of-powers disputes

[4] *See, e.g.*, *Cologne*, 37 Conn. Supp. at 115 (injunctive relief); *Bellerive*, 365 Mo. at. 492 (injunctive relief); *Batchelder*, 388 Mass. at 93 (declaratory relief); *Schmid*, 84 N.J. at 569 (trespass conviction overturned); *Tate*, 495 Pa. at 176 (trespass conviction overturned).

brought by private parties whose claims implicate the proper distribution of authority among governmental entities. *See, e.g.*, *In re Phillips*, 265 Va. 81, 87 (2003) (holding, in a suit brought by a convicted felon, that a statute regulating the process of restoring voting rights did not usurp the Governor's constitutional authority to remove political disabilities resulting from criminal convictions); *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 498 (2010) (holding, in a suit brought by private institutions, that a federal statute imposing conditions on the removal of executive officers "subvert[ed] the President's ability to ensure that the laws are faithfully executed").

A party claiming standing need only "demonstrate a personal stake in the outcome of the controversy," such that a court can be assured "that the issues will be fully and fairly developed." *Goldman v. Landsidle*, 262 Va. 364, 371 (2001). That standard is easily satisfied here. Plaintiffs have alleged a host of legally cognizable injuries stemming from Defendants' unlawful actions on August 12, 2017, *see* Am. Compl. ¶¶ 135–51, to say nothing of the harms that would result from a repetition of such conduct. This Court is fully empowered to adjudicate Plaintiffs' claims for relief under state law—including the Strict Subordination Clause.

F. Neither Dillon's Rule Nor Virginia's Firearm-Preemption Statute Precludes the City from Seeking Judicial Relief

Finally, Defendants advance two arguments that apply only to the claims brought by the City. First, they assert that the City lacks authority to bring this suit under a principle known as "Dillon's Rule." *See* Alt-Right Br. 24; Redneck Revolt Br. 9, 26. Redneck Revolt additionally argues (at 9–10, 26–27, 29–30) that the City was affirmatively prohibited from doing so under a Virginia statute limiting the local regulation of firearms.

Neither argument has merit. Defendants ask this Court to endorse radical extensions of both Dillon's Rule and Virginia's firearm-preemption statute, theories that would virtually eliminate municipalities' ability to seek redress for violations of state law. Although both arguments logically apply to each of Plaintiffs' claims, they will be addressed in full only here for

the sake of simplicity.

1. Dillon's Rule

Under the rule of construction known as Dillon's Rule, local governments in Virginia "have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable." *Bd. of Zoning Appeals of Fairfax Cnty. v. Bd. of Supervisors of Fairfax Cnty.*, 276 Va. 550, 554 (2008). But Dillon's Rule does not implicate *courts'* authority to determine parties' rights and obligations—even those of a municipality—under state law. Defendants have offered only bare assertions to the contrary.

Defendants also fail to mention that the General Assembly *has* expressly authorized municipalities to seek judicial redress, providing that "[e]very locality may sue or be sued in its own name in relation to all matters connected with its duties." Va. Code § 15.2-1404. The statutorily defined "duties" of localities, moreover, plainly encompass efforts to ensure safety at public events. The Virginia Code expressly empowers cities to regulate in sweeping terms:

> A municipal corporation shall have and may exercise all powers which it now has or which may hereafter be conferred upon or delegated to it under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the municipality and the inhabitants thereof . . . .

Va. Code § 15.2-1102; *see also* Va. Code § 15.2-1700 ("Any locality may provide for the protection of its inhabitants and property and for the preservation of peace and good order therein."); *City of Bristol v. Earley*, 145 F. Supp. 2d 741, 744 (W.D. Va. 2001) (alluding to "Virginia's broad grant of powers to localities").

The City of Charlottesville's Charter—also enacted by the General Assembly—echoes this broad grant of statutory authority. The City's Charter authorizes it to "preserve public peace and

good order"; to "make such other and additional ordinances as it may deem necessary for the general welfare of said city"; to regulate as it "deem[s] necessary for the good order and government of the city, . . . the peace, comfort, convenience, order, morals, health, and protection of its citizens or their property"; and "to do such other things . . . as may be necessary or proper to carry into effect any power, authority, capacity, or jurisdiction . . . vested in said city . . . or which may be necessarily incident to a municipal corporation." City of Charlottesville Charter §§ 14(14), (16), (20).

The power to sue is widely "regarded as an incident to the existence of a municipal corporation." 17 Eugene McQuillin, *The Law of Municipal Corporations* § 49:2 (3d ed. 2017). But the General Assembly removed any doubt by expressly authorizing localities to sue in connection with their statutorily defined duties, which include the maintenance of peace, safety, and good order. Naturally, Virginia courts have adjudicated the merits of cities' claims for injunctive relief under state law without first identifying a subject-matter-specific grant of authority.[5]

The City of Charlottesville is not attempting to "participate in [the] governance of the Commonwealth's armed forces." Redneck Revolt Br. 9. It is simply seeking relief for a violation of state law, pursuant to explicit statutory language authorizing it to sue and be sued in its own name. Dillon's Rule has never been understood to affect cities' capacity to litigate in the Commonwealth's courts, and this Court should reject Defendants' suggestion to the contrary.

[5] *See, e.g.*, *Rainey v. City of Norfolk*, 14 Va. App. 968, 970 (1992) (affirming civil contempt sanctions for violating a circuit court's order enjoining the defendant to comply with the Virginia Uniform Statewide Building Code in a suit brought by a municipality); *Town of New Market v. Battlefield Enters.*, No. 2191, 1985 WL 306890, at *1 (Va. Cir. 1985) (adjudicating a town's request for an injunction under state law, but denying relief because the facts alleged did not meet the relevant legal standard); *cf. City of Petersburg v. Petersburg Aqueduct Co.*, 47 S.E. 848, 850 (Va. 1904) (holding that the complaint's allegations "would clearly entitle the city to the injunctive relief prayed for," pursuant to its state-law authority to regulate "in the interest of the public welfare").

2. Virginia's Firearm-Preemption Statute

Defendant Redneck Revolt further maintains (at 9) that Virginia's firearm-preemption statute, Va. Code § 15.2-915, "constrains [the City] from acting in this case." This argument fares no better.

In relevant part, the statute provides as follows:

> No locality shall adopt or enforce any ordinance, resolution or motion, as permitted by § 15.2-1425, and no agent of such locality shall take any administrative action, governing the purchase, possession, transfer, ownership, carrying, storage or transporting of firearms, ammunition, or components or combination thereof other than those expressly authorized by statute.

Va. Code § 15.2-915(A). Redneck Revolt implicitly acknowledges (at 10, 29–30) that the City's decision to join as a plaintiff did not constitute an ordinance, resolution, motion, or administrative action governing the relevant subject matters. Its argument instead is that the City may not "achieve through civil litigation [that] which it is expressly prohibited from accomplishing by ordinance, resolution, motion, or administrative action." *Id.* at 10. Redneck Revolt fails to explain why this Court should concoct a statutory prohibition far broader than the one actually enacted.

As a state-level preemption statute, § 15.2-915 operates to limit the types of municipal law that may be enacted and enforced. But the City is not acting as an enactor or enforcer of local law; in its capacity as a litigant, it is asking this Court to apply existing state law, pursuant to an express statutory grant of authority to sue and be sued. Moreover, the City's decision to seek judicial redress did not "govern[]" anything, because it did not alter anyone's legal rights and obligations. Redneck Revolt rightly refrains from arguing as much. But it is entirely unclear why a provision focused on the enactment and enforcement of local law should be interpreted—in unprecedented fashion—as implicitly abrogating other statutes authorizing cities to sue under state law.

Redneck Revolt's position is further undermined by the provision immediately following Virginia's firearm-preemption statute. Va. Code § 15.2-915.1 forbids localities from suing for

injunctive relief concerning "the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public." Such action is instead "reserved exclusively to the Commonwealth." *Id.* If Redneck Revolt were correct, that prohibition would have been unnecessary—localities would have been forbidden from seeking such relief in the first place. And in specifying which types of firearm-related suits may be brought only by the Commonwealth, § 15.2-915.1 implies that cities retain all litigating authority not expressly withdrawn.

Virginia's firearm-preemption statute simply does not apply to the City's participation in this lawsuit. And because the City has not violated Va. Code § 15.2-915(A), it cannot be made to pay Redneck Revolt's attorney's fees, expenses, and court costs. Section 15.2-915(D)'s fee-shifting provision presupposes a successful challenge to "an ordinance, resolution, or motion," or "an administrative action taken in bad faith." Redneck Revolt has identified no such action by the City governing the relevant subject matters, much less an unlawful one—much less an egregiously unlawful one. This Court should reject Redneck Revolt's misguided preemption objection.

II. Plaintiffs Have Stated Claims Under Virginia's Anti-Paramilitary and False-Assumption Statutes

Counts 2 and 3 of Plaintiffs' Amended Complaint allege that each Defendant has violated, and will continue to violate, Va. Code § 18.2-433.2, Virginia's anti-paramilitary statute. Count 4 alleges that Defendant Redneck Revolt (among other Militia Defendants) has violated, and will continue to violate, Va. Code § 18.2-174, which prohibits falsely assuming the functions of police officers and other law-enforcement officers.

The Alt-Right Defendants do not argue that the conduct alleged against them fails to satisfy the terms of the anti-paramilitary prohibitions contained in §§ 18.2-433.2(1) and (2); they merely suggest (at 11) that a clarification appended to those prohibitions immunizes their actions from liability. Redneck Revolt contends (at 18–23) that Plaintiffs have failed to state a claim under both §§ 18.2-433.2(2) and 18.2-174. Defendants also insist that, under the circumstances, no private

right of action exists to seek injunctive relief under these statutes. *See* Alt-Right Br. 14–16; Redneck Revolt Br. 11–18.

These objections are mistaken: Plaintiffs' Amended Complaint alleges violations of both statutes, and the circumstances of this case are a fitting occasion to enjoin expected violations.

A. Plaintiffs Have Alleged Sufficient Facts to Establish a Violation of § 18.2-433.2

Va. Code § 18.2-433.2, titled "Paramilitary Activity Prohibited," is divided into two subsections—two distinct ways of committing "unlawful paramilitary activity." The first readily applies to persons in a leadership capacity; the second applies more naturally to organizations, as well as to persons not serving as leaders or commanders.

Under Va. Code § 18.2-433.2(1), a person is guilty of "unlawful paramilitary activity" if he

> [t]eaches or demonstrates to any other person the use, application, or making of any firearm, explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that such training will be employed for use in, or in furtherance of, a civil disorder.

This provision is the basis for Count 2 of the Amended Complaint, which was brought against (among others) Defendants Kessler, Kline, and Heimbach. These Defendants do not contest that Plaintiffs' allegations against them satisfy the terms of § 18.2-433.2(1). *See, e.g.*, Am. Compl. ¶ 233 ("Defendants Jason Kessler and Eli Mosley [i.e., Elliott Kline]—as co-organizers of the Unite the Right rally—solicited the presence of paramilitary organizations, facilitated attendees' instruction in military techniques, and issued tactical commands to the other Alt-Right Defendants on August 12."); *id.* ¶¶ 87, 101, 107, 109 (highlighting specific instances in which Defendant Kline exercised command authority over alt-right attendees carrying shields); *id.* ¶¶ 90, 105 (same for Defendant Matthew Heimbach).

Under Va. Code § 18.2-433.2(2), a person is similarly guilty of "unlawful paramilitary activity" if he

> [a]ssembles with one or more persons for the purpose of training with, practicing with, or being instructed in the use of any firearm, explosive or incendiary device, or technique capable of causing injury or death to persons, intending to employ such training for use in, or in furtherance of, a civil disorder.

This provision is the basis for Count 3 of the Amended Complaint, which was brought against (among others) Defendants TWP, Vanguard America, and Redneck Revolt. Defendants TWP and Vanguard America do not contest that Plaintiffs' allegations against them satisfy the terms of § 18.2-433.2(2). *See, e.g.*, Am. Compl. ¶ 90 (alleging that TWP "spent the morning [of August 12] engaged in 'preparation,' including 'doing some basic training in organization and self defense maneuvers'"); *id.* ¶¶ 90, 97, 102 (detailing TWP's coordinated use of weaponry on August 12); *id.* ¶¶ 87, 102, 108 (same for Vanguard America).

Redneck Revolt, on the other hand, disputes that Plaintiffs have alleged conduct that would violate § 18.2-433.2(2). According to Redneck Revolt, it is "fatal" to Plaintiffs' claim that the Amended Complaint contains "no factual allegations against Redneck Revolt that occurred before their arrival at the Park on August 12" or "prior to their arrival at the counter-protest." Redneck Revolt Br. 19. As an initial matter, in this suit for injunctive and declaratory relief, the Court need not confine its analysis to any Defendant's precise historical conduct. It is hardly foreordained, for example, that Redneck Revolt (or any other Defendant) will not engage in training exercises in advance of future rallies in Charlottesville.[6]

Moreover, Redneck Revolt is wrong to suggest that conduct satisfying each element of § 18.2-433.2 is somehow excluded from the statute's reach if it occurs at a public event rather than before it. Redneck Revolt simply states—but makes no effort to justify—its view that "no training,

[6] Redneck Revolt's website, for example, depicts five persons aiming firearms in unison. *See Redneck Revolt Organizing Principles*, Redneck Revolt, https://www.redneckrevolt.org/principles (cited in Am. Compl. ¶ 51 n.27). If Redneck Revolt members in fact received no training or instruction in the use of semiautomatic weapons before deploying them in Charlottesville last August, that would only highlight the public-safety risks posed by wielding arms collectively at public events outside the reach of public accountability.

practicing, or instruction . . . t[ook] place" among its members on August 12. Redneck Revolt Br. 19. The group's conduct, however, easily satisfies ordinary definitions of the word "practice." *Merriam-Webster*'s leading entries for the verb and noun forms of "practice" are "carry out, apply," and "actual performance or application." *Merriam-Webster*, "Practice," *available at* https://www.merriam-webster.com/dictionary/practice (last viewed May 15, 2018). These meanings contrast sharply with that dictionary's leading entry for the intransitive form of the verb "train"—"to undergo instruction, discipline, or drill." *Merriam-Webster*, "Train," *available at* https://www.merriam-webster.com/dictionary/train (last viewed May 15, 2018).

As previously mentioned, § 18.2-433.2 is titled "Paramilitary Activity Prohibited," and the forbidden conduct is styled "unlawful paramilitary activity." It would be an odd conception of paramilitary activity that would encompass only preparatory or inchoate behavior and not the act of deploying dangerous techniques in a public setting. Nor would any sensible legislature have deemed certain activities too unsafe to be rehearsed in private, while permitting them to be carried out on the cusp of, or during, an actual civil disorder. There is no principled reason that training, practicing, or instruction would satisfy § 18.2-433.2 if it occurred in a nearby parking lot minutes before a group's arrival at a public event, but not after an armed deployment had actually occurred.

That the statute forbids both "training" *and* "practicing" counsels strongly against according the latter word an artificially narrow sweep. Other states, after all, prohibit paramilitary "train[ing]," but not "practicing." *See* Ga. Code Ann. § 16-11-151(b)(2); La. Stat. Ann. § 14:117.1(A). This conclusion is reinforced by § 18.2-433.2(2)'s placement within a chapter called "Crimes Against Peace and Order."[7] (Other provisions within that chapter include

[7] The Alt-Right Defendants (at 12) and Redneck Revolt (at 20) urge this Court to interpret § 18.2-433.2 narrowly given that the General Assembly recently declined to enact an amendment to that statute that would have criminalized "[a]ssembl[ing] with one or more persons with the intent of intimidating any person or group of persons by drilling, parading, or marching with any firearm, any explosive or incendiary device, or any components or combination

prohibitions on violent assemblies, Va. Code § 18.2-406; incitement to riot, *id.* § 18.2-408; disorderly conduct in public places, § 18.2-415; and cross-burning in public places with intent to intimidate, *id.* § 18.2-423.)

On August 12, approximately 20 Redneck Revolt members purposefully formed a "security perimeter" around Justice Park, "most of them open-carrying tactical rifles," Am. Compl. ¶ 79—thereby carrying out (i.e., "practicing") the use of firearms. Those members undoubtedly intended to employ their firearms "for use in . . . a civil disorder," § 18.2-433.2(2), as defined in the immediately prior provision—namely, the Unite the Right rally. Indeed, one of Redneck Revolt's stated reasons for attending the event was to repel the "violence" and "power" of opposition groups expected to attend. *See Call to Arms for Charlottesville*, Redneck Revolt, Aug. 10, 2017, https://www.redneckrevolt.org/single-post/CALL-TO-ARMS-FOR-CHARLOTTESVILLE (cited in Am. Compl. ¶ 78 & n.71).

That Defendants' conduct meets § 18.2-433.2(2)'s definition of "unlawful paramilitary activity" is not the end of the matter, however. Section 18.2-433.3 contains a list of four exceptions to the prohibition and one clarification. But the conduct alleged in Plaintiffs' Amended Complaint satisfies none of them. The four exceptions listed in §§ 18.2-433.3(1)–(4) are plainly inapplicable to group-based conduct capable of causing injury or death and intended for use in a civil disorder. In fact, the inclusion of the first exception—which exempts from § 18.2-433.2's coverage "[a]ny act of a law-enforcement officer performed in the otherwise lawful performance of the officer's official duties"—strongly suggests that coordinated armed peacekeeping activity is presumptively forbidden under the anti-paramilitary statute (at least when it bears the necessary relation to a civil

thereof." S.B. 987 (NS), 2018 Gen. Assem., Reg. Sess. (Va. 2018). But Plaintiffs have not invoked § 18.2-433.2 to enjoin Defendants from drilling, parading, or marching with the intent to intimidate. The amendment would have applied only to those three activities; it was not, as Redneck Revolt suggests (at 20), a proposed ban on unauthorized military organizations. In any case, the legislature's rejection of this amendment says nothing about the proper scope of § 18.2-433.2, which was enacted in 1987.

disorder). This lends further support to Plaintiffs' argument that conduct can be actionable under § 18.2-433.2 even if it occurs at a public event.

Va. Code § 18.2-433.3 also clarifies that "no activity of any individual, group, organization or other entity engaged in the lawful display or use of firearms or other weapons or other facsimiles" shall be deemed to violate § 18.2-433.2. Both the Alt-Right Defendants and Redneck Revolt contend that the allegations against them describe a "lawful" display or use of weapons. *See* Alt-Right Br. 11; Redneck Revolt Br. 21. But if the conduct alleged does in fact violate § 18.2-433.2, then it is not "lawful." This clarification's reference to the "lawful" display or use of weapons does not purport to create a category of conduct immune from § 18.2-433.2's strictures, as do the exceptions listed in § 18.2-433.3(1)–(4). It instead incorporates by reference any other sources of law rendering lawful what the text of § 18.2-433.2 might otherwise cause to be unlawful. Were it otherwise, the inquiry would be aimless, inviting substitution of one's abstract conceptions of "lawful[ness]" for the standard laid out by the General Assembly.

B. Plaintiffs Have Alleged Sufficient Facts to Establish a Violation of § 18.2-174

Defendant Redneck Revolt also claims (at 22–23) that its members did not falsely assume or exercise the functions of law-enforcement officers in Charlottesville on August 12, 2017. This argument can be advanced only by selectively omitting critical allegations included in the Amended Complaint.

Va. Code § 18.2-174 provides as follows:

> Any person who falsely assumes or exercises the functions, powers, duties, and privileges incident to the office of sheriff, police officer, marshal, or other peace officer, or any local, city, county, state, or federal law-enforcement officer, or who falsely assumes or pretends to be any such officer, is guilty of a Class 1 misdemeanor. A second or subsequent offense is punishable as a Class 6 felony.

This provision contains two separate prohibitions: engaging in activities reserved to law-enforcement officers without statutory authorization to do so, and attempting to deceive others into

believing that one is a law-enforcement officer. Count 4 of Plaintiffs' Amended Complaint proceeds under the former theory. Redneck Revolt does not contest that § 18.2-174 presupposes a category of functions reserved exclusively to law-enforcement officers, or that its members lack authority to engage in those functions. Redneck Revolt argues only that the Amended Complaint's allegations are insufficient to state a claim under § 18.2-174.

State law specifies that "[t]he police force of a locality . . . is responsible for . . . the safeguard of life and property" and "the preservation of peace." Va. Code § 15.2-1704. Members of the Virginia National Guard and Virginia Defense Force also qualify as "law-enforcement officer[s]" when called upon to help "maintain[] order and public safety . . . in cooperation with Virginia State Police and local law-enforcement agencies." Va. Code § 44-11.1(A).

The General Assembly has entrusted such functions only to those persons who meet a strict set of statutory requirements. Accordingly, every police officer must "comply with . . . compulsory minimum training standards," Va. Code § 9.1-114, which include completion of a statewide certification exam, *id.* § 15.2-1706(A). Prospective police officers must also be U.S. citizens at least 18 years of age, have at least a high-school education (or the equivalent), undergo a comprehensive background check, pass a physical examination and a drug test, and have no felonies in their criminal histories. *Id.* § 15.2-1705(A). State law does permit the existence of "private police department[s]," but they must be "authorized by statute" and "comply with . . . the laws governing municipal police departments." *Id.* § 9.1-101. All persons employed as private police officers must "meet all requirements, including the minimum compulsory training requirements, for [regular] law enforcement officers." *Id.* As detailed in Plaintiffs' Amended Complaint, *see* Am. Compl. ¶ 63, Virginia law also thoroughly regulates the provision of private security services.

State law envisions several mechanisms for providing additional assistance to local police

departments, should the need arise. First, localities may enter into reciprocal agreements "for cooperation in the furnishing of police services," Va. Code § 15.2-1726, to help "maintain peace and good order," *id.* § 15.2-1736. Even without such agreements, moreover, localities are authorized to send their police officers anywhere in the Commonwealth "in response to any law-enforcement emergency involving any immediate threat to life or public safety." *Id.* § 15.2-1724. Second, as outlined above, members of the organized military can be called upon to help maintain public safety. This can occur on the Governor's own initiative or at the request of "the governing body or the chief law-enforcement officer" of a locality. *See id.* § 44-78.1. And third, localities may establish auxiliary police forces "for the further preservation of the public peace, safety, and good order of the community." *Id.* § 15.2-1731(A). Auxiliary police officers may be called into service "in time of public emergency" or "at such times as there are insufficient numbers of regular police officers to preserve the peace, safety and good order of the community." *Id.* § 15.2-1734(A). But such officers must "me[e]t the training requirements established by the Department of Criminal Justice Services," *id.* § 15.2-1731(A), and "wear the uniform prescribed by the governing body," *id.* § 15.2-1734(A).

It is no wonder that the General Assembly has prohibited "falsely assum[ing] or exercis[ing] the functions, powers, duties, and privileges incident to the office of sheriff, police officer, marshal, or other peace officer, or any local, city, county, state, or federal law-enforcement officer." *Id.* § 18.2-174. The unauthorized assumption of such functions would undercut the General Assembly's finely calibrated approach toward ensuring public safety.

With these principles in mind, Plaintiffs' allegations readily state a claim under Va. Code § 18.2-174. The Amended Complaint alleges that approximately 20 Redneck Revolt members created a security perimeter around Justice Park on August 12, "most of them open-carrying tactical rifles." Am. Compl. ¶ 79. These members "sought to make Justice Park an 'autonomous

zone' by 'keep[ing] cops' and 'keep[ing] the state . . . out of the park.'" *Id.* The Amended Complaint cites Redneck Revolt's insistence that it must step into the shoes of law enforcement by "tak[ing] the defense of our communities into our own hands." *Id.* ¶ 51. Also quoted is Redneck Revolt's ongoing belief that it must "not allow the state to have a direct monopoly on the use of force." *Id.* ¶ 79. Lastly, the Amended Complaint alleges that Redneck Revolt failed to "follow[] the statutory prerequisites" for exercising these functions. *Id.* ¶ 256.

C. This Court Should Enjoin Defendants from Continuing to Violate § 18.2-433.2 and § 18.2-174

Both the Alt-Right Defendants and Redneck Revolt urge the Court to avoid recognizing a private right of action to enjoin future violations of Virginia's anti-paramilitary and false-assumption statutes, even assuming that Plaintiffs have alleged conduct falling within both prohibitions. *See* Alt-Right Br. 14–16; Redneck Revolt Br. 11–18. Such reticence is unwarranted by precedent and improper under the circumstances of this case.

1. Plaintiffs' Allegations of Harm Warrant the Issuance of Injunctive Relief to Forestall Further Violations

Defendants are correct that the mere violation of a penal statute does not warrant injunctive relief. *Black & White Cars, Inc. v. Groome Transp., Inc.*, 247 Va. 426, 430 (1994). But "[t]he fact that a statute contains an express penalty for violation does not bar a court from considering the equitable remedy of injunction." Kent Sinclair, *Sinclair on Virginia Remedies* § 51-2[C], at 51-28 (5th ed. 2016). The Virginia Supreme Court has repeatedly endorsed "the long standing principle that an injunction is appropriate relief where violation of a penal statute or penal ordinance results in special damage to property rights which would be difficult to quantify." *Id.*

As an initial matter, the property-rights framework of *Black & White Cars* has never been held applicable to suits brought by governmental parties. Quite the contrary: the Virginia Supreme Court has deemed it "well settled that a court of equity has jurisdiction upon the application of . . .

a governmental subdivision to restrain by injunction acts which are a menace to the public rights or welfare," rather than to the government's own property rights. *Thomas v. City of Danville*, 207 Va. 656, 661 (1967). With that framework in mind, the Court upheld the issuance of an injunction, in a suit brought by a locality, against certain "violation[s] of the laws of the Commonwealth . . . designed to maintain the public peace." *Id.* at 658. The City of Charlottesville may likewise seek injunctive relief for harms to its residents and businesses stemming from violations of two statutes designed to maintain the public peace.

In any case, the non-City Plaintiffs have satisfied the *Black & White Cars* standard by alleging special damage to their property rights that would be difficult to quantify. The Amended Complaint contains the following allegations of property-based harms stemming from the events of August 12, 2017, to say nothing of the further harms Plaintiffs would endure should Defendants be permitted to return to Charlottesville to engage in unlawful activity:

- Before the Unite the Right rally, Plaintiff businesses and members of Plaintiff Downtown Business Association of Charlottesville (DBAC) "spent significant amounts of time and resources to understand and prepare for the risk of violence." Am. Compl. ¶ 138. Some Plaintiff businesses "invested in measures to secure their property from harm, including hiring additional staff and private security, boarding up their store windows, and installing blackout curtains." *Id.*

- Many Plaintiff restaurants and retail stores, and other members of Plaintiff DBAC, either closed early or never opened on August 12 "out of fear for the safety of their owners, employees, and property." *Id.* ¶ 139. Some Plaintiffs remained closed the next day, August 13. *Id.*

- Employees of many Plaintiff businesses opted not to show up for work on August 12 and 13 "out of fear for their safety." *Id.* ¶ 140.

- On August 12, two militia members stationed themselves in front of Plaintiff Alakazam Toys and Gifts, "interfering with its business." *Id.* ¶ 141. Alakazam locked its doors "in order to protect [its] patrons from physical harm." *Id.*

- The owners of Plaintiffs Hays + Ewing and Wolf Ackerman were unable to reach their offices on August 12, "because they felt it was unsafe to travel downtown." *Id.* ¶ 142.

- Plaintiff Quality Pie "shut down construction work for four days" after August 12, "thereby delaying its opening to customers." *Id.* ¶ 143.

- "[P]laintiff businesses and members of DBAC have experienced a marked decline in revenues" since August 12. *Id.* ¶ 144. "Would-be clients and customers have avoided . . . the downtown area in particular, because they fear the return of private militias and alt-right paramilitary groups." *Id.* "The public has also come to associate Charlottesville with paramilitary activity, diminishing Plaintiffs' business prospects and property values in Charlottesville." *Id.*

- Multiple Plaintiff businesses "have invested new efforts and resources into marketing to try to make up for the loss of business and reputational harms they have experienced." *Id.* ¶ 146. Plaintiff Champion Brewery, in particular, has had to compensate by "expand[ing] the distribution of its packaged products" and "invest[ing] significant amounts of time to encourage tourism to Charlottesville." *Id.*

- Due largely to "the association between Charlottesville and paramilitary activity," "[c]onfidence in Charlottesville as a quality place to live and work has been eroded." *Id.* ¶ 147. These changes have fallen particularly hard on Plaintiffs Hays + Ewing and Wolf Ackerman, two architectural design firms that have recently received "notably fewer inquiries for new building projects than anticipated based on past experience." *Id.* "Each architectural project is unique and takes several years to complete, making the amount of loss impossible to quantify." *Id.*

- Members of Plaintiffs Belmont-Carlton, Little High, and Woolen Mills neighborhood associations "felt unsafe in their homes" on August 12. *Id.* ¶ 149. Fearing for their children's safety, "residents either kept their children indoors or sent them out of town to stay with friends and family members." *Id.* "Neighborhood events planned for the weekend of August 12 were canceled, as well." *Id.*

- On August 12, "Defendants, many of them armed, trespassed on the property of Plaintiff neighborhood associations' members in traveling to and from the rally." *Id.* ¶ 150.

The Alt-Right Defendants contend that these property-based harms are irrelevant for purposes of applying *Black & White Cars*, because the underlying criminal statute must itself "confer[] . . . property rights." Alt-Right Br. 16. Redneck Revolt agrees, insisting that the *Black & White Cars* principle should be confined to the narrow class of "franchise property rights." Redneck Revolt Br. 14. The Court should reject this invitation to rewrite binding precedent.

Under *Black & White Cars*, injunctive relief should issue "where violation of a penal statute

. . . results in special damage to property rights which would be difficult to quantify." 247 Va. at 430. The Virginia Supreme Court did not say—and has never suggested—that only franchise rights qualify as property rights for these purposes. Confining that category to franchise rights would nonsensically exclude other more paradigmatic forms of property. A franchise represents only a "means of acquiring wealth," after all, not a form of "tangible and visible property." *Grand Int'l Bhd. of Locomotive Eng'rs v. Mills*, 43 Ariz. 379, 400 (1934). In an early decision enjoining the violation of a criminal provision, the Virginia Supreme Court explained that it had "enlarge[d] and broaden[ed] the originally narrower meaning of the term 'property rights'" by deeming franchise rights to fall within that category. *Long's Baggage Transfer Co. v. Burford*, 144 Va. 339, 354 (1926) (internal quotation marks omitted). But the Court made clear that equity will still protect more traditional forms of property, including by "prevent[ing] a threatened trespass." *Id.* at 353 (internal quotation marks omitted).

Redneck Revolt counsels that the *Black & White Cars* exception should not be allowed to "swallow the general rule." Redneck Revolt Br. 14. That is of course correct, and it is why the rule contains its own limiting principle: that the damage to property rights must "be difficult to quantify." *Black & White Cars*, 247 Va. at 430. That sensible limitation on equitable relief accounts for the vast majority of cases that Defendants insist mandate their unduly narrow approach. There is a simple reason that decisions enjoining the violation of a penal ordinance or statute are "primarily franchise cases": "In such cases it is clear that damages . . . are difficult to quantify. It would be difficult to determine exactly what business was lost because another interfered with a franchise." *Shepard v. AOC/VNC P'ship*, 61 Va. Cir. 261, at *2 (2003).

The Virginia Supreme Court's decision in *Landon v. Kwass*, 96 S.E. 764 (1918), is instructive in this regard. In that case, a plaintiff sought injunctive relief to prevent the erection of a wooden wall on adjacent property, in violation of an ordinance that restricted the erection of

buildings and structures within the fire limits of the town unless made of brick or stone. The Court denied the request—not because the plaintiff had failed to allege a harm to his property, but in part because the injury alleged (an "increase of the rate of fire insurance") could be fully repaired with damages. *Id.* at 765. Other decisions relied on by Defendant Redneck Revolt identified similar deficiencies. *See Dial A Car, Inc. v. Transp., Inc.*, 132 F.3d 743, 746 (D.C. Cir. 1998) ("Dial A Car states that its damages are 'more easily quantifiable' than the damages in *Black & White* . . . ."); *Patel v. Zillow, Inc.*, No. 17-CV-4008, 2017 WL 3620812, at *9 (N.D. Ill. Aug. 23, 2017) ("Plaintiffs make no argument that the damages they seek would be difficult to quantify.").

For this reason, Defendants are also wrong to invoke decisions refusing to afford relief for criminal violations where the plaintiffs ascribed a specific dollar value to their monetary losses. *See, e.g.*, *Vansant & Gusler, Inc. v. Washington*, 245 Va. 356, 358 (1993) ("[A]ppellant . . . s[ought] recovery against the defendants . . . in the sum of $308,553.07"); *Riverside Hosp. v. Optima Health Plan*, 82 Va. Cir. 250, at *1 (2011) (describing a claim for "damages . . . in the amount of $703,646"). It is also unremarkable that injunctive relief has been denied under criminal provisions that reserved enforcement authority to specific governmental actors,[8] or that authorized a private right of action for damages only.[9]

Imposing a rigid limitation on the issuance of injunctive relief would be misguided for yet another reason: equity abhors bright-line rules and fixed preconditions. Whether to issue an

[8] *See Landon*, 123 Va. at 766 ("The ordinance . . . reserves to the council the discretion to determine whether a building erected in violation thereof shall be torn down."); *Comfort v. City of Norfolk*, 82 Va. Cir. 89, at *2 (2011) (explaining that the relevant provisions vested enforcement authority exclusively with "the local building departments," "the director of public health," and "certain law enforcement officers"); *Dial A Car*, 132 F.3d at 745 (stating that the "primary purpose of the [underlying] statute" was "to consolidate responsibility for the regulation of the industry in a single administrative agency"); *Patel*, 2017 WL 3620812, at *7 ("The statute provides for criminal penalties, a civil penalty for up to $25,000 for each violation, and injunctive relief. Three different government actors may pursue that injunctive relief . . . .").

[9] *See Physicians Comm. for Responsible Medicine*, 283 Fed. Appx. 139, 145 (4th Cir. 2008) ("[T]he statute is not silent as to whether a private cause of action exists, but rather explicitly authorizes a private cause of action that is limited to only damages.").

injunction always "rests on sound judicial discretion to be exercised upon consideration of the nature and circumstances of a particular case." *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 60 (2008); *see also* 30A C.J.S. Equity § 2 (2018) ("There are no established rules and fixed principles laid down for application of equity.").

Just as the non-City Plaintiffs have identified property rights implicated by Defendants' unlawful activity, they have also alleged special damages to those property rights—ones that would be especially difficult to quantify. To take just one example, Redneck Revolt claims (at 15) that the "lost revenue or potential business opportunities" alleged by Plaintiff businesses are too "generalized" to count as special damages. But that is the very sort of harm alleged in *Black & White Cars*. *See Black & White Cars*, 247 Va. at 431 (holding that a likelihood of "fares lost" in the marketplace, "in conjunction with the inherent difficulty of establishing the quantum of lost profits in these circumstances, satisfies the required showing of special damages"). That Plaintiff businesses "have not identified a single person whose business [they] lost," Alt-Right Br. 19, is precisely the point. Plaintiffs cannot easily account for counterfactual transactions, just as the franchise-holding taxis in *Black & White Cars* could not pinpoint lost business opportunities resulting from a minuscule increase in the total amount of competition. *See* 247 Va. at 430 (indicating that 233 taxicabs had been issued certificates to operate and advertise).

2. Injunctive Relief Would Furnish More Effective and Complete Relief Than Criminal Prosecutions

Defendant Redneck Revolt urges the Court to stay its remedial hand on the theory that "a more effective, complete, and just remedy" would be to criminally prosecute each Redneck Revolt member who violated Va. Code §§ 18.2-433.2 and 18.2-174 on August 12, 2017. Redneck Revolt Br. 17. In fact, this case is a classic instance of when injunctive relief would furnish fuller and fairer relief.

For starters, as Redneck Revolt acknowledges, "the Commonwealth has sole enforcement

authority" to prosecute violations of penal statutes. *Id.* at 13 n.8. No Plaintiff is empowered to initiate criminal enforcement proceedings. The same would not be true of contempt proceedings, were an injunction to issue in this case. Redneck Revolt also suggests that Plaintiffs ought to have availed themselves of the so-called "citizen's warrant" procedure, pursuant to Va. Code § 19.2-72, enabling them to secure "severe felony penalties" for "these felony statutes." Redneck Revolt Br. 17. But magistrates are expressly forbidden from "issu[ing] an arrest warrant for a felony offense" at the urging of a private citizen unless an agent of the Commonwealth has authorized the arrest. Va. Code § 19.2-72. That required level of intermediation belies Redneck Revolt's suggestion that Plaintiffs need only make a probable-cause showing to trigger criminal enforcement.

Even were the "citizen's warrant" procedure available to Plaintiffs (as it would be for first-time violations of the false-assumption statute, a misdemeanor), injunctive relief would be far more effective than a "multiplicity of prosecutions," *Turner v. Hicks*, 164 Va. 612, 615 (1935) (quoting *Long's Baggage Transfer Co.*, 144 Va. at 353), which would not provide the forward-looking relief Plaintiffs seek. First, it would require a massive investigative undertaking to successfully identify the scores of Vanguard America, TWP, and Redneck Revolt members who violated criminal statutes on August 12. Even if that task could be accomplished, prosecuting each member seriatim would be a tremendous drain on scarce judicial and prosecutorial resources. Out-of-state defendants—likely the vast majority—would need to be extradited. And this multitude of prosecutions could never be completed in advance of August 11 and 12, 2018, when Defendant Kessler intends to hold a Unite the Right anniversary rally in Charlottesville. *See* Am. Compl. ¶¶ 6, 195–96.

Second, even if such prosecutions were successful, any resulting penalties for past conduct could not ensure that the same conduct would not be repeated in the future. *Cf. Stead v. Fortner*, 255 Ill. 468, 477 (1912) (explaining that a criminal prosecution "can only dispose of an existing

nuisance and cannot prevent renewal of the nuisance, for which a new prosecution must be brought"). For Defendant organizations, moreover, even if every person who violated §§ 18.2-433.2 and 18.2-174 last August could be successfully identified and prosecuted in advance of Defendant Kessler's planned rally, other members of those groups—not being personally subject to a court order—would remain free to attend in their place and commit similar violations. Pursuing post hoc, individualized prosecutions for repetitive harm *after* it has occurred can hardly be thought a more effective, complete, and just remedy than enjoining organizations from committing those violations in the first place. And although Defendants could choose to violate any injunction issued against them, the forward-looking remedy sought by Plaintiffs would not depend solely on arrests and prosecutions for enforcement. Finally, to the extent that Defendants suggest that arrests and prosecutions for future violations are an adequate remedy, public safety might well counsel against arresting entire groups of people carrying dangerous weaponry during volatile public demonstrations.

Redneck Revolt's concern about "having liberty interests deprived based on alleged criminal violations," Redneck Revolt Br. 16, is misplaced. Courts have "frequently and uniformly rejected" the notion that equitable remedies unlawfully deprive defendants of constitutional criminal-procedure protections, as "such injunctive restraints are not criminal in character but are civil." *Sinclair on Virginia Remedies* § 51-2[C], at 51-28. An injunction based on a criminal statute is identical in character to an injunction based on a civil statute: each is issued at the conclusion of civil proceedings and forbids a defendant from engaging in particular conduct, with violations punishable by contempt. When criminal contempt proceedings do arise, the enjoined parties are entitled to the full constitutional protections accorded to criminal defendants. It is unclear why Redneck Revolt believes that its members' liberty interests would be better served if they were criminally prosecuted rather than civilly enjoined. And equitable relief will of course

issue only at the hand of a "neutral and impartial actor[]," Redneck Revolt Br. 16—this Court.

III. Plaintiffs Have Stated a Public-Nuisance Claim

Count 5 of Plaintiffs' Amended Complaint alleges that Defendants have engaged in, and will continue to engage in, conduct that amounts to a public nuisance under the common law of Virginia. "When Defendants engage in paramilitary activity in public areas independent of any civil authority," the Amended Complaint states, "their conduct necessarily threatens public health, safety, peace, and comfort, and the general welfare." Am. Compl. ¶ 264. Defendants deny that their alleged conduct would constitute a public nuisance under state law. *See* Alt-Right Br. 22; Redneck Revolt Br. 27–28. This Court should reject Defendants' crabbed understanding of the tort of public nuisance.

Plaintiffs' public-nuisance theory is not "based on a violation of a criminal statute." Redneck Revolt Br. 26. Plaintiffs simply allege that Defendants' anticipated conduct would qualify as a public nuisance, and that it should be enjoined for that reason. This is a straightforward application of a well-established common-law doctrine.[10]

A public nuisance is "an unreasonable interference with a right common to the general public," *Restatement (Second) of Torts* § 821B(1) (1979), including "public safety, public peace, and public comfort or convenience in public facilities," *Va. Prac. Tort & Personal Injury Law* § 8:7 (2017). The claimed interference must be "substantial," for "[t]he law does not concern itself with trifles" and "petty annoyance[s]." *Id.* §§ 8:4, 8:7. It is often said that "[a] public nuisance is a condition that is a danger to the public." *Taylor v. City of Charlottesville*, 240 Va. 367, 372 (1990); *see also Chapman v. City of Virginia Beach*, 252 Va. 186, 192 (1996) (same). In

[10] The Alt-Right Defendants wrongly assert (at 21) that the General Assembly abrogated common-law public-nuisance claims by passing Va. Code §§ 48.1 *et seq.*, a statutory mechanism for abating public nuisances that dates to the early 20th century. *See* Va. Code § 1520 (1919). No court has ever deemed this remedial process to be exclusive, as demonstrated by the large body of decisions adjudicating public-nuisance claims brought by private parties in Virginia state court.

determining whether particular conduct would present a danger to the public, a court may consider "whether [it] is proscribed by a statute," among other factors. *Restatement (Second) of Torts* § 821B(2)(b).

The allegations in the Amended Complaint readily state a claim for public nuisance. Although Defendants' precise historical conduct cannot be determinative in this suit for forward-looking relief, the Amended Complaint exhaustively describes how Defendants engaged in the coordinated use of force—or projected a willingness to do so—at a volatile demonstration in downtown Charlottesville. This behavior substantially and unreasonably interfered with the general public's ability to gather in Emancipation and Justice Parks, and on nearby streets and sidewalks, free from the danger of violence inflicted by Defendants' coordinated use of weaponry. Courts have explicitly recognized that unauthorized military activity threatens "the public peace, safety and good order." *Presser*, 116 U.S. at 268; *see also Dunne*, 94 Ill. at 141 (stating that unofficial military bodies "endanger the public peace" and "endanger the public security"); *Vietnamese Fishermen's Ass'n*, 543 F. Supp. at 218 (concluding that unauthorized "[m]ilitary organizations are dangerous wherever they exist"); *Murphy*, 166 Mass. at 172 (remarking that such organizations adversely "affect the public security, quiet, and good order").

Rather than considering the substantiality or unreasonableness of the alleged interference, Defendants seek to reorient the inquiry by focusing on the *frequency* with which the relevant acts must occur. The Alt-Right Defendants insist (at 22) that a condition "must prevail at all times and under all circumstances" in order to constitute a public nuisance. But the Virginia Supreme Court used that phrase to describe the category of "nuisance[s] *per se*." *Price v. Travis*, 149 Va. 536, 547 (1927); *see also Turner v. Caplan*, 268 Va. 122, 128 (2004) (explaining that "the term nuisance *per se*" is "restrict[ed] . . . to such things as are nuisances at all times and under all circumstances") (internal quotation marks omitted). That sweeping phrase also appeared in the distinct context of

announcing "the principles upon which the law of public nuisances *as to highways* is based." *Price*, 149 Va. at 546 (emphasis added); *cf. Harman v. Nininger*, 83 Va. Cir. 280, at *4 (2011) ("The highway was not continuously obstructed and therefore a public nuisance was not created.").

Both the Alt-Right Defendants and Redneck Revolt also claim that conduct cannot be a public nuisance unless it is more than "sporadic or isolated," Alt-Right Br. 22; Redneck Revolt Br. 23, the implication being that Defendants' alleged conduct—occurring only intermittently—necessarily cannot qualify as a public nuisance. But that phrase has been used in the case law in contradistinction to the governing legal standard—whether an interference was (or would be) substantial. *See Breeding ex rel. Breeding v. Hensley*, 258 Va. 207, 213 (1999) ("More than sporadic or isolated conditions must be shown; the interference must be 'substantial'"). The concept of a public nuisance carries "no fixed duration or definite time limit," for "[e]ach case must be adjudged according to its own circumstances." *Pope v. Commonwealth*, 109 S.E. 429, 437 (Va. 1921); *see also Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.2d 580, 596 (Tex. 2016) (clarifying that the "duration or recurrence of the interference is merely one—and not necessarily a conclusive—factor in determining whether the damage is so substantial as to amount to a nuisance") (internal quotation marks omitted).

Redneck Revolt misunderstands the basis for Plaintiffs' requested relief. According to Redneck Revolt, Plaintiffs seek an injunction based solely "on the allegation that the single incident of August 12 has given rise to damages sufficient to warrant an injunction." Redneck Revolt Br. 24. But Plaintiffs, as their Amended Complaint makes clear, filed this suit to prevent injuries likely to result from *anticipated* violations of state law, including on Defendant Kessler's planned anniversary rally. Am. Compl. ¶¶ 195–96. The Amended Complaint's backward-looking factual allegations are merely probative of the types of conduct that this Court can conclude are reasonably likely to occur in the future. Redneck Revolt's contention that a so-called "single-

incident exception" has been "limited to claims for damages," Redneck Revolt Br. 24, is thus entirely beside the point. The plaintiffs in such cases sought damages precisely because they did not allege that the causes of their injuries would occur again. Because Plaintiffs here seek purely prospective relief, this is inherently a "multi-incident" case.[11]

The organized use of force outside the reach of public accountability, as well as implicit threats to engage in such activity in public settings, fall comfortably within the category of substantial and unreasonable interferences with rights held in common by the public. Courts have held each of the following to constitute a public nuisance: the emission of loud music from a restaurant, *City of Va. Beach v. Murphy*, 239 Va. 353, 356 (1990); a single act of indecent exposure, *Truet v. State*, 3 Ala. App. 114, 116 (1912); a single act of public urination on a commercial street, *People v. McDonald*, 137 Cal. App. 4th 521, 535–37 (2006); and a single prize fight, *Commonwealth v. McGovern*, 75 S.W. 261, 265 (Ky. 1903). It would require no doctrinal gymnastics to reach the same conclusion on the allegations presented here, for the relevant factual allegations provide far more detail than necessary to inform each Defendant of the "true nature of the claim" against it. Rule 1:4(d). At the very least, because "there are factual issues" remaining to be resolved through discovery, *Tickle v. City of Roanoke*, 81 Va. Cir. 324, at *2 (2010), Plaintiffs should not be "precluded at this stage of the proceeding from going forward with their case," *Breeding*, 258 Va. at 214.

Finally, neither party contests that the City may sue to enjoin a public nuisance.[12] It is statutorily authorized to do so, after all, to protect the safety and welfare of its citizens. *See* Va.

[11] To be clear, Plaintiffs could seek injunctive relief even if no violative conduct had previously occurred. *See Restatement (Second) of Torts* § 821B, com. i. ("[F]or an injunction harm need only be threatened and need not actually have been sustained at all.").

[12] Because the City's standing is uncontested and relief with respect to the City would provide relief as to all Plaintiffs, it is unnecessary to consider the argument that the non-City Plaintiffs cannot demonstrate the harm required to sustain a public-nuisance claim.

Code § 15.2-900. "[A]batement of a public nuisance" has long been deemed "an exercise of the police power." *Lee v. City of Norfolk*, 281 Va. 423, 439 (2011); *see also Thomas*, 207 Va. at 661 ("It is well settled that a court of equity has jurisdiction upon the application of . . . a governmental subdivision to restrain by injunction acts which are a menace to the public rights or welfare."); *City of Rochester v. Charlotte Docks Co.*, 114 N.Y.S.2d 37, 41 (N.Y. Sup. Ct. 1952) ("[A] municipal corporation . . . has the capacity and is a proper party to bring an action to restrain a public nuisance . . . .") (internal quotation marks omitted).

IV. Plaintiffs' Requested Relief Would Not Implicate Defendants' First and Second Amendment Rights

Defendants next argue that the proposed injunctive relief would infringe their First and Second Amendment rights.[13] Yet instead of citing any legal authority for these propositions, Defendants tellingly offer only threadbare assertions. The Alt-Right Defendants complain of encroachments on their "[f]reedom of speech, [f]reedom to peaceably assemble," and "right to bear arms," but decline to "delv[e] . . . into the immense law that applies." Alt-Right Br. 19–20. Defendant Redneck Revolt, too, simply identifies the concepts of the "rights to free speech and group assembly at public protests" and the "right to bear arms," with no supporting argumentation. *See* Redneck Revolt Br. 29. It also invokes a supposed "inherent right to . . . community defense," *id.* 16 n.9, rather than one with any foundation in judicially enforceable law.

Defendants' contentions are unsupportable. Even if Defendants' objections enjoyed minimal plausibility under the governing case law, statutes enacted by the General Assembly—which "carr[y] a strong presumption of validity"—may not be invalidated unless they "clearly violate[] a provision of the United States or Virginia Constitutions." *Marshall v. N. Va. Transp.*

[13] Analogous protections under the Virginia Constitution are coextensive with those guaranteed by the First and Second Amendments to the U.S. Constitution. *See Elliott v. Commonwealth*, 267 Va. 464, 473–74 (2004) (First Amendment); *DiGiacinto*, 281 Va. at 134 (Second Amendment).

Auth., 275 Va. 419, 427 (2008). Defendants have come nowhere close to satisfying that standard.[14]

A. The First Amendment

The Strict Subordination Clause, the anti-paramilitary statute, and the false-assumption statute do not regulate speech. They instead contain generally applicable prohibitions on conduct deemed harmful to public safety. These provisions affect what persons "m[ay] *do* . . . not what they may or may not *say*." *Rumsfeld v. FAIR*, 547 U.S. 47, 60 (2006). Yet even if the provisions above could be conceived as targeting expression rather than conduct, they would not be subject to heightened scrutiny. That is because they plainly apply without regard to "the topic discussed or the ideas or message expressed." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015).

Even generally applicable prohibitions on conduct can trigger First Amendment scrutiny in the context of specific acts that are "sufficiently imbued with elements of communication" to give rise to as-applied challenges. *Spence v. Washington*, 418 U.S. 405, 409 (1974). But the U.S. Supreme Court has rejected the notion "that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." *Texas v. Johnson*, 491 U.S. 397, 404 (1989) (quoting *United States v. O'Brien*, 391 U.S. 367, 376 (1968)). It is "possible to find some kernel of expression in almost every activity a person undertakes," of course, but "such a kernel is not sufficient to bring the activity within the protection of the First Amendment." *City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989). To qualify as so-called "symbolic speech" or "expressive conduct," the conduct in question must be "inherently expressive." *FAIR*, 547 U.S. at 66.

Even if Defendants' militaristic and coordinated weapons-wielding could somehow be

[14] Redneck Revolt asserts (at 29) that its constitutional concerns are "exacerbated . . . by the participation of the City in this case as a government actor." Yet again, Redneck Revolt mischaracterizes the nature of the City's participation as a plaintiff in this case. The City is merely suing to vindicate its rights under state law. Plaintiffs' identities are entirely irrelevant to whether Redneck Revolt's constitutional rights will be violated if the Court orders it to refrain from engaging in particular conduct.

deemed inherently expressive, the underlying message—an implicit threat to engage in violence—would not be protected by the First Amendment. *See Virginia v. Black*, 538 U.S. 343, 360 (2003) (explaining that communications made "with the intent of placing [another] in fear of bodily harm or death" are not constitutionally protected). And even if the First Amendment were implicated, the state-law prohibitions invoked by Plaintiffs would easily survive an as-applied First Amendment challenge. That is because they "promote[] a substantial government interest"—namely, protection of public safety and good order—"that would be achieved less effectively absent the regulation." *United States v. Albertini*, 472 U.S. 675, 689 (1985).

B. The Second Amendment

The Second Amendment guarantees an individual right to self-defense, not a right to wield weapons in coordination with others. Defendants do not have a Second Amendment right to form private armies; they do not have a Second Amendment right to substitute themselves for law enforcement; and they do not have a Second Amendment right to use, or prepare to use, firearms or dangerous techniques in a civil disorder.

Before the U.S. Supreme Court took up the question in 2008, scholars had long debated how to harmonize the Amendment's prefatory language—"[a] well regulated Militia, being necessary to the security of a free State"—with the idea of a judicially enforceable "right of the people to keep and bear arms." U.S. Const. amend. II. The Court's decision made one point unmistakably clear: the right is secured to people "as individuals," and "not as members of a fighting force." *Heller*, 554 U.S. at 593. The Court has specifically held that the Second Amendment embodies "an individual citizen's right to self-defense." *Id.* at 603; *see also McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality) (reiterating that the Amendment "protects a personal right to keep and bear arms for lawful purposes"); *DiGiacinto*, 281 Va. at 134 (explaining that the Amendment safeguards a right to "[i]ndividual self-defense").

When persons associate together to train in the use of firearms, *Heller* went on to explain, they must "observ[e] in doing so the laws of public order." *Heller*, 554 U.S. at 618 (internal quotation marks omitted).

Heller also affirmed the continued vitality of certain types of "longstanding prohibitions" on the use and possession of firearms. *Id.* at 626. Prohibitions on unauthorized military activity readily fit that descriptor. Not only are these sorts of regulations longstanding and pervasive, but there is also an unbroken tradition of upholding them against Second Amendment challenges. *See Presser*, 116 U.S. at 265, 267; *Vietnamese Fishermen's Ass'n*, 543 F. Supp. at 210; *Dunne*, 94 Ill. at 140–41; *Murphy*, 166 Mass. at 173; *Gohl*, 46 Wash. at 411. On this point, *Heller* explicitly reaffirmed *Presser*'s holding that "the Second Amendment . . . does not prevent the prohibition of private paramilitary organizations." 554 U.S. at 621. Defendants have cited, and Plaintiffs' research has uncovered, no decision holding that the Second Amendment protects a right to engage in coordinated arms-bearing outside of institutions subject to governmental control.

The conduct Plaintiffs seek to enjoin lies nowhere close to the Second Amendment's core: the right to individual "self-defense *within the home*." *McDonald*, 561 U.S. at 780 (plurality) (emphasis added); *see also United States v. Masciandaro*, 638 F.3d 458, 469 (4th Cir. 2011) ("[A]s we move outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense."). Moreover, Plaintiffs are not relying on laws that "tak[e] away the people's arms." *Heller*, 554 U.S. at 598. The relevant prohibitions do not restrict the possession or use of any class of weapon, nor do they limit individuals' ability to arm themselves for personal self-defense in any setting (including at public rallies). It would understate the case considerably to say that Plaintiffs' proposed injunction would "leave ample channels for keeping and for carrying arms." *Wrenn v. District of Columbia*, 864 F.3d 650, 662 (D.C. Cir. 2017). So even if Defendants' group-based conduct fell within the outermost margins

of Second Amendment protection, the relevant prohibitions would easily satisfy the requisite means-end scrutiny. Each is a narrowly crafted effort to advance the Commonwealth's "compelling" interest "in the protection of its citizenry and the public safety." *Kolbe v. Hogan*, 849 F.3d 114, 139 (4th Cir. 2017) (en banc).

V. Equitable Relief Is Appropriate Under the Circumstances

Finally, the Alt-Right Defendants argue (at 16–20) that Plaintiffs have not alleged facts that could give rise to an award of injunctive relief. For largely the reasons explained above, the Amended Complaint's allegations against each Defendant—and all reasonable inferences therefrom—have demonstrated "the existence of a legal basis" for the issuance of an injunction.[15] *Friends of the Rappahannock*, 286 Va. at 44.

Under Virginia law, injunctive relief is appropriate when four factors are present: (1) the defendant "is violating, or threatening to violate, a substantial right or interest of the plaintiff"; (2) the plaintiff's injury "will be irreparable if an injunction is not entered"; (3) the plaintiff "has no adequate remedy using any of the available legal causes of action or procedures"; and (4) "[t]he balance of hardships and other equitable considerations favor enjoining defendants' conduct." *Sinclair on Virginia Remedies* § 51-2[A], at 51-11. Factors two and three have proven to be largely interchangeable. *Id.* § 51-2[A], at 51-19 ("If one is threatened with irreparable injury it is because there is no adequate remedy elsewhere, and if one has no adequate remedy, he will surely suffer irreparable harm."). A legal remedy may be deemed inadequate if it is "materially less helpful to the plaintiff." *Id.* § 51-2[A], at 51-15.

[15] The Alt-Right Defendants claim (at 22) that Plaintiffs have "unclean hands," which would disentitle them from seeking equitable relief. The only affirmative misconduct ascribed to Plaintiffs is an alleged failure to name as defendants certain left-leaning organizations. A plaintiff's selection of defendants plainly cannot constitute "fraud, illegality, tortious conduct or the like." *Cline v. Berg*, 273 Va. 142, 147 (2007) (internal quotation marks omitted). Even so, the list of defendants in this case attests to Plaintiffs' neutrality in the application of their legal theories and assertion of their legal rights.

As Parts I through IV of this Brief explain, Plaintiffs have stated claims for relief under each count of the Amended Complaint. The factual allegations excerpted above, moreover, demonstrate that Plaintiffs' future injuries could not be "adequately compensated in damages." *Genheimer v. Crystal Spring Land Co.*, 155 Va. 134, 142 (1930). Nor would the Commonwealth's post hoc prosecutorial authority furnish "a more effective, complete, and just remedy," Redneck Revolt Br. 17, than a forward-looking injunction applicable to each member of the Defendant groups. The balance of hardships also cuts strongly in favor of injunctive relief under the circumstances alleged. Plaintiffs are not asking this Court to preclude Defendants from speaking freely, from peaceably assembling, from exercising their "individual right to use arms for self-defense," *Heller*, 554 U.S. at 603, or from doing all three at the same time. This suit simply seeks to prevent Defendants from engaging in the *coordinated* use of weaponry at public events outside the reach of public accountability, in violation of Virginia's Strict Subordination Clause and its anti-paramilitary and false-assumption statutes. Were this behavior to become normalized, political rallies might regularly devolve into armed clashes between oppositional forces.

Defendant Redneck Revolt insists (at 28–29) that the Amended Complaint offers no basis for concluding that the group will return to Charlottesville and engage in unlawful conduct once again. This argument, too, falls short. The Amended Complaint cites Defendant Kessler's public commitment to holding a Unite the Right anniversary rally in Charlottesville on August 11 and 12, 2018. *See* Am. Compl. ¶¶ 195–96. Redneck Revolt attended Kessler's first Unite the Right rally because of its refusal to "[l]et[] fascists organize publicly . . . without challenge." *Id.* ¶ 78. The group believes that it must "not allow the state to have a direct monopoly on the use of force," *id.* ¶ 79, and that "[w]e have to be prepared to take the defense of our communities into our own hands," *id.* ¶ 51. Among Redneck Revolt's core convictions is that "[i]t is time to turn our guns on our real enemies." *Redneck Revolt Organizing Principles*, *supra* (cited in Am. Compl. ¶ 51

n.27). Redneck Revolt members "are not pacifists" and expect "to act militantly" in the future. *Id.* The Amended Complaint further alleges that Redneck Revolt "look[s] forward to building stronger defense networks together" with like-minded organizations. Am. Compl. ¶ 227.

This issue—like all others—will undoubtedly "be the subject of elaboration when the evidence is presented." *Breeding*, 258 Va. at 213. "But that does not mean that the plaintiffs are precluded at this stage . . . from going forward with their case." *Id.* at 214. Redneck Revolt did not reveal its plans for last year's Unite the Right rally until just two days before the event. *See* Am. Compl. ¶ 78. And if the group had no intention of reprising its August 2017 conduct, it presumably would not be litigating to secure its ability to engage in coordinated arms-bearing in Charlottesville once again. Plaintiffs have adequately alleged to a "reasonable probability" that Redneck Revolt—along with the Alt-Right Defendants—will return to Charlottesville and wield weapons in concert once again. *WTAR Radio-TV Corp. v. City Council of City of Virginia Beach*, 216 Va. 892, 895 (1976).

At a minimum, the Court should permit Plaintiffs' request for declaratory relief to proceed. Neither the Alt-Right Defendants nor Redneck Revolt contests that Plaintiffs have alleged a sufficient basis for the issuance of declaratory relief, assuming that one or more of their claims is grounded in a valid legal theory. And for good reason: "[D]eclaratory relief involves a lesser showing than injunctive relief," requiring no demonstration of irreparable harm or the relative balance of hardships. *Sinclair on Virginia Remedies* § 4-1[A], 4-19, 20 (emphasis removed). Plaintiffs have certainly alleged "a controversy beyond the realm of speculation." *Martin v. Garner*, 286 Va. 76, 83 (2013).

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that this Court deny Defendants' Demurrers.

May 15, 2018

Respectfully submitted,

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
DOUGLAS N. LETTER*
JOSHUA A. GELTZER*
AMY L. MARSHAK*
ROBERT D. FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

LISA ROBERTSON (VSB #32486)
Acting City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

*Admitted *pro hac vice*.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE; DOWNTOWN BUSINESS ASSOCIATION OF CHARLOTTESVILLE; CHAMPION BREWING CO., LLC; ESCAFÉ; IRON PAFFLES AND COFFEE; MAS TAPAS; MAYA RESTAURANT; QUALITY PIE; RAPTURE RESTAURANT AND NIGHT CLUB; ALAKAZAM TOYS AND GIFTS; ALIGHT FUND LLC; ANGELO JEWELRY; HAYS + EWING DESIGN STUDIO, PC; WOLF ACKERMAN DESIGN, LLC; WILLIAMS PENTAGRAM CORPORATION; BELMONT-CARLTON NEIGHBORHOOD ASSOCIATION; LITTLE HIGH NEIGHBORHOOD ASSOCIATION; and WOOLEN MILLS NEIGHBORHOOD ASSOCIATION,

Plaintiffs,

v.

PENNSYLVANIA LIGHT FOOT MILITIA; NEW YORK LIGHT FOOT MILITIA; VIRGINIA MINUTEMEN MILITIA; AMERICAN FREEDOM KEEPERS, LLC; III% PEOPLE'S MILITIA OF MARYLAND; AMERICAN WARRIOR REVOLUTION; REDNECK REVOLT; SOCIALIST RIFLE ASSOCIATION; TRADITIONALIST WORKER PARTY; VANGUARD AMERICA; LEAGUE OF THE SOUTH, INC.; NATIONAL SOCIALIST MOVEMENT; JASON KESSLER; ELLIOTT KLINE; CHRISTIAN YINGLING; GEORGE CURBELO; EUGENE WELLS; RICHARD WILSON; GARY SIGLER; JOSHUA SHOAFF; MATTHEW HEIMBACH; CESAR HESS; SPENCER BORUM; MICHAEL TUBBS; and JEFF SCHOEP,

Defendants.

Case No. CL 17000560-00

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

TABLE OF CONTENTS

I.
INTRODUCTION

1. The establishment of private armies is inconsistent with a well-ordered society and enjoys no claim to protection under the law. Indeed, Virginia law has long recognized the threat to civil order and public safety posed by organized groups prepared to use force outside the careful strictures of the Commonwealth's supervision. In language that dates back to the Virginia Declaration of Rights of 1776, Article I, Section 13 of the Virginia Constitution provides that "in all cases the military should be under strict subordination to, and governed by, the civil power." A section of the Virginia Code is dedicated to prohibiting "unlawful paramilitary activity," as specified therein. *See* Va. Code Ann. § 18.2-433.2. And another state statute forbids falsely assuming the functions of any peace officer or law-enforcement officer. *See id.* § 18.2-174.

2. As the United States Supreme Court has long recognized, "Military organization and military drill . . . are subjects especially under the control of the government of every country. They cannot be claimed as a right independent of law." *Presser v. Illinois*, 116 U.S. 252, 267 (1886). And for good reason: "[T]he proliferation of private military organizations threatens to result in lawlessness and destructive chaos." *Vietnamese Fishermen's Ass'n v. Knights of the Ku Klux Klan*, 543 F. Supp. 198, 216 (S.D. Tex. 1982).

3. These dangers were vividly demonstrated at the "Unite the Right" rally at Emancipation Park in Charlottesville, Virginia, on August 12, 2017. Touted as an opportunity to protest the removal of a controversial Confederate statue, the event quickly escalated well beyond such constitutionally protected expression. Instead, private military forces transformed an idyllic college town into a virtual combat zone.

4. Several white-nationalist organizations came to Charlottesville to fight. Applying techniques developed well in advance, affiliated bands of alt-right warriors used clubs, flagpoles, and shields to batter their ideological opponents. Sporting matching uniforms and weaponry—and with command structures to coordinate their actions—they functioned as paramilitary units. These paramilitary organizations and their leaders (the Alt-Right Defendants) wielded their weapons on August 12 not "as individuals" exercising their Second Amendment right to self-defense, but "as members of a fighting force." *District of Columbia v. Heller*, 554 U.S. 570, 593 (2008). Just as they had anticipated and indeed desired, these groups encountered significant resistance from counter-protestors within the so-called Antifa and other movements, many of whom fought back with comparable intensity, though without the hallmarks of private armies that characterized the Alt-Right Defendants' contributions to the day's violence.

5. Other Defendants—self-professed private militia groups and their commanders (Militia Defendants)—purported to function as peacekeepers. These vigilante militia members carried assault rifles as they patrolled the sidewalks in combat boots, military-grade body armor, and, in most cases, camouflage uniforms. They were equipped to inflict massive harm upon a moment's notice from their commanders. Whatever their stated intentions, these groups terrified local residents and caused attendees to mistake them for authorized military personnel. In reality, they answered to no governmental authority, and their paramilitary activity draws no support from the Second Amendment, which protects an individual right to self-defense and extols the virtues of a "well regulated Militia," *Heller*, 554 U.S. at 576, while creating no right to form unregulated private armies or private peacekeeping forces, *Presser*, 116 U.S. at 267.

6. Defendants' unlawful paramilitary activity shows no signs of abating. The Commonwealth of Virginia and the City of Charlottesville have taken on talismanic significance

in the white-nationalist community. It was in Charlottesville that an online clique of ethno-statists became a movement with real destructive force—that they began "stepping off the internet in a big way."[1] Charlottesville has been besieged repeatedly by these groups, and key organizers and leaders of the Unite the Right rally have pledged to return to Charlottesville as often as possible. They made good on their promise in October 2017, reappearing at Emancipation Park in a torchlit procession designed to intimidate local residents. A co-organizer of Unite the Right closed out the incident by leading his followers in chanting, "We will be back!"[2] And the principal organizer of Unite the Right, Defendant Jason Kessler, has vowed to hold another rally in Emancipation Park on August 11 and 12, 2018, the one-year anniversary of Unite the Right.[3]

7. As demonstrated at the Unite the Right rally, several alt-right groups have become increasingly militarized and appear to regard collective armament as an indispensable means of showcasing their physical influence. The prevalence of such paramilitary units at the promised future rallies will, in turn, continue to attract private militia groups that regard the alt-right movement's destructive capabilities as justification for undertaking unauthorized peacekeeping missions.

8. This suit does not seek to restrict the individual Second Amendment right to arm oneself for self-defense. Nor would it imperil Defendants' First Amendment rights to peaceably assemble and express their political views, however abhorrent they might be to others. Instead, it

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[1] *Charlottesville: Race and Terror – VICE News Tonight (HBO)*, YOUTUBE, Aug. 14, 2017, https://www.youtube.com/watch?v=P54sP0Nlngg (7:57 mark) (quoting *Daily Stormer* author Robert "Azzmador" Ray).
[2] Richard Spencer, *Back in Charlottesville*, PERISCOPE, Oct. 7, 2017, https://www.pscp.tv/RichardBSpencer/1yoKMpodMMexQ?t=27 (15:44 mark).
[3] Jason Kessler, *Back to Charlottesville (UTR Anniversary Rally)*, REAL NEWS WITH JASON KESSLER, Nov. 29, 2017, http://jasonkessler.us/2017/11/29/back-to-charlottesville-utr-anniversary-rally/.

aims to restore the longstanding public-private equilibrium disrupted by Defendants' unlawful paramilitary conduct. In Charlottesville today, as through centuries of American tradition, the government alone retains a monopoly on the organized use of force. "No independent military company has a constitutional right to parade with arms in our cities and towns." *Commonwealth v. Murphy*, 166 Mass. 171, 173 (1896).

9. Plaintiffs—the civilian government whose authority to protect public safety is undercut by the presence of unauthorized private armies, the Charlottesville residents who were terrorized on August 12, and the local businesses that have lost significant revenues as a result—seek declaratory and injunctive relief to prevent Defendants from returning to Virginia organized as military units and engaging in paramilitary activity. Without such relief, Charlottesville will be forced to relive the frightful spectacle of August 12: an invasion of roving paramilitary bands and unaccountable vigilante peacekeepers.

II.
PARTIES

10. Plaintiff City of Charlottesville is a political subdivision of the Commonwealth of Virginia.

11. Plaintiff Downtown Business Association of Charlottesville (DBAC) is a not-for-profit, volunteer-run organization. Incorporated in 2000, DBAC has over 75 members, consisting of restaurants, merchants, and other local businesses. DBAC is dedicated to promoting commerce in downtown Charlottesville, Virginia, and to ensuring its member businesses' success.

12. Plaintiff Champion Brewing Company, LLC, is a brewery and tap room founded in Charlottesville, Virginia, in 2012. Champion's Charlottesville Tap Room and Brasserie

Saison are located in downtown Charlottesville, and Champion's packaged products advertise the restaurant's Charlottesville location.

13. Plaintiff Escafé is a restaurant in downtown Charlottesville, Virginia, serving locally sourced, seasonal American cuisine. Escafé is incorporated under the name Estcafe, LLC.

14. Plaintiff Iron Paffles and Coffee is a restaurant in downtown Charlottesville, Virginia, that serves locally sourced sandwiches, coffee, and juices. Iron is a sole proprietorship.

15. Plaintiff MAS Tapas is a small Spanish restaurant located in the Belmont neighborhood of Charlottesville, Virginia, that believes in fostering diversity, community, and unity. MAS is incorporated under the name Sweet Potato & Rabe, LLC.

16. Plaintiff Maya Restaurant is a restaurant located in downtown Charlottesville, Virginia, that specializes in locally sourced southern food. Maya is incorporated under the name Backwater, Inc.

17. Plaintiff Quality Pie is a restaurant in the Belmont neighborhood of Charlottesville, Virginia. Quality Pie is currently undergoing renovations prior to its official opening. Quality Pie is incorporated under the name Avon 309 LLC.

18. Plaintiff Rapture Restaurant and Night Club is a restaurant, bar, and dance club located in downtown Charlottesville, Virginia, that specializes in southern cooking. Rapture is incorporated under the name Rapture, Inc.

19. Plaintiff Alakazam Toys and Gifts is an independent toy store located in downtown Charlottesville, Virginia, that seeks to foster creativity, exploration, and imaginative play. Alakazam is incorporated under the name AlakaZam LLC.

20. Plaintiff Alight Fund LLC is an investment firm that does business and has its principal offices in downtown Charlottesville, Virginia.

21. Plaintiff Angelo Jewelry is a contemporary jewelry gallery located in downtown Charlottesville, Virginia. Angelo Jewelry is incorporated under the name Marraccini Designs, Ltd.

22. Plaintiff Hays + Ewing Design Studio, PC, is an architectural design firm that does business and has its principal office in downtown Charlottesville, Virginia. Hays + Ewing focuses on green design, and many of its clients are individuals, families, and businesses considering moving to Charlottesville from other locations.

23. Plaintiff Wolf Ackerman Design, LLC, is an architectural design firm that does business and has its principal offices in downtown Charlottesville, Virginia. Wolf Ackerman specializes in modern design, and the majority of its clients are commercial entities in Charlottesville, Virginia.

24. Plaintiff Williams Pentagram Corporation is a property owner in downtown Charlottesville, Virginia. Williams Pentagram owns properties located at 101 Third Street SE and 222 East Main Street, Charlottesville, Virginia.

25. Plaintiff Belmont-Carlton Neighborhood Association (BCNA) is a not-for-profit corporation that represents residents and businesses in the Belmont-Carlton area of southeast Charlottesville, Virginia. The Belmont-Carlton area lies between Sixth Street SE, Moore's Creek, and the CSX railroad. BCNA's mission is to identify and advocate for the needs of the Belmont-Carlton community.

26. Plaintiff Little High Neighborhood Association (LHNA) is an association of residents living within the Little High neighborhood of Charlottesville, Virginia. Established in

2016, LHNA is governed by a board of directors and includes over 50 dues-paying households in the Little High area. LHNA's mission includes maintaining the safety of the Little High neighborhood.

27. Plaintiff Woolen Mills Neighborhood Association (WMNA) is an association of residents living within the Woolen Mills neighborhood of Charlottesville, Virginia, and Albemarle County, Virginia. Established in 1980, WMNA is governed by a board of directors and comprised of all people residing within the Woolen Mills area who have expressed interest in the Association. WMNA's mission includes representing the interests of its residents and maintaining the Woolen Mills neighborhood as a wholesome, safe, and pleasant place to live.

28. Defendant Jason Kessler was one of the primary organizers of the Unite the Right rally on August 12, 2017, and the illegal paramilitary activity that occurred there. He solicited and facilitated the attendance of alt-right paramilitary organizations and issued operational orders to them on August 12. In the weeks before the rally, Kessler also reached out to Defendant Christian Yingling of the Pennsylvania Light Foot Militia, as well as C.J. Ross of the Virginia Three Percenters—a local chapter of a nationwide militia organization—to request a private militia presence on August 12. He organized a torchlit rally in Charlottesville, Virginia, on May 13, 2017, which protested the removal of the Robert E. Lee statue in what has since been renamed Emancipation Park. Kessler believes that white people are currently being "ethnically cleans[ed] . . . from the face of the earth."[4]

29. Defendant Elliott Kline (who will be referred to throughout as "Eli Mosley," his assumed name) was one of the primary organizers of the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017. He transmitted a set of General Orders to Unite the Right

[4] *See the Sparks that Set Off Violence in Charlottesville | National Geographic*, YOUTUBE, Aug. 19, 2017, https://www.youtube.com/watch?v=FDIfPhx-Fm0 (:36 mark).

attendees and exercised supervisory command over alt-right groups' paramilitary activities on August 12. Until recently, Mosley was the Chief Executive Officer of Identity Evropa, a white-supremacist group that attended the rally. A U.S. Army veteran, Mosley has described himself as the "command s[ergeant] major of the 'alt-right.'"[5] He recently moved to Virginia specifically to plan similar white-nationalist rallies in the Commonwealth.[6]

30. Defendant Traditionalist Worker Party (TWP) is a white-nationalist organization that claims to have 500 dues-paying members across three dozen chapters. According to its website, TWP's mission is to "establish an independent White ethno-state in North America," and it has "declare[d] war" against, among other things, "international Jewry."[7] TWP was founded in 2015 by Matthew Parrott and Defendant Matthew Heimbach. The group is a member of the Nationalist Front, an alliance of white-supremacist organizations that also includes Defendants Vanguard America, League of the South, and the National Socialist Movement. TWP attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, and engaged in unlawful paramilitary activity.

31. Defendant Matthew Heimbach is the Chairman and one of the founders of TWP. He is also a leader of the Nationalist Front. Heimbach attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, issuing tactical commands to other TWP members

[5] Alexis Gravely et al., *Torch-Wielding White Nationalists March at U.Va.*, THE CAVALIER DAILY, Aug. 12, 2017, http://www.cavalierdaily.com/article/2017/08/torch-wielding-white-nationalists-march-at-uva.
[6] Christopher Mathias & Andy Campbell, *How What Happened Here in Charlottesville Was Inevitable*, HUFFINGTON POST, Aug. 15, 2017, http://www.huffingtonpost.com/entry/charlottesville-was-inevitable-white-nationalist-rally_us_59907756e4b090964297ba58.
[7] *25 Points*, TRADWORKER, http://www.tradworker.org/points.

carrying shields. According to Heimbach, "They see me as their leader."[8] Heimbach has said that TWP members "understand the importance of hierarchy."[9]

32. Defendant Cesar Hess is a regional coordinator of TWP. An "experienced combat veteran,"[10] Hess served as the group's commanding officer at the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017.

33. Defendant Vanguard America is a white-supremacist organization that opposes the notion of a multicultural America. Led by Dillon Irizarry (also known as Dillon Ulysses Hopper), a Marine Corps veteran from New Mexico, Vanguard America claims to have 200 members in 20 states. The group attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, and engaged in unlawful paramilitary activity.

34. Defendant League of the South, Inc., is a "Southern Nationalist organization whose ultimate goal is a free and independent Southern republic."[11] Founded in 1994, the League is a membership organization with chapters in at least 18 states. It is incorporated under the laws of Alabama. In a "directive" issued on February 2, 2017, Michael Hill, the League's President, announced the establishment of a "Southern Defense Force" within the League. Hill called on "all able-bodied, traditionalist Southern men to join" the new group. He claimed that membership would "increase your proficiency with hand-to-hand defense skills, firearms

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[8] *White Nationalists Matthew Heimbach, Richard Spencer on Their Controversial Beliefs: Part 2*, YOUTUBE, Aug. 19, 2017, https://www.youtube.com/watch?v=7dT2azmfWl4&t=63s (:54 mark).
[9] Allegra Kirkland, *Specter of Violence Looms Ahead of Tennessee "White Lives Matter" Rallies*, TALKING POINTS MEMO, Oct. 27, 2017, http://talkingpointsmemo.com/muckraker/white-supremacists-neo-nazis-descend-tennessee-white-lives-matter-rallies.
[10] Matt Parrott, *Catcher in the Reich: My Account of My Experience in Charlottesville*, Aug. 14, 2017, https://steemit.com/altright/@mattparrott/catcher-in-the-reich-my-account-of-my-experience-in-charlottesville-by-matt-parrott.
[11] Michael Hill, *What Is the League of the South?*, LEAGUE OF THE SOUTH, http://leagueofthesouth.com/about/.

training (both pistols and long weapons), and other related skills. Also, you will stand shoulder-to-shoulder with other Southern warriors in an organization dedicated to the survival, well-being, and independence of the Southern people."[12] The League attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, and engaged in unlawful paramilitary activity.

35. Defendant Spencer Borum is the Chairman of the Kentucky chapter of the League of the South. He co-led the League's procession to Emancipation Park on August 12, 2017, and initiated a violent clash by charging at counter-protestors with his flagpole.

36. Defendant Michael Tubbs is the Chairman of the Florida chapter of the League of the South, and Chief of Staff to the League's President, Michael Hill. Along with Defendant Borum, Tubbs marched at the forefront of the League's division as the group approached Emancipation Park. He fought in the ensuing melee and instigated several other violent confrontations throughout the day by ordering his men into battle. Tubbs spent four years in federal prison for stealing a huge cache of military weapons and explosives from his former employer, the U.S. Army.

37. Defendant National Socialist Movement (NSM) is a membership organization dedicated to "defending the rights of white people everywhere" and "promot[ing] . . . white separation." The group maintains chapters in 48 states and limits its membership to "non-Semitic heterosexuals of European descent."[13] All applicants for membership must detail their military training and skills. NSM thoroughly embraces the terminology of militarism: The group has a "Commander" (Defendant Jeff Schoep), as well as "Storm Troopers," "Corporals,"

[12] *Southern Defense Force Formed*, LEAGUE OF THE SOUTH, Feb. 2, 2017, http://leagueofthesouth.com/southern-defense-force-formed/.
[13] *America's National Socialist Party*, NATIONAL SOCIALIST MOVEMENT, https://web.archive.org/web/20170829205617/http://www.nsm88.org/aboutus.html.

"Unit Leaders," "Sergeants," "Officers," and an "SS" detachment.[14] NSM attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, and engaged in unlawful paramilitary activity.

38. Defendant Jeff Schoep is the Commander of the National Socialist Movement and "a warrior for the interests of White Americans."[15] Schoep maintains a blog on the organization's webpage called the "Commander's Desk."[16] He is also a leader of the Nationalist Front. Schoep attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, in his capacity as Commander of the group.

39. Defendant Pennsylvania Light Foot Militia is a privately organized militia group with approximately 300 members spread over several local chapters. The group's stated purpose is to keep the peace at public gatherings. Operating entirely outside established law-enforcement processes, its members—dressed and armed like battle-ready soldiers—station themselves at public events that they claim pose a risk of violence. Under the command of Defendant Christian Yingling, heavily armed members of the Pennsylvania Light Foot Militia deployed to Emancipation Park in Charlottesville, Virginia, on August 12, 2017, fanning out to take up strategic posts—purportedly to provide security for the Unite the Right rally.

40. Defendant Christian Yingling is the Commanding Officer of the Pennsylvania Light Foot Militia. Yingling exercised tactical command over a group of 38 heavily armed militiamen at Emancipation Park in Charlottesville, Virginia, on August 12, 2017.

41. Defendant New York Light Foot Militia, like its Pennsylvania counterpart, is a private militia organization whose members stand guard at public events. Under the command

[14] *Ranks*, NATIONAL SOCIALIST MOVEMENT, http://www.nsm88.org/policy/ranks.html.
[15] *Leadership*, THE NATIONALIST FRONT, https://www.nfunity.org/leadership/.
[16] Jeff Schoep, *The Commander's Desk*, NATIONAL SOCIALIST MOVEMENT, https://web.archive.org/web/20170830042016/http://www.nsm88.org/commandersdesk/.

of Defendants Christian Yingling and George Curbelo, heavily armed members of the New York Light Foot Militia took up posts at Emancipation Park in Charlottesville, Virginia, on August 12, 2017, purportedly to provide security for the Unite the Right rally.

42. Defendant George Curbelo is the Commanding Officer of the New York Light Foot Militia. He was Yingling's "second in command" at Emancipation Park in Charlottesville on August 12, 2017.[17] Curbelo issued directives to other militiamen at the rally and reported exerting significant effort "to maintain . . . discipline" among his militia members.[18]

43. Defendant Virginia Minutemen Militia is "a statewide community based militia, with 16 brigades set up throughout the state of Virginia."[19] The group was established to train a corps of private, unlicensed peacekeepers to be deployed at public gatherings. It coordinated with Yingling and Curbelo to secure a cohesive, multi-regional militia presence at the Unite the Right rally on August 12, 2017, including by contributing some of its own members.[20]

44. Defendant Eugene Wells is the Commanding Officer of the Virginia Minutemen Militia.[21] According to Defendant Curbelo, Wells retained "centralized command" (as opposed to Yingling's "tactical command") over the 38-person militia regiment on August 12, 2017.[22]

45. Defendant American Freedom Keepers, LLC, is a private militia organization and for-profit company headquartered in Vancouver, Washington. The group seeks "to further the

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[17] The Liberty Den (George Curbelo), *After-Action Report*, FACEBOOK, Aug. 13, 2017, https://www.facebook.com/TheLibertyDen/videos/1631991076819081/ (11:27 mark).
[18] Sarah Wallace, *New York Militia Group Speaks Out on Charlottesville Response, Hate and Bloodshed*, NBC NEW YORK, Aug. 21, 2017, http://www.nbcnewyork.com/investigations/Militia-New-York-Light-Catskill-Training-Charlottesville-Response-White-Nationalist-Violence-441311083.html.
[19] VA MINUTEMEN MILITIA, TWITTER, https://twitter.com/VaMinutemen.
[20] *See Charlottesville 32 – Official Statement*, VIRGINIA MINUTEMEN MILITIA, http://minutemenva.com/cville32/.
[21] Christian Yingling, FACEBOOK, Oct. 13, 2017, https://www.facebook.com/christiaan.yingling/posts/725677364292957.
[22] Curbelo, *supra* note 17 (11:14 mark).

Patriot movement across our great country" through "nationwide organization, communication, and . . . our unique ground effort mission."[23] American Freedom Keepers contributed personnel to the 38-person militia commanded by Defendant Yingling in Charlottesville, Virginia, on August 12, 2017.

46. Defendant Richard Wilson (known within the militia community as "Francis Marion") is the President and a founder of American Freedom Keepers, LLC. A military veteran, he is active in the militia movement; in that capacity, he regularly patrols contentious public gatherings armed with tactical gear and military-style weaponry. Wilson traveled to Charlottesville, Virginia, for the Unite the Right rally and served under Defendant Yingling's command on August 12, 2017. Wilson's avowed purpose was to "keep the peace."[24]

47. Defendant III% People's Militia of Maryland (formerly III% United Patriots of Maryland) is a private militia organization that was established to train a corps of private, unlicensed peacekeepers to be deployed at public gatherings. The group contributed members to the militia commanded by Defendant Yingling at the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017.

48. Defendant Gary Sigler is the Commanding Officer of the III% People's Militia of Maryland.[25] Sigler traveled to Charlottesville, Virginia, for the Unite the Right rally and served under Defendant Yingling's command on August 12, 2017.

49. Defendant American Warrior Revolution (AWR) is a paramilitary group associated with a merchandising and media outlet. Its stated mission is to keep the peace at

[23] "What is the Difference Between AFK and AWR?," *Frequently Asked Questions*, AMERICAN FREEDOM KEEPERS, https://americanfreedomkeepers.com/.
[24] American Freedom Keepers (Francis Marion), *After-Action Report #1*, FACEBOOK, Aug. 13, 2017, https://www.facebook.com/AmericanFreedomKeepers/videos/1536543569738451/ (12:22 mark).
[25] The Liberty Den (George Curbelo), FACEBOOK, Dec. 13, 2017, https://www.facebook.com/TheLibertyDen/videos/vb.536194586398741/1757715100913344/.

public gatherings. AWR is active in the militia movement and maintains regular contact with other like-minded groups. Thirty-seven AWR members, many of them armed with semiautomatic weapons, attended the Unite the Right rally on August 12, 2017, in Charlottesville, Virginia.[26] Rather than falling in with Defendants Yingling and Curbelo, AWR members served under the command of their own leader, Defendant Joshua Shoaff. The group's attendees did not take up posts on Market Street, but instead patrolled streets and sidewalks elsewhere in downtown Charlottesville.

50. Defendant Joshua Shoaff (known within the militia community as "Ace Baker") is the commanding officer of Defendant AWR. He traveled to Charlottesville, Virginia, for the Unite the Right rally and commanded a 37-person contingent of AWR members on August 12, 2017.

51. Defendant Redneck Revolt is a national network of community-defense projects with a pro-worker, anti-racist orientation. Redneck Revolt was founded in June 2016 and maintains over 30 branches. It describes itself as a "militant formation"[27]—a left-wing "alternative for people who might otherwise join the growing right-wing militia movement."[28] Many of its branches have formed John Brown Gun Clubs, through which members train themselves in collective-defense tactics. The group believes that "[w]e have to be prepared to take the defense of our communities into our own hands."[29] Armed Redneck Revolt members

[26] American Warrior Revolution (Ace Baker), FACEBOOK, Oct. 25, 2017, https://www.facebook.com/americanwarriorrevolution/videos/1492781644144829/ (2:30 mark).
[27] *Organizing Principles*, REDNECK REVOLT, https://www.redneckrevolt.org/principles.
[28] Cecilia Saixue Watt, *Redneck Revolt: The Armed Leftwing Group that Wants to Stamp Out Fascism*, THE GUARDIAN, July 11, 2017, https://www.theguardian.com/us-news/2017/jul/11/redneck-revolt-guns-anti-racism-fascism-far-left.
[29] RedneckRevolt, FACEBOOK, Aug. 26, 2017, https://www.facebook.com/RedneckRevolt/posts/620697418318897.

stood post paramilitary-style at Justice Park in Charlottesville, Virginia, on August 12, 2017, for the avowed purpose of protecting counter-protestors within the park.

52. Defendant Socialist Rifle Association is an "anti-fascist, anti-racist, anti-capitalist" organization that aims to "arm and train the working class" for collective self-defense.[30] Its members stood alongside Redneck Revolt in Justice Park on August 12, 2017, openly displaying assault rifles to provide a protective buffer for counter-protestors within the park.

III.
JURISDICTION AND VENUE

53. This Court has subject-matter jurisdiction over this action pursuant to Virginia Code §§ 17.1-513 and 8.01-620.

54. Venue is proper in this circuit under Virginia Code § 8.01-261(15).

IV.
LEGAL BACKGROUND

55. The Commonwealth of Virginia has carefully regulated the circumstances under which military force may lawfully be employed. Article I, Section 13 of the Virginia Constitution specifies that "in all cases the military should be under strict subordination to, and governed by, the civil power."

56. A network of statutory provisions structuring Virginia's armed forces helps preserve the civil government's monopoly on organized peacekeeping. State law permits the Commonwealth to "maintain only such troops" as prescribed therein. Va. Code Ann. § 44-6. It also divides "the militia"—those authorized to use military force on the Commonwealth's

[30] SOCIALIST RIFLE ASSOCIATION, https://www.socialistra.org/news/index.html.

behalf—into just four classes: the National Guard, the Virginia Defense Force, the naval militia, and the unorganized militia. *Id.* § 44-1.

57. By statute, the militia may operate only under the strict control of governmental officials. All military personnel are ultimately subordinate to the Governor, who is "Commander in Chief of the armed forces of the Commonwealth." *Id.* § 44-8. Virginia's Department of Military Affairs is charged with administering, employing, and training the militia. *Id.* §§ 44-11.1(A)(1), (8), 44-75.2. Each part of Virginia's armed forces answers to the Adjutant General, who exercises "command of all of the militia of the Commonwealth, subject to the orders of the Governor as Commander in Chief." *Id.* § 44-13.

58. To achieve state control over military personnel, Virginia's armed forces must conform to a suite of state-law requirements. All members of the National Guard must sign an enlistment contract and swear an enlistment oath. *Id.* § 44-36. State law regulates the composition and organization of both the National Guard and the Virginia Defense Force. *Id.* §§ 44-25, 44-54.4, 44-54.5. It also determines their manner of dress, what arms they may carry (and when), what equipment they use, how and when they train, and how they may be disciplined or punished. *Id.* §§ 44-39, 44-40, 44-41, 44-42, 44-54.9, 44-54.10, 44-54.12, 44-75.2. And the unorganized militia, whenever ordered out, is "governed by the same rules and regulations and [is] subject to the same penalties as the National Guard." *Id.* § 44-85.

59. State law also delineates the circumstances under which Virginia's armed forces may be used. The Governor is empowered to call forth any part of the militia when a state agency is "in need of assistance to perform particular law-enforcement functions," *id.* § 44-75.1(A)(3), and he may deploy the National Guard or the unorganized militia "in order to

execute the law," *id.* § 44-86. Among the enumerated responsibilities of the Department of Military Affairs is "maintaining order and public safety." *Id.* § 44-11.1(A)(3).

60. To preserve the critical principle of civil-military accountability, Virginia has further criminalized "paramilitary activity." *Id.* § 18.2-433.2. Identifying such activity as a "Crime[] Against Peace and Order," the prohibition aims to ensure that private groups will not use "technique[s] capable of causing injury or death . . . in, or in furtherance of, a civil disorder." *Id.* The legislature specifically excluded—and thus consciously chose not to restrict—such lawful individual pursuits as hunting, target shooting, and firearms collecting. *Id.* § 18.2-433.3(4).

61. Other Virginia statutes underscore the harm that results when armed private groups interfere with regularized, state-driven peacekeeping efforts. Under state law, "The police force of a locality" is responsible for "the safeguard of life and property" and "the preservation of peace." *Id.* § 15.2-1704(A). To exercise these functions, police officers must meet several minimum qualifications and complete a statewide certification exam. *Id.* §§ 15.2-1705(A), 1706(A). Virginia has also enacted a separate prohibition on unregulated peacekeeping: It is unlawful to "falsely assume[] or exercise[] the functions, powers, duties, and privileges incident to the office of sheriff, police officer, marshal, or other peace officer, or any local, city, county, state, or federal law-enforcement officer." *Id.* § 18.2-174. It is also a crime to "hold a firearm . . . in a public place in such a manner as to reasonably induce fear in the mind of another of being shot or injured." *Id.* § 18.2-282(A).

62. To allow citizens and state officials to distinguish between official and self-appointed law-enforcement personnel, the Virginia Code includes a "Protection of the Uniform" provision. It is generally unlawful for anyone not a member of the armed forces of the United

States "to wear the duly prescribed uniform thereof, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of [such] uniform." *Id.* § 44-120. Because Virginia National Guard members are generally to wear "the same type of uniform . . . provided for the armed forces of the United States," *id.* § 44-39, that provision reinforces the National Guard's authority and tactical effectiveness. Although the statute carves out several exemptions, private militia activity is not among them. Even the uniform and insignia of the Virginia Defense Force must "include distinctive devices identifying it as a state defense force and distinguishing it from the National Guard or the armed forces of the United States." *Id.* § 44-54.9.

63. Finally, Virginia law heavily regulates the provision of private security services, with the goal of "secur[ing] the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons" occupying those roles. *Id.* § 9.1-141(C). Every business providing such services must be licensed by Virginia's Department of Criminal Justice Services, and every person employed as an armed security officer must be registered with the Department. *Id.* § 9.1-139(A). Certain kinds of criminal convictions preclude licensing and registration. *Id.* § 9.1-139(K). Every private security business must maintain an insurance policy, *id.* § 9.1-144(A); every employee of such a business must complete a proper training course, *id.* § 9.1-141(A); and the providers of such training must first submit their fingerprints to the Department for a comprehensive criminal-background check, *id.* § 9.1-145(A). It is illegal under Virginia law to operate a private security services business without complying with each of these provisions. *Id.* § 9.1-147(A)(1), (4).

64. This comprehensive legislative regime, in conjunction with the Virginia Constitution, enables the Commonwealth to maintain a firm grip over all military and

peacekeeping activity within its borders. For, as the Virginia Constitution's architects knew, "a *well regulated* militia . . . is the proper, natural, and safe defense of a free state." Va. Const. art. I, § 13 (emphasis added).

V.
FACTUAL ALLEGATIONS

A. Unite the Right: Charlottesville Transformed into a Military Theater

65. On the night of August 11, 2017, hundreds of white nationalists strode through the University of Virginia, many of them wielding flaming tiki torches. The campus resounded with such white-nationalist mantras as "Blood and soil!" and "Jews will not replace us!" As their route came to an end, the marchers encircled a small handful of counter-protesters near the Thomas Jefferson statue at the base of the Rotunda. Alt-right attendees threw punches and even torches at the outnumbered counter-protesters.[31] After several counter-protestors were injured in the attack, the police intervened to declare an unlawful assembly, forcing the marchers to disperse.

66. The following morning began with a solemn tribute to togetherness. Clergy from a range of faith traditions packed the pews for a sunrise service at First Baptist Church in Charlottesville. After strengthening their resolve to meet malice with love, the clergy locked hands with community members and marched toward the turmoil that would await them. They split into two groups—one headed to McGuffey Park, and the other to nearby Emancipation Park. The latter group planned to risk their bodies by engaging in nonviolent direct action. One

[31] Alex Rubinstein, TWITTER, Aug. 11, 2017, 10:43 PM, https://twitter.com/RealAlexRubi/status/896200377099587585.

participating evangelical recalled that "[i]t really felt like every step you take could be your last."[32]

Private Militias Unlawfully Purport to "Keep the Peace"

67. When the clergy reached Emancipation Park around 9:00 AM on August 12, 2017, they encountered a terrifying scene: a company of heavily armed men clothed in camouflage and deployed in parallel columns. That group—a self-organized, self-designated private militia unit unaccountable to the civil power—had arrived in Charlottesville between 7:00 and 7:30 AM. Many of them had gathered together the previous evening at a farm in Unionville, Virginia,[33] where they received instruction and training for the Unite the Right rally.

68. The militia ultimately boasted 38 members. Its tactical commander was Defendant Christian Yingling, the Commanding Officer of the Pennsylvania Light Foot Militia. His second-in-command was Defendant George Curbelo, the Commanding Officer of the New York Light Foot Militia. Yingling and Curbelo described their experiences in great detail in lengthy Facebook videos they uploaded on August 13, 2017, as well as in interviews with local and national news organizations.

69. According to Defendant Yingling, the organizers of Unite the Right had contacted him and requested a private militia force to act as security.[34] He later accepted a similar request from the Virginia Minutemen Militia, which wanted him "to reinforce their numbers"[35] and take

[32] Jack Jenkins, *Meet the Clergy Who Stared Down White Supremacists in Charlottesville*, THINKPROGRESS, Aug. 16, 2017, https://thinkprogress.org/clergy-in-charlottesville-e95752415c3e/.
[33] Curbelo, *supra* note 17 (10:57 mark).
[34] Joanna Walters, *Militia Leaders Who Descended on Charlottesville Condemn "Rightwing Lunatics"*, THE GUARDIAN, Aug. 15, 2017, https://www.theguardian.com/us-news/2017/aug/15/charlottesville-militia-free-speech-violence.
[35] *Id.*

"tactical command" of the operation.[36] Yingling had overseen the militia response at several right-wing gatherings in recent months, including in Gettysburg and Harrisburg, Pennsylvania.[37] In a Facebook video, Defendant Curbelo confirmed that "[w]e showed up on the request of the Virginia Minutemen Militia."[38]

70. Defendant Yingling assembled his regiment through Facebook and several militia chatrooms. The group, which he described as "a coalition of various militia units from throughout the East,"[39] included personnel from Yingling's Pennsylvania Light Foot Militia, Defendant Curbelo's New York Light Foot Militia, Defendant Richard Wilson's American Freedom Keepers, Defendant Eugene Wells's Virginia Minutemen Militia,[40] and Defendant Gary Sigler's III% United Patriots of Maryland (now known as the III% People's Militia of Maryland). Defendant Wilson has stated that he, the New York Light Foot Militia, and the Virginia Minutemen Militia discussed logistics and shared intelligence for at least a month leading up to the rally.[41]

71. Once the militia group arrived in Charlottesville, Defendant Yingling gave his troops a "pre-op briefing"[42]—"what we were there to do, how we were gonna do it."[43] Thirty-

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[36] Paul Duggan, *Militiamen Came to Charlottesville as Neutral First Amendment Protectors, Commander Says*, WASH. POST, Aug. 13, 2017, https://www.washingtonpost.com/local/trafficandcommuting/militiamen-came-to-charlottesville-as-neutral-first-amendment-protectors-commander-says/2017/08/13/d3928794-8055-11e7-ab27-1a21a8e006ab_story.html.
[37] *Id.*
[38] Curbelo, *supra* note 17 (11:06 mark).
[39] Christian Yingling, *After-Action Report*, FACEBOOK, Aug. 13, 2017, https://www.facebook.com/christiaan.yingling/videos/699494596911234/ (2:03 mark).
[40] *See* Brennan Gilmore, TWITTER, Aug. 12, 2017, 11:53 AM, https://twitter.com/brennanmgilmore/status/896399305996742656 (showing a member of Yingling's group wearing a "Minutemen Militia" patch).
[41] American Freedom Keepers (Francis Marion), *Charlottesville After-Action Report #2*, FACEBOOK, Aug. 14, 2017, https://www.facebook.com/AmericanFreedomKeepers/videos/1537612629631545/ (58:30 mark).
[42] Yingling, *supra* note 39 (5:21 mark).
[43] *Id.* (3:39 mark).

two militiamen received instruction from Yingling at this time.[44] By all accounts, Yingling was the chief tactician of a militia unit observing a well-defined chain of command. He spoke of the men who "f[e]ll under my command"[45] and "serv[ed] under me;"[46] they regarded Yingling's verbal commands as authoritative.[47] (At the same time, however, each constituent "group[] ran independent within that command structure."[48]) Yingling also issued a "very specific instruction . . . to direct all press to myself or George Curbelo."[49] When Brian Moran, Virginia's Secretary of Public Safety and Homeland Security, approached the militia to introduce himself, he experienced the unit's hierarchy firsthand: Militia members told him to speak with their "commanding officer." Yingling's men also used radios and headsets to facilitate the transmission of orders.

72. Militia members carried between 60 and 80 pounds of camouflaged, military-style equipment. Among their paraphernalia were semiautomatic AR-15 assault rifles, with spare 30-round magazines; sidearms; tactical shooting glasses; kevlar helmets; combat shirts and pants; AK-47-resistant Level III body armor; pocket knives; nightstick-style batons; combat boots; military-surplus gas masks; and personal first-aid kits.[50] Defendant Yingling personally carried a Sig Sauer AR-556 semiautomatic rifle.[51] His unit kept their trigger fingers on or near the

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[44] George Curbelo, *Interview with Francis Marion*, FACEBOOK, Oct. 24, 2017, https://www.facebook.com/george.curbelo/videos/1650958994954491/ (7:53 mark).
[45] *Id.* (2:25 mark).
[46] Duggan, *supra* note 36.
[47] *Weapons of Charlottesville Protests*, YOUTUBE, Aug. 15, 2017, https://www.youtube.com/watch?v=3-KOUxTIdUE (:15 mark) (depicting Yingling shouting "Move! Move! Move! Move! Move!" to fellow militiamen).
[48] Curbelo, *supra* note 44 (5:23 mark).
[49] Yingling, *supra* note 39 (39:44 mark).
[50] *See* Joanna Walters, *Mistaken for the Military: The Gear Carried by the Charlottesville Militia*, THE GUARDIAN, Aug. 15, 2017, https://www.theguardian.com/us-news/2017/aug/15/charlottesville-militia-security-gear-uniforms.
[51] Duggan, *supra* note 36.

triggers of their primary weapons as they stood guard over the Unite the Right rally.[52] Yingling told the *Washington Post* that the rifles' magazines were fully loaded, and that their sidearms were "chambered and ready to go."[53] Another militia member stated that his semiautomatic weapon could "put out 30 rounds in less than three seconds."[54]

73. At least one member of Yingling's group also wore a rectangular "MEDIC" patch on his camouflage uniform,[55] despite Virginia's prohibition on "impersonat[ing] . . . an emergency medical services provider." Va. Code Ann. §18.2-174.1.

74. Yingling and Curbelo openly characterize their militia as assuming functions ordinarily performed by state security forces. In their own words, carrying weapons of war functions as "one hell of a visual deterrent"[56] enabling them to "to keep the peace,"[57] "to protect everybody,"[58] to "tak[e] care of your community,"[59] "to hold the line of peace,"[60] and to act as a "peacekeeping force."[61] According to Curbelo, maintaining a militarized presence at public gatherings helps the Militia Defendants "put the tyrants in the place where they belong, which is

[52] *See, e.g.*, American Freedom Keepers (Francis Marion), *Charlottesville Live-Stream #1*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/AmericanFreedomKeepers/videos/1535388346520640 (19:35 mark) (showing Defendant Curbelo).
[53] Duggan, *supra* note 36.
[54] Jason Turner, *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/jason.turner.5602/videos/1484854948227159/ (47:11 mark).
[55] Christopher Mathias, TWITTER, Aug. 12, 2017, 9:19 AM, https://twitter.com/letsgomathias/status/896360475918782465.
[56] Duggan, *supra* note 36.
[57] Curbelo, *supra* note 17 (5:34 mark).
[58] Julian Routh, *Who is Christian Yingling: Far-Right Militia Leader or Protector of the Constitution?*, PITTSBURG POST-GAZ., Aug. 16, 2017, http://www.post-gazette.com/local/region/2017/08/16/christian-yingling-pa-militia-latrobe-charlottesville-va-rally-white-supremacist/stories/201708160063.
[59] *Id.*
[60] Curbelo, *supra* note 17 (34:36 mark).
[61] The Liberty Den (George Curbelo), FACEBOOK, Aug. 8, 2017, https://www.facebook.com/TheLibertyDen/videos/1627027737315415 (3:39 mark).

out of the way."[62] Curbelo "despises" the word "authorities."[63] Defendant Shoaff similarly referred to Yingling's and Curbelo's men, as well as Defendant AWR's own members, as "peacekeepers" who took it upon themselves to maintain "law and order."[64]

75. After gearing up together, Yingling's militia marched in formation through the downtown streets and sidewalks.[65] He and Curbelo requested a police escort for this purpose, fearing that the City would otherwise be inundated with 911 calls complaining of "a small army of guys walking down the street with a bunch of guns."[66] The 32 men arranged themselves in two inward-facing lines near the southern border of Emancipation Park.[67] Attendees struggled to comprehend the spectacle of an infantry unit patrolling a public park. Local residents and clergy members feared a bloodbath, not knowing what might cause the self-assigned guardians of a white-nationalist gathering to open fire. Many other observers initially mistook the camouflage-clad militia for the state-sanctioned National Guard.

76. Six additional militiamen showed up and fell in line with Yingling's 32-person regiment throughout the morning. According to Defendant Curbelo, those six were allowed to serve under Yingling—and were expected to maintain strict, coordinated discipline while carrying weapons of war—despite having missed the group's pre-operation planning and

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[62] The Liberty Den (George Curbelo), FACEBOOK, Oct. 16, 2017, https://www.facebook.com/TheLibertyDen/videos/1698744536810401/ (20:42 mark).
[63] George Curbelo, FACEBOOK, Dec. 19, 2017, https://www.facebook.com/george.curbelo/videos/1711643938885996/ (13:26 mark).
[64] American Warrior Revolution, *supra* note 26 (6:06 mark).
[65] Craig Stanley, TWITTER, Aug. 12, 2017, 8:33 AM, https://twitter.com/_CraigStanley/status/896349016929206272.
[66] *Christian Yingling – Charlottesville Militia*, YOUTUBE, Oct. 28, 2017, https://www.youtube.com/watch?v=grYt5cNabbw (22:31 mark).
[67] For early video footage of one of the two lines, see Christopher Mathias, TWITTER, Aug. 12, 2017, 9:09 AM, https://twitter.com/letsgomathias/status/896358048918327297.

briefing.[68] A man named Rob Kapp, for example, was "immediately put . . . in the ranks" when he arrived at Market Street with military-grade equipment.[69]

77. As Defendant Curbelo recounted, "there were other militia groups dispersed further out, in the outer perimeter, on other streets, not necessarily on Market Street."[70] One of these organizations was Defendant American Warrior Revolution, led by its commander, Defendant Joshua Shoaff.

78. Approximately three blocks east of Emancipation Park, two other private militia groups stationed themselves near Justice Park, where they helped create and secure a staging area for counter-protestors. The first group, Redneck Revolt, had issued a "Call to Arms for Charlottesville" on its website on August 10, 2017.[71] Redneck Revolt refused to "[l]et[] fascists organize publicly . . . without challenge," pledging to "dust[] off the guns of 1921." The missive assured "the people of Charlottesville and . . . all oppressed peoples" that "Redneck Revolt and the John Brown Gun Club are at your disposal."

79. An article published on Redneck Revolt's website entitled "Reportback: Charlottesville" details the group's involvement. According to the report, dated August 12, "Five Redneck Revolt branches from nearby towns have been on the ground in Charlottesville since [Friday, August 11]."[72] On Friday evening, "Armed Redneck Revolt members were on-hand to assist with security" at St. Paul's Memorial Church, near the white nationalists' torchlit

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[68] Curbelo, *supra* note 44 (7:19 mark).
[69] Rob Kapp, *Charlottesville Live-Stream #1*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/rob.kapp.1/videos/889403047865009/ (1:51 mark).
[70] Curbelo, *supra* note 44 (6:56 mark).
[71] *See Call to Arms for Charlottesville*, REDNECK REVOLT, Aug. 10, 2017, https://www.redneckrevolt.org/single-post/CALL-TO-ARMS-FOR-CHARLOTTESVILLE.
[72] *Reportback: Charlottesville*, REDNECK REVOLT, Aug. 12, 2017, https://www.redneckrevolt.org/single-post/REPORTBACK-CHARLOTTESVILLE.

rally.[73] And on Saturday, the organization claims, "Approximately 20 [of its] members created a security perimeter around [Justice] [P]ark, most of them open-carrying tactical rifles."[74] Redneck Revolt sought to make Justice Park an "autonomous zone"[75] by "keep[ing] cops" and "keep[ing] the state . . . out of the park."[76] The group believes that it must "not allow the state to have a direct monopoly on the use of force."[77]

80. A second group, the Socialist Rifle Association (SRA), also contributed members to the security perimeter around Justice Park. Redneck Revolt "work[ed] closely with the SRA" and "especially appreciat[ed] . . . the camaraderie of the SRA."[78] The SRA likewise expressed gratitude for the "Redneck Revolt heroes who held the line against Nazi scum."[79]

81. Also in Justice Park on August 12 were employees of H&H Security Services, Inc., a Charlottesville-based private security firm. H&H had been hired for the day by People's Action for Racial Justice, a non-violent activist group that organized counter-protests stationed at McGuffey Park and Justice Park in Charlottesville. In stark contrast to the paramilitary organizations that attended the event, H&H Security is licensed by the Virginia Department of Criminal Justice Services to provide private security services, and attended in that duly regulated capacity.

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[73] *Id.*
[74] *Id*; *see also* George Squares, TWITTER, Aug. 12, 2017, 2:26 PM, https://twitter.com/GeorgeSquares/status/896437856473894912; *EPIC FOOTAGE of the #Charlottesville #UniteTheRight Rally Shut Down*, YOUTUBE, Aug. 14, 2017, https://www.youtube.com/watch?v=2MH4XTmrh7U (1:30 mark).
[75] *Stand Up and Fight Back – An Interview with Redneck Revolt*, FEMINIST KILLJOYS, PhD, Aug. 19, 2017, https://soundcloud.com/eministilljoysh/ep-66-stand-up-fight-back-an-interview-with-redneck-revolt (31:36 mark).
[76] *Id.* (8:34 mark).
[77] Redneck Revolt, FACEBOOK, Oct. 26, 2017, https://www.facebook.com/RedneckRevolt/posts/652157135172925.
[78] *Reportback*, *supra* note 72.
[79] Socialist Rifle Association Backup, FACEBOOK, Aug. 15, 2017, https://www.facebook.com/SocialistRA/posts/756727061174031.

82. Throughout the day, militia members carried assault rifles and other firearms through the streets of Charlottesville. They took up post outside downtown businesses, including Plaintiff Alakazam Toys and Gifts.[80] Defendant Wilson and other militiamen provided armed security for Defendant Eli Mosley and other alt-right figures behind a closely guarded yellow line, while ordering everyone else to "back up!"[81] Two militia members pointed their assault rifles at someone who shouted, "get out of my town!"[82] And Richard Preston—a KKK leader who would later fire his pistol at a counter-protestor—arrived not in Klan gear, but wearing a tactical vest as part of a local offshoot of the Three Percenters ("3% Risen").[83] According to Preston, "I had my AR-15 and a 9 mm. One of my guys had a .45 and another a 9 mm."[84]

83. For half an hour, three militia members carrying semi-automatic rifles stood across from the Congregation Beth Israel synagogue. The synagogue's president "couldn't take [his] eyes off them," or the white-nationalist groups that repeatedly marched by in formation.[85] Fearing an attack on their building, the forty congregants inside quietly slipped out of the back entrance. The Congregation removed all of its Torahs, including a Holocaust scroll, for safe keeping elsewhere; police advised the Congregation to cancel a worship service scheduled for later that evening.[86]

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[80] *Militia*, YOUTUBE, Sept. 6, 2017, https://www.youtube.com/watch?feature=youtu.be&amp=&v=Rnler3a1cvM.
[81] *Three Percenters Militia in Charlottesville*, YOUTUBE, Aug. 17, 2017, https://www.youtube.com/watch?v=WtPL8CpNf7I.
[82] Samanta Baars et al., *United We Stand: Charlottesville Says No to Hate*, C'VILLE WEEKLY, Aug. 16, 2017, http://www.c-ville.com/stand-charlottesville-say-no-hate/.
[83] Nate Thayer, *Redneck Revolt: Armed Leftists Confront White Nationalists in Charlottesville*, Aug. 18, 2017, http://www.nate-thayer.com/redneck-revolt-armed-leftists-confront-white-nationalists-in-charlottesville/.
[84] *Id.*
[85] Alan Zimmerman, *In Charlottesville, the Local Jewish Community Presses On*, REFORM JUDAISM, Aug. 14, 2017, https://reformjudaism.org/blog/2017/08/14/charlottesville-local-jewish-community-presses.
[86] *Id.*

84. In Defendant Curbelo's estimation, there were roughly "100 to 200 militia people there" in Charlottesville on August 12.[87] The Militia Defendants were disappointed at what they regarded as an unexpectedly low turnout. According to Defendant Wilson, "at one time there was 200, 250 people that were like, 'yeah, we're ready to go!'"[88] (i.e., to serve under Defendants Yingling and Curbelo on August 12). Yingling was "angered and embarrassed" that only 32 men initially answered the call to fall under his command;[89] his "blood boiled" at the low attendance figure.[90] Ordinarily, "upwards of a hundred to two hundred" militia members join him at public events.[91] Defendant Shoaff expressed similar frustration: "There was 37 [AWR members] in Charlottesville. There should have been 3,000 of us."[92]

Alt-Right Groups Terrorize Charlottesville with Military Tactics

85. Tensions continued to boil as alt-right groups arrived at Emancipation Park throughout the morning. They rode into town together in large white shuttle vans rented for that purpose.[93] One by one, the Alt-Right Defendants marched toward the park in a show of military pageantry. They wore helmets and distinctive uniforms, wielded heavy shields, armed themselves with clubs, and carried flags and banners bearing the groups' insignia.

[87] Madison Rising, *Interview with George Curbelo*, FACEBOOK, Oct. 26, 2017, https://www.facebook.com/madisonrising/videos/1552242181532599/ (29:52 mark).
[88] Curbelo, *supra* note 44 (45:49 mark).
[89] Duggan, *supra* note 36.
[90] Christian Yingling, FACEBOOK, Dec. 29, 2017, https://www.facebook.com/christiaan.yingling/posts/764015143792512.
[91] *Charlottesville Militia*, *supra* note 66 (23:01 mark).
[92] Baker, *supra* note 26 (11:51 mark).
[93] For a rider's-eye view of the procession, see *Unite the Right - Charlottesville*, YOUTUBE, Sept. 8, 2017, https://www.youtube.com/watch?v=IgeYbjxT_j8 (:08 mark).

86. As the clergy sang "This Little Light of Mine"[94] and chanted "Love has already won!,"[95] battle-ready alt-right groups roared in unison with such chants as "Fuck you, faggots!,"[96] "Gas the kikes now!,"[97] "Blood and soil!,"[98] "Commie scum—off our streets!,"[99] "White lives matter!,"[100] and "Jews will not replace us!"

87. Defendant Vanguard America arrived in downtown Charlottesville around 9:30 AM. Its members wore matching uniforms of white polo shirts and khaki pants, and most wore black sunglasses or goggles. Wielding shields and carrying flags with the group's insignia, they "marched in military-style formation"[101] behind Defendant Eli Mosley, one of the rally's co-organizers, chanting "You will not replace us!" at counter-protestors in nearby Justice Park. Vanguard's chant changed to "Blood and soil!," a Nazi slogan, after its members turned right on Market Street and made their way toward Emancipation Park.[102]

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[94] *Clergy #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=RGSgf550NYA; *Let It Shine #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=jqFnGE3FeGw.

[95] Christopher Mathias, TWITTER, Aug. 12, 2017, 10:19 AM, https://twitter.com/letsgomathias/status/896375699501711361.

[96] Christopher Mathias, TWITTER, Aug. 12, 2017, 10:35 AM, https://twitter.com/letsgomathias/status/896379733050634240; *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 7*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=4gY8R3Bg-RE (:32 mark).

[97] *Black Lives Do Not Matter #charlottesville #unitetheright*, YOUTUBE, Aug. 12, 2017, https://www.youtube.com/watch?v=Mn3XF9xzkO8 (:05 mark).

[98] Christopher Mathias, TWITTER, Aug. 12, 2017, 9:25 AM, https://twitter.com/letsgomathias/status/896361902804267009.

[99] Christopher Mathias, TWITTER, Aug. 12, 2017, 10:57 AM, https://twitter.com/letsgomathias/status/896385163818659841.

[100] *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 5*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=mn7NTQcKvd4 (1:46 mark).

[101] Jason Wilson, *Charlottesville: Man Charged with Murder Was Pictured at Neo-Nazi Rally*, THE GUARDIAN, Aug. 13, 2017, https://www.theguardian.com/us-news/2017/aug/13/charlottesville-james-fields-charged-with-was-pictured-at-neo-nazi-rally-vanguard-america.

[102] *Vanguard America Marches into Emancipation Park Chanting "Blood and Soil"*, YOUTUBE, Aug. 13, 2017, https://www.youtube.com/watch?v=hyWdm8AunAw; Craig Stanley, TWITTER, Aug. 12, 2017, 9:38 AM, https://twitter.com/_CraigStanley/status/896365259258200068.

88. Later-arriving groups simply bulldozed anyone who slowed down their entry. "All right, guys, we're busting through!," one alt-right attendee informed his shield-carrying associates.[103] Instructing Nationalist Front members in the Market Street parking garage, Defendant Spencer Borum—Chairman of Defendant League of the South's Kentucky chapter—urged them to "take it to their Commie asses!"[104] Minutes later, he triggered a violent melee on Market Street by charging at a line of counter-protestors with his flagpole.[105] Nearly a dozen League members rushed in from behind, ramming into the crowd with their matching shields held in formation.[106] In its official statement, the League claims to have "push[ed] our way through" by initiating "physical confrontation."[107] Borum proudly emphasized his own role in the brawl: "I was down on the front, fighting the Commie scum and whatnot. . . . We gave 'em hell, boys!"[108]

89. Matthew Parrott, Director of the Traditionalist Worker Party, offered the following account of the League's rehearsed assault: "With a full-throated rebel yell, the League broke through the wall of degenerates . . . . [Defendant] Michael Tubbs, an especially imposing League organizer[,] towered over and pushed through the antifa like a Tyrannosaurus . . . as

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[103] *James Allsup and Racist Friends at CHARLOTTESVILLE #UNITETHERIGHT*, YOUTUBE, Aug. 13, 2017, https://www.youtube.com/watch?v=qzWIs1zNx2U (1:15 mark).
[104] *Nationalist Front Marches to Lee Park*, YOUTUBE, Sept. 5, 2017, https://www.youtube.com/watch?v=t0dh70dkroI (:17 mark).
[105] *Charlottesville White Nationalist Rally; 1 Killed 34 Injured Part 1/3. August 12, 2017*, YOUTUBE, Aug. 12, 2017, https://www.youtube.com/watch?v=kZCkwVp-jPY (:06 mark); *USA: Explosive Violence Breaks Out at Alt-Right Rally in Charlottesville*, YOUTUBE, Aug. 12, 2017, https://www.youtube.com/watch?v=FLgpz2LjIgA (:01 mark).
[106] *Fascists Attack Counter-Protest in Charlottesville While Police Stand Aside*, VIMEO, Aug. 16, 2017, https://vimeo.com/229919629 (:05 mark). For another perspective of the violence, see Craig Stanley, TWITTER, Aug. 12, 10:56 AM, https://twitter.com/_CraigStanley/status/896384861187051520.
[107] *League of the South Statement on Charlottesville*, LEAGUE OF THE SOUTH, Aug. 23, 2017, http://leagueofthesouth.com/league-of-the-south-statement-on-charlottesville/.
[108] *Unite the Right! August 12 – Charlottesville, VA at Lee Park*, YOUTUBE, Aug. 27, 2017, https://www.youtube.com/watch?v=FSFSdw5mEoY (46:37 mark).

[L]eague fighters with shields put their training to work."[109] An eyewitness remarked at the time that "they're just forcing their way through with their shields."[110] Militia member Rob Kapp described the League's offensive as "pretty brutal"—"like barbarians on a battlefield."[111]

90. Defendant Traditionalist Worker Party (TWP) entered immediately behind the League. TWP had spent the morning engaged in "preparation," including "doing some basic training in organization and self defense maneuvers."[112] Its members wore matching black uniforms and helmets. TWP's commanding officer was Defendant Cesar Hess, a regional coordinator and an "experienced combat veteran."[113] He directed his men to proceed by exclaiming, "Let's go! Forward!"[114] Defendant Matthew Heimbach also served as an operational leader that day. He shouted "shields up!" as the League stormed counter-protestors just ahead. TWP then joined the charge amid an instruction to "push!"[115] Moments later, League members shoved a counter-protestor to the pavement, screamed "Leave!" and "Get the fuck out of here!," spat in her face, and pepper-sprayed her at point-blank range.[116]

91. Defendant National Socialist Movement (NSM) trailed TWP in the Nationalist Front's militarized parade down Market Street.[117] A large rectangular banner announced the

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[109] Parrott, *supra* note 10.
[110] *A IGLY, EAUTIFUL GRAND ALT-RIGHT ENTRANCE into & Through the "Alt-Left" in Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=tneHx3jg0Yk (1:01 mark).
[111] Rob Kapp, *Charlottesville Live-Stream #3*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/rob.kapp.1/videos/889452967860017/ (2:39 mark).
[112] Matt Parrott, *Charlottesville Event Coordination Notes*, TRADITIONALIST WORKER PARTY, Oct. 23, 2017, https://www.tradworker.org/2017/10/charlottesville-event-coordination-notes/.
[113] Parrott, *supra* note 10.
[114] *Explosive Violence*, *supra* note 105 (2:08 mark).
[115] *Raw Footage of the Violence at Lee Park, Charlottesville*, YOUTUBE, Aug. 14, 2017, https://www.youtube.com/watch?v=Thhd-VM6mW4 (:06 mark).
[116] *Id.* (:30 mark); *see also ALT-RIGHT ENTRANCE*, *supra* note 110 (1:25 mark); *Fight #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=axOL-ZVNiyo (:05 mark).
[117] Mathias, *supra* note 99 (:38 mark).

group's presence; shields, flagpoles, helmets, and goggles steeled them for battle. NSM entered Emancipation Park under the command of Defendant Jeff Schoep;[118] he "personally took charge" throughout the day.[119] Referring to the Nationalist Front's opening offensive, Schoep claimed that "we pushed thru them"[120] and "[w]e went right thru them like warriors!"[121]

92. Defendant Schoep personally engaged in combat en route to Emancipation Park. According to *NSM Magazine*, "In one of the initial exchanges NSM Commander Jeff Schoep himself decked a Red with a single blow."[122] On August 13, Schoep tweeted that "[s]elf defense is beautiful, I knocked out an antifa scumbag who attacked us in Charlottesville. Laid him out in the street. ;)"[123]

93. The Alt-Right Defendants did not come to Charlottesville merely to espouse their controversial ideas in a public park. They came to coerce and terrorize. In Defendant Yingling's words, "They weren't there to protect the statue. They were there to fight. And it didn't take long."[124] Another eyewitness described the Alt-Right Defendants' techniques in real time: "They make this line, and then they'll approach the [counter-protestors] in that aggressive posture with weapons-bearing, and instigate. . . . They came here to battle, for war."[125] Robert

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[118] *ALT-RIGHT ENTRANCE*, *supra* note 110 (6:22 mark).
[119] "Unite the Right After Action Report," *NSM Magazine*, Fall/Winter 2017, at 18, http://www.nsm88.org/stormtrooper/nsmmagazinefallwinter2017.pdf.
[120] Jeff Schoep, TWITTER, Aug. 14, 2017, formerly at https://twitter.com/nsm88/status/897224358564954114 (account suspended).
[121] Jeff Schoep, TWITTER, Aug. 14, 2017, formerly at https://twitter.com/nsm88/status/896974682418806785 (account suspended).
[122] "Unite the Right After Action Report," *supra* note 119, at 17.
[123] Jeff Schoep, TWITTER, Aug. 13, 2017, https://web.archive.org/web/20170815152939/https:/twitter.com/nsm88/.
[124] Yingling, *supra* note 39 (12:39 mark).
[125] *Alt-Right Attacks Police in Charlottesville*, YOUTUBE, Aug. 12, 2017, https://www.youtube.com/watch?v=gQmoWS9cuXE (13:02 mark).

"Azzmador" Ray, a prominent Neo-Nazi figure, boasted that the alt-right movement's battle tactics would make Charlottesville residents "afraid to leave their house!"[126]

94. Once inside Emancipation Park—the area to which the rally's permit extended—the Alt-Right Defendants did not remain there to give or listen to speeches. Instead, they repeatedly exited the park in organized bands to clash violently with counter-protestors on the streets below.[127]

95. In one of these highly coordinated sorties, the League's Chief of Staff, Defendant Michael Tubbs, screamed "Follow me!" and motioned for his men to accompany him down the southeast stairs of Emancipation Park. The battalion rushed into the street, assaulting nearby counter-protestors with a cascade of clubs and shields.[128] As his crew stared down their intended foes and wielded flagpoles like javelins,[129] Tubbs shouted, "Shields forward!"[130] And again: "Shields forward! Shields forward!"[131] Tubbs also took it upon himself to physically arrange his group's shield-carriers into fighting position.[132] When one round of skirmishing ended, Tubbs led his men back toward Emancipation Park amid an instruction to "follow your leader!"[133]

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[126] *Azzmador at #UniteTheRight, aka The Charlottesville Putsch pt 1*, YOUTUBE, Aug. 15, 2017, https://www.youtube.com/watch?v=6KxNsGxlrQQ (32:29 mark).
[127] *See, e.g.*, *Charlottesville 2017 - Memes and Terror*, YOUTUBE, Sept. 28, 2017, https://www.youtube.com/watch?v=EKWSwzQylmk (14:44 mark); *Charlottesville White Nationalist Protest: Fights & KKK RIOT (Unite the Right)*, YOUTUBE, Aug. 13, 2017, https://www.youtube.com/watch?v=4bCV3IPKakE (5:51 mark).
[128] *Charge #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=eIfoY5hM9rA (:05 mark); Alex Rubinstein, TWITTER, Aug. 12, 2017, 12:18 PM, https://twitter.com/RealAlexRubi/status/896405542305923074 (:06 mark); WHIO, *LIVE: White Nationalists Rally in Charlottesville, VA*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/whionews/videos/1676962582335299/ (11:18 mark).
[129] *Unite the Right Charlottesville – The Protestors (August 12, 2017)*, YOUTUBE, Aug. 17, 2017, https://www.youtube.com/watch?v=U91XVeBRHAQ (11:07, 11:44 marks).
[130] *Id.* (11:27 mark).
[131] *LIVE After Car Plows into Counter-Protestors at Alt Right Rally in Charlottesville*, YOUTUBE, Aug. 12, 2017, https://www.youtube.com/watch?v=z7Bftlvh1qs (18:40 mark).
[132] WHIO, *supra* note 128 (:54, 9:14 marks).
[133] *Memes and Terror*, *supra* note 127 (10:19 mark).

96. The League's President, Michael Hill, later tweeted that "Tubbs is a hell of a Southern nationalist warrior."[134] According to Hill, Tubbs "fought beside many brave warriors that day"[135] and "was everywhere the chaos was."[136] The League's public-relations chief claimed that Tubbs "towered over Antifa . . . and ran over them like a giant."[137]

97. Defendant Cesar Hess frequently initiated combat, as well. Hess exercised "direct command" of TWP's "full shield squad."[138] "Let's go!," he at one point commanded TWP members carrying clubs and clear riot shields. "Get ready to fucking fight! Let's go!"[139] TWP members then streamed down the stairs with their weapons ready. Throughout the day, Hess also "worked with the League, NSM, and other Nationalist Front groups to help create two shield walls."[140] "Form a line!," he shouted at alt-right shield-carriers.[141] He repeatedly grabbed TWP members, dragging them into his preferred formations.[142] Even TWP's Director could not remove his battle gear without seeking Hess's permission.[143]

98. Not even clerics were immune from the Alt-Right Defendants' militaristic advances. At one point, clergy and faith leaders joined hands and sang on the southeast steps of

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[134] Michael Hill, TWITTER, Aug. 21, 2017, 2:19 PM, formerly at https://twitter.com/MichaelHill51/status/899697441649422336 (account suspended).
[135] Michael Hill, TWITTER, Aug. 22, 2017, 8:02 AM, formerly at https://twitter.com/MichaelHill51/status/899965070662348802 (account suspended).
[136] Michael Hill, TWITTER, Aug. 21, 2017, 11:42 PM, formerly at https://twitter.com/MichaelHill51/status/899839104195735554 (account suspended).
[137] Hunter Wallace, *The Hard Right*, OCCIDENTAL DISSENT, Oct. 31, 2017, http://www.occidentaldissent.com/2017/10/31/hard-right/.
[138] Parrott, *supra* note 112.
[139] *ALT-RIGHT ENTRANCE*, *supra* note 110 (9:18 mark).
[140] Parrott, *supra* note 10.
[141] Hunter Wallace, *#UniteTheRight: Nationalist Front*, PERISCOPE, Aug. 12, 2017, formerly at https://www.pscp.tv/w/1ypJdlnwNlqJW (24:26 mark) (account suspended).
[142] *White Nationalist Protest*, *supra* note 127 (3:57 mark); *Alt-Right Attacks*, *supra* note 125 (4:42, 6:42 marks); *Weapons of Charlottesville Protests*, *supra* note 47 (1:21 mark).
[143] Parrott, *supra* note 10.

Emancipation Park.[144] They intended to block access to the park and expected to be arrested for their show of unity. Robert "Azzmador" Ray asserted that the clergy "will never stand in the way of us for one second. We will go through them like shit through a goose!"[145] Nearby, an alt-right leader screamed, "Fuckin' go through them—right there! Walk through them! Shield wall—go! Go!"[146]

99. As commanded, an organized phalanx slammed into the clergy using shields, bats, and batons. The line broke, allowing the assailants through, only because "someone feared for their life."[147] This offensive "knocked a few folks over"[148] and wounded some of the participants. As one member of the clergy line recalled, "They just plowed right through, knocking people—old people, completely unarmed people—out of the way."[149] The Alt-Right Defendants' demonstrated willingness to rely on violence greatly unnerved the religious leaders. Defendant Kessler, on the other hand, exalted the marchers' aggression: "Cornel West thought he could stop us. Nothing can stop us!"[150]

100. The Alt-Right Defendants also used their shield-wall technique to control entry and exit to Emancipation Park. Upon command, they broke the wall and stationed themselves into two parallel columns to create an "alley" that allowed movement. When the order came to

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[144] *Clergy #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=nCt3Zu0RHTA.
[145] *Azzmador, pt 1*, *supra* note 126 (7:45 mark).
[146] *Id.* (6:40 mark).
[147] Abbey White, *A Charlottesville Faith Leader to Unite the Right: "Love Has Already Won Here"*, VOX, Aug. 14, 2017, https://www.vox.com/identities/2017/8/14/16140506/congregate-cville-charlottesville-rally-protest-interview.
[148] Dahlia Lithwick, *Yes, What About the "Alt-Left"?*, SLATE, Aug. 16, 2017, http://www.slate.com/articles/news_and_politics/politics/2017/08/what_the_alt_left_was_actually_doing_in_charlottesville.html (quoting one community faith leader).
[149] News2Share, FACEBOOK, Oct. 21, 2017, https://www.facebook.com/N2Sreports/videos/1560810424026841/ (1:25:12 mark).
[150] *Azzmador, pt 1*, *supra* note 126 (7:34 mark).

"form up!" again, the shield wall reconstituted itself.[151] James A. Fields, Jr., who would later punctuate the day with terror and tragedy by ramming his car into a crowd of counter-protestors, participated in this coordinated exercise with a Vanguard America shield.[152]

101. Nearby, Defendant Mosley stood alert at the edge of the stairwell. When not giving media interviews, he attempted to control who could enter Emancipation Park.[153] To that end, he directed his followers on how to arrange themselves around the park: "All right, give me some shield guys in front. Let's go, shield guys in front!"[154] Mosley had remarked the night before that "I run this as a military operation. . . . I was in the army."[155]

102. The situation at Emancipation Park grew dangerously unstable. People sent bricks, chemicals, urine, smoke bombs, and frozen water bottles flying;[156] mace, pepper spray, and tear gas pervaded the air.[157] Some alt-right groups, including Defendant Vanguard America, formed a block-long shield wall.[158] Others, including Defendants League of the South and TWP, deployed their shields offensively—simply to ram into counter-protestors.[159] In the thick of the

[151] *See, e.g.*, *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 13*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=1ZwnwminFyQ (1:52, 2:03 marks).
[152] *Id.* (5:07, 5:41, 6:36, 7:48 marks).
[153] *Id.* (3:18 mark).
[154] *Violence in Charlottesville*, *supra* note 4 (9:45 mark).
[155] Gravely et al., *supra* note 5.
[156] Christopher Mathias, TWITTER, Aug. 12, 2017, 11:31 AM, https://twitter.com/letsgomathias/status/896393826897719296.
[157] Christopher Mathias, TWITTER, Aug. 12, 2017, 11:33 AM, https://twitter.com/letsgomathias/status/896394332407771137.
[158] Christopher Mathias, TWITTER, Aug. 12, 2017, 10:49 AM, https://twitter.com/letsgomathias/status/896383176695848961.
[159] For a photo of several shield-carriers amassing for this purpose, see Joe Heim, TWITTER, Aug. 12, 2017, 11:11 AM, https://twitter.com/JoeHeim/status/896388651848011776.

chaos, armed alt-right groups received such orders as "More fucking shield wall!" and "Form a line!"[160] Defendant Borum ordered League members to "hold the line!"[161]

103. The chaos that engulfed downtown Charlottesville left many attendees not only physically broken, but deeply traumatized. Witnesses have described feeling as if an invading army marched into their town, tarnished the community's reputation, and left others to pick up the wreckage. Even Yingling's and Curbelo's men—who fully expected violence at the rally—were deeply shaken by the intensity of what they experienced. Yingling claims that his troops were insulted, shoved, maced, struck with frozen water bottles, pelted with paint, and sprayed with caustic chemicals.[162]

104. Around 11:30 AM, the Charlottesville Police Department deemed the gathering an unlawful assembly. Police used megaphones to convey the decision and informed attendees that if they did not leave Emancipation Park and the surrounding streets, they would be arrested. Law enforcement prepared to clear the park by deploying a police line with riot shields.

105. The melee continued nonetheless. One videographer exclaimed that "it feels like a complete battleground right now!"[163] Another described it as "a fucking war zone out here."[164] Armed demonstrators attacked each other from opposite sides of police barricades, while a KKK-affiliated militia member toting an assault rifle roamed Emancipation Park[165] and nearby

[160] *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 14*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=Hmw3qZ029C8.
[161] *Memes and Terror*, *supra* note 127 (17:40 mark).
[162] Yingling, *supra* note 39 (16:47 mark).
[163] Jake Westly Anderson, *INSANE NEW FOOTAGE FROM CHARLOTTESVILLE!!!*, YOUTUBE, Aug. 28, 2017, https://www.youtube.com/watch?v=JEpDiM0M610 (12:46 mark).
[164] *Unite the Right Charlottesville – Off the Beaten Path (August 12, 2017)*, YOUTUBE, Aug. 12, 2017, https://www.youtube.com/watch?v=29VEPn3jNjA (:54 mark).
[165] *White Nationalist Protest*, *supra* note 127 (4:21 mark); WHIO, *supra* note 128 (7:52 mark).

sidewalks.[166] (Other militia members had entered the park throughout the morning.[167]) The fighting worsened after Defendant Heimbach "ordered his followers to push down the metal police barricades."[168]

106. One alt-right protestor waved his flag and shouted, "Shoot! Fire the first shot in the race war, baby! Shoot!"[169] Richard Preston, the Imperial Wizard of the Confederate White Knights of the Ku Klux Klan, threatened to "shoot that fucking nigger. . . . I'll stand there and fuck that fucking nigger!"[170] He brandished his pistol at the Market Street crowd and shouted, "Go ahead, motherfucker! I'll shoot you!"[171] One minute after declaring that "I'm gonna shoot one of these motherfuckers!,"[172] Preston actually fired at a counter-protestor in the direction of Emancipation Park.[173] Defendant Kessler considers Preston "a damn hero" for having done so.[174]

107. The Alt-Right Defendants again used shield walls to resist any effort to reclaim the territory. A man appearing to command multiple Nationalist Front groups screamed, "Shields up front! Shields up front! Shields!" Others interjected with "Attack!," "Fuckin' use

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[166] WHIO, *supra* note 128 (8:19 mark).
[167] *Behind the Scenes Footage, Part 13*, *supra* note 151 (1:34 mark).
[168] Robert King, *Meet the Man in the Middle of the "Unite the Right" Rally in Charlottesville*, USA TODAY, Aug. 12, 2017, https://www.usatoday.com/story/news/nation-now/2017/08/12/meet-man-middle-unite-right-rally-charlottesville/562571001/.
[169] *Id.* (13:14 mark).
[170] *Battle of Charlottesville: BLACKPILING? Nah. UNIFYING? Absolutely!*, YOUTUBE, Aug. 19, 2017, https://www.youtube.com/watch?v=VLGGxApuBiw (5:01 mark).
[171] *Gun Pulled #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=4fvmeiYroTU (:02 mark).
[172] *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 16*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=LnhfqzPYcYM (7:26 mark).
[173] *Id.* (8:35 mark); ACLU of Virginia, TWITTER, Aug. 26, 2017, 6:28 PM, https://twitter.com/ACLUVA/status/901572207079555073.
[174] *James Fields is Innocent!*, YOUTUBE, Dec. 14, 2017, https://www.youtube.com/watch?v=0yotV_RcpzY (11:20 mark).

'em!," and "Give 'em hell, boys!"[175] One demonstrator warned that "[w]e're getting ready to charge you!"[176] Defendant Mosley called for "every shield" to line up and form a barricade.[177] "Shield wall! Shield wall!," he screamed to his followers.[178] As one reporter on the ground observed, "It seemed that they had practiced for this."[179]

108. Some alt-right attendees forcefully pushed back against the police line in riot gear.[180] The police eventually cleared the area just before the rally's scheduled noon start time, forcing the free-for-all onto the surrounding streets. Members of Defendant Vanguard America and other organizations quickly formed an imposing shield wall in front of an adjacent business.[181] Defendant Tubbs led a procession of shield-carrying demonstrators down Market Street.[182]

109. Defendant Kessler soon gave alt-right attendees their next command: "[W]e're marching to McIntire! We're marching to McIntire Park!"[183] Defendant Mosley, too, announced that "we're marching to McIntire—let everyone know!"[184] En route, one marcher threw a flare at a *Washington Post* videographer.[185]

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[175] *Battle of Charlottesville*, *supra* note 170 (:13 mark); *see also id.* (4:50 mark) ("Shields to the front! Shields to the front!"); *id.* (6:58 mark) ("Shields over here! Shields!").
[176] *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 15*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=vPzDGMCP1o0 (:11 mark).
[177] *Behind the Scenes, Part 16*, *supra* note 172 (7:15 mark).
[178] *Memes and Terror*, *supra* note 127 (21:21 mark).
[179] Blake Montgomery, *Here's What Really Happened in Charlottesville*, BUZZFEED NEWS, Aug. 14, 2017, https://www.buzzfeed.com/blakemontgomery/heres-what-really-happened-in-charlottesville.
[180] Christopher Mathias, TWITTER, Aug. 12, 2017, 11:51 AM, https://twitter.com/letsgomathias/status/896398859043295236.
[181] Joe Heim, TWITTER, Aug. 12, 2017, 11:33 PM, https://twitter.com/JoeHeim/status/896395388093124608.
[182] *Behind the Scenes, Part 16*, *supra* note 172 (19:20 mark); WHIO, *supra* note 128 (31:16 marks).
[183] *Violence in Charlottesville*, *supra* note 4 (14:29 mark).
[184] *Azzmador at #UniteTheRight, aka The Charlottesville Putsch pt 2*, YOUTUBE, Aug. 15, 2017, https://www.youtube.com/watch?v=zIIVu1HdaF4 (30:47 mark).
[185] Joe Heim, TWITTER, Aug. 12, 2017, 11:53 AM, https://twitter.com/JoeHeim/status/896399188396822529.

110. In a heated phone conversation, Mosley fumed to law-enforcement officials that additional vehicles were not being allowed near Emancipation Park to pick up alt-right attendees holding the group's remaining equipment. He warned that "I'm about to send at least 200 people with guns to go get them out if you guys do not get our people out."[186] He began searching for firepower: "I need shooters!"[187] Mosley vehemently rejected another white nationalist's suggestion that the group leave McIntire Park to avoid arrest: "I'm the fucking organizer . . . . Listen to what I say, goddamnit!"[188]

111. After the rally ended, Defendant American Warrior Revolution marched in formation through the downtown streets for roughly twenty minutes.[189] One member remarked that "we put ourselves at a lot of risk being out here armed like this."[190] His premonition proved accurate: The rifle-toting regiment elicited intense hostility from local residents, both in a parking lot on Water Street[191] and near the Friendship Court residential area.[192] They were told to "get the fuck out of our city!"[193]—"you're invading these people's homes!"[194] At least one militia member left his assault rifle unsecured in the bed of a pickup truck during this tense standoff.[195]

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[186] *Race and Terror*, *supra* note 1 (9:12 mark).
[187] Allie Conti, *Inside the Chaos and Hate at Charlottesville*, VICE, Aug. 13, 2017, https://www.vice.com/en_us/article/kzz8we/inside-the-chaos-and-hate-at-charlottesville.
[188] *Id.*
[189] *See* American Warrior Revolution, *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/americanwarriorrevolution/videos/1428969810526013/ (24:01 mark); American Warrior Revolution, *Charlottesville Live-Stream #3*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/americanwarriorrevolution/videos/1429012537188407.
[190] American Warrior Revolution, *Live-Stream #3*, *supra* note 189 (11:00 mark).
[191] *Id.* (2:19 mark).
[192] Dean Seal, TWITTER, Aug. 12, 2017, 1:00 PM, https://twitter.com/JDeanSeal/status/896416032386162688.
[193] *Alt Right Rally*, *supra* note 131 (2:04:04 mark).
[194] *Id.* (2:03:43 mark).
[195] *Id.* (1:59:21 mark).

112. As organizers of the counter-protest received word of trouble at Friendship Court, just south of the downtown mall, they sent as many as 300 people toward the area. That group encountered the roving militiamen as they returned to the Water Street parking lot from Friendship Court.[196] The counter-protestors eventually merged with another group of like-minded marchers making their way toward Justice Park via Water Street.

113. As the groups came together and headed up Fourth Street around 1:40 PM., a silver Dodge Challenger came barreling toward the captive crowd. The collision killed 32-year-old Heather Heyer and injured at least 19 others. It was a gruesome coda to a day full of violence and terror.

114. The attack was also a natural outgrowth of the Alt-Right Defendants' militaristic mindset. James A. Fields, Jr., who drove the car that killed Heather Heyer, in apparent imitation of an international terrorism tactic, attended Unite the Right within the ranks of Defendant Vanguard America. He wore the group's uniform and carried a black shield emblazoned with Vanguard's logo.

B. The Harms Posed by Unaccountable Private Militias

115. In emergency situations, it is essential that the Commonwealth's duly constituted armed forces and peace officers be immediately recognizable. Private individuals need to know whose orders they must follow and to whom to report emergency information; state actors need to know that military personnel answer to them and will follow their commands to protect public safety. Private militia activity, like the kind witnessed in Charlottesville on August 12, 2017, obliterates this critical clarity for both private citizens and state officials alike.

[196] Alex Rubinstein, TWITTER, Aug. 12, 2017, 1:27 PM, https://twitter.com/RealAlexRubi/status/896422963423178752.

116. To any reasonable observer, the Militia Defendants' attire and weaponry rendered them indistinguishable from state-sanctioned peacekeeping units. One episode in particular illustrates the gravity of this problem. On the morning of August 12, Virginia's Secretary of Public Safety and Homeland Security, Brian Moran, crossed paths with a militia group in the Market Street parking garage. Despite knowing that these particular soldiers could not be with the Virginia National Guard, their strikingly similar appearance caused him to "d[o] a double take." "They're not ours, are they?," Moran asked his deputy, just to be sure. "No sir," his deputy replied, "I don't think they're with us."[197]

117. According to Moran, state officials "were worried that Yingling . . . and his troops would be mistaken for National Guard members by the public."[198] Virginia's National Guard—deployed for the first time in decades to help quell the impending violence—was so concerned that attendees would conflate it with private militia groups that it tweeted out a way to distinguish between them: "@VaNationalGuard ready to assist local law enforcement in #Charlottesville, can be identified by MP patch #cvilleaug12." A picture of the patch was appended to the message.[199]

118. Numerous eyewitnesses reported mistaking the Militia Defendants for National Guard personnel. Overwhelmingly, their first instinct was that any unit so dressed and equipped *must* be an adjunct of state or local law enforcement. One attendee, for example, told her companion that "they're security for Unite the Right";[200] another mistook the militia for "civil

[197] Aaron C. Davis et al., *How Charlottesville Lost Control Amid Deadly Protest*, WASH. POST, Aug. 29, 2017, https://www.washingtonpost.com/investigations/how-charlottesville-lost-control-amid-deadly-protest/2017/08/26/288ffd4a-88f7-11e7-a94f-3139abce39f5_story.html.
[198] Duggan, *supra* note 36.
[199] Va. National Guard, TWITTER, Aug. 12, 2017, 12:04 PM, https://twitter.com/VaNationalGuard/status/896402001067683841.
[200] Marion, *supra* note 52 (18:43 mark).

defense."[201] Few were willing to approach a row of armed men bearing assault rifles and inspect their uniforms to ascertain the militia's public or private status. If they had done so on August 12, they would have seen patches bearing the emblems of the U.S. Army,[202] the Army's 82nd Airborne Division,[203] and the U.S. Marine Corps.[204] Another militia member ostensibly carried a "US IFAK" (i.e., Individual First Aid Kit), which the U.S. military has traditionally issued to soldiers deployed to theaters of war.[205] Defendant Wilson described the militia's uniforms as "military-looking."[206]

119. As one Charlottesville resident later told several Militia Defendants, "Regardless of what your intentions were, what the public perception was—and just being a citizen here—you guys were part of an invasion."[207] Other residents indicated that "I didn't know who y'all were" on August 12,[208] and that "people are not sure about . . . who is who."[209] As a local community organizer explained, "Did you have people worried not knowing whose side you was on? Absolutely! . . . Nobody knew why you guys were here!"[210] Defendant Yingling agreed that when he attends public gatherings as part of a heavily armed private militia, "nobody really knows who we are. We saw that first-hand here on [August] 12."[211] Defendant Curbelo stated

[201] Turner, *supra* note 54 (38:34 mark).
[202] *Alt Right Rally*, *supra* note 131 (2:18:48 mark).
[203] *Id.* (1:59:21 mark).
[204] Brennan Gilmore, TWITTER, Aug. 12, 2017, 11:53 AM, https://twitter.com/brennanmgilmore/status/896399305996742656.
[205] *He Defends White Nationalism, Even After Charlottesville*, YOUTUBE, Aug. 25, 2017, https://www.youtube.com/watch?v=Jj_8lXM3pwA (2:17 mark).
[206] Marion, *supra* note 41 (17:16 mark).
[207] News2Share, *supra* note 149 (19:12 mark).
[208] *Id.* (2:24:51 mark).
[209] *Id.* (2:14:55 mark).
[210] *Id.* (2:03:38 mark).
[211] *Id.* (2:33:20 mark).

that "it would have been great if they did know who we were," but he understood why "assumptions [were] made immediately."[212]

120. The presence of uniformed, rifle-wielding militiamen on the streets of a college town terrified rally attendees and local residents. One Charlottesville native wondered aloud, "Who would have thought that this would happen in America?"[213] Another exclaimed that a nearby militia member "ha[d] a fucking loaded AR-15!"[214] One attendee admonished an AWR member: "You're pointing your fucking gun at people! Why are you holding your gun up like that?"[215] Two passersby threw their hands up in a plea not to be shot.[216] "Don't touch me! Don't touch me!," another rallygoer warned AWR members.[217] As a Charlottesville resident later told several of the Militia Defendants, "Did you guys scare people walking with the big guns? Damn right you did! . . . Did you make people uneasy? Absolutely, you did!"[218]

121. Even Defendant Curbelo acknowledged that "If I saw me coming at me in all my gear, I would find it intimidating."[219] Yingling, too, admitted that his men's equipment "looks intimidating; it looks scary."[220] "If I was in your shoes," he later reflected, "and I saw a bunch of

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[212] The Liberty Den (George Curbelo), FACEBOOK, Oct. 21, 2017, https://www.facebook.com/TheLibertyDen/videos/1703298689688319/ (6:26 mark).
[213] *Alt Right Rally*, *supra* note 131 (2:16:54 mark).
[214] *Id.* (2:21:14 mark).
[215] Chastity Bendele, *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/chastity.bendele/videos/10156485464068452/ (9:32 mark)
[216] American Freedom Keepers (Francis Marion), *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/AmericanFreedomKeepers/videos/1535537156505759/ (8:44 mark).
[217] Chastity Bendele, *Charlottesville Live-Stream #3*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/chastity.bendele/videos/10156485538113452/ (3:49 mark).
[218] News2Share, *supra* note 149 (36:39 mark).
[219] Walters, *supra* note 34.
[220] *Interview with Christian Yingling Leader of the Pennsylvania Light Foot Militia*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=z1xSR6LOFGI (5:01 mark).

armed guys walking down the street, I would be concerned too. Absolutely. You had every right to be."[221]

122. Civil authorities must be able to calibrate the proper response to public demonstrations without having to account for the often unpredictable and incompatible security measures of unaccountable, self-directed, heavily armed paramilitary groups. In Governor McAuliffe's words, "state and local officials" must be able "to make thoughtful and informed decisions on managing the new reality of the potential for civil unrest."[222] This process requires extensive preparation and depends upon a meticulous accounting of existing resources.

123. Private militia activity threatens to confound these carefully crafted plans. Unauthorized militia groups' practice of attending politically charged public events dramatically impairs officials' ability to formulate dependable plans to ensure public safety. Law-enforcement officials must invest significant amounts of time and energy in predicting which militia groups will attend and where they might station themselves. Given the decentralized and self-directed nature of these groups, such predictions are unlikely to be accurate.

124. The mere movement of militia members to and from their vehicles may also require a massive diversion of law-enforcement resources. The appearance of Defendant American Warrior Revolution in and around the Water Street parking lot was so alarming that the Virginia State Police moved in to secure the area with a full line of riot shields.[223] Militia member Rob Kapp commented that the police presence was "all for us, for our little group here. . . . This is the second time the police came to a spot we were at."[224]

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[221] News2Share, *supra* note 149 (19:27 mark).
[222] *Governor McAuliffe Signs Executive Order Temporarily Halting Demonstrations at Lee Monument in Richmond*, Aug. 18, 2017, https://governor.virginia.gov/newsroom/newsarticle?articleId=20966.
[223] *Alt Right Rally*, *supra* note 131 (2:18:14 mark).
[224] Rob Kapp, *Charlottesville Live-Stream #4*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/rob.kapp.1/videos/889524014519579 (1:45, 3:29 marks).

125. During a demonstration, state and local officials must also consider whether to expel private militia members from the scene, risking an escalation of violence, or allow them to continue frightening the local population. According to Lieutenant Steve Upman, the Charlottesville Police Department's Public Information Officer, "obviously we had to be cognizant of their presence" in determining how best to manage the unfolding chaos.[225]

126. In any large-scale protest, moreover, law enforcement must strike a delicate balance between preserving community order and upholding constitutional rights. The need to ensure that law enforcement can overpower paramilitary personnel, should hostilities ever arise, greatly complicates that challenging task. As the president of the Major County Sheriffs of America told *Defense One* following August 12, 2017, "You don't want to have so many officers there . . . that it makes it look like you're trying to stifle someone's ability to protest." Still, "you need to be prepared in case you have some individuals that are going to start breaking the law."[226]

127. Governor McAuliffe noted the disparity between the militia presence and that of the Commonwealth's peace officers: "You saw the militia walking down the street," he said. "You would have thought they were an army. . . . [The militia members] had better equipment than our state police had."[227] Private militia groups, but not the police or Virginia National Guard, carried assault rifles at the Unite the Right rally. According to Moran, "The militia showed up with long rifles, and we were concerned about that in the mix. . . . [I]t was a concern

[225] Caroline Houck, *Armed Militias Won't Stop After Charlottesville, and That Worries Law Enforcement*, DEFENSE ONE, Aug. 17, 2017, http://www.defenseone.com/threats/2017/08/armed-militias-wont-stop-after-charlottesville-and-worries-law-enforcement/140335/.
[226] *Id.*
[227] Casey Michel, *How Militias Became the Private Police for White Supremacists*, POLITICO, Aug. 17, 2017, http://www.politico.com/magazine/story/2017/08/17/white-supremacists-militias-private-police-215498.

to have rifles of that kind in that environment."[228] One member of the Charlottesville Police Department told Defendant Shoaff that "if y'all do leave, it will help settle this down a bit more."[229]

128. All of these considerations distract officials from their standard peacekeeping duties. And if law enforcement errs at any step along the way—if it miscalculates what may well be incalculable—responsibility for any resulting tragedies will be laid at its doorstep, as the politically accountable defender of local communities.

129. Private militia groups' flagrant disregard for state-law requirements exacerbates the danger of such catastrophes. Virginia has prescribed strict qualifications, training procedures, weaponry protocols, and codes of conduct for its armed peacekeepers and those who provide private security services within its borders. The Militia Defendants pay no heed to such regulations. These groups continue to accept applicants on whatever terms they wish and train members whenever and however they prefer. According to Yingling, many militia groups' "training schedules have taken quite a hit . . . due to constantly being at events."[230] Private militias also ignore state-law specifications in deciding how to arm themselves: Even within the 38-person group commanded by Defendants Yingling and Curbelo on August 12, "everybody carrie[d] something different."[231] In these and other ways, private militia groups operate outside the reach of public accountability.

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[228] Duggan, *supra* note 36.
[229] Chastity Bendele, *Charlottesville Live-Stream #1*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/chastity.bendele/videos/10156485254483452 (37:57 mark).
[230] Christian Yingling, FACEBOOK, Dec. 31, 2017, https://www.facebook.com/christiaan.yingling/posts/764965127030847.
[231] *Charlottesville Militia*, *supra* note 66 (19:10 mark).

130. The militia movement as a whole, moreover, is internally fragmented and decentralized. Individual groups differ vastly in terms of their objectives, criteria for admission, training procedures, and willingness to use force. In Defendant Curbelo's words, "There is no standardization out there. Anybody can go out . . . and have a completely different perspective on what they want to do under the title of 'militia.'"[232] And again: "[The] movement isn't regulated in any way outside of individual groups within [it] . . . . [T]hey can call themselves militia, but there's no governing body, there's no license that they can get. . . . It's unregulated."[233]

131. Because they are unanswerable to civil authorities, private militia groups cannot be reprimanded for any lapses in attentiveness. Rather than focusing fully on the mission at hand, for example, at least three militia members—Rob Kapp, Jason Turner, and Defendant Richard Wilson—broadcast their August 12 experiences for Facebook Live audiences. Kapp frequently allowed the logistics of recording to preoccupy his attention. "I'm gonna try putting my thumb in my vest, see if [the camera] will stay upright," he told his viewers.[234] Kapp acknowledged that "I need to be paying a little more attention to everything, but every time I put it down, something happens. I want everybody to see what's going on out here!"[235] Both Kapp

[232] George Curbelo, FACEBOOK, Nov. 13, 2017, https://www.facebook.com/george.curbelo/videos/1670852579631799/ (3:25 mark).
[233] News2Share, *supra* note 149 (7:09 mark).
[234] Rob Kapp, *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/rob.kapp.1/videos/889426417862672/ (:05 mark).
[235] Kapp, *supra* note 111 (3:46 mark).

and Turner engaged with online viewers' real-time comments;[236] Defendant Wilson zoomed in on passive bystanders for lengthy periods, visibly annoying them.[237]

132. Observers described the Militia Defendants as tense and restive as the surrounding violence tried their patience. As he witnessed a particularly violent clash initiated by a white-nationalist group, one militia member was heard to say, "OK, here we go," while moving for his weapon. For Defendant Yingling, the scene was "nothing short of horrifying";[238] he claims to have "ha[d] nightmares about it."[239] Defendant Curbelo recalled it as "four and a half, five hours of absolute hell."[240] He divulged to a reporter that "I can't tell you how difficult it was to maintain our discipline with that measure of hate."[241]

133. Defendant Wilson explained that "because of all the firearms involved," the potential for violence was "extremely, extremely higher than any other event or rally any of us have ever been at."[242] Defendant Curbelo also appreciated how hazardous the gathering had become, his men being "fully armed with long guns, with sidearms, batons, knives."[243]

134. The massacre so many feared very nearly materialized. After the rally, Defendant Curbelo acknowledged that additional shots likely would have been fired had the militia been unable to "maintain[] its discipline."[244] In a chilling assessment, Curbelo stated, "Did [my men] deploy any of th[eir] weapons? No. Did they have the right to, considering that there was a mob

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[236] *Id.* (5:47 mark); Jason Turner, *Charlottesville Live-Stream #1*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/jason.turner.5602/videos/1484778834901437/ (9:54 mark); Turner, *supra* note 54 (10:39, 26:52, 32:14 marks).
[237] Marion, *supra* note 52 (16:37 mark).
[238] Duggan, *supra* note 36.
[239] Routh, *supra* note 58.
[240] Curbelo, *supra* note 17 (31:37 mark).
[241] Wallace, *supra* note 18.
[242] Marion, *supra* note 41 (58:07 mark).
[243] Curbelo, *supra* note 17 (38:02 mark).
[244] *Id.* (19:10 mark).

attacking them? Yes!"[245] In fact, a member of the New York Light Foot Militia reportedly drew his weapon and "came very close to firing on the crowd"[246] after exclaiming, "Get the fuck back!"[247] Curbelo insisted that this militia member "had the right to . . . shoot them."[248] Just minutes after leaving the rally scene, Defendant Wilson breathed a sigh of relief: "Whew, that was a little bit close!"[249] Defendant Shoaff similarly claimed that he and Defendant American Warrior Revolution "could have fucking used deadly force . . . . We had the justification to use deadly force that day, and mow people fucking down!"[250] As one attendee reflected, "All it takes is one jumpy person pulling a trigger."[251]

C. Plaintiffs Suffered, and Will Continue to Suffer, Irreparable and Incalculable Injuries as a Result of Defendants' Unlawful Conduct

135. The City of Charlottesville has expended hundreds of thousands of dollars in preparing for and responding to the Unite the Right rally, and the City anticipates that its costs will continue to mount. These costs include overtime pay for city employees, support from surrounding localities, and legal costs both before and after the rally. The presence of paramilitary activity and militia groups increased these costs by heightening the risks of violence, thereby necessitating additional police and security resources.

136. Should Defendants be allowed to return to Charlottesville to engage in paramilitary activity, the City would be required to devote further time and effort to addressing

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[245] *Id.* (38:11 mark).
[246] Houck, *supra* note 225.
[247] Curbelo, *supra* note 17 (38:50 mark).
[248] *Id.* (38:57 mark).
[249] Marion, *supra* note 216 (7:04 mark).
[250] American Warrior Revolution (Ace Baker), FACEBOOK, Oct. 12, 2017, formerly at https://www.facebook.com/americanwarriorrevolution/videos/1481078121981848/.
[251] *Squaring Off Against Fascism, Critical Reflections from the Front Lines: An Interview*, CRIMETHINC., Sept. 4, 2017, https://crimethinc.com/2017/09/04/squaring-off-against-fascism-critical-reflections-from-the-front-lines-an-interview.

the resulting threat to public safety. The City has set up an internal task force to develop proactive strategies regarding policing, regulations, communications, intelligence-gathering, and community outreach for future similar events in Charlottesville, thereby diverting multiple City departments' limited resources. The City likely would have to continue or expand such efforts should Defendants be permitted to engage in paramilitary activity in Charlottesville again.

137. The City of Charlottesville has also felt compelled, in part by the presence of paramilitary groups, to revise its rules and procedures for controlling the conditions under which groups and organizations may hold rallies and demonstrations in Charlottesville.

138. Prior to the Unite the Right rally, plaintiff businesses and members of the Downtown Business Association of Charlottesville (DBAC) spent significant amounts of time and resources to understand and prepare for the risk of violence. For example, some plaintiff businesses invested in measures to secure their property from harm, including hiring additional staff and private security, boarding up their store windows, and installing blackout curtains.

139. Downtown businesses, including members of DBAC and plaintiff restaurants and retail stores, closed early on August 12, 2017—or never opened—out of fear for the safety of their owners, employees, and property. These plaintiffs each lost thousands of dollars in revenue by closing on a Saturday in the summer. Some plaintiffs remained closed on Sunday, August 13, 2017, or closed early on that day, leading to additional revenue losses.

140. Employees of many plaintiff businesses did not come to work on August 12 and 13, 2017, out of fear for their safety.

141. On the morning of August 12, 2017, two members of a militia group stationed themselves in front of Alakazam Toys and Gifts, interfering with its business. Alakazam locked the doors to its store with patrons still inside in order to protect the patrons from physical harm.

142. Although the owners of Hays + Ewing and Wolf Ackerman often work on weekends, they were unable to reach their offices on August 12, 2017, because they felt it was unsafe to travel downtown.

143. Quality Pie shut down construction work for four days following the Unite the Right rally out of fear of violence, thereby delaying its opening to customers.

144. Since August 12, 2017, plaintiff businesses and members of DBAC have experienced a marked decline in revenues. Would-be clients and customers have avoided Charlottesville, and the downtown area in particular, because they fear the return of private militias and alt-right paramilitary groups. The public has also come to associate Charlottesville with paramilitary activity, diminishing plaintiffs' business prospects and property values in Charlottesville. Should paramilitary forces return to Charlottesville, this perception would intensify, further harming the City and its businesses.

145. In a recent survey, nearly a quarter of potential travelers indicated that they would be less interested in visiting Charlottesville because of the Unite the Right rally and related events. Moreover, nearly all of the Charlottesville and Albemarle County businesses surveyed reported having been negatively affected by the Unite the Right rally and related events, with over two fifths reporting a "strong negative" impact. Only 5.8 percent of the participating businesses had not suffered revenue losses since August 12, 2017. Overall, Charlottesville suffered a nearly 12 percent drop in retail sales in September 2017 as compared to September 2016.

146. Multiple plaintiff businesses have invested new efforts and resources into marketing to try to make up for the loss of business and reputational harms they have experienced. For example, as Champion Brewing has sought to expand the distribution of its

packaged products, which display Champion's association with Charlottesville, it has had to overcome the negative connotation now associated with the City. Champion Brewing also has invested significant amounts of time to encourage tourism to Charlottesville—an effort that Champion did not consider necessary before the Unite the Right rally.

147. Confidence in Charlottesville as a quality place to live and work has been eroded by the events surrounding the Unite the Right rally and the association between Charlottesville and paramilitary activity. If left unredressed, this perception will reduce the number of new housing and business projects in the Charlottesville area, causing harm to both Hays + Ewing and Wolf Ackerman. Since August 12, 2017, these plaintiffs have received notably fewer inquiries for new building projects than anticipated based on past experience. Each architectural project is unique and takes several years to complete, making the amount of loss impossible to quantify.

148. Because the City of Charlottesville has redirected many of its agencies to focus on responding to the events of August 12, 2017, and preparing for similar future events, City agencies have been unable to maintain their usual flow of day-to-day business. This has caused significant delays in Wolf Ackerman's existing projects and has required the firm to devote additional resources toward, among other things, seeking needed approvals from the City.

149. Members of the Belmont-Carlton, Little High, and Woolen Mills neighborhood associations felt unsafe in their homes and in their communities on August 11 and 12, 2017, leaving them unable to enjoy the many benefits that Charlottesville has to offer. Residents were frightened and confused by the presence of militia groups. Because they feared for their children's safety, residents either kept their children indoors or sent them out of town to stay

with friends and family members. Neighborhood events planned for the weekend of August 12 were canceled, as well.

150. On August 12, 2017, Defendants, many of them armed, trespassed on the property of plaintiff neighborhood associations' members in traveling to and from the rally. If Defendants were to return to downtown Charlottesville—where parking is scarce—to engage in paramilitary activity, these harms likely would occur again.

151. Plaintiff businesses' owners and employees, DBAC's members, and the neighborhood associations' members continue to suffer from anxiety and stress because they fear that paramilitary organizations will return to Charlottesville. Many residents feel anxious about attending large public gatherings or encountering large groups in downtown Charlottesville, and parents continue to avoid bringing their children to Emancipation Park and the public library, located across the street from the park. Further paramilitary activity in Charlottesville would exacerbate these fears and augment residents' perception of their vulnerability.

D. The Organizers of Unite the Right Established a Private Online Discussion Group to Coordinate a Massive Show of Force

152. The Unite the Right rally of August 12, 2017—and the unlawful paramilitary activity that undergirded it—were the product of systematic, centralized preparation. It has since come to light that rally organizers Jason Kessler and Eli Mosley oversaw a highly regimented event-planning process using an online chat app called Discord. They orchestrated a weeks-long virtual convocation of alt-right organizations, one designed to streamline the logistics of attending the event and engaging in a militaristic show of force under the guise of self-defense.

Over 400 unique users from all parts of the country[252] transmitted and received information about Unite the Right over Discord.

153. Using a series of dedicated channels within an invitation-only chatroom labeled "Charlottesville 2.0," Defendants Kessler and Mosley and their agents funneled specific operational instructions to attendees. Rank-and-file participants also used those outlets to seek clarification and apprise one another of the latest relevant intelligence. The Charlottesville 2.0 channels included such topics as #announcements, #confirmed_participants, #code_of_conduct, #questions_for_coordinators, #flags_banners_signs, #promotion_and_cyberstrike, #gear_and_attire, #antifa_watch, #demonstration_tactics, #chants, and #virginia_laws.

154. One of the Discord group's moderators "set up private, organization specific channels so members in each group c[ould] coordinate and socialize with each other." The listed groups included Defendants Traditionalist Worker Party, Vanguard America, and League of the South. The same convenience was also provided for individual geographic regions, including ones as far-ranging as #florida, #tx_ok, #california_pacific_nw, #midwest_region, #ny_nj, and #beltway_bigots.

155. Several prominent alt-right figures participated in the event planning through Discord. Of those whose identities can readily be discerned, the contributors included Christopher Cantwell, Defendant Matthew Heimbach, Augustus Invictus, Matthew Parrott, Robert "Azzmador" Ray, and Richard Spencer, in addition to Defendants Kessler and Mosley.

156. Kessler and Mosley delegated certain event-planning tasks to other alt-right leaders. User "Tyrone," for example, oversaw the shuttle system on August 12, claiming to convey "the official policy from the organizing committee"; user "Erika" coordinated "the

[252] Of the relatively few Discord users who included their states of residence in their usernames, at least 29 states and the District of Columbia were represented.

medical end of things," which included enlisting the services of unlicensed EMTs. Individual Discord users were also identified as regional and state-specific organizers for the rally. Even so, only a fraction of the preparations occurred in online chatrooms. As one user explained, "I'm sure there is a lot of planning going on behind the scenes that we don't see."

157. On July 7, 2017, user "Heinz - MI" posted a Word document entitled "Shields_and_Shield_Tactics_Primer.docx" to the #safety_planning channel.[253] He wrote that "this is what we have been sending to group leaders in order to get them on the same page." The document illustrated how to execute a shield wall, which would have both "defensive" and "offensive" components. It envisioned the creation of an impregnable barrier that would use "long[] weapons" to "push people away from the wall as [our] group advances." Inter-group coordination—using shields "in an organized manner"—would be the key to "present[ing] a squared away force" against "our enemies." The document concluded by inviting all shield-wielding groups to train collectively upon arriving in Virginia: "By the time we get to Charlottesville we will hopefully have enough time to practice as a solid group." "Heinz - MI" also promised to "put[] out a video for basic formation, roles, and commands to all of the group leaders shortly."

158. One user of Gab, another social-networking site, similarly advised Unite the Right attendees to "[l]earn to move in formation" and follow an "organized hierarchy," including a chain of command.

159. On August 10, 2017, Defendant Mosley circulated a nine-page PDF entitled "General Orders" in the Charlottesville 2.0 Discord chatroom.[254] This document contained a

[253] *See Shields and Shield Tactics Primer*, July 7, 2017, *available at* https://www.unicornriot.ninja/wp-content/uploads/2017/09/Shields_and_Shield_Tactics_Primer.pdf.
[254] *See Operation Unite the Right Charlottesville 2.0: General Orders*, Aug. 10, 2017, *available at* https://www.unicornriot.ninja/wp-content/uploads/2017/08/OpOrd3_General.pdf.

comprehensive set of directives to help attendees finalize their preparations and work in lockstep at the event. Its readers were exhorted to "follow the rules and stick to the plan." That entailed "pay[ing] attention to your leadership, and the announcements channel in [D]iscord," as well as following six specific Twitter accounts for minute-by-minute updates. The General Orders also advised participants to "get in touch with the organizers (Eli Mosley or Jason Kessler) ASAP" in the event of an emergency.

160. Defendant Mosley emphasized that law enforcement could not be relied on to keep the peace, and that alt-right paramilitary units must do so instead. To that end, the "General Orders" document he drafted and circulated via Discord described three contingency plans: Plan Green, Plan Yellow, and Plan Red. Under Plan Yellow, "we . . . [would] have to take the ground by force." And Mosley described Plan Red as being "incredibly dangerous." To implement these plans, the organizers urged all attendees to bring shields and helmets. Mosley declared that "[o]ur security forces in [the] form of the shield wall will be deployed in whatever manner is most effective to reduce the threat." He continued: "Our protection overall will be from our numbers"—those combining to form a shield wall—"and the people who are experienced/trained with a firearm." The Orders accordingly encouraged attendees to "bring a weapon" if they felt comfortable doing so. Posting on Discord, one co-organizer revealed the extent of coordination: "We've consistently been in contact with the security organizers of every individual group that's attending for months."

161. In the weeks before the rally, Defendants Kessler and Mosley organized several conference calls attended by at least one representative from each attending group. Those calls, which took place in the "Leadership Meeting" voice channel on Discord, aimed to consolidate

various groups' efforts and present a united tactical front. The last such call occurred on August 10, 2017, and lasted over an hour.[255]

162. Defendants Kessler and Mosley frequently interceded in the Discord group to provide definitive instructions or answer specific queries. For example, Kessler recommended that attendees "bring picket sign posts, shields and other self-defense implements" that could be turned into "weapon[s] should things turn ugly." Mosley periodically alerted participants to impending leadership meetings and the status of forthcoming operational orders. He told the entire Discord group that "[s]ince I am doing this full time . . . please feel free to reach out to me directly for important things." Kessler has also said that "for two months . . . it was my full-time job essentially."[256]

163. Unite the Right attendees often introduced themselves by referencing their Discord usernames. As one demonstrator remarked, "I'm meeting tons of people from the Discord. It's great!"[257] A typical exchange unfolded as follows: "Oh, you're 'TheBigKK'?" "Yeah, I hosted Discord. Nice to meet you!"[258] Another attendee alluded to "the people in my Discord."[259]

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[255] *See Discord Voice Chat Meeting Recording (Part One)*, Aug. 10, 2017, *available at* https://www.unicornriot.ninja/wp-content/uploads/2017/09/UniteTheRight-August10-leakedchat-1.mp3; *Discord Voice Chat Meeting Recording (Part Two)*, Aug. 10, 2017, *available at* https://www.unicornriot.ninja/wp-content/uploads/2017/09/UniteTheRight-August10-LeakedChat2.mp3.
[256] Jason Kessler, *The Elliot Kline (Eli Mosley) Problem and Unite the Right*, PERISCOPE, Sept. 17, 2017, https://www.pscp.tv/w/1djxXLpVeRNxZ (4:50 mark).
[257] *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 17*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=MKxybrkKTqs (5:50 mark).
[258] *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 10*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=Mc7CdHy2rzA (1:18 mark).
[259] *Unite the Right!*, *supra* note 108 (59:23 mark).

E. The Alt-Right's Extensive Planning for Militaristic Violence at the Unite the Right Rally

164. The organized violence that erupted in Charlottesville was hardly unintended. Those who planned the Unite the Right rally, as well as the rank-and-file attendees who received instruction and helped publicize the event, eagerly plunged into a maelstrom of their own making. And the event's self-appointed peacekeepers stood guard with military-style weapons precisely because they deemed their presence necessary to forestall violent confrontations.

165. Months before the Unite the Right rally, Defendant League of the South's President, Michael Hill, called upon League members to "fight back and drive our enemies from our midst. And when I say fight, I mean it literally. You cannot use the pen when the situation clearly calls for the sword."[260] He later informed League members that "Antifa, BLM [i.e., Black Lives Matter] will be there to greet us! Don't miss out on the fun!"[261]

166. On August 11, 2017, Tim Gionet (also known as "Baked Alaska"), one of the rally's featured guests, tweeted a picture of a battle scene with prominent alt-right figures' faces superimposed on those of rifle-wielding soldiers. The picture was captioned, "Tomorrow #UniteTheRight."

167. On August 11, 2017, Augustus Invictus—another prominent alt-right personality featured on posters publicizing the rally—shared the same image on his Facebook account. He chose the following caption: "The Battle of Charlottesville. Tomorrow at 10."[262]

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[260] Michael Hill, *Submit or Fight*, LEAGUE OF THE SOUTH, Oct. 4, 2016, http://leagueofthesouth.com/submit-or-fight/.
[261] Michael Hill, *League Will Be at Unite the Right Rally, 12 August, Charlottesville, VA*, LEAGUE OF THE SOUTH, June 9, 2017, http://leagueofthesouth.com/league-will-be-at-unite-the-right-rally-12-august-charlottesville-va/.
[262] Augustus Invictus, FACEBOOK, Aug. 10, 2017, https://www.facebook.com/augustus.invictus.3/posts/490733967926370.

168. Christopher Cantwell, an alt-right leader whose name appeared on Unite the Right promotional materials, claimed that "[t]hese people"—i.e., his ideological opponents—"want violence, and the right is just meeting market demand."[263] He informed his readers on August 8, 2017, that he "planned on being armed . . . to deal with the very real threat of violent communist agitators."[264] Sure enough, he came equipped to do battle: "You lose track of your fuckin' guns, huh,"[265] Cantwell remarked while displaying his weaponry in an interview on August 12, 2017. "I came pretty well prepared for this thing today. . . . We knew that we were gonna meet a lot of resistance. The fact that nobody on our side died, I'd go ahead and call that points for us."[266]

169. Matthew Parrott, Director of Defendant TWP, informed the group's members that they should be prepared "to take the lead i[n] fighting" on August 12;[267] TWP attendees were presumed to be "willing and able to fight."[268] He later wrote in a blog post that "[w]e were prepared to fight" in Charlottesville.[269] That was certainly true of the Unite the Right attendee who wore a helmet with "Commi Killer" inscribed on the front.[270]

170. As a PBS News Hour interviewer observed to Defendant Heimbach, "You must have known that if you did a rally in a city like this, that something like this might happen. You must have had some knowledge of that—that people would show up to say, 'We don't want you

[263] *Race and Terror*, *supra* note 1 (21:31 mark).
[264] Christopher Cantwell, *Unite the Right Updates*, RADICAL AGENDA, Aug. 8, 2017, https://christophercantwell.com/2017/08/08/unite-right-updates/.
[265] *Race and Terror*, *supra* note 1 (19:37 mark).
[266] *Id.* (19:10, 19:41 marks).
[267] Parrott, *supra* note 112.
[268] *Id.*
[269] Matt Parrott, *Fighting It Only Makes It Worse: A Defense of "White Dinduism"*, TRADWORKER, Aug. 22, 2017, https://www.tradworker.org/2017/08/fighting-it-only-makes-it-worse/.
[270] *Behind the Scenes, Part 17*, *supra* note 257 (5:19 mark).

in our city,' and violence would ensue."[271] Heimbach had foreseen that very possibility; in fact, he explained to a Facebook commenter that permitting women to attend the rally as medics and photographers would "free[] up our fighting men."[272]

171. The *Daily Stormer*, a popular white-supremacist website, "spent months openly planning for war" in Charlottesville. It encouraged its readers to "bring shields, pepper spray, and fascist flags and flagpoles."[273] A post at the website stated that certain alt-right groups "are pretty prone to starting shit," and would likely "bash antifas['] heads in" on August 12. The post also admonished readers to "TAKE A BATTLE BUDDY" and "BE READY FOR A FIGHT."[274] One *Daily Stormer* commenter—"Exterminajudios"—insisted that "[w]e need military guys there to crack skulls."[275]

172. On the day of the rally, a *Daily Stormer* author explained that "the true reason" for the gathering "is that we're making a show of force."[276] He continued: "There's those . . . who say that we're war-mongerers and we're evil, and we want to destroy our enemies. Well, we do want to destroy them."[277]

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[271] *How White Nationalist Leader Matt Heimbach Defends Violence at Saturday's Rally in Charlottesville*, YOUTUBE, Aug. 15, 2017, https://www.youtube.com/watch?v=lt7tHZcLbbU (4:31 mark).
[272] Matthew Heimbach, FACEBOOK, Aug. 10, 2017, *available at* https://itsgoingdown.org/wp-content/uploads/2017/08/11aazz-2.png.
[273] A.C. Thompson et al., *Police Stood By as Mayhem Mounted in Charlottesville*, MOTHER JONES, Aug. 13, 2017, http://www.motherjones.com/politics/2017/08/police-stood-by-as-mayhem-mounted-in-charlottesville/.
[274] *Solidarity Cville Documents Threats of Violence Planned for August 12*, SOLIDARITY CVILLE, July 17, 2017, http://solidaritycville.com/2017/07/17/Solidarity-Cville-documents-threats-of-violence-planned-for-August-12/#more.
[275] *Id.*
[276] *Azzmador, pt 1*, *supra* note 126 (29:10 mark).
[277] *Id.* (30:22 mark).

173. In communicating with one another in advance of the rally, many attendees welcomed the prospect of violence. On the *Stormfront* message board, one user wrote, "Going. Bringing a shield baseball helmet and goggles. I also got some mean fists."[278]

174. A Facebook user named Aaron Dale strategized about how to perpetrate mass slaughter at alt-right rallies through premeditated "self-defense": "You have the opportunity to advertise a time and place; you show up with guns and let these degenerates come try to kill you. You literally have the chance to take out our enemies. Not just metaphorically or through rhetoric, but through legal acts of self defense."[279]

175. The organizers of Unite the Right used Discord to arrange for a team of alt-right-affiliated emergency medical providers, precisely because they knew the gathering would likely turn violent.

176. Legions of "Charlottesville 2.0" Discord chatroom users openly craved violence against their ideological opponents, as the following messages graphically reveal:

- Defendant Kessler advocated weaponizing shields should things "turn ugly." He also insisted that "[w]e . . . don't want to scare [Antifa] from laying hands on us";
- "8OD": "we can stick [our shields] together and become one undefeatable well protected battle unit";
- "Aaron - VA" encouraged users to "[l]ift weights . . . and defeat degeneracy." He wrote that "I am expecting violence," and warned that if the Charlottesville police didn't arrest Antifa members, "I become the Charlottesville PD";
- "Americana - MD" described Unite the Right as "an event where there will be known hostilities." He also wrote the following: "Be better at violence th[a]n they are"; "Attack on all fronts"; "If you want peace, prepare for war"; "get jacked so you can look good when you stab commies with a knife";
- "Azzmador," regarding the possibility of an "all out brawl," wrote, "good, bring it on";

[278] "Unite the Right 8/12/2017," *Events*, STORMFRONT, June 30, 2017, https://web.archive.org/web/20170816114836/https://www.stormfront.org/forum/t1215665.
[279] *Threats of Violence*, *supra* note 274.

- “AltCelt(IL),” after posting a picture of a truck plowing through a large crowd: “This will be us”;

- “Baeravon” predicted that the rally would be a “pit of vipers.” He asked fellow users “what can we get away with, without receiving assault charges?”;

- “Chris Liguria”: “I plan on bringing riot spray . . . in case shit really hits the fan”; “If you use PVC [for flagpoles] get schedule 80 for thicker thumping”; “construction helmet, sunglasses/goggle, pepper spray and a shield seem to now be the bare minimum”; “Whip them into passivity like their parent[s] should have”;

- “Codaius - PA”: “I would love to headbutt the fuck out of some antifa”;

- “Colton Merwin - MD”: “I’d suggest not bringing anything that you don’t want to get broken”;

- “Dr_Ferguson” detailed what he would do “if/when violence erupts”;

- “Erika” uploaded an image of a poster that read, “This is an attack on your racial existence. FIGHT BACK OR DIE”;

- “Goldstein Riots”: “carving war swa[s]tika into chest to prepare for battle”;

- “greg-ky” was “concerned about getting my teeth knocked out to be honest. . . . Should be one hell of a show”;

- “卐 Heimdulf - VA 卐” uploaded an image of a poster with the text, “The Battle for Charlottesville.” He also spoke cheerfully of “drop[ping] that faggot with a swift combo”;

- “Heinz - MI” urged everyone to “prepare for violence” and described Unite the Right as “a protest/rally where we expect violence.” He also “suggest[ed] learning how to actually fight in a shield wall”;

- “I’m Not Sam Hyde”: “Pee in balloons and throw them at communists”;

- “IdentityIndiana” asked, “What would y’all recommend for melee?” (Tiwaz responded, “Your fists and your brains”);

- “JCAdams”: “everyone and their mother will need helmets for this”:

- “John Cholisniky - TX” posted a picture of a man pointing two guns at the camera, rifle strapped over his chest, with the comment: “If you don’t look like this in Cville, you’re a cuck”;

- “Kampfhund VA”: “Violence of action is extremely important!”;

- "kristall.night" warned that "cheaper [flagpoles] won't be very useful to double as spears," and told others how "to use [a flagpole] as a club";

- "Kurt - VA"—a moderator—wrote that "[i]mpaling people is always the best option," and urged other users to "put your own spike on the top of [a flagpole]." He also alluded to "the wars to come" and asserted that "you only need 2 bullets" for each person to be killed;

- "Kurt14Lipper": "We must secure the extinction of Antifa";

- "Lawrence - TX": "Everyone should have a battle buddy";

- "Mack Albion": "[F]eel free to urinate and defecate on your nearest antifa wannabe terrorist faggot pussy"; "I'm ready to crack skulls"; "I [may] have to smash an antifa in the face";

- "Marie": "Anyone want to stomp some boomers?";

- "McCarthy" described himself as a "FUTURE SOLDIER." He also acknowledged that attendees could "be[] beaten and killed";

- "Melektaus": "Solve this racewar once and for all";

- "Munich": "its going to be a pleasure fighting for the white race alongside all of you";

- "NIMP": "[I] would love to 'have fun' with some Antifa";

- "Nicklis - OH" posted an "inspirational" quote urging attendees to "do battle," "fight to the death," and withstand "Olympian AGONIES." He also called for his enemies to be "[t]hrow[n] . . . in a woodchipper and set . . . on fire";

- "PureDureSure" mused about whether to "fashion a shield small/light enough to prove an effective striking tool." He advocated "us[ing] their ammunition against them and return[ing] fire with several times the force," and also remarked that "[i]f they intend to throw [bottles of concrete] we should have a means to 'return to sender' with even more force";

- "Requiem" posted pictures of (1) the words "YOU DIE" written underneath an X'ed-out Star of David, and (2) a hand carrying a knife, captioned, "Fight Until the Last Drop";

- "roybooneNC" posted an image with the caption, "Beat all Jews";

- "StrawberryArmada" posted an image of an execution via firing squad;

- "Tiwaz": "We should throw bars of soap at antifa";

- "Tyrone" affirmed that being able to run over protestors "[s]ure would be nice," and posted a picture captioned, "Introducing John Deere's New Multi-Lane Protester Digestor." He even asked the forum, "Is it legal to run over protestors blocking roadways? I'm NOT just shitposting. I would like clarification." He urged others to "have a plan to kill everybody you meet." He advised that, with respect to flag size, "[a]nything longer is too long to effectively bludgeon someone with"; commenting on flagpole design, he cautioned that "you only are going to get 3-6 whacks to something solid before it breaks"—"You want something designed for longitudinal stress." "Tyrone" also stated the following: "The best defense is a good offense"; "I'm bringing Mosin-Nagants with bayonets attached"—"It will shoot clean through a crowd at least four deep"; "First I have to kill me a Communist"; "What if we are sociopathic and want [Antifa] to show up, for… self defense purposes?"; and "Just carry a pocket full of rocks. They can be in a sock or something";

- "von Diez - NC": "a real man knows how to make a shield a deadly weapon";

- "WhiteTrash": "my boys bringing AKs"—"ar15s are for pussies anyways."

177. In promoting the Unite the Right rally, Defendant Kessler publicly disclaimed the possibility of violence, stating that "we are going to be here to peaceably assemble"[280] and exchange ideas "in a nonviolent way."[281] Defendant Mosley later claimed to have "c[o]me there to have a peaceful demonstration that was given to us by our permit and our First Amendment right."[282] Yet despite their paeans to pacifism, Kessler and Mosley actively encouraged alt-right paramilitary mobilization under the pretense of self-defense. They also knew that many Unite the Right attendees were clamoring for a fight (or far worse), having closely monitored the grim discussions unfolding on Discord. (Kessler has stated that he "took a very laissez faire approach to what people said on forums associated with [Unite the Right]."[283]) And in a leadership-wide

[280] Jason Kessler, *Unite the Right Press Conference*, YOUTUBE, July 13, 2017, https://www.youtube.com/watch?v=61e372tGFBY (1:44 mark).
[281] *Id.* (:11 mark).
[282] *Charlottesville: Australian Radio Interviews Alt Right + Reaction from "Jewish" Caller*, YOUTUBE, Aug. 15, 2017, https://www.youtube.com/watch?v=EJU5fR_Snms (:49 mark).
[283] Kessler, *supra* note 3.

conference call on August 10, one of the organizers envisioned "attack[s] by right wing death squads."[284]

178. Kessler and Mosley were hardly the only attendees who employed civil-libertarian platitudes to whitewash ulterior motives. Before the Unite the Right rally began, Defendant Heimbach insisted that "we are there with a permit to utilize our First Amendment Rights."[285] (Heimbach later stated that he invokes the U.S. Constitution "when it's convenient."[286]) The League of the South issued an official statement assuring the public that its members would merely exercise their "right to free speech" and would "not initiate physical contact with anyone who opposes [them]."[287]

179. Similarly, in the aftermath of August 12, 2017, C.J. Ross—a member of the Virginia Three Percenters—explained to a news organization why he and his group had attended the rally.[288] In short, "We wanted to support the Constitution and help keep things peaceful." Ross claims to have been blindsided by the bigotry: "We realized this wasn't what we were all about when we heard [white nationalists] start chanting slurs." But even "Nazis . . . have the right to speak."[289]

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[284] *Meeting Recording (Part Two)*, *supra* note 255 (4:47 mark).
[285] *Defends White Nationalism*, *supra* note 205 (2:19 mark).
[286] *Matthew Heimbach on Constitution: "We Use It When It's Convenient"*, YOUTUBE, Dec. 3, 2017, https://www.youtube.com/watch?v=J6cyjHsWNCU (:20 mark).
[287] Michael Hill, *The League and the Unite the Right Rally*, LEAGUE OF THE SOUTH, Aug. 7, 2017, http://leagueofthesouth.com/the-league-and-the-unite-the-right-rally/.
[288] Plaintiffs do not seek declaratory or injunctive relief against the Virginia Three Percenters. That is because the Three Percenters organization, quite unlike the Militia Defendants, has strongly urged its members to stop "attending any type of protest or counter protest related to these white supremacist and Nazi groups." *The Three Percenters Official Statement Regarding the Violent Protests in Charlottesville*, The THREE PERCENTERS, Aug. 12, 2017, https://www.thethreepercenters.org/single-post/2017/08/12/The-Three-Percenters-Official-Statement-Regarding-the-Violent-Protests-in-Charlottesville.
[289] Bryan McKenzie, *Militia Member Speaks About Group's Role at Rally*, THE DAILY PROGRESS, Aug. 20, 2017, http://www.dailyprogress.com/news/local/militia-member-speaks-about-group-s-role-at-rally/article_e6765d00-85f9-11e7-82cf-3baf6f9c497a.html.

180. In the weeks before August 12, 2017, however, Ross had openly celebrated and indeed stoked the forthcoming violence. In a message sent to another Facebook user, he asserted that the rally's purpose was "to crush and demoralize Antifa to the point where they don't return to the park."[290] In a public post "liked" by Jason Kessler, Ross wrote, "Just say when go time is and we'll walk in there with a thousand men and crush these little cunt rags for good."[291] In a message to the "Mountaineers Against Antifa" Facebook group, Ross wrote, "I can assure you there will be beatings at the August event. . . . That day we finish them all off."[292] He also reported that "[w]e will be facing off directly with Antifa, and Black Lives Matter. All able bodied men and women ready to fight!"[293]

181. The Militia Defendants understood the risks, as well. On July 31, 2017, Defendant Yingling uploaded a video to Facebook Live explaining why he would attend the Unite the Right rally. After predicting that the protestors and counter-protestors would "just tear each other to pieces"[294] on August 12, Yingling asserted that "a rally like this really poses a true threat of violence."[295] In his view, the upcoming rally was "a veritable powder keg."[296] Yingling later told his local newspaper that his militia selects events "based on the level of the threat of violence."[297]

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[290] *Threats of Violence*, *supra* note 274.
[291] *Id.*
[292] *Id.*
[293] *Id.*
[294] Christian Yingling, FACEBOOK, July 26, 2017, https://www.facebook.com/christiaan.yingling/videos/691975064329854/ (2:24 mark).
[295] *Id.* (6:27 mark).
[296] *Id.* (8:01 mark).
[297] Routh, *supra* note 58.

182. On August 8, 2017, the Pennsylvania Light Foot Militia Laurel Highlands Ghost Company posted the following message to its Facebook page: "Gearing up for Charlottesville… this one is NOT going to be for the faint of heart."[298]

183. On August 11, 2017, Defendant Yingling posted the following message to his Facebook page: "[O]n the road to Charlotte[s]ville.. If anyone could possibly throw up a prayer for me (and all the militia going) [i]t would be GREATLY appreciated… Something tells me, we're going to need it."[299] Yingling later stated that the commander of the Virginia Minutemen Militia solicited his assistance, given "the volatility of the event."[300]

184. Finally, Defendant Curbelo, commander of the New York Light Foot Militia, stated in the rally's aftermath that "many of his [militia's] members . . . worried about the danger."[301] He explained that "we did know" how "hellacious" the event would be.[302]

F. Alt-Right Leaders Intend to Stage Additional Rallies in Charlottesville

185. In recent months, Charlottesville has been repeatedly besieged by far-right fear tactics. On May 13, 2017, Richard Spencer and Jason Kessler organized two rallies in Charlottesville. In the first, which took place in the afternoon, Spencer proclaimed that "[y]ou cannot destroy us. . . . We are here. We are never going away."[303] In the second rally, which

[298] Pennsylvania Light Foot Militia Laurel Highlands Ghost Company, FACEBOOK, Aug. 8, 2017, formerly at https://www.facebook.com/permalink.php?story_fbid=1934861403422517&id=1436871993221463.
[299] Christian Yingling, FACEBOOK, Aug. 11, 2017, https://www.facebook.com/christiaan.yingling/posts/698766176984076.
[300] Duggan, *supra* note 36.
[301] Wallace, *supra* note 18.
[302] Curbelo, *supra* note 44 (4:01, 4:16 marks).
[303] Laura Vozzella, *White Nationalist Richard Spencer Leads Torch-Bearing Protesters Defending Lee Statue*, WASH. POST, May 14, 2017, https://www.washingtonpost.com/local/virginia-politics/alt-rights-richard-spencer-leads-torch-bearing-protesters-defending-lee-statue/2017/05/14/766aaa56-38ac-11e7-9e48-c4f199710b69_story.html.

occurred at night, Spencer led a group into Lee Park (later renamed Emancipation Park). In a haunting show of intimidation, the gatherers hoisted tiki torches and chanted, "You will not replace us!"[304]

186. On July 8, 2017, about 50 members of the Loyal White Knights of the Ku Klux Klan and their supporters—some wearing Klan robes and carrying Confederate flags—gathered in Justice Park near a statue of Confederate General Stonewall Jackson. Altercations ensued between the Klansmen and the counter-protestors.

187. Alt-right warriors descended on Charlottesville on August 12, 2017. Immediately afterwards, they promised to regroup and return stronger than ever. In an interview on the evening of August 12, 2017, Defendant Mosley insisted that "[w]e're coming back to Charlottesville." Mosley himself was in the process of moving from Pennsylvania to Virginia. "In Virginia, he said, he could more easily organize the next big alt-right rallies in the state capital, Richmond, and of course, in Charlottesville."[305] For Mosley, "Charlottesville has become more than just a town. . . . It has a whole 'nother meaning."[306]

188. In an interview on the afternoon of August 12, 2017, after the police had declared an unlawful assembly and ordered Emancipation Park cleared, Defendant Heimbach claimed that "we're continuing . . . . [W]e're gonna keep fighting."[307] He and Defendant TWP were

[304] *Id.*
[305] Mathias & Campbell, *supra* note 6.
[306] *CHARLOTTESVILLE 3.0 | Eli Mosley & James Allsup*, YOUTUBE, Oct. 11, 2017, https://www.youtube.com/watch?v=cydize_kPug (2:41 mark).
[307] *Race and Terror*, *supra* note 1.

"absolutely moving forward."[308] The following Wednesday, Heimbach declared that "[w]e will be back, Charlottesville, and we will be back with more men."[309]

189. After the rally ended, David Duke—a former Grand Wizard of the KKK and a featured speaker at Unite the Right—announced on Twitter that "[w]e will be back to #Charlottesville … soon. That's a promise."[310] Duke's other tweets that weekend confirmed his earnestness: "This is only the beginning, believe me";[311] "Never forget - just the beginning";[312] "It's far from over, believe me -";[313] and "#Charlottesville was our Thermopylae. You know what comes after that."[314] Speaking at McIntire Park on the afternoon of August 12, 2017, Duke asserted—to roaring applause—that "we will be back in Charlottesville as long as it takes until we secure our rights, our freedom, our heritage, and our future!"[315] As he was leaving the rally on August 12, moreover, Duke remarked to a videographer that "[w]e will be back."[316]

190. Richard Spencer, a prominent alt-right leader and a close associate of Defendant Mosley, also repeatedly vowed to return to Charlottesville to participate in future rallies. After

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[308] *White Separatist from Cincinnati Calls for More Protests After Charlottesville Terror*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=PHwclSlJPk4 (3:04 mark).
[309] Gabe Gutierrez and Erik Ortiz, *White Nationalists Warn They Will Return to Charlottesville*, NBC NEWS, Aug. 17, 2017, https://www.nbcnews.com/news/us-news/white-nationalists-warn-they-will-return-charlottesville-n793421.
[310] David Duke, TWITTER, Aug. 12, 2017, 1:04 PM, https://twitter.com/DrDavidDuke/status/896417049446166530.
[311] David Duke, TWITTER, Aug. 12, 2017, 12:22 AM, https://twitter.com/DrDavidDuke/status/896225318746419200.
[312] David Duke, TWITTER, Aug. 12, 2017, 2:02 AM, https://twitter.com/DrDavidDuke/status/896250630255382531.
[313] David Duke, TWITTER, Aug. 12, 2017, 7:40 PM, https://twitter.com/DrDavidDuke/status/896516727273607168.
[314] David Duke, TWITTER, Aug. 13, 2017, 2:30 PM, https://twitter.com/DrDavidDuke/status/896801236388900864.
[315] *Dr. David Duke and Mike Enoch Speech at McIntire Park After Unite the Right Rally 8/12/2017*, YOUTUBE, Aug. 14, 2017, https://www.youtube.com/watch?v=p4ZzehhjOYQ (5:17 mark).
[316] *Race and Terror*, *supra* note 1 (10:06 mark).

the police declared an unlawful assembly, he insisted that "we'll be back!"[317] That evening, Spencer told a *Rolling Stone* reporter that "we're going to have to come back to Charlottesville."[318] He laid bare his intentions in a video uploaded later that evening: "We are gonna make Charlottesville the center of the universe. We are gonna come back here often. Your head's gonna spin, how many times we're gonna be back. We are absolutely never backing down!"[319] After the rally, Spencer told one publication that "[w]e're going to be back here . . . . We'll be back here 1,000 times if necessary. . . . Because I have the will to win, I keep going until I win."[320] And at a news conference the following Monday, August 14, 2017, Spencer promised to hold another rally in Charlottesville. "There is no way in hell that I am not going back," he said.[321]

191. On the evening of August 12, 2017, Christopher Cantwell was asked, "What do you think this means for the next alt-right protest?" He responded, "I say it's gonna be really tough to top, but we're up to the challenge."[322]

192. At 8:29 PM on August 12, 2017, the *Daily Stormer* informed its readers that "we are not going to back down. There will be more events. Soon."[323]

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[317] *Richard Spencer McIntire Speech*, YOUTUBE, Sept. 19, 2017, https://www.youtube.com/watch?v=-d6mUjDLQog (:36 mark).
[318] Sarah Posner, *After Charlottesville Rally Ends in Violence, Alt-Right Vows to Return*, ROLLING STONE, Aug. 13, 2017, http://www.rollingstone.com/politics/news/charlottesville-white-supremacist-rally-erupts-in-violence-w497446.
[319] Richard B. Spencer, *A Message for Charlottesville*, PERISCOPE, Aug. 12, 2017, https://www.pscp.tv/RichardBSpencer/1yNxamRYwwlxj?t=2.
[320] Alana Goodman, *White Nationalist Leader Richard Spencer Vows to Keep Demonstrating in Charlottesville*, DAILY MAIL, Aug. 13, 2017, http://www.dailymail.co.uk/news/article-4785976/Richard-Spencer-vows-Charlottesville-demonstrations.html.
[321] Alan Feuer, *Far Right Plans Its Next Moves with a New Energy*, N.Y. TIMES, Aug. 14, 2017, https://www.nytimes.com/2017/08/14/us/white-supremacists-right-wing-extremists-richard-spencer.html.
[322] *Race and Terror*, *supra* note 1 (20:55 mark).
[323] *#UniteTheRight: Charlottesville LIVE UPDATES*, DAILY STORMER, Aug. 12, 2017, 8:29 PM, https://web.archive.org/web/20170814195122/https://www.dailystormer.com/unitetheright-charlottesville-live-updates/.

193. Sure enough, Defendant Mosley returned to Charlottesville after dusk on October 7, 2017, alongside alt-right chieftains Richard Spencer and Mike "Enoch" Peinovich. They led between 40 and 50 white nationalists in yet another torchlit procession to Emancipation Park—a move they had been "planning . . . for a long time."[324] The three figures took turns using a megaphone, revealing the depth of their fixation with Charlottesville.

194. Peinovich addressed the city first: "Hello, Charlottesville! We're back! And we have a message: We're back, and we're gonna keep coming back!"[325] Spencer warned that Charlottesville "has become symbolic,"[326] and that alt-right demonstrators would "come back again and again and again!"[327] Charlottesville would just "have to get used to it!"[328] Defendant Mosley concluded the event by leading the crowd in chanting, "We will be back!"[329]

195. Shortly after the Unite the Right rally, Defendant Kessler stated that "[w]e're going to have bigger and bigger events in Charlottesville."[330] True to his word, on November 27, 2017, Kessler applied for a permit to hold a two-day rally in Emancipation Park on August 11 and 12, 2018, the one-year anniversary of the Unite the Right rally.[331] Kessler urged attendees to come prepared to "defend [them]selves" against their "enemies."[332] He closed his announcement by saying "[s]ee you in Charlottesville August 11th and 12th, 2018."[333] In his

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[324] Susan Svrluga, *"We Will Keep Coming Back": Richard Spencer Leads Another Torchlit March in Charlottesville*, WASH. POST, Oct. 7, 2017, https://www.washingtonpost.com/news/grade-point/wp/2017/10/07/richard-spencer-leads-another-torchlight-march-in-charlottesville/.
[325] Spencer, *supra* note 2 (7:35 mark).
[326] *Id.* (7:54 mark).
[327] *Id.* (9:53 mark).
[328] *Id.* (9:21 mark).
[329] *Id.* (15:44 mark).
[330] Madison Park, *Why White Nationalists Are Drawn to Charlottesville*, CNN, Aug. 12, 2017, http://www.cnn.com/2017/08/11/us/charlottesville-white-nationalists-rally-why/index.html.
[331] *See* Kessler, *supra* note 3.
[332] *Id.*
[333] *Id.*

words, "we HAVE TO go #BackToCharlottesville."[334] He insisted that "[w]e're going to Lee Park whether you like it or not @GovernorVa."[335]

196. Kessler maintained his defiant stance after the City of Charlottesville denied his initial permit request (along with several others): "Whether there's a permit or not, we're still going to do it."[336] He has asserted that the "[r]ally [is] still happening in Charlottesville's Lee Park August 11-12th, 2018!"[337]—"WE WON'T BE STOPPED."[338]

197. After the Unite the Right rally, the Director of Defendant TWP announced that "I still stand with Jason Kessler. . . . We at TradWorker intend to stand with him and support him."[339] Defendant Heimbach shared this post without comment.[340] Heimbach has also appeared with Defendant Mosley at alt-right gatherings since the Unite the Right rally.[341]

G. **Future Rallies Will Again Attract Alt-Right Paramilitary Organizations Prepared to Inflict Serious Harm**

198. On its own, the mere act of staging a public gathering enjoys constitutional protection. But just as Unite the Right participants anticipated and carried out repeated, coordinated violent encounters, future rallies orchestrated by white-nationalist leaders will

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[334] Jason Kessler, TWITTER, Dec. 1, 2017, 3:43 PM, https://twitter.com/TheMadDimension/status/936697251572912129.
[335] Jason Kessler, TWITTER, Dec. 6, 2017, 4:37 PM, https://twitter.com/TheMadDimension/status/938522715551547392.
[336] *Unite the Right Anniversary Rally Can't Be Stopped*, YOUTUBE, Dec. 11, 2017, https://www.youtube.com/watch?v=xSroleBEwUs (5:47 mark).
[337] Jason Kessler, TWITTER, Dec. 11, 2017, 5:17 PM, https://twitter.com/TheMadDimension/status/940344886196187136.
[338] Jason Kessler, TWITTER, Dec. 11, 2017, 7:04 PM, https://twitter.com/TheMadDimension/status/940371823710973952.
[339] Matt Parrott, VK, Aug. 19, 2017, https://vk.com/matt.parrott?w=wall296972605_23.
[340] Matthew Heimbach, VK, Aug. 20, 2017, https://vk.com/id299337742?w=wall299337742_38.
[341] *See Alt-Right Face Off with Antifa at White House over "Kate's Wall"*, YOUTUBE, Dec. 3, 2017, https://www.youtube.com/watch?v=eksv5BPWQ3s.

almost certainly attract alt-right warriors—including paramilitary organizations—prepared to inflict serious and irreparable harm.

199. Defendant Mosley has described the Unite the Right rally as a quantum leap in the alt-right movement's willingness and preparedness to use organized force. He warned his online readership that "Cville was dropping the bomb on Hiroshima. There will be more chaos ahead and everyone involved should be ready."[342]

200. An unnamed Unite the Right attendee reflected that the rally "helped us gain valuable experience in organizing protests." He then previewed what lay ahead: "I foresee us training in formation in creating perimeters and creating corridors for /ourguys/. These lessons will help us make sure the next Charlottesville is more successful, (there will be a next one, mark my words)."[343]

201. Anticipating future alt-right mega-rallies, Defendant Kessler stated in a podcast on September 15, 2017, that "there's a lot of these groups out there that just need to be working together."[344] Organizers like himself would help "get that broad base of support" for the white-nationalist movement to keep working in concert.[345] Defendant Heimbach, too, intends to "find ways for us all to work together."[346]

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[342] Eli Mosley, TWITTER, Sept. 12, 2017, 1:22 PM, formerly at https://twitter.com/ThatEliMosley/status/907655627530530816 (account suspended).
[343] "Thoughts on Charlottesville from Someone Who Went There," *Identitarian*, VOAT, Aug. 21, 2017, https://voat.co/v/Identitarian/2077131.
[344] *Cantwell and Kessler: Monument Flashpoint, Trump Meets w/Democrats & Richmond's Ghetto Shooting Spree*, REAL NEWS WITH JASON KESSLER, Sept. 16, 2017, formerly at https://soundcloud.com/realnewswithjasonkessler/cantwell-kessler-monument-flashpoint-trump-meets-w-democrats-richmonds-ghetto-shooting-spree (3:24 mark) (account suspended).
[345] *Id.* (3:33 mark).
[346] *Matthew Heimbach Visits ROF Militia REPOST*, YOUTUBE, Sept. 8, 2017, https://www.youtube.com/watch?v=c194gSeJ864 (1:36 mark).

202. On the morning of August 12, 2017, the *Daily Stormer* proudly exclaimed that "WE HAVE AN ARMY!"—"THIS IS THE BEGINNING OF A WAR!"[347] It followed up with an equally menacing message later that evening: "[T]o everyone, know this: we are now at war."[348]

203. Robert "Azzmador" Ray, a features writer for the *Daily Stormer*, explained that his ideological goals are predicated on the use of force: "At some point, we will have enough power that we will clear them from the streets forever. That which is degenerate, in white countries, will be removed."[349] He also declared that "[w]e're starting to slowly unveil a little bit of our power level. You ain't seen nothing yet."[350]

204. Asked on August 12, 2017, whether he and fellow white-nationalist protestors were capable of violence, Christopher Cantwell replied, "Of course we're capable. I'm carrying a pistol! I go to the gym all the time. I'm trying to make myself more capable of violence!"[351] Cantwell told the same interviewer that "we're not non-violent—we'll fucking kill these people if we have to."[352] He later added that "I think a lot more people are gonna die before we're done here, frankly . . . . People die violent deaths all the time. Like, this is part of the reason why we want an ethno-state, right?"[353] Cantwell also marveled that the actual levels of violence in Charlottesville were not significantly higher: "The amount of restraint that our people showed out there, I think was astounding."[354]

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[347] *LIVE UPDATES*, *supra* note 323, Aug. 12, 2017, 11:22 AM.
[348] *Id.*, Aug. 12, 2017, 8:29 PM.
[349] *Race and Terror*, *supra* note 1 (8:21 mark).
[350] *Id.* (8:37 mark).
[351] *Id.* (3:37 mark).
[352] *Id.* (7:08 mark).
[353] *Id.* (21:02 mark).
[354] *Id.* (20:46 mark).

205. After Cantwell was pepper-sprayed at the Unite the Right rally, a nearby associate assured him that "We're gonna fuckin' kill 'em. I fuckin' promise you—we're gonna fuckin' kill these pieces of shit."[355]

206. Defendant Matthew Heimbach has expressed "willing[ness] to die for his cause"[356] at future public gatherings. Heimbach also intimated that he would be "willing to kill" in self-defense.[357] For Heimbach, attending a white-nationalist rally means that he will "come back with [his] shield or on it."[358]

207. Richard Spencer also anticipates violence at such rallies: "I crossed a Rubicon long ago that I'm willing to die,"[359] for "politics can be a war."[360]

208. Matthew Parrott, the Director of Defendant TWP, has extolled the alt-right's recent evolution into "a proven street fighting faction."[361] He recently implored TWP's members to "be prepared at all times to fight" with "shields, helmets, and black bloc uniforms."[362]

209. A member of Defendant Vanguard America named "Dylan"—likely its leader, Dillon Irizarry—told ABC News's *20/20* that "[w]e want to be like ants. We're a colony and we just go and destroy everything in our way."[363]

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[355] Jack Smith IV, TWITTER, Aug. 12, 2017, 11:50 AM, https://twitter.com/JackSmithIV/status/896579771760615428.
[356] Thompson et al., *supra* note 273.
[357] *Defends White Nationalism, supra* note 205 (:48 mark).
[358] *Id.* (3:47 mark).
[359] *Heimbach, Spencer*, *supra* note 8 (6:48 mark).
[360] *Id.* (7:06 mark).
[361] Parrott, *supra* note 10.
[362] Matthew Parrott, *No. We Are Not Going to Stop LARPing*, TRADITIONALIST WORKER PARTY, Nov. 29, 2017, https://www.tradworker.org/2017/11/no-were-not-going-to-stop-larping/.
[363] Keturah Gray et al., *How White Nationalists, Counterprotestors Who Were in Charlottesville Prepare for Rallies*, ABC NEWS, Aug. 17, 2017, http://abcnews.go.com/US/white-nationalists-counter-protesters-charlottesville-prepare-rallies/story?id=49263007.

210. Soon after the Unite the Right Rally, Michael Hill, the President of Defendant League of the South, tweeted a picture of the group's shield-carriers charging through counter-protestors on Market Street. He captioned the photo, "Join The League of the South. We'll fight!"[364] Hill has hailed the "warriors in our LS shield wall in Charlottesville,"[365] encouraged his audience to "be a part of the shock troops of Southern nationalism like you saw in Charlottesville,"[366] and boasted that "[o]ur Southern boys can kick some Antifa/BLM ass!"[367] In response to a tweet advocating "bigger shields and better gear," Hill assured his followers that "[w]e're . . . working on having not only more but bigger and better for next time."[368] He recently admonished League members to "[s]tay in shape!," given that "[w]e have a busy and active 2018 coming up for The League."[369] The image attached to one of Hill's recent recruitment messages suggested that the League's "Southern nationalist warriors" will begin carrying semiautomatic weapons at future events.[370]

211. In an interview on August 12, Defendant Spencer Borum called for more white-nationalist warriors at future events: "Next time, be here—help us out"[371] in "fighting the commie scum."[372]

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[364] Michael Hill, TWITTER, Aug. 22, 2017, 5:58 PM, formerly at https://twitter.com/MichaelHill51/status/900114947023286272 (account suspended).
[365] Michael Hill, GAB, Dec. 23, 2017, https://gab.ai/MichaelHill1951/posts/16707037.
[366] Michael Hill, TWITTER, Aug. 14, 2017, 11:33 PM, formerly at https://twitter.com/MichaelHill51/status/897300120647208961 (account suspended).
[367] Michael Hill, TWITTER, Aug. 21, 2017, 10:29 PM, formerly at https://twitter.com/MichaelHill51/status/899820769684971520 (account suspended).
[368] Michael Hill, TWITTER, Aug. 21, 2017, 12:15 AM, formerly at https://twitter.com/MichaelHill51/status/899484982879461378 (account suspended).
[369] Michael Hill, GAB, Dec. 20, 2017, https://gab.ai/MichaelHill1951/posts/16507140.
[370] Michael Hill, GAB, Dec. 17, 2017, https://gab.ai/MichaelHill1951/posts/16332612.
[371] *Unite the Right!*, *supra* note 108 (46:50 mark).
[372] *Id.* (46:39 mark).

212. Ken Parker, a regional director of Defendant NSM, told a reporter that "[w]e would have killed every one of those motherfuckers if the cops weren't there."[373] In the group's official magazine, NSM celebrated "the large number of injuries that were inflicted on the pathetic Reds who are no match for the hardened Nationalists."[374] NSM warned its members that "[t]his is not the end; it is only the beginning. . . . [*I*]*t is a certainty that there will be more violence before this situation is resolved*."[375] NSM would continue deploying "our training programs in real life scenarios."[376]

213. In reacting to Heather Heyer's tragic death, many Unite the Right participants condoned the prospect of using violence to achieve their ideological aims. Ken Parker, for example, confessed to a journalist that "I am glad that woman is dead. She was a communist feminist. . . . They got exactly what was coming to them."[377] Mike "Enoch" Peinovich also expressed grave indifference to Heyer's fate: "I don't give a shit about this dead cat lady. Whatever. The world is a better place."[378] And users of the Discord app ridiculed Fields's deceased victim while valorizing his lethal hit-and-run tactics.

214. Justin Moore, the Grand Dragon for the Loyal White Knights of the Ku Klux Klan (and a Unite the Right attendee), told a local reporter that "I'm sorta glad that them people got hit and I'm glad that girl died. . . . They were a bunch of Communists out there protesting against somebody's freedom of speech, so it doesn't bother me that they got hurt at all." He then

[373] Thayer, *supra* note 83.
[374] "Unite the Right After Action Report," *supra* note 119, at 17.
[375] *Id.* at 19.
[376] *Id.* at 18.
[377] Thayer, *supra* note 83.
[378] Simone Wilson, *Mike "Enoch" Peinovich, Upper East Side Neo-Nazi, Helped Lead Charlottesville Rally*, PATCH, Aug. 17, 2017, https://patch.com/new-york/upper-east-side-nyc/mike-peinovich-upper-east-side-neo-nazi-helped-lead-charlottesville.

issued a dire prediction: "I think we're going to see more stuff like this happening at white nationalist events . . . . I think there will be more violence like this in the future to come."[379] His colleague Chris Barker, the group's Imperial Wizard, concurred: "When a couple of them die, it doesn't bother us."[380] The organization's voicemail recording echoed these sentiments: "Nothing makes us more proud at the KKK than [when] we see white patriots such as James Fields, Jr., age 20, taking his car and running over nine communist anti-fascists, killing one nigger-lover named Heather Heyer."[381]

215. In broadly ascribing murderous intent to attendees who did not share his views, Defendant Heimbach insinuated that a far larger death toll would have been legally justified on self-defense grounds: "[T]he left wanted to attack all of us. They want to kill anyone they disagree with. . . . These radical leftists truly are trying to kill anyone they disagree with."[382] He even asserted—without evidence—that Heyer herself had sought to massacre white nationalists: "I'm also not going to cry over someone that was trying to kill me and my comrades just a few hours earlier."[383] It was in that context that Heimbach promised "not [to] back down when they threaten us. We will defend ourselves."[384]

216. Several key alt-right figures implausibly shifted culpability from Heyer's killer, James Fields, to his defenseless victim. In doing so, they signaled the acceptability of using organized violence to harm counter-protestors appearing on public thoroughfares at future rallies. Defendant Kessler, for example, tweeted that "I 100% believe Heather Heyer was to blame for

[379] Steve Crump, *NC KKK Leader: "I'm Glad That Girl Died" During Virginia Protest*, WBTV, Aug. 15, 2017, http://www.wbtv.com/story/36139058/nc-kkk-leader-im-glad-that-girl-died-during-virginia-protest.
[380] *Id.*
[381] *Id.*
[382] *Heimbach Defends Violence*, *supra* note 271 (2:58, 5:56 marks).
[383] *Id.* (5:54 mark).
[384] *Id.* (4:27 mark).

participating in an armed mob blocking traffic during a state of emergency."[385] That was after insisting that "Heather Heyer was a fat, disgusting Communist. Communists have killed 94 million. Looks like it was payback time."[386]

217. Mike "Enoch" Peinovich similarly opined that "the murderer is not the driver of the car. . . . He did nothing wrong. Frankly, he should get a medal."[387] White-nationalist attendee Kyle Hanophy concluded that Heyer "shouldn't be standing out in traffic, I suppose."[388] And Christopher Cantwell insisted that "none of our people killed anybody unjustly,"[389] and that Heyer's death "was more than justified."[390] Those crushed by Fields's vehicle were simply "a bunch of stupid animals who don't pay attention."[391] Heyer, he maintained, was "a fucking rioter [who] was blocking fucking traffic."[392]

218. On September 12, 2017, The Virginia Flaggers—a group that glorifies Confederate emblems and memorials—uploaded a video to its Facebook page depicting liberal activists at the University of Virginia. One commenter suggested that "it might be time for someone to make a return trip to Charlottesville." Within hours, other users posted the following responses:

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[385] Jason Kessler, TWITTER, Aug. 24, 2017, 3:40 PM, https://twitter.com/TheMadDimension/status/900805089174138881.
[386] Matt Pearce, *Tweet from the Account of Charlottesville Rally Organizer Insults Slain Protester Heather Heyer*, L.A. TIMES, Aug. 19, 2017, http://www.latimes.com/nation/la-na-charlottesville-organizer-20170818-story.html.
[387] Wilson, *supra* note 378.
[388] *Exclusive Interview with an American Nationalist Who Participated in Charlottesville*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=ezeXse5t4iQ.
[389] *Race and Terror*, *supra* note 1 (19:53 mark).
[390] *Id.* (20:43 mark).
[391] *Id.* (20:33 mark).
[392] *Cantwell and Kessler: Malcolm X vs MLK & Who Is a Backstabbing Buddyfucker in the Alt-Right Movement*, REAL NEWS WITH JASON KESSLER, Sept. 4, 2017, formerly at https://soundcloud.com/realnewswithjasonkessler/cantwell-kessler-malcolm-x-vs-mlk-who-is-backstabbing-who-in-the-alt-right (32:01 mark) (account suspended).

- "I just want to know, when can we start shooting?"
- "Kill them and the knee grows!"
- "Unleash Hell on their asses"
- "Kill them all."
- "Shoot em."[393]

H. The Militia Defendants Will Attempt to "Keep the Peace" at Future Alt-Right Rallies in Charlottesville by Engaging in Paramilitary Activity

219. Aware that the Unite the Right rally would involve more than the peaceful expression of ideas, Defendant Kessler solicited the presence of private militia groups. He reached out to Defendants Yingling and the Pennsylvania Light Foot Militia to provide protection. The "Charlottesville 2.0" Discord chats reveal that decision unfolding in real time, with Kessler first floating the idea on July 15, 2017. He reflected that "I think we need a contingent of people circling and guarding the statue . . . . I bet we could reach out to some of these militia groups to help." Another user responded that "[V]anguard has members in the pa militia we could do some networking." Kessler made the same appeal to C.J. Ross and the Virginia Three Percenters. Ross agreed that his group would "provide a security presence" on August 12.[394]

220. Private militias will likely appear at contentious public gatherings in Virginia even if alt-right leaders cease to actively recruit them. In an August 13, 2017, Facebook video, Defendant Yingling made clear his intentions: "In [my] first video, I stated, 'It is time to put up or shut up.' . . . I'm gonna reiterate that right now. If you call yourself militia, then you have to

[393] *Virginia Flagger Supporters Suggest Killing Peaceful Protesters, Spout White Power Slogans on Flagger Facebook Page*, RESTORING THE HONOR, Sept. 13, 2017, http://restoringthehonor.blogspot.com/2017/09/virginia-flaggers-supporters-suggest.html.
[394] McKenzie, *supra* note 289.

support the Constitution."[395] On August 21, Yingling created a GoFundMe account on behalf of the Pennsylvania Light Foot Militia Laurel Highlands Ghost Company. He appealed to those who "support what we do, and would like to see us keep doing it," asking for "money to travel to different states to defend people's constitutional rights."[396] And in a Facebook comment soon after the rally ended, Yingling promised that "I will continue to fight until my last breath is drawn."[397]

221. Defendant Curbelo, too, publicly reaffirmed his militia's commitment in a Facebook video on August 13, 2017. He deemed it "important that whenever—*whenever*—there is any attempt at shutting down free speech, . . . patriotic Americans stand in opposition to that attempt."[398] Charlottesville was "a wakeup call for the patriot movement. . . . [A]re you truly willing to stand for the enforcement of everybody's rights here in the United States?"[399] Private militias must "keep [their] presence up"[400] rather than "sit back and do nothing."[401] As for Curbelo himself, he was "looking forward to the next one."[402] Curbelo has also stated that "I would do it again,"[403] and that "we will keep doing it, for sure!"[404] And he has claimed that "each one of them"—each person who served under his and Yingling's command on August 12—"has said to me that they would do it again."[405]

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[395] Yingling, *supra* note 39 (35:24 mark).
[396] Christian Yingling, *Help Support the Constitution*, GOFUNDME, Aug. 21, 2017, https://www.gofundme.com/help-support-the-constitution.
[397] Yingling, *supra* note 39.
[398] Curbelo, *supra* note 17 (41:56 mark).
[399] *Id.* (43:10 mark).
[400] *Id.* (35:35 mark).
[401] *Id.* (35:51 mark).
[402] *Id.* (42:36 mark).
[403] George Curbelo, FACEBOOK, Aug. 22, 2017, https://www.facebook.com/george.curbelo/posts/1593681324015592.
[404] Curbelo, *supra* note 44 (42:10 mark).
[405] Curbelo, *supra* note 62 (32:03 mark).

222. Curbelo has specifically promised to "be back at it again come 2018."[406] He plans a "big push forward"[407] in the New York Light Foot's recruitment efforts, enabling him to keep "doing the militia stuff that I do."[408] Curbelo has vowed to intensify his militia activity significantly, reaching a state of "HYPERDRIVE ON STEROIDS."[409] Curbelo is particularly eager to collaborate again with Yingling, who is "kind of a hero to us."[410]

223. After describing the frequency of his paramilitary missions, Defendant Wilson stated that he and American Freedom Keepers are "always trying to . . . organize and plan for the next event that's coming up."[411] Wilson "absolutely" intends to recruit and command a militia presence at future events.[412]

224. Gesturing toward Defendants Yingling, Curbelo, and Wilson, Defendant Sigler stated that "we're gonna keep doing what we're doing."[413] He has written that August 12, 2017 "was the beginning of a things [*sic*] yet to come."[414] In commenting on a photograph of himself with Defendant Shoaff and two other militia members, Sigler wrote, "[I] will stand with them anywhere!"[415] And he has provided the same assurance directly to Yingling: "Got your back anytime brother, let me know!"[416] Sigler "can't wait to see the road" again with Yingling; "we

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[406] Curbelo, *supra* note 63.
[407] *Id.* (8:06 mark).
[408] *Id.* (16:34 mark).
[409] George Curbelo, FACEBOOK, Dec. 31, 2017, https://www.facebook.com/george.curbelo.
[410] The Liberty Den (George Curbelo), FACEBOOK, Sept. 16, 2017, https://www.facebook.com/TheLibertyDen/videos/1669632733054915/ (:35 mark).
[411] Marion, *supra* note 41 (:9:43 mark).
[412] Curbelo, *supra* note 44 (42:13 mark).
[413] News2Share, *supra* note 149 (1:57:55 mark).
[414] George Curbelo, FACEBOOK, Dec. 3, 2017, https://www.facebook.com/george.curbelo/posts/1692592177457839:0. Sigler was commenting on a photo uploaded by Curbelo.
[415] Gary Sigler, FACEBOOK, Sept. 18, 2017, https://www.facebook.com/gary.sigler.58/posts/10213920013817555.
[416] Yingling, *supra* note 90.

will travel this coming year! . . . [W]e will do it as a team!" To which Yingling replied, "always!"[417]

225. Defendant Shoaff has made equally firm commitments on behalf of his group, American Warrior Revolution: "Mark my words. This is my first time ever to come to Charlottesville, but I can assure you of one thing—this will not be our last!"[418] Perceived inaccuracies in media coverage were "damn sure not gonna keep us from coming back to Charlottesville, Virginia, again!"[419] Shoaff promised his online audience that "I'm not gonna stop . . . going to events";[420] in his view, "militiamen . . . and Three Percent organizations should go to every single event that's ever held!"[421] Shoaff has specifically denied that this lawsuit will deter him from attending future gatherings with Defendant AWR.[422]

226. Many militia groups in the Mid-Atlantic and Northeast maintain "mutual defense agreements," ensuring maximum coverage at events expected to pose a risk of injury.[423] Defendant Wilson has explained that "being networked and coordinated across the country" allows militia groups to "bolster our numbers at these events."[424] Defendant Curbelo celebrated—and tapped into—such support structures in a Facebook video on July 14, 2017, appealing directly to his viewers: "We're asking you for your participation, whether it's through

[417] Yingling, *supra* note 230.
[418] Patriot Media, *Truth About Charlottesville*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/joshgemmipatriotmedia/videos/335928490197751/ (1:53 mark).
[419] *Id.* (6:46 mark).
[420] Baker, *supra* note 26 (11:35 mark).
[421] *Id.* (8:48 mark).
[422] *Id.* (13:53 mark).
[423] Duggan, supra note 36.
[424] Marion, supra note 41 (1:03:40 mark).

time or financial support, to any one of these organizations,"[425] which he has referred to as "our affiliate militias."[426]

227. Defendant Redneck Revolt, too, "look[s] forward to building stronger defense networks together" with groups like Defendant Socialist Rifle Association.[427]

228. In sharp contrast to the Militia Defendants' enthusiasm for attending future alt-right rallies, the Three Percenters National Council issued a stand-down order for its members following the Unite the Right rally. The organization "strongly reject[ed] and denounce[d] anyone who calls themselves a patriot or a Three Percenter that has attended or is planning on attending any type of protest or counter protest related to these white supremacist and Nazi groups."[428]

VI.
CAUSES OF ACTION

Count 1

(Article I, Section 13 of the Virginia Constitution – Strict Subordination)

229. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 228 above.

230. Article I, Section 13 of the Virginia Constitution guarantees that "in all cases the military should be under strict subordination to, and governed by, the civil power."

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[425] *What is the Measure of Your Resolve?*, The Liberty Den (George Curbelo), FACEBOOK, July 14, 2017, https://www.facebook.com/TheLibertyDen/videos/1598745356810320/ (4:58 mark).
[426] The Liberty Den (George Curbelo), FACEBOOK, Oct. 22, 2017, https://www.facebook.com/TheLibertyDen/videos/1704166312934890/ (14:10 mark).
[427] *Reportback: Charlottesville*, *supra* note 72.
[428] *The Three Percenters Official Statement Regarding the Violent Protests in Charlottesville*, THE THREE PERCENTERS, Aug. 12, 2017, https://www.thethreepercenters.org/single-post/2017/08/12/The-Three-Percenters-Official-Statement-Regarding-the-Violent-Protests-in-Charlottesville.

231. Because no further legislation is required to make it operative, the Strict Subordination Clause—like most of the Virginia Constitution's Bill of Rights—is self-executing and gives rise to a private right of action. *See Gray v. Virginia Sec'y of Trans*., 276 Va. 93, 103 (2008).

232. On August 12, 2017, Defendants Traditionalist Worker Party, Vanguard America, League of the South, National Socialist Movement, Pennsylvania Light Foot Militia, New York Light Foot Militia, Virginia Minutemen Militia, American Freedom Keepers, III% People's Militia of Maryland, American Warrior Revolution, Redneck Revolt, and Socialist Rifle Association organized as "military" units within the meaning of Article I, Section 13 of the Virginia Constitution.

233. On August 12, 2017, Defendants Matthew Heimbach, Cesar Hess, Spencer Borum, Michael Tubbs, Jeff Schoep, Christian Yingling, George Curbelo, Eugene Wells, Richard Wilson, Gary Sigler, and Joshua Shoaff were members and/or commanders of their respective military units. Defendants Jason Kessler and Eli Mosley—as co-organizers of the Unite the Right rally—solicited the presence of paramilitary organizations, facilitated attendees' instruction in military techniques, and issued tactical commands to the other Alt-Right Defendants on August 12.

234. Defendants did not follow the statutory prerequisites for acting as a military unit and are not responsible to, or under the command of, the civil power in Virginia.

235. Defendants intend to operate as a military unit, or as members and commanders thereof, in Virginia in the immediate future.

236. Defendants' continued operation as military units, or as members and commanders thereof, independent of the civil power in Virginia will violate Article I, Section 13 of the Virginia Constitution.

237. Defendants' planned conduct will cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

Count 2

(Virginia Code § 18.2-433.2(1) – Unlawful Paramilitary Activity)

238. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 237 above.

239. At the Unite the Right rally on August 12, 2017, as well as before arriving, Defendants Matthew Heimbach, Cesar Hess, Spencer Borum, Michael Tubbs, Jeff Schoep, Jason Kessler, Eli Mosley, Christian Yingling, George Curbelo, Eugene Wells, Richard Wilson, Gary Sigler, and Joshua Shoaff taught and/or demonstrated to others the use of firearms and other techniques—including the use of shields, flagpoles, and batons as offensive weapons—capable of causing injury or death.

240. Defendants Heimbach, Hess, Borum, Tubbs, Schoep, Kessler, Mosley, Yingling, Curbelo, Wells, Wilson, Sigler, and Shoaff knew and intended that these techniques would be used in and/or in furtherance of a "civil disorder" within the meaning of § 18.2-433.2 of the Virginia Code.

241. The Unite the Right rally was a "civil disorder" within the meaning of § 18.2-433.2 of the Virginia Code because it was a public disturbance in the United States that involved acts of violence by assemblages of three or more persons, which caused both immediate danger of damage and injury, and actual damage and injury, to persons and property.

242. Defendants Heimbach, Hess, Borum, Tubbs, Schoep, Kessler, Mosley, Yingling, Curbelo, Wells, Wilson, Sigler, and Shoaff intend to teach and/or demonstrate the use of firearms and other techniques capable of causing injury and death again in Virginia in the immediate future. The above Defendants know, have reason to know, and/or intend that such techniques will be used in and/or in furtherance of a "civil disorder" within the meaning of § 18.2-433.2 of the Virginia Code.

243. Defendants' planned conduct in this manner will violate § 18.2-433.2(1) of the Virginia Code.

244. Defendants' continued unlawful paramilitary activity will cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

245. Because Plaintiffs will suffer irreparable and incalculable harm from Defendants' planned conduct, the Court has authority to enjoin Defendants from violating § 18.2-433.2(1) in the future. *See Black & White Cars, Inc. v. Groome Transp., Inc.*, 247 Va. 426, 430 (1994).

Count 3

(Virginia Code § 18.2-433.2(2) – Unlawful Paramilitary Activity)

246. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 245 above.

247. At the Unite the Right rally on August 12, 2017, as well as before arriving, Defendants Traditionalist Worker Party, Vanguard America, League of the South, National Socialist Movement, Pennsylvania Light Foot Militia, New York Light Foot Militia, Virginia Minutemen Militia, American Freedom Keepers, III% People's Militia of Maryland, American Warrior Revolution, Redneck Revolt, and Socialist Rifle Association assembled with multiple persons for the purpose of training with, practicing with, and/or being instructed in the use of

firearms and other techniques—including the use of shields, flagpoles, and batons as offensive weapons—capable of causing injury or death.

248. Defendants Traditionalist Worker Party, Vanguard America, League of the South, National Socialist Movement, Pennsylvania Light Foot Militia, New York Light Foot Militia, Virginia Minutemen Militia, American Freedom Keepers, American Warrior Revolution, III% People's Militia of Maryland, Redneck Revolt, and Socialist Rifle Association intended that these techniques would be used in and/or in furtherance of a "civil disorder" within the meaning of § 18.2-433.2 of the Virginia Code.

249. The Unite the Right rally was, in fact, a "civil disorder" within the meaning of § 18.2-433.2 of the Virginia Code because it was a public disturbance in the United States that involved acts of violence by assemblages of three or more persons, which caused both immediate danger of damage and injury, and actual damage and injury, to persons and property.

250. The Defendant groups indicated above intend to assemble for the purpose of training with, practicing with, and/or being instructed in the use of firearms and other techniques capable of causing injury or death again in Virginia in the immediate future. Defendants know and intend that such techniques will be used in and/or in furtherance of a "civil disorder" within the meaning of § 18.2-433.2 of the Virginia Code.

251. Defendants' planned conduct in this manner will violate § 18.2-433.2(2) of the Virginia Code.

252. Defendants' continued unlawful paramilitary activity will cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

253. Because Plaintiffs will suffer irreparable and incalculable harm from Defendants' planned conduct, the Court has authority to enjoin Defendants from violating § 18.2-433.2(2) in the future. *See Black & White Cars, Inc.*, 247 Va. at 430.

Count 4

(Virginia Code § 18.2-174 – Falsely Assuming the Functions of Peace Officers and/or Other Law-Enforcement Officers)

254. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 253 above.

255. Defendants Pennsylvania Light Foot Militia, New York Light Foot Militia, Virginia Minutemen Militia, American Freedom Keepers, III% People's Militia of Maryland, American Warrior Revolution, Redneck Revolt, and Socialist Rifle Association purported to "keep the peace" at the Unite the Right rally on August 12, 2017, by engaging in paramilitary activity. In so doing, they falsely assumed the functions of state and local peace officers and other law-enforcement officers.

256. These Defendants intend to "keep the peace" at future alt-right rallies occurring in Virginia, without following the statutory prerequisites for doing so.

257. Defendants' continued false assumption of law-enforcement functions will violate § 18.2-174 of the Virginia Code.

258. Defendants' planned conduct will cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

259. Because Plaintiffs will suffer irreparable and incalculable harm from Defendants' planned conduct, the Court has authority to enjoin Defendants from violating § 18.2-174 in the future. *See Black & White Cars, Inc.*, 247 Va. at 430.

Count 5

(Public Nuisance)

260. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 259 above.

261. At the Unite the Right rally on August 12, 2017, Defendants Jason Kessler, Eli Mosley, Traditionalist Worker Party, Matthew Heimbach, Cesar Hess, Vanguard America, League of the South, Spencer Borum, Michael Tubbs, National Socialist Movement, Jeff Schoep, Pennsylvania Light Foot Militia, Christian Yingling, New York Light Foot Militia, George Curbelo, Virginia Minutemen Militia, Eugene Wells, American Freedom Keepers, Richard Wilson, III% People's Militia of Maryland, Gary Sigler, American Warrior Revolution, Joshua Shoaff, Redneck Revolt, and Socialist Rifle Association engaged in paramilitary activity independent of any civil authority in public streets, public parks, and other public areas, substantially interfering with public health, safety, peace, and comfort, and the general welfare.

262. Defendants' conduct in this manner constituted a public nuisance.

263. Defendants plan to return to return to Virginia for the purpose of engaging in paramilitary activity in public areas independent of any civil authority.

264. When Defendants engage in paramilitary activity in public areas independent of any civil authority, their conduct necessarily threatens public health, safety, peace, and comfort, and the general welfare.

265. Defendants' planned conduct will continue the public nuisance and cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

266. Because Plaintiffs will suffer irreparable harm from Defendants' planned conduct, the Court has authority to enjoin Defendants from engaging in activity that constitutes a public nuisance. *See Ritholz v. Commonwealth*, 184 Va. 339, 350 (1945).

VII.
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter an order:

1) Declaring that Defendants' conduct in organizing and acting as military units independent of the civil authority in Virginia violates Article I, Section 13 of the Virginia Constitution;

2) Declaring that Defendants' conduct in teaching and/or demonstrating the use of firearms and/or other techniques capable of causing injury or death at future public gatherings in Virginia violates § 18.2-433.2(1) of the Virginia Code;

3) Declaring that Defendants' conduct in assembling to train with, practice with, and/or be instructed in the use of firearms and/or other techniques capable of causing injury or death at future public gatherings in Virginia violates § 18.2-433.2(2) of the Virginia Code;

4) Declaring that Defendants' conduct in falsely assuming the functions of peace officers and/or other law-enforcement officers violates § 18.2-174 of the Virginia Code;

5) Declaring that Defendants' conduct in engaging in paramilitary activity constitutes a public nuisance;

6) Enjoining Defendants and their directors, officers, agents, and employees from violating Article I, Section 13 of the Virginia Constitution; violating § 18.2-

433.2 and § 18.2-174 of the Virginia Code; and engaging in conduct that constitutes a public nuisance; and

7) Providing such other and further relief as this Court may deem just and proper.

January 4, 2018

Respectfully Submitted,

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
AMY L. MARSHAK*
ROBERT FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

S. CRAIG BROWN (VSB #19286)
City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

* Admitted *pro hac vice*.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE; CHAMPION BREWING CO., LLC; ESCAFÉ; MAS TAPAS; MAYA RESTAURANT; QUALITY PIE; RAPTURE RESTAURANT AND NIGHT CLUB; ALAKAZAM TOYS AND GIFTS; ALIGHT FUND LLC; ANGELO JEWELRY; HAYS + EWING DESIGN STUDIO, PC; WOLF ACKERMAN DESIGN, LLC; WILLIAMS PENTAGRAM CORPORATION; BELMONT-CARLTON NEIGHBORHOOD ASSOCIATION; LITTLE HIGH NEIGHBORHOOD ASSOCIATION; and WOOLEN MILLS NEIGHBORHOOD ASSOCIATION,

Plaintiffs,

v.

PENNSYLVANIA LIGHT FOOT MILITIA; NEW YORK LIGHT FOOT MILITIA; VIRGINIA MINUTEMEN MILITIA; AMERICAN FREEDOM KEEPERS, LLC; AMERICAN WARRIOR REVOLUTION; REDNECK REVOLT; SOCIALIST RIFLE ASSOCIATION; TRADITIONALIST WORKER PARTY; VANGUARD AMERICA; LEAGUE OF THE SOUTH, INC.; NATIONAL SOCIALIST MOVEMENT; JASON KESSLER; ELLIOTT KLINE; CHRISTIAN YINGLING; GEORGE CURBELO; FRANCIS MARION; ACE BAKER; MATTHEW HEIMBACH; CESAR HESS; SPENCER BORUM; MICHAEL TUBBS; and JEFF SCHOEP,

Defendants.

Case No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

TABLE OF CONTENTS

I.
INTRODUCTION

1. The establishment of private armies is inconsistent with a well-ordered society and enjoys no claim to protection under the law. Indeed, Virginia law has long recognized the threat to civil order and public safety posed by organized groups prepared to use force outside the careful strictures of the Commonwealth's supervision. In language that dates back to the Virginia Declaration of Rights of 1776, Article I, Section 13 of the Virginia Constitution provides that "in all cases the military should be under strict subordination to, and governed by, the civil power." A section of the Virginia Code is dedicated to prohibiting "unlawful paramilitary activity," as specified therein. *See* Va. Code Ann. § 18.2-433.2. And another state statute forbids falsely assuming the functions of any peace officer or law-enforcement officer. *See id.* § 18.2-174.

2. As the United States Supreme Court has long recognized, "Military organization and military drill . . . are subjects especially under the control of the government of every country. They cannot be claimed as a right independent of law." *Presser v. Illinois*, 116 U.S. 252, 267 (1886). And for good reason: "[T]he proliferation of private military organizations threatens to result in lawlessness and destructive chaos." *Vietnamese Fishermen's Ass'n v. Knights of the Ku Klux Klan*, 543 F. Supp. 198, 216 (S.D. Tex. 1982).

3. These dangers were vividly demonstrated at the "Unite the Right" rally at Emancipation Park in Charlottesville, Virginia, on August 12, 2017. Touted as an opportunity to protest the removal of a controversial Confederate statue, the event quickly escalated well beyond such constitutionally protected expression. Instead, private military forces transformed an idyllic college town into a virtual combat zone.

4. Several white-nationalist organizations came to Charlottesville to fight. Applying techniques developed well in advance, affiliated bands of alt-right warriors used clubs, flagpoles, and shields to batter their ideological opponents. Sporting matching uniforms and weaponry—and with command structures to coordinate their actions—they functioned as paramilitary units. These paramilitary organizations and their leaders (the Alt-Right Defendants) wielded their weapons on August 12 not "as individuals" exercising their Second Amendment rights to self-defense, but "as members of a fighting force." *District of Columbia v. Heller*, 554 U.S. 570, 593 (2008). Just as they had anticipated and indeed desired, these groups encountered significant resistance from counter-protestors within the so-called Antifa and other movements, many of whom fought back with comparable intensity, though without the hallmarks of private armies that characterized the Alt-Right Defendants' contributions to the day's violence.

5. Other Defendants—self-professed private militia groups and their commanders—purported to function as peacekeepers. These vigilante militia members (Militia Defendants) carried assault rifles as they patrolled the sidewalks in combat boots, military-grade body armor, and, in most cases, camouflage uniforms. They were equipped to inflict massive harm upon a moment's notice from their commanders. Whatever their stated intentions, these groups terrified local residents and caused attendees to mistake them for authorized military personnel. In reality, they answered to no governmental authority, and their activity draws no support from the Second Amendment, which protects an individual right to self-defense and extols the virtues of a "well regulated Militia," while creating no right to form unregulated private armies or private peacekeeping forces. *Heller*, 554 U.S. at 614; *Presser*, 116 U.S. at 267.

6. Defendants' unlawful paramilitary activity shows no signs of abating. The Commonwealth of Virginia and the City of Charlottesville have taken on talismanic significance

in the white-nationalist community. It was in Charlottesville that an online clique of ethno-statists became a movement with real destructive force—that they began "stepping off the internet in a big way."[1] Charlottesville has been besieged repeatedly by these groups, and key organizers and leaders of the Unite the Right rally have pledged to return to Charlottesville as often as possible. They made good on their promise just five days ago, reappearing at Emancipation Park in a torchlit procession designed to intimidate local residents. A co-organizer of Unite the Right closed out the incident by leading his followers in chanting, "We will be back!"[2]

7. As demonstrated at the Unite the Right rally, several alt-right groups have become increasingly militarized and appear to regard collective armament as an indispensable means of showcasing their physical influence. The prevalence of such paramilitary units at the promised future rallies will, in turn, continue to attract private militia groups that regard the alt-right movement's destructive capabilities as justification for undertaking unauthorized peacekeeping missions.

8. This suit does not seek to restrict the individual Second Amendment right to arm oneself for self-defense. Nor would it imperil Defendants' First Amendment rights to peaceably assemble and express their political views, however abhorrent they might be to others. Instead, it aims to restore the longstanding public-private equilibrium disrupted by Defendants' unlawful paramilitary conduct. In Charlottesville today, as through centuries of American tradition, the government alone retains a monopoly on the organized use of force. "No independent military

[1] *Charlottesville: Race and Terror – VICE News Tonight (HBO)*, YOUTUBE, Aug. 14, 2017, https://www.youtube.com/watch?v=P54sP0Nlngg (7:57 mark) (quoting *Daily Stormer* author Robert "Azzmador" Ray).
[2] Richard Spencer, *Back in Charlottesville*, PERISCOPE, Oct. 7, 2017, https://www.pscp.tv/RichardBSpencer/1yoKMpodMMexQ?t=27 (15:44 mark).

company has a constitutional right to parade with arms in our cities and towns." *Commonwealth v. Murphy*, 166 Mass. 171, 173 (1896).

9. Plaintiffs—the civilian government whose authority to protect public safety was undercut by unauthorized private armies on August 12, the Charlottesville residents who were terrorized that day, and the local businesses that have lost significant revenues as a result—seek declaratory and injunctive relief to prevent Defendants from returning to Virginia organized as military units and engaging in paramilitary activity. Without such relief, Charlottesville will be forced to relive the frightful spectacle of August 12: an invasion of roving paramilitary bands and unaccountable vigilante peacekeepers.

II.
PARTIES

10. Plaintiff City of Charlottesville is a political subdivision of the Commonwealth of Virginia.

11. Plaintiff Champion Brewing Company, LLC, is a brewery and tap room founded in Charlottesville, Virginia, in 2012. Champion's Charlottesville Tap Room and Brasserie Saison are located in downtown Charlottesville, and Champion's packaged products advertise the restaurant's Charlottesville location.

12. Plaintiff Escafé is a restaurant in downtown Charlottesville, Virginia, serving locally sourced, seasonal American cuisine. Escafé is incorporated under the name Estcafe, LLC.

13. Plaintiff MAS Tapas is a small Spanish restaurant located in the Belmont neighborhood of Charlottesville, Virginia, that believes in fostering diversity, community, and unity. MAS is incorporated under the name Sweet Potato & Rabe, LLC.

14. Plaintiff Maya Restaurant is a restaurant located in downtown Charlottesville, Virginia, that specializes in locally sourced southern food. Maya is incorporated under the name Backwater, Inc.

15. Plaintiff Quality Pie is a restaurant in the Belmont neighborhood of Charlottesville, Virginia. Quality Pie is currently undergoing renovations prior to its official opening. Quality Pie is incorporated under the name Avon 309 LLC.

16. Plaintiff Rapture Restaurant and Night Club is a restaurant, bar, and dance club located in downtown Charlottesville, Virginia, that specializes in southern cooking. Rapture is incorporated under the name Rapture, Inc.

17. Plaintiff Alakazam Toys and Gifts is an independent toy store located in downtown Charlottesville, Virginia, that seeks to foster creativity, exploration, and imaginative play. Alakazam is incorporated under the name AlakaZam LLC.

18. Plaintiff Alight Fund LLC is an investment firm that does business and has its principal offices in downtown Charlottesville, Virginia.

19. Plaintiff Angelo Jewelry is a contemporary jewelry gallery located in downtown Charlottesville, Virginia. Angelo Jewelry is incorporated under the name Marraccini Designs, Ltd.

20. Plaintiff Hays + Ewing Design Studio, PC, is an architectural design firm that does business and has its principal office in downtown Charlottesville, Virginia. Hays + Ewing focuses on green design, and many of its clients are individuals, families, and businesses considering moving to Charlottesville from other localities.

21. Plaintiff Wolf Ackerman Design, LLC, is an architectural design firm that does business and has its principal offices in downtown Charlottesville, Virginia. Wolf Ackerman

specializes in modern design, and the majority of its clients are commercial entities in Charlottesville, Virginia.

22. Plaintiff Williams Pentagram Corporation is a property owner in downtown Charlottesville, Virginia. Williams Pentagram owns properties located at 101 Third Street SE and 222 East Main Street, Charlottesville, Virginia.

23. Plaintiff Belmont-Carlton Neighborhood Association (BCNA) is a not-for-profit corporation that represents residents and businesses in the Belmont-Carlton area of southeast Charlottesville, Virginia. The Belmont-Carlton area lies between Sixth Street SE, Moore's Creek, and the CSX railroad. BCNA's mission is to identify and advocate for the needs of the Belmont-Carlton community.

24. Plaintiff Little High Neighborhood Association (LHNA) is an association of residents living within the Little High neighborhood of Charlottesville, Virginia. Established in 2016, LHNA is governed by a board of directors and includes over 50 dues-paying households in the Little High area. LHNA's mission includes maintaining the safety of the Little High neighborhood.

25. Plaintiff Woolen Mills Neighborhood Association (WMNA) is an association of residents living within the Woolen Mills neighborhood of Charlottesville, Virginia, and Albemarle County, Virginia. Established in 1980, WMNA is governed by a board of directors and comprised of all people residing within the Woolen Mills area who have expressed interest in the Association. WMNA's mission includes representing the interests of its residents and maintaining the Woolen Mills neighborhood as a wholesome, safe, and pleasant place to live.

26. Defendant Jason Kessler was one of the primary organizers of the Unite the Right rally on August 12, 2017, and the illegal paramilitary activity that occurred there. He solicited

and facilitated the attendance of alt-right paramilitary organizations and issued operational orders to them on August 12. In the weeks before the rally, Kessler also reached out to Defendant Christian Yingling of the Pennsylvania Light Foot Militia, as well as C.J. Ross of the Virginia Three Percenters—a local chapter of a nationwide militia organization—to request a private militia presence on August 12. He organized a torchlight rally in Charlottesville, Virginia, on May 13, 2017, which protested the removal of the Robert E. Lee statue in what has since been renamed Emancipation Park. Kessler believes that white people are currently being "ethnically cleans[ed] . . . from the face of the earth."[3] He is a resident of Charlottesville, Virginia.

27. Defendant Elliott Kline (who will be referred to throughout as "Eli Mosley," his assumed name) was one of the primary organizers of the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017. He transmitted a set of General Orders to Unite the Right attendees and exercised supervisory command over alt-right groups' paramilitary activities on August 12. He is currently the Chief Executive Officer of Identity Evropa, a white-supremacist group that attended the rally. A U.S. Army veteran, Mosley has described himself as the "command s[ergeant] major of the 'alt-right.'"[4] He recently moved to Virginia specifically to plan similar white-nationalist rallies in the Commonwealth.[5]

28. Defendant Traditionalist Worker Party (TWP) is a white-nationalist organization that claims to have 500 dues-paying members across three dozen chapters. According to its website, TWP's mission is to "establish an independent White ethno-state in North America,"

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[3] *See the Sparks that Set Off Violence in Charlottesville | National Geographic*, YOUTUBE, Aug. 19, 2017, https://www.youtube.com/watch?v=FDIfPhx-Fm0 (:36 mark).
[4] Alexis Gravely et al., *Torch-Wielding White Nationalists March at U.Va.*, THE CAVALIER DAILY, Aug. 12, 2017, http://www.cavalierdaily.com/article/2017/08/torch-wielding-white-nationalists-march-at-uva.
[5] Christopher Mathias & Andy Campbell, *How What Happened Here in Charlottesville Was Inevitable*, HUFFINGTON POST, Aug. 15, 2017, http://www.huffingtonpost.com/entry/charlottesville-was-inevitable-white-nationalist-rally_us_59907756e4b090964297ba58.

and it has "declare[d] war" against, among other things, "international Jewry."[6] TWP was founded in 2015 by Matthew Parrott and Defendant Matthew Heimbach. The group is a member of the Nationalist Front, an alliance of white-supremacist organizations that also includes Defendants Vanguard America, League of the South, and the National Socialist Movement. TWP attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, and engaged in unlawful paramilitary activity.

29. Defendant Matthew Heimbach is the Chairman and one of the founders of TWP. He is also a leader of the Nationalist Front. Heimbach attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, issuing tactical commands to TWP members. According to Heimbach, "They see me as their leader."[7]

30. Defendant Cesar Hess is a regional coordinator of TWP. An "experienced combat veteran,"[8] Hess served as the group's commanding officer at the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017.

31. Defendant Vanguard America is a white-supremacist organization that opposes the notion of a multicultural America. Led by Dillon Irizarry (also known as Dillon Ulysses Hopper), a Marine Corps veteran from New Mexico, Vanguard America claims to have 200 members in 20 states. The group attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, and engaged in unlawful paramilitary activity.

32. Defendant League of the South, Inc. is a "Southern Nationalist organization whose ultimate goal is a free and independent Southern republic."[9] Founded in 1994, the League

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[6] *25 Points*, TRADWORKER, http://www.tradworker.org/points.
[7] *White Nationalists Matthew Heimbach, Richard Spencer on Their Controversial Beliefs: Part 2*, YOUTUBE, Aug. 19, 2017, https://www.youtube.com/watch?v=7dT2azmfWl4&t=63s (:54 mark).
[8] Matt Parrott, *Catcher in the Reich: My Account of My Experience in Charlottesville*, Aug. 14, 2017, https://steemit.com/altright/@mattparrott/catcher-in-the-reich-my-account-of-my-experience-in-charlottesville-by-matt-parrott.

is a membership organization with chapters in at least 18 states. It is incorporated under the laws of Alabama. In a "directive" issued on February 2, 2017, Michael Hill, the League's President, announced the establishment of a "Southern Defense Force" within the League. Hill called on "all able-bodied, traditionalist Southern men to join" the new group. He claimed that membership would "increase your proficiency with hand-to-hand defense skills, firearms training (both pistols and long weapons), and other related skills. Also, you will stand shoulder-to-shoulder with other Southern warriors in an organization dedicated to the survival, well-being, and independence of the Southern people."[10] The League attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, and engaged in unlawful paramilitary activity.

33. Defendant Spencer Borum is the Chairman of the Kentucky chapter of the League of the South. He co-led the League's procession to Emancipation Park on August 12, 2017, and initiated a violent clash by charging at counter-protestors with his flagpole.

34. Defendant Michael Tubbs is the Chairman of the Florida chapter of the League of the South, and Chief of Staff to the League's President, Michael Hill. Along with Defendant Borum, Tubbs marched at the forefront of the League's division as the group approached Emancipation Park. He fought in the ensuing melee and instigated several other violent confrontations throughout the day by ordering his men into battle. Tubbs spent four years in federal prison for stealing a huge cache of military weapons and explosives from his former employer, the U.S. Army.

35. Defendant National Socialist Movement (NSM) is a membership organization dedicated to "defending the rights of white people everywhere" and "promot[ing] . . . white

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[9] Michael Hill, *What Is the League of the South?*, LEAGUE OF THE SOUTH, http://leagueofthesouth.com/about/.

[10] *Southern Defense Force Formed*, LEAGUE OF THE SOUTH, Feb. 2, 2017, http://leagueofthesouth.com/southern-defense-force-formed/.

separation." The group maintains chapters in 48 states and limits its membership to "non-Semitic heterosexuals of European descent."[11] All applicants for membership must detail their military training and skills. NSM is led by its "commander," Defendant Jeff Schoep. NSM attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, and engaged in unlawful paramilitary activity.

36. Defendant Jeff Schoep is the "commander" of the National Socialist Movement and "a warrior for the interests of White Americans."[12] Schoep maintains a blog on the organization's webpage called the "Commander's Desk."[13] He is also a leader of the Nationalist Front. Schoep attended the Unite the Right rally in Charlottesville, Virginia, on August 12, 2017, in his capacity as commander of the group.

37. Defendant Pennsylvania Light Foot Militia is a privately organized militia group with approximately 300 members spread over several local chapters. The group's stated purpose is to keep the peace at public gatherings. Operating entirely outside established law-enforcement processes, its members—dressed and armed like battle-ready soldiers—station themselves at public events that they claim pose a risk of violence. Under the command of Defendant Christian Yingling, heavily armed members of the Pennsylvania Light Foot Militia deployed to Emancipation Park in Charlottesville, Virginia, on August 12, 2017, fanning out to take up strategic posts—purportedly to provide security for the Unite the Right rally.

38. Defendant Christian Yingling is the Commanding Officer of the Pennsylvania Light Foot Militia and of one of its constituent units, the Laurel Highlands Ghost Company. The Ghost Company has about a dozen members and is based near Yingling's home in New Derry,

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[11] *America's National Socialist Party*, NATIONAL SOCIALIST MOVEMENT, https://web.archive.org/web/20170829205617/http://www.nsm88.org/aboutus.html.
[12] *Leadership*, THE NATIONALIST FRONT, https://www.nfunity.org/leadership/.
[13] Jeff Schoep, *The Commander's Desk*, NATIONAL SOCIALIST MOVEMENT, https://web.archive.org/web/20170830042016/http://www.nsm88.org/commandersdesk/.

Pennsylvania. Yingling exercised tactical command over a group of 32 heavily armed militiamen at Emancipation Park in Charlottesville, Virginia, on August 12, 2017.

39. Defendant New York Light Foot Militia, like its Pennsylvania counterpart, is a private militia organization whose members stand guard at public events. Under the command of Defendants Christian Yingling and George Curbelo, heavily armed members of the New York Light Foot Militia took up posts at Emancipation Park in Charlottesville, Virginia, on August 12, 2017, purportedly to provide security for the Unite the Right rally.

40. Defendant George Curbelo is the Commanding Officer of the New York Light Foot Militia. He was Yingling's "second in command" at Emancipation Park in Charlottesville on August 12, 2017.[14] Curbelo issued directives to other militiamen at the rally and reported exerting significant effort "to maintain . . . discipline" among his militia members.[15]

41. Defendant Virginia Minutemen Militia is "a statewide community based militia, with 16 brigades set up throughout the state of Virginia."[16] The group was established to train a corps of private, unlicensed peacekeepers to be deployed at public gatherings. It coordinated with Yingling and Curbelo to secure a cohesive, multi-regional militia presence at the Unite the Right rally on August 12, 2017, including by contributing some of its own members. According to Curbelo, the commander of the Virginia Minutemen Militia retained "centralized command" (as opposed Yingling's "tactical command") over the 32-person militia regiment on August 12.[17]

42. Defendant American Freedom Keepers, LLC, is a private militia organization and for-profit company headquartered in Vancouver, Washington. The group seeks "to further the

[14] Liberty Den Home of the American Patriot (George Curbelo), *After-Action Report*, FACEBOOK, Aug. 13, 2017, https://www.facebook.com/TheLibertyDen/videos/1631991076819081/ (11:27 mark).
[15] Sarah Wallace, *New York Militia Group Speaks Out on Charlottesville Response, Hate and Bloodshed*, NBC NEW YORK, Aug. 21, 2017, http://www.nbcnewyork.com/investigations/Militia-New-York-Light-Catskill-Training-Charlottesville-Response-White-Nationalist-Violence-441311083.html.
[16] VA MINUTEMEN MILITIA, TWITTER, https://twitter.com/VaMinutemen.
[17] Curbelo, *supra* note 14 (11:14 mark).

Patriot movement across our great country" through "nationwide organization, communication, and . . . our unique ground effort mission."[18] American Freedom Keepers contributed personnel to the 32-person militia commanded by Defendant Yingling in Charlottesville, Virginia, on August 12, 2017.

43. Defendant Francis Marion is the President and a founder of American Freedom Keepers, LLC. A military veteran, he is active in the militia movement; in that capacity, he regularly patrols contentious public gatherings armed with tactical gear and military-style weaponry. Marion traveled to Charlottesville, Virginia, for the Unite the Right rally and served under Christian Yingling's command on August 12, 2017. Marion's avowed purpose was to "keep the peace."[19]

44. Defendant American Warrior Revolution (AWR) is a paramilitary group associated with a merchandising and media outlet. Its mission is to keep the peace at public gatherings. AWR is active in the militia movement and maintains regular contact with other like-minded groups. Several AWR members served under Christian Yingling's command at the Unite the Right rally on August 12, 2017, in Charlottesville, Virginia.

45. Defendant Ace Baker is the leader of Defendant AWR. He traveled to Charlottesville, Virginia, for the Unite the Right rally and served under Christian Yingling's command on August 12, 2017.

46. Defendant Redneck Revolt is a national network of community-defense projects with a pro-worker, anti-racist orientation. Redneck Revolt was founded in June 2016 and

[18] "What is the Difference Between AFK and AWR?," *Frequently Asked Questions*, AMERICAN FREEDOM KEEPERS, https://americanfreedomkeepers.com/.
[19] American Freedom Keepers (Francis Marion), *After-Action Report #1*, FACEBOOK, Aug. 13, 2017, https://www.facebook.com/AmericanFreedomKeepers/videos/1536543569738451/ (12:22 mark).

maintains over 30 branches. It describes itself as a "militant formation"[20]—a left-wing "alternative for people who might otherwise join the growing right-wing militia movement."[21] Many of its branches have formed John Brown Gun Clubs, through which members train themselves in defense tactics. The group believes that "[w]e have to be prepared to take the defense of our communities into our own hands."[22] Armed Redneck Revolt members stood post paramilitary-style at Justice Park in Charlottesville, Virginia, on August 12, 2017, for the avowed purpose of protecting counter-protestors within the park.

47. Defendant Socialist Rifle Association is an "anti-fascist, anti-racist, anti-capitalist" organization that aims to "arm and train the working class" for collective self-defense.[23] Its members stood alongside Redneck Revolt in Justice Park on August 12, 2017, openly displaying assault rifles to provide a protective buffer for counter-protestors within the park.

III.
JURISDICTION AND VENUE

48. This Court has subject-matter jurisdiction over this action pursuant to Virginia Code §§ 17.1-513 and 8.01-620.

49. Venue is proper in this circuit under Virginia Code § 8.01-261(15).

IV.
LEGAL BACKGROUND

50. The Commonwealth of Virginia has carefully regulated the circumstances under which military force may lawfully be employed. Article I, Section 13 of the Virginia

[20] *Organizing Principles*, REDNECK REVOLT, https://www.redneckrevolt.org/principles.
[21] Cecilia Saixue Watt, *Redneck Revolt: The Armed Leftwing Group that Wants to Stamp Out Fascism*, THE GUARDIAN, July 11, 2017, https://www.theguardian.com/us-news/2017/jul/11/redneck-revolt-guns-anti-racism-fascism-far-left.
[22] RedneckRevolt, FACEBOOK, https://www.facebook.com/RedneckRevolt/posts/620697418318897.
[23] SOCIALIST RIFLE ASSOCIATION, https://www.socialistra.org/news/index.html.

Constitution specifies that "in all cases the military should be under strict subordination to, and governed by, the civil power."

51. A network of statutory provisions structuring Virginia's armed forces helps preserve the civil government's monopoly on organized peacekeeping. State law permits the Commonwealth to "maintain only such troops" as prescribed therein. Va. Code Ann. § 44-6. It also divides "the militia"—those authorized to use military force on the Commonwealth's behalf—into just four classes: the National Guard, the Virginia Defense Force, the naval militia, and the unorganized militia. *Id.* § 44-1.

52. By statute, the militia may operate only under the strict control of governmental officials. All military personnel are ultimately subordinate to the Governor, who is "Commander in Chief of the armed forces of the Commonwealth." *Id.* § 44-8. Virginia's Department of Military Affairs is charged with administering, employing, and training the militia. *Id.* §§ 44-11.1(A)(1), (8), 44-75.2. Each part of Virginia's armed forces answers to the Adjutant General, who exercises "command of all of the militia of the Commonwealth, subject to the orders of the Governor as Commander in Chief." *Id.* § 44-13.

53. To achieve state control over military personnel, Virginia's armed forces must conform to a suite of state-law requirements. All members of the National Guard must sign an enlistment contract and swear an enlistment oath. *Id.* § 44-36. State law regulates the composition and organization of both the National Guard and the Virginia Defense Force. *Id.* §§ 44-25, 44-54.4, 44-54.5. It also determines their manner of dress, what arms they may carry (and when), what equipment they use, how and when they train, and how they may be disciplined or punished. *Id.* §§ 44-39, 44-40, 44-41, 44-42, 44-54.9, 44-54.10, 44-54.12, 44-

75.2. And the unorganized militia, whenever ordered out, is "governed by the same rules and regulations and [is] subject to the same penalties as the National Guard." *Id.* § 44-85.

54. State law also delineates the circumstances under which Virginia's armed forces may be used. The Governor is empowered to call forth any part of the militia when a state agency is "in need of assistance to perform particular law-enforcement functions," *id.* § 44-75.1(A)(3), and he may deploy the National Guard or the unorganized militia "in order to execute the law," *id.* § 44-86. Among the enumerated responsibilities of the Department of Military Affairs is "maintaining order and public safety." *Id.* § 44-11.1(A)(3).

55. To preserve the critical principle of civil-military accountability, Virginia has further criminalized "paramilitary activity." *Id.* § 18.2-433.2. Identifying such activity as a "Crime[] Against Peace and Order," the prohibition aims to ensure that private groups will not use "technique[s] capable of causing injury or death . . . in, or in furtherance of, a civil disorder." *Id.* The legislature specifically excluded—and thus consciously chose not to restrict—such lawful individual pursuits as hunting, target shooting, and firearms collecting. *Id.* § 18.2-433.3(4).

56. Other Virginia statutes underscore the harm that results when armed private groups interfere with regularized, state-driven peacekeeping efforts. Under state law, "The police force of a locality" is responsible for "the safeguard of life and property" and "the preservation of peace." *Id.* § 15.2-1704(A). To exercise these functions, police officers must meet several minimum qualifications and complete a statewide certification exam. *Id.* §§ 15.2-1705(A), 1706(A). Virginia has even criminalized the act of unregulated peacekeeping: It is unlawful to "falsely assume[] or exercise[] the functions, powers, duties, and privileges incident

to the office of sheriff, police officer, marshal, or other peace officer, or any local, city, county, state, or federal law-enforcement officer." *Id.* § 18.2-174.

57. In addition to these minimum qualifications, all machine guns brought into the Commonwealth must be registered with the Department of State Police within 24 hours. *See id.* § 18.2-295. It is also a crime to "hold a firearm . . . in a public place in such a manner as to reasonably induce fear in the mind of another of being shot or injured." *Id.* § 18.2-282(A).

58. To allow citizens and state officials to distinguish between official and self-appointed law-enforcement personnel, the Virginia Code includes a "Protection of the Uniform" provision. It is generally unlawful for anyone not a member of the armed forces of the United States "to wear the duly prescribed uniform thereof, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of [such] uniform." *Id.* § 44-120. Because Virginia National Guard members are generally to wear "the same type of uniform . . . provided for the armed forces of the United States," *id.* § 44-39, that provision reinforces the National Guard's authority and tactical effectiveness. Although the statute carves out several exemptions, private militia activity is not among them. Even the uniform and insignia of the Virginia Defense Force must "include distinctive devices identifying it as a state defense force and distinguishing it from the National Guard or the armed forces of the United States." *Id.* § 44-54.9.

59. Finally, Virginia law heavily regulates the provision of private security services, with the goal of "secur[ing] the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons" occupying those roles. *Id.* § 9.1-141(C). Every business providing such services must be licensed by Virginia's Department of Criminal Justice Services, and every person employed as an armed security officer must be registered with the Department.

Id. § 9.1-139(A). Certain kinds of criminal convictions preclude licensing and registration. *Id.* § 9.1-139(K). Every private security business must maintain an insurance policy, *id.* § 9.1-144(A); every employee of such a business must complete a proper training course, *id.* § 9.1-141(A); and the providers of such training must first submit their fingerprints to the Department for a comprehensive criminal-background check, *id.* § 9.1-145(A). It is illegal under Virginia law to operate a private security services business without complying with each of these provisions. *Id.* § 9.1-147(A)(1), (4).

60. This comprehensive legislative regime, in conjunction with the Virginia Constitution, enables the Commonwealth to maintain a firm grip over military activity and military personnel operating within its borders. For, as the Virginia Constitution's architects knew, "a *well regulated* militia . . . is the proper, natural, and safe defense of a free state." Va. Const. art. I, § 13 (emphasis added).

V.
FACTUAL ALLEGATIONS

A. Unite the Right: Charlottesville Transformed into a Military Theater

61. On the night of August 11, 2017, hundreds of white nationalists strode through the University of Virginia, their faces illuminated by tiki torches. The campus resounded with such white-nationalist mantras as "Blood and soil!" and "Jews will not replace us!" As their route came to an end, the marchers encircled a small handful of counter-protesters near the Thomas Jefferson statue at the base of the Rotunda. Alt-right attendees threw punches and even torches at the outnumbered counter-protesters.[24] After several counter-protestors were injured in the attack, the police intervened to declare an unlawful assembly, forcing the marchers to disperse.

[24] Alex Rubinstein, TWITTER, Aug. 11, 2017, 10:43 PM, https://twitter.com/RealAlexRubi/status/896200377099587585.

62. The following morning began with a solemn tribute to togetherness. Clergy from a range of faith traditions packed the pews for a sunrise service at First Baptist Church in Charlottesville. After strengthening their resolve to meet malice with love, the clergy locked hands with community members and marched toward the turmoil that would await them. They split into two groups—one headed to McGuffey Park, and the other to nearby Emancipation Park.

63. The latter group engaged in nonviolent direct action, risking their bodies as counter-witnesses to racially fueled aggression and claims of ethnic superiority. They persisted despite being told that, if they "were not prepared to die that day, [they] should not attend this protest."[25] One participating evangelical recalled that "[i]t really felt like every step you take could be your last."[26]

Private Militias Unlawfully Purport to "Keep the Peace"

64. When the clergy arrived at Emancipation Park around 9:00 AM on August 12, 2017, they encountered a terrifying scene: a company of heavily armed men clothed in camouflage and deployed in parallel columns. That group—a self-organized, self-designated private militia unit unaccountable to the civil power—had convoyed in to Charlottesville between 7:00 and 7:30 AM. They had gathered together the previous evening at a farm in Unionville, Virginia,[27] where they engaged in joint training exercises.

65. The militia boasted 32 members. Its tactical commander was Defendant Christian Yingling, the Commanding Officer of the Pennsylvania Light Foot Militia. His second-in-command was Defendant George Curbelo, the Commanding Officer of the New York Light Foot

[25] *"Antifa Saved Their Lives": Report from the Clergy at Charlottesville*, IT'S GOING DOWN, Aug. 23, 2017, https://itsgoingdown.org/antifa-saved-their-lives-report-from-clery-at-charlottesville/.
[26] Jack Jenkins, *Meet the Clergy Who Stared Down White Supremacists in Charlottesville*, THINKPROGRESS, Aug. 16, 2017, https://thinkprogress.org/clergy-in-charlottesville-e95752415c3e/.
[27] Curbelo, *supra* note 14 (10:57 mark).

Militia. Yingling and Curbelo described their experiences in great detail in lengthy Facebook videos they uploaded on August 13, 2017, as well as in interviews they granted to local and national news organizations.

66. According to Defendant Yingling, the organizers of Unite the Right had contacted him and requested a private militia force to act as security.[28] He later accepted a similar request from the Virginia Minutemen Militia, which wanted him "to reinforce their numbers"[29] and take "tactical command" of the operation.[30] Yingling had overseen the militia response at several right-wing gatherings in recent months, including in Gettysburg and Harrisburg, Pennsylvania.[31] In a Facebook video, Defendant Curbelo confirmed that "[w]e showed up on the request of the Virginia Minutemen Militia."[32]

67. Defendant Yingling assembled his regiment through Facebook and several militia chatrooms. The group, which he described as "a coalition of various militia units from throughout the East,"[33] included personnel from Yingling's Pennsylvania Light Foot Militia, Defendant Curbelo's New York Light Foot Militia, Defendant Francis Marion's American Freedom Keepers, and Defendant Ace Baker's American Warrior Revolution. The local Virginia Minutemen Militia also contributed troops.[34] Defendant Marion has stated that he, the

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[28] Joanna Walters, *Militia Leaders Who Descended on Charlottesville Condemn "Rightwing Lunatics"*, THE GUARDIAN, Aug. 15, 2017, https://www.theguardian.com/us-news/2017/aug/15/charlottesville-militia-free-speech-violence.
[29] *Id.*
[30] Paul Duggan, *Militiamen Came to Charlottesville as Neutral First Amendment Protectors, Commander Says*, WASH. POST, Aug. 13, 2017, https://www.washingtonpost.com/local/trafficandcommuting/militiamen-came-to-charlottesville-as-neutral-first-amendment-protectors-commander-says/2017/08/13/d3928794-8055-11e7-ab27-1a21a8e006ab_story.html.
[31] *Id.*
[32] Curbelo, *supra* note 14 (11:06 mark).
[33] Christian Yingling, *After-Action Report*, FACEBOOK, Aug. 13, 2017, https://www.facebook.com/christiaan.yingling/videos/699494596911234/ (2:03 mark).
[34] *See* Brennan Gilmore, TWITTER, Aug. 12, 2017, 11:53 AM, https://twitter.com/brennanmgilmore/status/896399305996742656 (showing a member of Yingling's group wearing a "Minutemen Militia" patch).

New York Light Foot Militia, and the Virginia Minutemen Militia discussed logistics and shared intelligence for at least a month leading up to the rally.[35]

68. Once the militia group arrived in Charlottesville, Defendant Yingling gave his troops a "pre-op briefing"[36]—"what we were there to do, how we were gonna do it."[37] By all accounts, Yingling was the chief tactician of a militia unit observing a well-defined chain of command. He spoke of the men who "f[e]ll under my command"[38] and "serv[ed] under me."[39] He also issued a "very specific instruction . . . to direct all press to myself or George Curbelo."[40] When Brian Moran, Virginia's Secretary of Public Safety and Homeland Security, approached the militia to introduce himself, he experienced the unit's hierarchy firsthand: Militia members told him to speak with their "commanding officer." Yingling's men also used radios and headsets to facilitate the transmission of orders.

69. Militia members carried between 60 and 80 pounds of camouflaged, military-style equipment. Among their paraphernalia were semiautomatic AR-15 assault rifles, with spare 30-round magazines; sidearms; tactical shooting glasses; kevlar helmets; combat shirts and pants; AK-47-resistant Level III body armor; pocket knives; nightstick-style batons; combat boots; military-surplus gas masks; and personal first-aid kits.[41] Defendant Yingling personally carried a Sig Sauer AR-556 semiautomatic rifle.[42] His unit kept their trigger fingers on or near the

[35] American Freedom Keepers (Francis Marion), *Charlottesville After-Action Report #2*, FACEBOOK, Aug. 14, 2017, https://www.facebook.com/AmericanFreedomKeepers/videos/1537612629631545/ (58:30 mark).
[36] Yingling, *supra* note 33 (5:21 mark).
[37] *Id.* (3:39 mark).
[38] *Id.* (2:25 mark).
[39] Duggan, *supra* note 30.
[40] Yingling, *supra* note 33 (39:44 mark).
[41] *See* Joanna Walters, *Mistaken for the Military: The Gear Carried by the Charlottesville Militia*, THE GUARDIAN, Aug. 15, 2017, https://www.theguardian.com/us-news/2017/aug/15/charlottesville-militia-security-gear-uniforms.
[42] Duggan, *supra* note 30.

triggers of their primary weapons as they stood guard over the Unite the Right rally.[43] Yingling told the *Washington Post* that the rifles' magazines were fully loaded, and that their sidearms were "chambered and ready to go."[44] Another militia member stated that his semiautomatic weapon could "put out 30 rounds in less than three seconds."[45]

70. Yingling and Curbelo openly characterize their militia as assuming functions ordinarily performed by state security forces. In their own words, carrying weapons of war enables them to "to keep the peace,"[46] "to protect everybody,"[47] to "tak[e] care of your community,"[48] "to hold the line of peace,"[49] and to act as a "peacekeeping force."[50]

71. One member of Yingling's group also wore a rectangular "MEDIC" patch on his camouflage uniform,[51] despite Virginia's prohibition on "impersonat[ing] . . . an emergency medical services provider." Va. Code Ann. §18.2-174.1.

72. After gearing up together, Yingling's militia marched in formation through downtown streets and sidewalks.[52] They arranged themselves into two inward-facing lines near

[43] *See, e.g.*, American Freedom Keepers (Francis Marion), *Charlottesville Live-Stream #1*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/AmericanFreedomKeepers/videos/1535388346520640 (19:35 mark) (showing Defendant Curbelo).
[44] Duggan, *supra* note 30.
[45] Jason Turner, *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/jason.turner.5602/videos/1484854948227159/ (47:11 mark).
[46] Curbelo, *supra* note 14 (5:34 mark).
[47] Julian Routh, *Who is Christian Yingling: Far-Right Militia Leader or Protector of the Constitution?*, PITTSBURG POST-GAZ., Aug. 16, 2017, http://www.post-gazette.com/local/region/2017/08/16/christian-yingling-pa-militia-latrobe-charlottesville-va-rally-white-supremacist/stories/201708160063.
[48] *Id.*
[49] Curbelo, *supra* note 14 (34:36 mark).
[50] Liberty Den Home of the American Patriot (George Curbelo), FACEBOOK, Aug. 8, 2017, https://www.facebook.com/TheLibertyDen/videos/1627027737315415 (3:39 mark).
[51] Christopher Mathias, TWITTER, Aug. 12, 2017, 9:19 AM, https://twitter.com/letsgomathias/status/896360475918782465.
[52] Craig Stanley, TWITTER, Aug. 12, 2017, 8:33 AM, https://twitter.com/_CraigStanley/status/896349016929206272.

the south border of Emancipation Park.[53] Attendees struggled to comprehend the spectacle of an infantry unit patrolling a public park. Local residents and clergy members feared a bloodbath, not knowing what might cause the self-assigned guardians of a white-nationalist gathering to open fire. And many observers initially mistook the camouflage-clad militia for the state-sanctioned National Guard.

73. Approximately three blocks east of Emancipation Park, two other private militia groups stationed themselves near Justice Park, where they helped create and secure a staging area for counter-protestors. The first group, Redneck Revolt, had issued a "Call to Arms for Charlottesville" on its website on August 10, 2017.[54] Redneck Revolt refused to "[l]et[] fascists organize publicly . . . without challenge," pledging to "dust[] off the guns of 1921." The missive assured "the people of Charlottesville and . . . all oppressed peoples" that "Redneck Revolt and the John Brown Gun Club are at your disposal."

74. An article published on Redneck Revolt's website entitled "Reportback: Charlottesville" details the group's involvement on August 11 and 12. According to the report, "Five Redneck Revolt branches from nearby towns have been on the ground in Charlottesville since [Friday, August 11]."[55] On Friday evening, "Armed Redneck Revolt members were on-hand to assist with security" at St. Paul's Memorial Church, near the white nationalists' torchlit

[53] For early video footage of one of the two lines, see Christopher Mathias, TWITTER, Aug. 12, 2017, 9:09 AM, https://twitter.com/letsgomathias/status/896358048918327297.
[54] *See Call to Arms for Charlottesville*, REDNECK REVOLT, Aug. 10, 2017, https://www.redneckrevolt.org/single-post/CALL-TO-ARMS-FOR-CHARLOTTESVILLE.
[55] *Reportback: Charlottesville*, REDNECK REVOLT, Aug. 12, 2017, https://www.redneckrevolt.org/single-post/REPORTBACK-CHARLOTTESVILLE.

rally.[56] And on Saturday, the organization claims, "Approximately 20 [of its] members created a security perimeter around [Justice] [P]ark, most of them open-carrying tactical rifles."[57]

75. A second group, the Socialist Rifle Association (SRA), also contributed members to the security perimeter around Justice Park. Redneck Revolt "work[ed] closely with the SRA" and "especially appreciat[ed] . . . the camaraderie of the SRA."[58] The SRA likewise expressed gratitude for the "Redneck Revolt heroes who held the line against Nazi scum."[59]

76. Also in Justice Park on August 12 were employees of H&H Security Services, Inc., a Charlottesville-based private security firm. H&H had been hired for the day by People's Action for Racial Justice, a non-violent activist group that organized counter-protests stationed at McGuffey Park and Justice Park in Charlottesville. In stark contrast to the paramilitary organizations that attended the event, H&H Security is licensed by the Virginia Department of Criminal Justice Services to provide private security services, and attended in that duly regulated capacity.

Alt-Right Groups Terrorize Charlottesville with Military Tactics

77. Tensions continued to boil as alt-right groups arrived at Emancipation Park throughout the morning. They rode into town together in large white shuttle vans rented for that purpose.[60] One by one, the Alt-Right Defendants marched toward the Park in a show of military pageantry. They brought helmets, wore distinctive uniforms, wielded heavy shields, armed themselves with clubs, and carried flags and banners bearing the groups' insignia.

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[56] *Id.*
[57] *Id*; *see also* George Squares, TWITTER, Aug. 12, 2017, 2:26 PM, https://twitter.com/GeorgeSquares/status/896437856473894912; *EPIC FOOTAGE of the #Charlottesville #UniteTheRight Rally Shut Down*, YOUTUBE, Aug. 14, 2017, https://www.youtube.com/watch?v=2MH4XTmrh7U (1:30 mark).
[58] *Reportback*, *supra* note 55.
[59] Socialist Rifle Association Backup, FACEBOOK, Aug. 15, 2017, https://www.facebook.com/SocialistRA/posts/756727061174031.
[60] For a rider's-eye view of the procession, see *Unite the Right - Charlottesville*, YOUTUBE, Sept. 8, 2017, https://www.youtube.com/watch?v=IgeYbjxT_j8 (:08 mark).

78. As the clergy sang "This Little Light of Mine"[61] and chanted "Love has already won!,"[62] battle-ready alt-right groups roared in unison with such chants as "Fuck you, faggots!,"[63] "Gas the kikes now!,"[64] "Blood and soil!,"[65] "Commie scum—off our streets!,"[66] "White lives matter!,"[67] and "Jews will not replace us!"

79. Defendant Vanguard America arrived in downtown Charlottesville around 9:30 AM. Its members wore matching uniforms of white polo shirts and khaki pants, and most wore black sunglasses or goggles. Wielding shields and carrying flags with the group's insignia, they "marched in military-style formation"[68] behind Defendant Eli Mosley, one of the rally's co-organizers, chanting "You will not replace us!" at counter-protestors in nearby Justice Park. Vanguard's chant changed to "Blood and soil!," a Nazi slogan, after its members turned right on Market Street and made their way toward Emancipation Park.[69]

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[61] *Clergy #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=RGSgf550NYA; *Let It Shine #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=jqFnGE3FeGw.
[62] Christopher Mathias, TWITTER, Aug. 12, 2017, 10:19 AM, https://twitter.com/letsgomathias/status/896375699501711361.
[63] Christopher Mathias, TWITTER, Aug. 12, 2017, 10:35 AM, https://twitter.com/letsgomathias/status/896379733050634240; *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 7*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=4gY8R3Bg-RE (:32 mark).
[64] *Black Lives Do Not Matter #charlottesville #unitetheright*, YOUTUBE, Aug. 12, 2017, https://www.youtube.com/watch?v=Mn3XF9xzkO8 (:05 mark).
[65] Christopher Mathias, TWITTER, Aug. 12, 2017, 9:25 AM, https://twitter.com/letsgomathias/status/896361902804267009.
[66] Christopher Mathias, TWITTER, Aug. 12, 2017, 10:57 AM, https://twitter.com/letsgomathias/status/896385163818659841.
[67] *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 5*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=mn7NTQcKvd4 (1:46 mark).
[68] Jason Wilson, *Charlottesville: Man Charged with Murder Was Pictured at Neo-Nazi Rally*, THE GUARDIAN, Aug. 13, 2017, https://www.theguardian.com/us-news/2017/aug/13/charlottesville-james-fields-charged-with-was-pictured-at-neo-nazi-rally-vanguard-america.
[69] *Vanguard America Marches into Emancipation Park Chanting "Blood and Soil"*, YOUTUBE, Aug. 13, 2017, https://www.youtube.com/watch?v=hyWdm8AunAw; Craig Stanley, TWITTER, Aug. 12, 2017, 9:38 AM, https://twitter.com/_CraigStanley/status/896365259258200068.

80. Later-arriving groups simply bulldozed anyone who slowed down their entry. "All right, guys, we're busting through!," one alt-right attendee informed his shield-carrying associates.[70] Defendant League of the South epitomized this technique by plowing through a line of counter-protestors. Defendant Spencer Borum, Chairman of the League's Kentucky chapter, triggered a violent melee by charging at counter-protestors with his flagpole.[71] Nearly a dozen League members rushed in from behind, ramming into the crowd with their matching shields held in formation.[72]

81. Matthew Parrott, Director of the Traditionalist Worker Party, offered the following account of the League's rehearsed assault: "With a full-throated rebel yell, the League broke through the wall of degenerates . . . . [Defendant] Michael Tubbs, an especially imposing League organizer[,] towered over and pushed through the antifa like a Tyrannosaurus . . . as [L]eague fighters with shields put their training to work."[73] An eyewitness remarked at the time that "they're just forcing their way through with their shields."[74] Militia member Rob Kapp described the League's offensive as "pretty brutal"—"like barbarians on a battlefield."[75]

82. Defendant Traditionalist Worker Party (TWP) entered immediately behind the League. Its members wore matching black uniforms and helmets. TWP's commanding officer

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[70] *James Allsup and Racist Friends at CHARLOTTESVILLE #UNITETHERIGHT*, YOUTUBE, Aug. 13, 2017, https://www.youtube.com/watch?v=qzWIs1zNx2U (1:15 mark).
[71] *Charlottesville White Nationalist Rally; 1 Killed 34 Injured Part 1/3. August 12, 2017*, YOUTUBE, Aug. 12, 2017, https://www.youtube.com/watch?v=kZCkwVp-jPY (:06 mark); *USA: Explosive Violence Breaks Out at Alt-Right Rally in Charlottesville*, YOUTUBE, Aug. 12, 2017, https://www.youtube.com/watch?v=FLgpz2LjIgA (:01 mark).
[72] *Fascists Attack Counter-Protest in Charlottesville While Police Stand Aside*, VIMEO, Aug. 16, 2017, https://vimeo.com/229919629 (:05 mark). For another perspective of the violence, see Craig Stanley, TWITTER, Aug. 12, 10:56 AM, https://twitter.com/_CraigStanley/status/896384861187051520.
[73] Parrott, *supra* note 8.
[74] *A IGLY, EAUTIFUL GRAND ALT-RIGHT ENTRANCE into & Through the "Alt-Left" in Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=tneHx3jg0Yk (1:01 mark).
[75] Rob Kapp, *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/rob.kapp.1/videos/889452967860017/ (2:39 mark).

was Defendant Cesar Hess, a regional coordinator and an "experienced combat veteran."[76] He directed his men to proceed by exclaiming, "Let's go! Forward!"[77] Defendant Matthew Heimbach also served as an operational leader that day. He shouted "shields up!" as the League stormed counter-protestors just ahead. TWP then joined the charge amid an instruction to "push!"[78] Moments later, League members shoved a counter-protestor to the pavement, screamed "Leave!" and "Get the fuck out of here!," spat in her face, and pepper-sprayed her at point-blank range.[79]

83. Defendant National Socialist Movement (NSM) trailed TWP in the militarized parade down Market Street.[80] A large rectangular banner announced the group's presence; shields, flagpoles, helmets, and goggles steeled them for battle. NSM entered Emancipation Park under the command of Defendant Jeff Schoep.[81]

84. The Alt-Right Defendants did not come to Charlottesville merely to espouse their controversial ideas in a public park. They came to coerce and terrorize. In Defendant Yingling's words, "They weren't there to protect the statue. They were there to fight. And it didn't take long."[82] Another eyewitness described the Alt-Right Defendants' techniques in real time: "They make this line, and then they'll approach the [counter-protestors] in that aggressive posture with weapons-bearing, and instigate. . . . They came here to battle, for war."[83] Robert "Azzmador"

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[76] Parrott, *supra* note 8.
[77] *Explosive Violence*, *supra* note 71 (2:08 mark).
[78] *Raw Footage of the Violence at Lee Park, Charlottesville*, YOUTUBE, Aug. 14, 2017, https://www.youtube.com/watch?v=Thhd-VM6mW4 (:06 mark).
[79] *Id.* (:30 mark); *see also ALT-RIGHT ENTRANCE*, *supra* note 74 (1:25 mark); *Fight #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=axOL-ZVNiyo (:05 mark).
[80] Christopher Mathias, TWITTER, Aug. 12, 2017, 10:57 AM, https://twitter.com/letsgomathias/status/896385163818659841 (:38 mark).
[81] *ALT-RIGHT ENTRANCE*, *supra* note 74 (6:22 mark).
[82] Yingling, *supra* note 33 (12:39 mark).
[83] *Alt-Right Attacks Police in Charlottesville*, YOUTUBE, Aug. 12, 2017, https://www.youtube.com/watch?v=gQmoWS9cuXE (13:02 mark).

Ray, a prominent Neo-Nazi figure, boasted that the alt-right movement's battle tactics would make Charlottesville residents "afraid to leave their house!"[84]

85. Once inside Emancipation Park—the area to which the rally's permit extended—the Alt-Right Defendants did not remain there to give or listen to speeches. Instead, they repeatedly exited the Park in organized bands to clash violently with counter-protestors on the streets below.[85] In one of these highly coordinated sorties, the League's Chief of Staff, Defendant Michael Tubbs, screamed "Follow me!" and motioned for his men to accompany him down the southeast stairs of Emancipation Park. The battalion rushed into the street, assaulting nearby counter-protestors with a cascade of clubs and shields.[86] As his crew stared down their intended foes and wielded flagpoles like javelins,[87] Tubbs shouted, "Shields forward!"[88] And again: "Shields forward! Shields forward!"[89]

86. Defendant Cesar Hess initiated combat in this way, as well. "Let's go!," he commanded TWP members carrying clubs and clear riot shields. "Get ready to fucking fight! Let's go!"[90] TWP members then streamed down the stairs with their weapons ready. Throughout the day, Hess also "worked with the League, NSM, and other Nationalist Front groups to help create two shield walls."[91] He repeatedly grabbed TWP members, dragging them

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[84] *Azzmador at #UniteTheRight, aka The Charlottesville Putsch pt 1*, YOUTUBE, Aug. 15, 2017, https://www.youtube.com/watch?v=6KxNsGxlrQQ (32:29 mark).
[85] *See, e.g.*, *Charlottesville White Nationalist Protest: Fights & KKK RIOT (Unite the Right)*, YOUTUBE, Aug. 13, 2017, https://www.youtube.com/watch?v=4bCV3IPKakE (5:51 mark).
[86] *Charge #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=eIfoY5hM9rA (:05 mark); Alex Rubinstein, TWITTER, Aug. 12, 2017, 12:18 PM, https://twitter.com/RealAlexRubi/status/896405542305923074 (:06 mark).
[87] *Unite the Right Charlottesville – The Protestors (August 12, 2017)*, YOUTUBE, Aug. 17, 2017, https://www.youtube.com/watch?v=U91XVeBRHAQ (11:07, 11:44 marks).
[88] *Id.* (11:27 mark).
[89] *LIVE After Car Plows into Counter-Protestors at Alt Right Rally in Charlottesville*, YOUTUBE, Aug. 12, 2017, https://www.youtube.com/watch?v=z7Bftlvh1qs (18:40 mark).
[90] *ALT-RIGHT ENTRANCE*, *supra* note 74 (9:18 mark).
[91] Parrott, *supra* note 8.

into his preferred formations.[92] Even TWP's Director had to seek Hess's permission before removing his battle gear.[93]

87. Not even clerics were immune from the Alt-Right Defendants' militaristic advances. At one point, clergy and faith leaders joined hands and sang on the southeast steps of Emancipation Park.[94] They intended to block access to the Park and expected to be arrested for their show of unity. Robert "Azzmador" Ray asserted that the clergy "will never stand in the way of us for one second. We will go through them like shit through a goose!"[95] Nearby, an alt-right leader screamed, "Fuckin' go through them—right there! Walk through them! Shield wall—go! Go!"[96]

88. As commanded, the group "basically walked right through them."[97] An organized phalanx slammed into the clergy using shields, bats, and batons. The line broke, allowing the assailants through, only because "someone feared for their life."[98] This offensive "knocked a few folks over"[99] and wounded some of the clergy. The Alt-Right Defendants' demonstrated willingness to rely on violence greatly unnerved the religious leaders. Defendant Kessler, on the other hand, exalted the marchers' aggression: "Cornel West thought he could stop us. Nothing can stop us!"[100]

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[92] *White Nationalist Protest*, *supra* note 85 (3:57 mark); *Alt-Right Attacks*, *supra* note 83 (4:42, 6:42 marks).
[93] Parrott, *supra* note 8.
[94] *Clergy #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=nCt3Zu0RHTA.
[95] *Azzmador, pt 1*, *supra* note 84 (7:45 mark).
[96] *Id.* (6:40 mark).
[97] *Id.* (22:06 mark).
[98] Abbey White, *A Charlottesville Faith Leader to Unite the Right: "Love Has Already Won Here"*, VOX, Aug. 14, 2017, https://www.vox.com/identities/2017/8/14/16140506/congregate-cville-charlottesville-rally-protest-interview.
[99] Dahlia Lithwick, *Yes, What About the "Alt-Left"?*, SLATE, Aug. 16, 2017, http://www.slate.com/articles/news_and_politics/politics/2017/08/what_the_alt_left_was_actually_doing_in_charlottesville.html (quoting one community faith leader).
[100] *Azzmador, pt 1*, *supra* note 84 (7:34 mark).

89. The Alt-Right Defendants also used their shield-wall technique to control entry and exit to Emancipation Park. Upon command, they broke the wall and stationed themselves into two parallel columns to create an "alley" that allowed movement. When the order came to "form up!" again, the shield wall reconstituted itself.[101] James A. Fields, Jr., who would later punctuate the day with terror and tragedy by ramming his car into a crowd of counter-protestors, participated in this coordinated exercise with a Vanguard America shield.[102]

90. Nearby, Defendant Mosley stood alert at the edge of the stairwell. When not giving media interviews, he attempted to control who could enter Emancipation Park.[103] To that end, he directed his followers on how to arrange themselves around the Park: "All right, give me some shield guys in front. Let's go, shield guys in front!"[104] Mosley had remarked the night before that "I run this as a military operation. . . . I was in the army."[105]

91. The situation at Emancipation Park grew dangerously unstable. Some alt-right groups, including Defendant Vanguard America, formed a block-long shield wall.[106] Others, including Defendants League of the South and TWP, deployed their shields offensively—simply to ram into counter-protestors.[107] People sent bricks, chemicals, urine, smoke bombs, and frozen water bottles flying;[108] mace, pepper spray, and tear gas pervaded the air.[109] In the thick of the

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[101] *See, e.g.*, *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 13*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=1ZwnwminFyQ (1:52, 2:03 marks).
[102] *Id.* (5:07, 5:41, 6:36, 7:48 marks).
[103] *Id.* (3:18 mark).
[104] *Violence in Charlottesville*, *supra* note 3 (9:45 mark).
[105] Gravely et al., *supra* note 4.
[106] Christopher Mathias, TWITTER, Aug. 12, 2017, 10:49 AM, https://twitter.com/letsgomathias/status/896383176695848961.
[107] For a photo of several shield-carriers amassing for this purpose, see Joe Heim, TWITTER, Aug. 12, 2017, 11:11 AM, https://twitter.com/JoeHeim/status/896388651848011776.
[108] Christopher Mathias, TWITTER, Aug. 12, 2017, 11:31 AM, https://twitter.com/letsgomathias/status/896393826897719296.
[109] Christopher Mathias, TWITTER, Aug. 12, 2017, 11:33 AM, https://twitter.com/letsgomathias/status/896394332407771137.

chaos, armed alt-right groups received such orders as "More fucking shield wall!" and "Form a line!"[110]

92. The chaos that engulfed downtown Charlottesville left many attendees not only physically broken, but deeply traumatized. Witnesses have described feeling as if an invading army marched into their town, tarnished the community's reputation, and left others to pick up the wreckage. Even Yingling's and Curbelo's men—who fully expected violence at the rally—were deeply shaken by the intensity of what they experienced. Yingling claims that his troops were insulted, shoved, maced, struck with frozen water bottles, pelted with paint, and sprayed with caustic chemicals.[111]

93. Around 11:30 AM, soon after Governor Terry McAuliffe declared a local state of emergency, the Charlottesville Police Department deemed the gathering an unlawful assembly. Police used megaphones to convey the decision and informed attendees that if they did not leave Emancipation Park and the surrounding streets, they would be arrested. Law enforcement prepared to clear the Park by deploying a police line with riot shields.

94. The melee continued nonetheless. One videographer exclaimed that "it feels like a complete battleground right now!"[112] Another described it as "a fucking war zone out here."[113] Armed demonstrators attacked each other from opposite sides of police barricades, while unidentified militia members roamed Emancipation Park toting assault rifles.[114] (Others had

[110] *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 14*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=Hmw3qZ029C8.
[111] Yingling, *supra* note 33 (16:47 mark).
[112] Jake Westly Anderson, *INSANE NEW FOOTAGE FROM CHARLOTTESVILLE!!!*, YOUTUBE, Aug. 28, 2017, https://www.youtube.com/watch?v=JEpDiM0M610 (12:46 mark).
[113] *Unite the Right Charlottesville – Off the Beaten Path (August 12, 2017)*, YOUTUBE, Aug. 12, 2017, https://www.youtube.com/watch?v=29VEPn3jNjA (:54 mark).
[114] *White Nationalist Protest*, *supra* note 85 (4:21 mark).

entered the Park throughout the morning.[115]) The fighting worsened after Defendant Heimbach "ordered his followers to push down the metal police barricades."[116]

95. One alt-right protestor waved his flag and shouted, "Shoot! Fire the first shot in the race war, baby! Shoot!"[117] Richard Preston, the Imperial Wizard of the Confederate White Knights of the Ku Klux Klan, threatened to "shoot that fucking nigger. . . . I'll stand there and fuck that fucking nigger!"[118] He brandished his pistol at the Market Street crowd and shouted, "Go ahead, motherfucker! I'll shoot you!"[119] One minute after declaring that "I'm gonna shoot one of these motherfuckers!,"[120] Preston actually fired at a counter-protestor in the direction of Emancipation Park.[121]

96. The Alt-Right Defendants again used shield walls to resist any effort to reclaim the territory. A man appearing to command multiple Nationalist Front groups screamed, "Shields up front! Shields up front! Shields!" Others interjected with "Attack!," "Fuckin' use 'em!," and "Give 'em hell, boys!"[122] One demonstrator warned that "We're getting ready to charge you!"[123] Eli Mosley screamed for "every shield" to line up and form a barricade.[124] As one reporter on the ground observed, "It seemed that they had practiced for this."[125]

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[115] *Behind the Scenes Footage, Part 13*, *supra* note 101 (1:34 mark).
[116] Robert King, *Meet the Man in the Middle of the "Unite the Right" Rally in Charlottesville*, USA TODAY, Aug. 12, 2017, https://www.usatoday.com/story/news/nation-now/2017/08/12/meet-man-middle-unite-right-rally-charlottesville/562571001/.
[117] *Id.* (13:14 mark).
[118] *Battle of Charlottesville: BLACKPILING? Nah. UNIFYING? Absolutely!*, YOUTUBE, Aug. 19, 2017, https://www.youtube.com/watch?v=VLGGxApuBiw (5:01 mark).
[119] *Gun Pulled #unitetheright #Charlottesville*, YOUTUBE, Aug. 16, 2017, https://www.youtube.com/watch?v=4fvmeiYroTU (:02 mark).
[120] *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 16*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=LnhfqzPYcYM (7:26 mark).
[121] *Id.* (8:35 mark); ACLU of Virginia, TWITTER, Aug. 26, 2017, 6:28 PM, https://twitter.com/ACLUVA/status/901572207079555073.
[122] *Battle of Charlottesville*, *supra* note 118 (:13 mark); *see also id.* (4:50 mark) ("Shields to the front! Shields to the front!"); *id.* (6:58 mark) ("Shields over here! Shields!").
[123] *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 15*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=vPzDGMCP1o0 (:11 mark).

97. Some alt-right attendees forcefully pushed back against the police line in riot gear.[126] The police eventually cleared the area just before the rally's scheduled noon start time, forcing the free-for-all onto the surrounding streets. Members of Defendant Vanguard America and other organizations quickly formed an imposing shield wall in front of an adjacent business.[127] Defendant Tubbs led a procession of shield-carrying demonstrators down Market Street.[128]

98. As the crowds began to disperse, six alt-right attendees—including a member of Vanguard America[129]—converged on a black man named Deandre Harris in the Market Street parking garage. They beat him with poles and shields, leaving him with a concussion, a broken wrist, a chipped tooth, a busted lip, and deep head lacerations.[130]

99. Defendant Kessler soon gave alt-right attendees their next command: "[W]e're marching to McIntire! We're marching to McIntire Park!"[131] Defendant Mosley, too, announced that "we're marching to McIntire—let everyone know!"[132] En route, one marcher threw a flare at a *Washington Post* videographer.[133]

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[124] *Behind the Scenes, Part 16*, *supra* note 120 (7:15 mark).
[125] Blake Montgomery, *Here's What Really Happened in Charlottesville*, BUZZFEED NEWS, Aug. 14, 2017, https://www.buzzfeed.com/blakemontgomery/heres-what-really-happened-in-charlottesville.
[126] Christopher Mathias, TWITTER, Aug. 12, 2017, 11:51 AM, https://twitter.com/letsgomathias/status/896398859043295236.
[127] Joe Heim, TWITTER, Aug. 12, 2017, 11:33 PM, https://twitter.com/JoeHeim/status/896395388093124608.
[128] *Behind the Scenes, Part 16*, *supra* note 120 (19:20 mark).
[129] Sauk River Review, TWITTER, Sept. 11, 2017, 3:31 AM, https://twitter.com/OldSaukRiver/status/907144530721308672.
[130] *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 17*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=MKxybrkKTqs (:25 mark); Anthony Sabella, *Suffolk Native Says He Was Beaten During Charlottesville Violence*, WTKR, Aug. 13, 2017, http://wtkr.com/2017/08/13/suffolk-native-says-he-was-beaten-during-charlottesville-rally/.
[131] *Violence in Charlottesville*, *supra* note 3 (14:29 mark).
[132] *Azzmador at #UniteTheRight, aka The Charlottesville Putsch pt 2*, YOUTUBE, Aug. 15, 2017, https://www.youtube.com/watch?v=zIIVu1HdaF4 (30:47 mark).
[133] Joe Heim, TWITTER, Aug. 12, 2017, 11:53 AM, https://twitter.com/JoeHeim/status/896399188396822529.

100. In a heated phone conversation, Mosley fumed to law-enforcement officials that additional vehicles were not being allowed near Emancipation Park to pick up alt-right attendees holding the group's remaining equipment. He warned that "I'm about to send at least 200 people with guns to go get them out if you guys do not get our people out."[134] He began searching for firepower: "I need shooters!"[135] Mosley vehemently rejected a suggestion that white-nationalist attendees leave McIntire Park to avoid arrest: "I'm the fucking organizer . . . . Listen to what I say, goddamnit!"[136]

101. Through the day, militia members carried assault rifles through the streets of Charlottesville. They took up post outside downtown businesses, including Plaintiff Alakazam Toys and Gifts.[137] Defendant Marion and a group of Three Percenters provided armed security for Defendant Mosley and other alt-right figures behind a closely guarded yellow line, while ordering everyone else to "back up!"[138] Two militia members pointed their assault rifles at someone who shouted, "get out of my town!"[139] And Richard Preston—the KKK leader who fired his pistol at a counter-protestor—had arrived not in Klan gear, but wearing a tactical vest as part of a local offshoot of the Three Percenters ("3% Risen").[140] According to Preston, "I had my AR-15 and a 9 mm. One of my guys had a .45 and another a 9 mm."[141]

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[134] *Race and Terror*, *supra* note 1 (9:12 mark).
[135] Allie Conti, *Inside the Chaos and Hate at Charlottesville*, VICE, Aug. 13, 2017, https://www.vice.com/en_us/article/kzz8we/inside-the-chaos-and-hate-at-charlottesville.
[136] *Id.*
[137] *Militia*, YOUTUBE, Sept. 6, 2017, https://www.youtube.com/watch?feature=youtu.be&amp=&v=Rnler3a1cvM.
[138] *Three Percenters Militia in Charlottesville*, YOUTUBE, Aug. 17, 2017, https://www.youtube.com/watch?v=WtPL8CpNf7I.
[139] Samanta Baars et al., *United We Stand: Charlottesville Says No to Hate*, C'VILLE WEEKLY, Aug. 16, 2017, http://www.c-ville.com/stand-charlottesville-say-no-hate/.
[140] Nate Thayer, *Redneck Revolt: Armed Leftists Confront White Nationalists in Charlottesville*, Aug. 18, 2017, http://www.nate-thayer.com/redneck-revolt-armed-leftists-confront-white-nationalists-in-charlottesville/.
[141] *Id.*

102. For half an hour, three militia members carrying semi-automatic rifles stood across from the Congregation Beth Israel synagogue. The synagogue's president "couldn't take [his] eyes off them," or the white-nationalist groups that repeatedly marched by in formation.[142] Fearing an attack on their building, the forty congregants inside quietly slipped out of the back entrance. The Congregation removed all of its Torahs, including a Holocaust scroll, for safe keeping elsewhere; police advised the Congregation simply to cancel a worship service scheduled for later that evening.[143]

103. After the rally ended, Defendant American Warrior Revolution marched in formation through the downtown streets for roughly twenty minutes.[144] One member remarked that "we put ourselves at a lot of risk being out here armed like this."[145] His premonition proved accurate: The rifle-toting regiment elicited intense hostility from local residents, both in a parking lot on Water Street[146] and near the Friendship Court residential area.[147] They were told to "get the fuck out of our city!"[148]—"you're invading these people's homes!"[149] At least one militia member left his assault rifle unsecured in the bed of a pickup truck during this tense standoff.[150]

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[142] Alan Zimmerman, *In Charlottesville, the Local Jewish Community Presses On*, REFORM JUDAISM, Aug. 14, 2017, https://reformjudaism.org/blog/2017/08/14/charlottesville-local-jewish-community-presses.
[143] *Id.*
[144] *See* American Warrior Revolution, *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/americanwarriorrevolution/videos/1428969810526013/ (24:01 mark); American Warrior Revolution, *Charlottesville Live-Stream #3*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/americanwarriorrevolution/videos/1429012537188407.
[145] American Warrior Revolution, *Live-Stream #3*, *supra* note 144 (11:00 mark).
[146] *Id.* (2:19 mark).
[147] Dean Seal, TWITTER, Aug. 12, 2017, 1:00 PM, https://twitter.com/JDeanSeal/status/896416032386162688.
[148] *Alt Right Rally*, *supra* note 89 (2:04:04 mark).
[149] *Id.* (2:03:43 mark).
[150] *Id.* (1:59:21 mark).

104. As organizers of the counter-protest received word of trouble at Friendship Court, just south of the downtown mall, they sent as many as 300 people toward the area. That group encountered the roving militiamen as they returned to the Water Street parking lot from Friendship Court.[151] The counter-protestors eventually merged with another group of like-minded marchers moving north toward Justice Park via Water Street.

105. As the group headed up Fourth Street around 1:40 PM., a silver Dodge Challenger came barreling toward the captive crowd. The collision killed 32-year-old Heather Heyer and injured at least 19 others. It was a gruesome coda to a day full of violence and terror.

106. The attack was also a natural outgrowth of the Alt-Right Defendants' militaristic mindset. James A. Fields, Jr., who drove the car that killed Heather Heyer, in apparent imitation of an overseas terror tactic, attended Unite the Right within the ranks of Defendant Vanguard America. He wore the group's uniform and carried a black shield emblazoned with Vanguard's logo.

B. Private Militia Groups Made a Precarious Situation Worse

107. In emergency situations, it is critically important that the Commonwealth's duly constituted armed forces and peace officers be immediately recognizable. Private individuals need to know whose orders they must follow and to whom to report emergency information; state actors need to know that military personnel answer to them and will follow their commands to protect public safety. Private militia activity in Charlottesville obliterated this critical clarity for both private citizens and state officials alike.

108. To any reasonable observer, the Militia Defendants' attire and weaponry rendered them indistinguishable from state-sanctioned peacekeeping units. One episode in particular

[151] Alex Rubinstein, TWITTER, Aug. 12, 2017, 1:27 PM, https://twitter.com/RealAlexRubi/status/896422963423178752.

illustrates the gravity of this problem. On the morning of August 12, 2017, Virginia's Secretary of Public Safety and Homeland Security, Brian Moran, crossed paths with a militia group in the Market Street parking garage. Despite knowing that these particular soldiers could not be with the Virginia National Guard, their strikingly similar appearance caused him to "d[o] a double take." "They're not ours, are they?," Moran asked his deputy, just to be sure. "No sir," his deputy replied, "I don't think they're with us."[152]

109. According to Moran, state officials "were worried that Yingling . . . and his troops would be mistaken for National Guard members by the public."[153] Virginia's National Guard—deployed for the first time in decades to help quell the impending violence—was so concerned that attendees would conflate it with private militia groups that it tweeted out a way to distinguish between them: "@VaNationalGuard ready to assist local law enforcement in #Charlottesville, can be identified by MP patch #cvilleaug12." A picture of the patch was appended to the message.[154]

110. Numerous eyewitnesses reported mistaking the Militia Defendants for National Guard personnel. Overwhelmingly, their first instinct was that any unit so dressed and equipped *must* be an adjunct of state or local law enforcement. One attendee, for example, told her companion that "they're security for Unite the Right";[155] another mistook the militia for "civil defense."[156] Few were willing to approach a row of armed men bearing assault rifles and inspect their uniforms to ascertain the militia's public or private status. If they had done so on August

[152] Aaron C. Davis et al., *How Charlottesville Lost Control Amid Deadly Protest*, WASH. POST, Aug. 29, 2017, https://www.washingtonpost.com/investigations/how-charlottesville-lost-control-amid-deadly-protest/2017/08/26/288ffd4a-88f7-11e7-a94f-3139abce39f5_story.html.
[153] Duggan, *supra* note 30.
[154] Va. National Guard, TWITTER, Aug. 12, 2017, 12:04 PM, https://twitter.com/VaNationalGuard/status/896402001067683841.
[155] Marion, *supra* note 43 (18:43 mark).
[156] Turner, *supra* note 45 (38:34 mark).

12, they would have seen patches bearing the emblems of the U.S. Army,[157] the Army's 82nd Airborne Division,[158] and the U.S. Marine Corps.[159] Defendant Marion described the militia's uniforms as "military-looking."[160]

111. The presence of uniformed, rifle-wielding militiamen on the streets of a college town terrified rally attendees and local residents. One Charlottesville native wondered aloud, "Who would have thought that this would happen in America?"[161] Another exclaimed that a nearby militia member "ha[d] a fucking loaded AR-15!"[162] Two passersby threw their hands up in a plea not to be shot.[163] Even Defendant Curbelo acknowledged that "If I saw me coming at me in all my gear, I would find it intimidating."[164]

112. Before the rally, Governor McAuliffe's Administration "engaged in extensive planning and preparation," including "the deployment of a large number of state troopers, as well as the Virginia National Guard for support."[165] The Commonwealth must be able to calibrate the proper response to public demonstrations without having to account for the often unpredictable and incompatible security measures of unaccountable, self-directed, heavily armed paramilitary groups. In Governor McAuliffe's words, "state and local officials" must be able "to make

[157] *Alt Right Rally*, *supra* note 89 (2:18:48 mark).
[158] *Id.* (1:59:21 mark).
[159] Brennan Gilmore, TWITTER, Aug. 12, 2017, 11:53 AM, https://twitter.com/brennanmgilmore/status/896399305996742656.
[160] Marion, *supra* note 35 (17:16 mark).
[161] *Alt Right Rally*, *supra* note 89 (2:16:54 mark).
[162] *Id.* (2:21:14 mark).
[163] American Freedom Keepers (Francis Marion), *Charlottesville Live-Stream #2*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/AmericanFreedomKeepers/videos/1535537156505759/ (8:44 mark).
[164] Walters, *supra* note 28.
[165] *Governor McAuliffe Statement on Emergency Declaration in Response to Violence in Charlottesville*, Aug. 12, 2017, https://governor.virginia.gov/newsroom/newsarticle?articleId=20924.

thoughtful and informed decisions on managing the new reality of the potential for civil unrest."[166]

113. Private militia activity threatens to confound these meticulously crafted plans, just as it did in Charlottesville. The attendance of unauthorized militia groups at politically charged public events dramatically impairs officials' ability to formulate an appropriate public-safety plan. As evidenced on August 12, 2017, law-enforcement officials invest significant amounts of time and energy in predicting which militia groups will attend and where they might station themselves. Given the nature of these groups, such predictions are unlikely to be accurate. Indeed, as reported by the *Washington Post*, the presence of militia groups on August 12 was an "unanticipated development[] . . . for state and local law enforcement leaders."[167]

114. The mere movement of militia members to and from their vehicles may also require a massive diversion of law-enforcement resources. The appearance of Defendant American Warrior Revolution in and around the Water Street parking lot was so controversial that the Virginia State Police moved in to secure the area with a full line of riot shields.[168] Militia member Rob Kapp commented that the police presence was "all for us, for our little group here. . . . This is the second time the police came to a spot we were at."[169]

115. During a demonstration, state and local officials must also consider whether to expel private militia members from the scene, risking an escalation of violence, or allow them to continue frightening the local population. According to Lieutenant Steve Upman, the

[166] *Governor McAuliffe Signs Executive Order Temporarily Halting Demonstrations at Lee Monument in Richmond*, Aug. 18, 2017, https://governor.virginia.gov/newsroom/newsarticle?articleId=20966.
[167] Davis, *supra* note 152.
[168] *Alt Right Rally*, *supra* note 89 (2:18:14 mark).
[169] Rob Kapp, *Charlottesville Live-Stream #3*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/rob.kapp.1/videos/889524014519579 (1:45, 3:29 marks).

Charlottesville Police Department's Public Information Officer, "obviously we had to be cognizant of their presence" in determining how best to manage the unfolding chaos.[170]

116. In any large-scale protest, moreover, law enforcement must strike a delicate balance between preserving community order and upholding constitutional rights. The need to ensure that law enforcement can overpower paramilitary personnel, should hostilities ever arise, greatly complicates that challenging task. As the president of the Major County Sheriffs of America told *Defense One* following August 12, 2017, "You don't want to have so many officers there . . . that it makes it look like you're trying to stifle someone's ability to protest." Still, "you need to be prepared in case you have some individuals that are going to start breaking the law."[171]

117. Governor McAuliffe noted the disparity between the militia presence and that of the Commonwealth's peace officers: "You saw the militia walking down the street," he said. "You would have thought they were an army. . . . [The militia members] had better equipment than our state police had."[172] Private militia groups, but not the police or official military, carried assault rifles at the Unite the Right rally. According to Moran, "The militia showed up with long rifles, and we were concerned about that in the mix. . . . [I]t was a concern to have rifles of that kind in that environment."[173]

118. All of these considerations distract officials from their standard peacekeeping duties. And if law enforcement errs at any step along the way—if it miscalculates what may well

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[170] Caroline Houck, *Armed Militias Won't Stop After Charlottesville, and That Worries Law Enforcement*, DEFENSE ONE, Aug. 17, 2017, http://www.defenseone.com/threats/2017/08/armed-militias-wont-stop-after-charlottesville-and-worries-law-enforcement/140335/.
[171] *Id.*
[172] Casey Michel, *How Militias Became the Private Police for White Supremacists*, POLITICO, Aug. 17, 2017, http://www.politico.com/magazine/story/2017/08/17/white-supremacists-militias-private-police-215498.
[173] Duggan, *supra* note 30.

be incalculable—responsibility for any resulting tragedies will be laid at its doorstep, as the politically accountable defender of local communities.

119. Private militia groups' flagrant disregard for state-law requirements exacerbates the danger of such catastrophes. Virginia has prescribed strict qualifications, training procedures, weaponry protocols, and codes of conduct for its armed forces and those who provide private security services within its borders. The Militia Defendants pay no heed to such regulations. These groups continue to accept applicants on whatever terms they wish, train members whenever and however they prefer, carry whatever weapons suit their sensibilities, and operate outside the reach of public accountability.

120. Rather than focusing on the mission at hand, at least three militia members—Rob Kapp, Jason Turner, and Defendant Francis Marion—broadcasted their experiences for Facebook Live audiences. Kapp frequently allowed the logistics of recording to preoccupy his attention. "I'm gonna try putting my thumb in my vest, see if [the camera] will stay upright," he told his viewers.[174] Kapp acknowledged that "I need to be paying a little more attention to everything, but every time I put it down, something happens. I want everybody to see what's going on out here!"[175] He also complained that "for some reason, it still won't let me zoom in!"[176] Both Kapp and Turner engaged with online viewers' real-time comments;[177] Defendant Marion zoomed in on individual attendees for lengthy periods, visibly annoying them.[178]

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[174] Rob Kapp, *Charlottesville Live-Stream #1*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/rob.kapp.1/videos/889426417862672/ (:05 mark).
[175] Kapp, *supra* note 75 (3:46 mark).
[176] Kapp, *supra* note 174 (2:35 mark).
[177] *Id.* (5:47 mark); Jason Turner, *Charlottesville Live-Stream #1*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/jason.turner.5602/videos/1484778834901437/ (9:54 mark); Turner, *supra* note 45 (10:39, 26:52, 32:14 marks).
[178] Marion, *supra* note 43 (16:37 mark).

121. Observers described the Militia Defendants as tense and restive as the surrounding violence tried their patience. As he witnessed a particularly violent clash initiated by a white-nationalist group, one militia member was heard to say, "OK, here we go," while moving for his weapon. For Defendant Yingling, the scene was "nothing short of horrifying";[179] he claims to be "having nightmares about it."[180] Defendant Curbelo recalled it as "four and a half, five hours of absolute hell."[181] He divulged to a reporter that "I can't tell you how difficult it was to maintain our discipline with that measure of hate."[182]

122. Defendant Marion explained that "because of all the firearms involved," the potential for violence was "extremely, extremely higher than any other event or rally any of us have ever been at."[183] Defendant Curbelo also appreciated how hazardous the gathering had become, his men being "fully armed with long guns, with sidearms, batons, knives."[184]

123. The massacre so many feared very nearly materialized. After the rally, Defendant Curbelo acknowledged that additional shots would likely have been fired had the militia been unable to "maintain[] its discipline."[185] In a chilling assessment, Curbelo stated, "Did [my men] deploy any of th[eir] weapons? No. Did they have the right to, considering that there was a mob attacking them? Yes!"[186] In fact, a militia member named "T.K." drew his weapon and "came very close to firing on the crowd"[187] after exclaiming, "Get the fuck back!"[188] Curbelo insisted

[179] Duggan, *supra* note 30.
[180] Routh, *supra* note 47.
[181] Curbelo, *supra* note 14 (31:37 mark).
[182] Wallace, *supra* note 15.
[183] Marion, *supra* note 35 (58:07 mark).
[184] Curbelo, *supra* note 14 (38:02 mark).
[185] *Id.* (19:10 mark).
[186] *Id.* (38:11 mark).
[187] Houck, *supra* note 170.
[188] Curbelo, *supra* note 14 (38:50 mark).

that "[T.K.] had the right to . . . shoot them."[189] Just minutes after leaving the rally scene, Defendant Marion breathed a sigh of relief: "Whew, that was a little bit close!"[190]

C. Plaintiffs Suffered, and Will Continue to Suffer, Irreparable and Incalculable Injuries as a Result of Defendants' Unlawful Conduct

124. The City of Charlottesville has expended hundreds of thousands of dollars in preparing for and responding to the Unite the Right rally, and the City anticipates that its costs will continue to mount. These costs include overtime pay for city employees, support from surrounding localities, and legal costs both before and after the rally. The presence of paramilitary activity and militia groups increased these costs by heightening the risks of violence, thereby necessitating additional police and security resources.

125. Should Defendants return to Charlottesville to engage in paramilitary activity, the City would be required to devote further time and effort to addressing the threat to public safety posed by such activity. The City has already set up an internal task force to develop proactive strategies regarding policing, regulations, communications, intelligence-gathering, and community outreach for future similar events in Charlottesville, thereby diverting multiple City departments' limited resources. The City would likely have to continue or expand such efforts should Defendants return to Charlottesville to engage in paramilitary activity.

126. The City of Charlottesville has also felt compelled, in part by the presence of paramilitary groups, to revise its rules and procedures for controlling the conditions under which groups and organizations may hold rallies and demonstrations in Charlottesville.

127. Prior to the Unite the Right rally, plaintiff businesses spent significant amounts of time and resources to understand and prepare for the risk of violence. For example, some plaintiff businesses felt compelled to invest in measures to secure their property from harm,

[189] *Id.* (38:57 mark).
[190] Marion, *supra* note 163 (7:04 mark).

including hiring additional staff and private security, boarding up their store windows, and installing blackout curtains.

128. Plaintiff restaurants and retail stores closed early on August 12, 2017—or never opened—out of fear for the safety of their owners, employees, and property. These plaintiffs each lost thousands of dollars in revenue by closing on a Saturday in the summer. Some plaintiffs remained closed on Sunday, August 13, 2017, or closed early on that day, leading to additional revenue losses.

129. Employees of many plaintiff businesses did not come to work on August 12 and 13, 2017, out of fear for their safety.

130. On the morning of August 12, 2017, two members of a militia group stationed themselves in front of Alakazam Toys and Gifts, interfering with its business. Alakazam locked the doors to its store with patrons still inside in order to protect the patrons from physical harm.

131. Although the owners of Hays + Ewing and Wolf Ackerman often work on weekends, they were unable to reach their offices on August 12, 2017, because they felt it was unsafe to travel downtown.

132. Quality Pie shut down construction work for four days following the Unite the Right rally out of fear of violence, thereby delaying its opening to customers.

133. Since August 12, 2017, plaintiff businesses have experienced a marked decline in revenues. Would-be clients and customers have begun to avoid Charlottesville, and the downtown area in particular, because they fear the return of private militias and alt-right paramilitary groups. The public has also come to associate Charlottesville with paramilitary activity, harming plaintiffs' business prospects and property values in Charlottesville. Should

paramilitary forces return to Charlottesville, this perception would intensify, making it more difficult for the City and its businesses to overcome.

134. Multiple plaintiff businesses have invested new efforts and resources into marketing to try to make up for the loss of business and reputational harms they have experienced. For example, as Champion Brewing has sought to expand the distribution of its packaged products, which display Champion's association with Charlottesville, it has had to overcome the negative connotation now associated with the City.

135. Additionally, a potentially significant investor who was scheduled to visit Champion Brewing postponed the meeting indefinitely after August 12, 2017, and has not yet rescheduled the visit. Champion Brewing has sought other investors, but has not found an equivalent replacement.

136. Confidence in Charlottesville as a quality place to live and work has been eroded by the events surrounding the Unite the Right rally and the association between Charlottesville and paramilitary activity. Unless redressed, this perception will reduce the number of new housing and business projects in the Charlottesville area, causing harm to both Hays + Ewing and Wolf Ackerman. Since August 12, 2017, these plaintiffs have received notably fewer inquiries for new building projects than anticipated based on past experience. Each architectural project is unique and takes several years to complete, making the amount of loss impossible to quantify.

137. Because the City of Charlottesville has redirected many of its agencies to focus on responding to the events of August 12, 2017, and to preparing for similar future events, City agencies have been unable to maintain their usual flow of day-to-day business. This has caused

significant delays in Wolf Ackerman's existing projects and has required the firm to devote additional resources toward, among other things, seeking needed approvals from the City.

138. Members of the Belmont-Carlton, Little High, and Woolen Mills neighborhood associations felt unsafe in their homes and in their communities on August 11 and 12, 2017, leaving them unable to enjoy the many benefits that Charlottesville has to offer. Residents were frightened by the presence of militia groups and confused about their status as public or private soldiers. Because they feared for their children's safety, residents either kept their children indoors or sent them out of town to stay with friends and family members. Neighborhood events planned for the weekend of August 12 were cancelled, as well.

139. On August 12, 2017, Defendants trespassed on the property of plaintiff neighborhood associations' members in traveling to and from the rally. If Defendants were to return to downtown Charlottesville—where parking is scarce—to engage in paramilitary activity, these harms would likely occur again.

140. Plaintiff businesses' owners and employees, as well as plaintiff neighborhood associations' members, continue to suffer from anxiety and stress because they fear that paramilitary organizations will return to Charlottesville. Many residents feel anxious about attending large public gatherings or encountering large groups in downtown Charlottesville, and parents continue to avoid bringing their children to Emancipation Park and the public library, located across the street from the park. Further militia activity in Charlottesville would exacerbate these fears and augment residents' perception of their vulnerability.

D. The Organizers of Unite the Right Established a Private Online Discussion Group to Coordinate a Massive Show of Force

141. The Unite the Right rally of August 12, 2017—and the unlawful paramilitary activity that undergirded it—were the product of systematic, centralized preparation. It has since

come to light that rally organizers Jason Kessler and Eli Mosley oversaw a highly regimented event-planning process using an online chat app called Discord. They orchestrated a weeks-long virtual convocation of alt-right organizations, one designed to streamline the logistics of attending the event and engaging in a militaristic show of force under the guise of self-defense. Over 400 unique users from all parts of the country[191] transmitted and received information about Unite the Right over Discord.

142. Using a series of dedicated channels within an invitation-only chatroom labeled "Charlottesville 2.0," Defendants Kessler and Mosley and their agents funneled specific operational instructions to attendees. Rank-and-file participants also used those outlets to seek clarification and apprise one another of the latest relevant intelligence. The Charlottesville 2.0 channels included such topics as #announcements, #confirmed_participants, #shuttle_service_information, #code_of_conduct, #questions_for_coordinators, #flags_banners_signs, #promotion_and_cyberstrike, #gear_and_attire, #antifa_watch, #demonstration_tactics, #chants, #safety_planning, #virginia_laws, #lodging, and #carpool_wanted.

143. One of the Discord group's moderators "set up private, organization specific channels so members in each group c[ould] coordinate and socialize with each other." The listed groups included Defendants Traditionalist Worker Party, Vanguard America, and League of the South. The same convenience was also provided for individual geographic regions, including ones as far-ranging as #florida, #tx_ok, #california_pacific_nw, #midwest_region, #ny_nj, and #beltway_bigots.

[191] Of the relatively few Discord users who included their states of residence in their usernames, 29 states and the District of Columbia were represented.

144. Several prominent alt-right figures participated in the event planning through Discord. Of those whose identities can readily be discerned, the contributors included Christopher Cantwell, Defendant Matthew Heimbach, Augustus Invictus, Matthew Parrott, Robert "Azzmador" Ray, and Richard Spencer, in addition to Defendants Kessler and Mosley.

145. Kessler and Mosley delegated certain event-planning tasks to other alt-right leaders. User "Tyrone," for example, oversaw the shuttle system on August 12, claiming to convey "the official policy from the organizing committee"; user "Erika" coordinated "the medical end of things," which included enlisting the services of unlicensed EMTs. Individual Discord users were also identified as regional and state-specific organizers for the rally. Even so, only a fraction of the preparations occurred in online chatrooms. As one user explained, "I'm sure there is a lot of planning going on behind the scenes that we don't see."

146. On July 7, 2017, user "Heinz - MI" posted a Word document entitled "Shields_and_Shield_Tactics_Primer.docx" to the #safety_planning channel.[192] He wrote that "this is what we have been sending to group leaders in order to get them on the same page." The document illustrated how to execute a shield wall, which would have both "defensive" and "offensive" components. It envisioned the creation of an impregnable barrier that would use "long[] weapons" to "push people away from the wall as [our] group advances." Inter-group coordination—using shields "in an organized manner"—would be the key to "present[ing] a squared away force" against "our enemies." The document concluded by inviting all shield-wielding groups to train collectively upon arriving in Virginia: "By the time we get to Charlottesville we will hopefully have enough time to practice as a solid group." "Heinz - MI"

[192] *See Shields and Shield Tactics Primer*, July 7, 2017, *available at* https://www.unicornriot.ninja/wp-content/uploads/2017/09/Shields_and_Shield_Tactics_Primer.pdf.

also promised to "put[] out a video for basic formation, roles, and commands to all of the group leaders shortly."

147. One user of Gab, another social-networking site, similarly advised Unite the Right attendees to "[l]earn to move in formation" and follow an "organized hierarchy," including a chain of command.

148. On August 10, 2017, Defendant Mosley circulated a nine-page PDF entitled "General Orders" in the Charlottesville 2.0 Discord chatroom.[193] This document contained a comprehensive set of directives to help attendees finalize their preparations and work in lockstep at the event. Its readers were exhorted to "follow the rules and stick to the plan." That entailed "pay[ing] attention to your leadership, and the announcements channel in [D]iscord," as well as following six specific Twitter accounts for minute-by-minute updates. The General Orders also advised participants to "get in touch with the organizers (Eli Mosley or Jason Kessler) ASAP" in the event of an emergency.

149. Defendant Mosley emphasized that law enforcement could not be relied on to keep the peace, and that alt-right paramilitary units must do so instead. To that end, the "General Orders" document he drafted and circulated via Discord described three contingency plans: Plan Green, Plan Yellow, and Plan Red. Under Plan Yellow, "we . . . [would] have to take the ground by force." And Mosley described Plan Red as being "incredibly dangerous." To implement these plans, the organizers urged all attendees to bring shields and helmets. Mosley declared that "[o]ur security forces in [the] form of the shield wall will be deployed in whatever manner is most effective to reduce the threat." He continued: "Our protection overall will be from our numbers"—those combining to form a shield wall—"and the people who are experienced/trained

[193] *See Operation Unite the Right Charlottesville 2.0: General Orders*, Aug. 10, 2017, *available at* https://www.unicornriot.ninja/wp-content/uploads/2017/08/OpOrd3_General.pdf.

with a firearm." The Orders accordingly encouraged attendees to "bring a weapon" if they felt comfortable doing so. Posting on Discord, one co-organizer revealed the extent of coordination: "We've consistently been in contact with the security organizers of every individual group that's attending for months."

150. In the weeks before the rally, Defendants Kessler and Mosley organized several conference calls attended by at least one representative from each attending group. Those calls, which took place in the "Leadership Meeting" voice channel on Discord, aimed to consolidate various groups' efforts and present a united tactical front. The last such call occurred on August 10, 2017, and lasted over an hour.[194]

151. Defendants Kessler and Mosley frequently interceded in the Discord group to provide definitive instructions or answer specific queries. For example, Kessler recommended that attendees "bring picket sign posts, shields and other self-defense implements" that could be turned into "weapon[s] should things turn ugly." Mosley periodically alerted participants to impending leadership meetings and the status of forthcoming operational orders. He told the entire Discord group that "[s]ince I am doing this full time . . . please feel free to reach out to me directly for important things." Kessler has also said that "for two months . . . it was my full-time job essentially."[195]

152. Unite the Right attendees often introduced themselves by referencing their Discord usernames. As one demonstrator remarked, "I'm meeting tons of people from the

[194] *See Discord Voice Chat Meeting Recording (Part One)*, Aug. 10, 2017, *available at* https://www.unicornriot.ninja/wp-content/uploads/2017/09/UniteTheRight-August10-leakedchat-1.mp3; *Discord Voice Chat Meeting Recording (Part Two)*, Aug. 10, 2017, *available at* https://www.unicornriot.ninja/wp-content/uploads/2017/09/UniteTheRight-August10-LeakedChat2.mp3.

[195] Jason Kessler, *The Elliot Kline (Eli Mosley) Problem and Unite the Right*, PERISCOPE, Sept. 17, 2017, https://www.pscp.tv/w/1djxXLpVeRNxZ (4:50 mark).

Discord. It's great!"[196] A typical exchange unfolded as follows: "Oh, you're 'TheBigKK'?" "Yeah, I hosted Discord. Nice to meet you!"[197]

E. The Alt-Right's Extensive Planning for Militaristic Violence at the Unite the Right Rally

153. The organized violence that erupted in Charlottesville was hardly unintended. Those who planned the Unite the Right rally, as well as the rank-and-file attendees who received instruction and helped publicize the event, eagerly plunged into a maelstrom of their own making. And the event's self-appointed peacekeepers stood guard with military-style weapons precisely because they deemed their presence necessary to forestall violent confrontations.

154. On August 11, 2017, Tim Gionet (also known as "Baked Alaska"), one of the rally's featured guests, tweeted a picture of a battle scene with prominent alt-right figures' faces superimposed on those of rifle-wielding soldiers. The picture was captioned, "Tomorrow #UniteTheRight."

155. On August 11, 2017, Augustus Invictus—another prominent alt-right personality featured on posters publicizing the rally—shared the same image on his Facebook account. He chose the following caption: "The Battle of Charlottesville. Tomorrow at 10."[198]

156. Christopher Cantwell, an alt-right leader whose name appeared on Unite the Right promotional materials, claimed that "[t]hese people"—i.e., his ideological opponents—"want violence, and the right is just meeting market demand."[199] He informed his readers on August 8, 2017, that he "planned on being armed . . . to deal with the very real threat of violent communist

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[196] *Behind the Scenes, Part 17*, *supra* note 130 (5:50 mark).
[197] *Behind the Scenes Footage of "Unite the Right" White Nationalist Rally in Charlottesville VA Part 10*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=Mc7CdHy2rzA (1:18 mark).
[198] Augustus Invictus, FACEBOOK, Aug. 10, 2017, https://www.facebook.com/augustus.invictus.3/posts/490733967926370.
[199] *Race and Terror*, *supra* note 1 (21:31 mark).

agitators."[200] Sure enough, he came equipped to do battle: "You lose track of your fuckin' guns, huh,"[201] Cantwell remarked while displaying his weaponry in an interview on August 12, 2017. "I came pretty well prepared for this thing today. . . . We knew that we were gonna meet a lot of resistance. The fact that nobody on our side died, I'd go ahead and call that points for us."[202]

157. Matthew Parrott, Director of Defendant TWP, wrote in a blog post that "[w]e were prepared to fight" in Charlottesville.[203] That was certainly true of the Unite the Right attendee who wore a helmet with "Commi Killer" inscribed on the front.[204]

158. As a PBS News Hour interviewer observed to Defendant Heimbach, "You must have known that if you did a rally in a city like this, that something like this might happen. You must have had some knowledge of that—that people would show up to say, 'We don't want you in our city,' and violence would ensue."[205] Heimbach had foreseen that very possibility; in fact, he explained to a Facebook commenter that permitting women to attend the rally as medics and photographers would "free[] up our fighting men."[206]

159. The *Daily Stormer*, a popular white-supremacist website, "spent months openly planning for war" in Charlottesville. It encouraged its readers to "bring shields, pepper spray, and fascist flags and flagpoles."[207] A post at the website stated that certain alt-right groups "are

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[200] Christopher Cantwell, *Unite the Right Updates*, RADICAL AGENDA, Aug. 8, 2017, https://christophercantwell.com/2017/08/08/unite-right-updates/.
[201] *Race and Terror*, *supra* note 1 (19:37 mark).
[202] *Id.* (19:10, 19:41 marks).
[203] Matt Parrott, *Fighting It Only Makes It Worse: A Defense of "White Dinduism"*, TRADWORKER, Aug. 22, 2017, https://www.tradworker.org/2017/08/fighting-it-only-makes-it-worse/.
[204] *Behind the Scenes, Part 17*, *supra* note 130 (5:19 mark).
[205] *How White Nationalist Leader Matt Heimbach Defends Violence at Saturday's Rally in Charlottesville*, YOUTUBE, Aug. 15, 2017, https://www.youtube.com/watch?v=lt7tHZcLbbU (4:31 mark).
[206] Matthew Heimbach, FACEBOOK, Aug. 10, 2017, *available at* https://itsgoingdown.org/wp-content/uploads/2017/08/11aazz-2.png.
[207] A.C. Thompson et al., *Police Stood By as Mayhem Mounted in Charlottesville*, MOTHER JONES, Aug. 13, 2017, http://www.motherjones.com/politics/2017/08/police-stood-by-as-mayhem-mounted-in-charlottesville/.

pretty prone to starting shit," and would likely "bash antifas[']heads in" on August 12. The post also admonished readers to "TAKE A BATTLE BUDDY" and "BE READY FOR A FIGHT."[208] One *Daily Stormer* commenter—"Exterminajudios"—insisted that "[w]e need military guys there to crack skulls."[209]

160. On the day of the rally, a *Daily Stormer* author explained that "the true reason" for the gathering "is that we're making a show of force."[210] He continued: "There's those . . . who say that we're war-mongerers and we're evil, and we want to destroy our enemies. Well, we do want to destroy them."[211]

161. In communicating with one another in advance of the rally, many attendees welcomed the prospect of violence. On the *Stormfront* message board, one user wrote, "Going. Bringing a shield baseball helmet and goggles. I also got some mean fists."[212]

162. A Facebook user named Aaron Dale strategized about how to perpetrate mass slaughter at alt-right rallies through premeditated "self-defense": "You have the opportunity to advertise a time and place; you show up with guns and let these degenerates come try to kill you. You literally have the chance to take out our enemies. Not just metaphorically or through rhetoric, but through legal acts of self defense."[213]

163. The organizers of Unite the Right used Discord to arrange for a team of alt-right-affiliated emergency medical providers, precisely because they knew the gathering would likely turn violent.

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[208] *Solidarity Cville Documents Threats of Violence Planned for August 12*, SOLIDARITY CVILLE, July 17, 2017, http://solidaritycville.com/2017/07/17/Solidarity-Cville-documents-threats-of-violence-planned-for-August-12/#more.
[209] *Id.*
[210] *Azzmador, pt 1*, *supra* note 84 (29:10 mark).
[211] *Id.* (30:22 mark).
[212] "Unite the Right 8/12/2017," *Events*, STORMFRONT, June 30, 2017, https://web.archive.org/web/20170816114836/https://www.stormfront.org/forum/t1215665.
[213] *Threats of Violence*, *supra* note 208.

164. Legions of "Charlottesville 2.0" Discord chatroom users openly craved violence against their ideological opponents, as the following messages graphically reveal:

- Kessler advocated weaponizing shields should things "turn ugly." He also insisted that "[w]e . . . don't want to scare [Antifa] from laying hands on us";
- "8OD": "we can stick [our shields] together and become one undefeatable well protected battle unit";
- "Aaron - VA" encouraged users to "[l]ift weights . . . and defeat degeneracy." He wrote that "I am expecting violence," and warned that if the Charlottesville police didn't arrest Antifa members, "I become the Charlottesville PD";
- "Americana - MD" described Unite the Right as "an event where there will be known hostilities." He also wrote the following: "Be better at violence th[a]n they are"; "Attack on all fronts"; "If you want peace, prepare for war"; "get jacked so you can look good when you stab commies with a knife";
- "Azzmador," regarding the possibility of an "all out brawl," wrote, "good, bring it on";
- "AltCelt(IL)," after posting a picture of a truck plowing through a large crowd: "This will be us";
- "Baeravon" predicted that the rally would be a "pit of vipers." He asked fellow users "what can we get away with, without receiving assault charges?";
- "Chris Liguria": "I plan on bringing riot spray . . . in case shit really hits the fan"; "If you use PVC [for flagpoles] get schedule 80 for thicker thumping"; "construction helmet, sunglasses/goggle, pepper spray and a shield seem to now be the bare minimum"; "Whip them into passivity like their parent[s] should have";
- "Codaius - PA": "I would love to headbutt the fuck out of some antifa";
- "Colton Merwin - MD": "I'd suggest not bringing anything that you don't want to get broken";
- "Dr_Ferguson" detailed what he would do "if/when violence erupts";
- "Erika" uploaded an image of a poster that read, "This is an attack on your racial existence. FIGHT BACK OR DIE";
- "Goldstein Riots": "carving war swa[s]tika into chest to prepare for battle";
- "greg-ky" was "concerned about getting my teeth knocked out to be honest. . . . Should be one hell of a show";

- “卐 Heimdulf - VA 卐” uploaded an image of a poster with the text, “The Battle for Charlottesville.” He also spoke cheerfully of “drop[ping] that faggot with a swift combo”;

- “Heinz - MI” urged everyone to “prepare for violence” and described Unite the Right as “a protest/rally where we expect violence.” He also “suggest[ed] learning how to actually fight in a shield wall”;

- “I’m Not Sam Hyde”: “Pee in balloons and throw them at communists”;

- “IdentityIndiana” asked, “What would y’all recommend for melee?” (Tiwaz responded, “Your fists and your brains”);

- “JCAdams”: “everyone and their mother will need helmets for this”:

- “John Cholisniky - TX” posted a picture of a man pointing two guns at the camera, rifle strapped over his chest, with the comment: “If you don’t look like this in Cville, you’re a cuck”;

- “Kampfhund VA”: “Violence of action is extremely important!”;

- “kristall.night” warned that “cheaper [flagpoles] won’t be very useful to double as spears,” and told others how “to use [a flagpole] as a club”;

- “Kurt - VA”—a moderator—wrote that “[i]mpaling people is always the best option,” and urged other users to “put your own spike on the top of [a flagpole].” He also alluded to “the wars to come” and asserted that “you only need 2 bullets” for each person to be killed;

- “Kurt14Lipper”: “We must secure the extinction of Antifa”;

- “Lawrence - TX”: “Everyone should have a battle buddy”;

- “Mack Albion”: “[F]eel free to urinate and defecate on your nearest antifa wannabe terrorist faggot pussy”; “I’m ready to crack skulls”; “I [may] have to smash an antifa in the face”;

- “Marie”: “Anyone want to stomp some boomers?”;

- “McCarthy” described himself as a “FUTURE SOLDIER.” He also acknowledged that attendees could “be[] beaten and killed”;

- “Melektaus”: “Solve this racewar once and for all”;

- “Munich”: “its going to be a pleasure fighting for the white race alongside all of you”;

- "NIMP": "[I] would love to 'have fun' with some Antifa";

- "Nicklis - OH" posted an "inspirational" quote urging attendees to "do battle," "fight to the death," and withstand "Olympian AGONIES." He also called for his enemies to be "[t]hrow[n] . . . in a woodchipper and set . . . on fire";

- "PureDureSure" mused about whether to "fashion a shield small/light enough to prove an effective striking tool." He advocated "us[ing] their ammunition against them and return[ing] fire with several times the force," and also remarked that "[i]f they intend to throw [bottles of concrete] we should have a means to 'return to sender' with even more force";

- "Requiem" posted pictures of (1) the words "YOU DIE" written underneath an X'ed-out Star of David, and (2) a hand carrying a knife, captioned, "Fight Until the Last Drop";

- "roybooneNC" posted an image with the caption, "Beat all Jews";

- "StrawberryArmada" posted an image of an execution via firing squad;

- "Tiwaz": "We should throw bars of soap at antifa";

- "Tyrone" affirmed that being able to run over protestors "[s]ure would be nice," and posted a picture captioned, "Introducing John Deere's New Multi-Lane Protester Digestor." He even asked the forum, "Is it legal to run over protestors blocking roadways? I'm NOT just shitposting. I would like clarification." He urged others to "have a plan to kill everybody you meet." He advised that, with respect to flag size, "[a]nything longer is too long to effectively bludgeon someone with"; commenting on flagpole design, he cautioned that "you only are going to get 3-6 whacks to something solid before it breaks"—"You want something designed for longitudinal stress." "Tyrone" also stated the following: "The best defense is a good offense"; "I'm bringing Mosin-Nagants with bayonets attached"—"It will shoot clean through a crowd at least four deep"; "First I have to kill me a Communist"; "What if we are sociopathic and want [Antifa] to show up, for… self defense purposes?"; and "Just carry a pocket full of rocks. They can be in a sock or something";

- "von Diez - NC": "a real man knows how to make a shield a deadly weapon";

- "WhiteTrash": "my boys bringing AKs"—"ar15s are for pussies anyways."

165. In promoting the Unite the Right rally, Defendant Kessler publicly disclaimed the possibility of violence, stating that "we are going to be here to peaceably assemble"[214] and

[214] Jason Kessler, *Unite the Right Press Conference*, YOUTUBE, July 13, 2017, https://www.youtube.com/watch?v=61e372tGFBY (1:44 mark).

exchange ideas "in a nonviolent way."[215] Yet despite his paeans to pacifism, Kessler knew that many Unite the Right attendees were engaged in paramilitary training and clamoring for a fight (or far worse). In a leadership-wide conference call on August 10, for example, one of the organizers envisioned "attack[s] by right wing death squads."[216]

166. Kessler was hardly the only attendee who employed civil-libertarian platitudes to whitewash ulterior motives. In the aftermath of August 12, 2017, C.J. Ross—a member of the Virginia Three Percenters—explained to a news organization why he and his group had attended the rally. In short, "We wanted to support the Constitution and help keep things peaceful." Ross claims to have been blindsided by the bigotry: "We realized this wasn't what we were all about when we heard [white nationalists] start chanting slurs." But even "Nazis . . . have the right to speak."[217]

167. In the weeks before August 12, 2017, however, Ross had openly celebrated and indeed stoked the forthcoming violence. In a message sent to another Facebook user, he asserted that the rally's purpose was "to crush and demoralize Antifa to the point where they don't return to the park."[218] In a public post "liked" by Jason Kessler, Ross wrote, "Just say when go time is and we'll walk in there with a thousand men and crush these little cunt rags for good."[219] In a message to the "Mountaineers Against Antifa" Facebook group, Ross wrote, "I can assure you there will be beatings at the August event. . . . That day we finish them all off."[220] He also

[215] *Id.* (:11 mark).
[216] *Meeting Recording (Part Two)*, *supra* note 194 (4:47 mark).
[217] Bryan McKenzie, *Militia Member Speaks About Group's Role at Rally*, THE DAILY PROGRESS, Aug. 20, 2017, http://www.dailyprogress.com/news/local/militia-member-speaks-about-group-s-role-at-rally/article_e6765d00-85f9-11e7-82cf-3baf6f9c497a.html.
[218] *Threats of Violence*, *supra* note 208.
[219] *Id.*
[220] *Id.*

reported that "[w]e will be facing off directly with Antifa, and Black Lives Matter. All able bodied men and women ready to fight!"[221]

168. The Militia Defendants understood the risks, as well. On July 31, 2017, Defendant Yingling uploaded a video to Facebook Live explaining why he would attend the Unite the Right rally. After predicting that the protestors and counter-protestors would "just tear each other to pieces"[222] on August 12, Yingling asserted that "a rally like this really poses a true threat of violence."[223] In his view, the upcoming rally was "a veritable powder keg."[224] Yingling later told his local newspaper that his militia selects events "based on the level of the threat of violence."[225]

169. On August 8, 2017, the Pennsylvania Light Foot Militia Laurel Highlands Ghost Company posted the following message to its Facebook page: "Gearing up for Charlottesville… this one is NOT going to be for the faint of heart."[226]

170. On August 11, 2017, Defendant Yingling posted the following message to his Facebook page: "[O]n the road to Charlotte[s]ville.. If anyone could possibly throw up a prayer for me (and all the militia going) [i]t would be GREATLY appreciated… Something tells me, we're going to need it."[227] Yingling later stated that the commander of the Virginia Minutemen Militia solicited his assistance, given "the volatility of the event."[228]

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[221] *Id.*
[222] Christian Yingling, FACEBOOK, July 26, 2017, https://www.facebook.com/christiaan.yingling/videos/691975064329854/ (2:24 mark).
[223] *Id.* (6:27 mark).
[224] *Id.* (8:01 mark).
[225] Routh, *supra* note 47.
[226] Pennsylvania Light Foot Militia Laurel Highlands Ghost Company, FACEBOOK, Aug. 8, 2017, https://www.facebook.com/permalink.php?story_fbid=1934861403422517&id=1436871993221463.
[227] Christian Yingling, FACEBOOK, Aug. 11, 2017, https://www.facebook.com/christiaan.yingling/posts/698766176984076.
[228] Duggan, *supra* note 30.

171. Finally, Defendant Curbelo, commander of the New York Light Foot Militia, stated in the rally's aftermath that "many of his [militia's] members . . . worried about the danger."[229]

F. Alt-Right Leaders Intend to Stage Additional Rallies in Charlottesville

172. In recent months, Charlottesville has been almost metronomically besieged by alt-right fear tactics. On May 13, 2017, Richard Spencer and Jason Kessler organized two rallies in Charlottesville. In the first, which took place in the afternoon, Spencer proclaimed that "[y]ou cannot destroy us. . . . We are here. We are never going away."[230] In the second rally, which occurred at night, Spencer led a group into Lee Park (later renamed Emancipation Park). In a haunting show of intimidation, the gatherers hoisted tiki torches and chanted, "You will not replace us!"[231]

173. On July 8, 2017, about 50 members of the Ku Klux Klan and their supporters—some wearing Klan robes and carrying Confederate flags—gathered in Justice Park near a statue of Confederate General Stonewall Jackson. Altercations ensued between the Klansmen and the counter-protestors.

174. Alt-right warriors descended on Charlottesville on August 12, 2017. Immediately afterwards, they promised to regroup and return stronger than ever. In an interview on the evening of August 12, 2017, Defendant Mosley insisted that "[w]e're coming back to Charlottesville." Mosley himself was in the process of moving from Pennsylvania to Virginia. "In Virginia, he said, he could more easily organize the next big alt-right rallies in the state

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[229] Wallace, *supra* note 15.
[230] Laura Vozzella, *White Nationalist Richard Spencer Leads Torch-Bearing Protesters Defending Lee Statue*, WASH. POST, May 14, 2017, https://www.washingtonpost.com/local/virginia-politics/alt-rights-richard-spencer-leads-torch-bearing-protesters-defending-lee-statue/2017/05/14/766aaa56-38ac-11e7-9e48-c4f199710b69_story.html.
[231] *Id.*

capital, Richmond, and of course, in Charlottesville."[232] Mosley looks forward to "building our movement" through "real world activism," and he plans to "be at the forefront of this great awakening among our people."[233]

175. In an interview on the afternoon of August 12, 2017, after the police had declared an unlawful assembly and ordered Emancipation Park cleared, Defendant Heimbach claimed that "we're continuing . . . . [W]e're gonna keep fighting."[234] The following Wednesday, Heimbach declared that "[w]e will be back, Charlottesville, and we will be back with more men."[235]

176. After the rally ended, David Duke—a former Grand Wizard of the KKK—announced on Twitter that "[w]e will be back to #Charlottesville … soon. That's a promise."[236] Duke's other tweets that weekend confirmed his earnestness: "This is only the beginning, believe me";[237] "Never forget - just the beginning";[238] "It's far from over, believe me -";[239] and "#Charlottesville was our Thermopylae. You know what comes after that."[240] Speaking at McIntire Park on the afternoon of August 12, 2017, Duke asserted—to roaring applause—that "we will be back in Charlottesville as long as it takes until we secure our rights, our freedom, our

[232] Mathias & Campbell, *supra* note 5.
[233] Eli Mosley, *Acceptance of Leadership*, IDENTITY EVROPA, Aug. 27, 2017, https://www.identityevropa.com/action-report/renewal-of-leadership.
[234] *Race and Terror*, *supra* note 1.
[235] Gabe Gutierrez and Erik Ortiz, *White Nationalists Warn They Will Return to Charlottesville*, NBC NEWS, Aug. 17, 2017, https://www.nbcnews.com/news/us-news/white-nationalists-warn-they-will-return-charlottesville-n793421.
[236] David Duke, TWITTER, Aug. 12, 2017, 1:04 PM, https://twitter.com/DrDavidDuke/status/896417049446166530.
[237] David Duke, TWITTER, Aug. 12, 2017, 12:22 AM, https://twitter.com/DrDavidDuke/status/896225318746419200.
[238] David Duke, TWITTER, Aug. 12, 2017, 2:02 AM, https://twitter.com/DrDavidDuke/status/896250630255382531.
[239] David Duke, TWITTER, Aug. 12, 2017, 7:40 PM, https://twitter.com/DrDavidDuke/status/896516727273607168.
[240] David Duke, TWITTER, Aug. 13, 2017, 2:30 PM, https://twitter.com/DrDavidDuke/status/896801236388900864.

heritage, and our future!"[241] As he was leaving the rally on August 12, moreover, Duke remarked to a videographer that "[w]e will be back."[242]

177. Richard Spencer, a prominent alt-right leader, also repeatedly vowed to return to Charlottesville to participate in future rallies. After the police declared an unlawful assembly, he insisted that "we'll be back!"[243] That evening, Spencer told a *Rolling Stone* reporter that "we're going to have to come back to Charlottesville."[244] He laid bare his intentions in a video uploaded later that evening: "We are gonna make Charlottesville the center of the universe. We are gonna come back here often. Your head's gonna spin, how many times we're gonna be back. We are absolutely never backing down! . . . We're gonna make even more of a fool of you when we're back here!"[245] After the rally, Spencer told one publication that "[w]e're going to be back here . . . . We'll be back here 1,000 times if necessary. . . . Because I have the will to win, I keep going until I win."[246] And at a news conference the following Monday, August 14, 2017, Spencer promised to hold another rally in Charlottesville. "There is no way in hell that I am not going back," he said.[247]

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[241] *Dr. David Duke and Mike Enoch Speech at McIntire Park After Unite the Right Rally 8/12/2017*, YOUTUBE, Aug. 14, 2017, https://www.youtube.com/watch?v=p4ZzehhjOYQ (5:17 mark).
[242] *Race and Terror*, *supra* note 1 (10:06 mark).
[243] *Richard Spencer McIntire Speech*, YOUTUBE, Sept. 19, 2017, https://www.youtube.com/watch?v=-d6mUjDLQog (:36 mark).
[244] Sarah Posner, *After Charlottesville Rally Ends in Violence, Alt-Right Vows to Return*, ROLLING STONE, Aug. 13, 2017, http://www.rollingstone.com/politics/news/charlottesville-white-supremacist-rally-erupts-in-violence-w497446.
[245] Richard B. Spencer, *A Message for Charlottesville*, PERISCOPE, Aug. 12, 2017, https://www.pscp.tv/RichardBSpencer/1yNxamRYwwlxj?t=2.
[246] Alana Goodman, *White Nationalist Leader Richard Spencer Vows to Keep Demonstrating in Charlottesville*, DAILY MAIL, Aug. 13, 2017, http://www.dailymail.co.uk/news/article-4785976/Richard-Spencer-vows-Charlottesville-demonstrations.html.
[247] Alan Feuer, *Far Right Plans Its Next Moves with a New Energy*, N.Y. TIMES, Aug. 14, 2017, https://www.nytimes.com/2017/08/14/us/white-supremacists-right-wing-extremists-richard-spencer.html.

178. On the evening of August 12, 2017, Christopher Cantwell was asked, "What do you think this means for the next alt-right protest?" He responded, "I say it's gonna be really tough to top, but we're up to the challenge."[248]

179. At 8:29 PM on August 12, 2017, the *Daily Stormer* informed its readers that "we are not going to back down. There will be more events. Soon."[249]

180. Sure enough, Defendant Mosley returned to Charlottesville after dusk on October 7, 2017, alongside alt-right chieftains Richard Spencer and Mike "Enoch" Peinovich. They led between 40 and 50 white nationalists in yet another torchlit procession to Emancipation Park—a move they had been "planning . . . for a long time."[250] The three figures took turns using a megaphone, revealing the depth of their fixation with Charlottesville.

181. Peinovich addressed the city first: "Hello, Charlottesville! We're back! And we have a message: We're back, and we're gonna keep coming back!"[251] Spencer warned that Charlottesville "has become symbolic,"[252] and that alt-right demonstrators would "come back again and again and again!"[253] He promised that "there's gonna be a lot more crime, sweetheart!";[254] Charlottesville would just "have to get used to it!"[255] Defendant Mosley concluded the event by leading the crowd in chanting, "We will be back!"[256]

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[248] *Race and Terror*, *supra* note 1 (20:55 mark).
[249] *#UniteTheRight: Charlottesville LIVE UPDATES*, DAILY STORMER, Aug. 12, 2017, 8:29 PM, https://web.archive.org/web/20170814195122/https://www.dailystormer.com/unitetheright-charlottesville-live-updates/.
[250] Susan Svrluga, *"We Will Keep Coming Back": Richard Spencer Leads Another Torchlit March in Charlottesville*, WASH. POST, Oct. 7, 2017, https://www.washingtonpost.com/news/grade-point/wp/2017/10/07/richard-spencer-leads-another-torchlight-march-in-charlottesville/.
[251] Spencer, *supra* note 2 (7:35 mark).
[252] *Id.* (7:54 mark).
[253] *Id.* (9:53 mark).
[254] *Id.* (9:36 mark).
[255] *Id.* (9:21 mark).
[256] *Id.* (15:44 mark).

182. Although paramilitary activity did not occur at the May 13, July 8, and October 7 demonstrations, Defendant Mosley has described the Unite the Right rally as a quantum leap in the alt-right movement's willingness and preparedness to use organized force. He warned his online readership that "Cville was dropping the bomb on Hiroshima. There will be more chaos ahead and everyone involved should be ready."[257]

G. Future Rallies Will Again Attract Alt-Right Paramilitary Organizations Prepared to Inflict Serious Harm

183. On its own, the mere act of staging a public gathering enjoys constitutional protection. But just as Unite the Right participants anticipated and carried out repeated, coordinated violent encounters, future rallies orchestrated by white-nationalist leaders will almost certainly attract alt-right warriors—including paramilitary organizations—prepared to inflict serious and irreparable harm.

184. An unnamed Unite the Right attendee reflected that the rally "helped us gain valuable experience in organizing protests." He then previewed what lay ahead: "I foresee us training in formation in creating perimeters and creating corridors for /ourguys/. These lessons will help us make sure the next Charlottesville is more successful, (there will be a next one, mark my words)."[258]

185. Anticipating future alt-right mega-rallies, Defendant Kessler stated in a podcast on September 15, 2017, that "there's a lot of these groups out there that just need to be working

[257] Eli Mosley, TWITTER, Sept. 12, 2017, 1:22 PM, https://twitter.com/ThatEliMosley/status/907655627530530816.
[258] "Thoughts on Charlottesville from Someone Who Went There," *Identitarian*, VOAT, Aug. 21, 2017, https://voat.co/v/Identitarian/2077131.

together."[259] Organizers like himself would help "get that broad base of support" for the white-nationalist movement to keep working in concert.[260]

186. On the morning of August 12, 2017, the *Daily Stormer* proudly exclaimed that "WE HAVE AN ARMY!"—"THIS IS THE BEGINNING OF A WAR!"[261] It followed up with an equally menacing message later that evening: "[T]o everyone, know this: we are now at war."[262]

187. Robert "Azzmador" Ray, a features writer for the *Daily Stormer*, explained that his ideological goals are predicated on the use of force: "At some point, we will have enough power that we will clear them from the streets forever. That which is degenerate, in white countries, will be removed."[263] He also declared that "[w]e're starting to slowly unveil a little bit of our power level. You ain't seen nothing yet."[264]

188. Asked on August 12, 2017, whether he and fellow white-nationalist protestors were capable of violence, Christopher Cantwell replied, "Of course we're capable. I'm carrying a pistol! I go to the gym all the time. I'm trying to make myself more capable of violence!"[265] Cantwell told the same interviewer that "we're not non-violent—we'll fucking kill these people if we have to."[266] He later added that "I think a lot more people are gonna die before we're done here, frankly . . . . People die violent deaths all the time. Like, this is part of the reason why we

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[259] *Cantwell and Kessler: Monument Flashpoint, Trump Meets w/Democrats & Richmond's Ghetto Shooting Spree*, REAL NEWS WITH JASON KESSLER, Sept. 16, 2017, https://soundcloud.com/realnewswithjasonkessler/cantwell-kessler-monument-flashpoint-trump-meets-w-democrats-richmonds-ghetto-shooting-spree (3:24 mark).
[260] *Id.* (3:33 mark).
[261] *LIVE UPDATES*, *supra* note 249, Aug. 12, 2017, 11:22 AM.
[262] *Id.*, Aug. 12, 2017, 8:29 PM.
[263] *Race and Terror*, *supra* note 1 (8:21 mark).
[264] *Id.* (8:37 mark).
[265] *Id.* (3:37 mark).
[266] *Id.* (7:08 mark).

want an ethno-state, right?"[267] Cantwell also marveled that the actual levels of violence in Charlottesville were not significantly higher: "The amount of restraint that our people showed out there, I think was astounding."[268]

189. After Cantwell was pepper-sprayed at the Unite the Right rally, a nearby associate assured him that "We're gonna fuckin' kill 'em. I fuckin' promise you—we're gonna fuckin' kill these pieces of shit."[269]

190. Defendant Matthew Heimbach has expressed "willing[ness] to die for his cause"[270] at future public gatherings. Richard Spencer has done the same: "I crossed a Rubicon long ago that I'm willing to die,"[271] for "politics can be a war."[272]

191. Matthew Parrott, the Director of Defendant TWP, has extolled the alt-right's recent evolution into "a proven street fighting faction."[273]

192. A member of Defendant Vanguard America named "Dylan"—likely its leader, Dillon Irizarry—told ABC News's *20/20* that "[w]e want to be like ants. We're a colony and we just go and destroy everything in our way."[274]

193. Ken Parker, a regional director of Defendant NSM, told a reporter that "[w]e would have killed every one of those motherfuckers if the cops weren't there."[275]

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[267] *Id.* (21:02 mark).
[268] *Id.* (20:46 mark).
[269] Jack Smith IV, TWITTER, Aug. 12, 2017, 11:50 AM, https://twitter.com/JackSmithIV/status/896579771760615428.
[270] Thompson et al., *supra* note 207.
[271] *Heimbach, Spencer*, *supra* note 7 (6:48 mark).
[272] *Id.* (7:06 mark).
[273] Parrott, *supra* note 8.
[274] Keturah Gray et al., *How White Nationalists, Counterprotestors Who Were in Charlottesville Prepare for Rallies*, ABC NEWS, Aug. 17, 2017, http://abcnews.go.com/US/white-nationalists-counter-protesters-charlottesville-prepare-rallies/story?id=49263007.
[275] Thayer, *supra* note 140.

194. In reacting to Heather Heyer's tragic death, many Unite the Right participants condoned the prospect of using violence to achieve their ideological aims. Ken Parker, for example, confessed to a journalist that "I am glad that woman is dead. She was a communist feminist. . . . They got exactly what was coming to them."[276] Mike "Enoch" Peinovich also expressed grave indifference to Heyer's fate: "I don't give a shit about this dead cat lady. Whatever. The world is a better place."[277] And users of the Discord app ridiculed Fields's deceased victim while valorizing his lethal hit-and-run tactics.

195. Justin Moore, the Grand Dragon for the Loyal White Knights of the Ku Klux Klan (and a Unite the Right attendee), told a local reporter that "I'm sorta glad that them people got hit and I'm glad that girl died. . . . They were a bunch of Communists out there protesting against somebody's freedom of speech, so it doesn't bother me that they got hurt at all." He then issued a dire prediction: "I think we're going to see more stuff like this happening at white nationalist events . . . . I think there will be more violence like this in the future to come."[278] His colleague Chris Baker, the group's Imperial Wizard, concurred: "When a couple of them die, it doesn't bother us."[279] The organization's voicemail recording echoed these sentiments: "Nothing makes us more proud at the KKK than [when] we see white patriots such as James Fields, Jr., age 20, taking his car and running over nine communist anti-fascists, killing one nigger-lover named Heather Heyer."[280]

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[276] *Id.*
[277] Simone Wilson, *Mike "Enoch" Peinovich, Upper East Side Neo-Nazi, Helped Lead Charlottesville Rally*, PATCH, Aug. 17, 2017, https://patch.com/new-york/upper-east-side-nyc/mike-peinovich-upper-east-side-neo-nazi-helped-lead-charlottesville.
[278] Steve Crump, *NC KKK Leader: "I'm Glad That Girl Died" During Virginia Protest*, WBTV, Aug. 15, 2017, http://www.wbtv.com/story/36139058/nc-kkk-leader-im-glad-that-girl-died-during-virginia-protest.
[279] *Id.*
[280] *Id.*

196. In broadly ascribing murderous intent to attendees who did not share his views, Defendant Heimbach insinuated that a far larger death toll would have been legally justified on self-defense grounds: "[T]he left wanted to attack all of us. They want to kill anyone they disagree with. . . . These radical leftists truly are trying to kill anyone they disagree with."[281] He even asserted—without evidence—that Heyer herself had sought to massacre white nationalists: "I'm also not going to cry over someone that was trying to kill me and my comrades just a few hours earlier."[282] It was in that context that Heimbach promised "not [to] back down when they threaten us. We will defend ourselves."[283]

197. Several key alt-right figures implausibly shifted culpability from Heyer's killer, James Fields, to his defenseless victim. In doing so, they signaled the acceptability of using organized violence to harm counter-protestors appearing on public thoroughfares at future rallies. Defendant Kessler, for example, tweeted that "I 100% believe Heather Heyer was to blame for participating in an armed mob blocking traffic during a state of emergency."[284] That was after insisting that "Heather Heyer was a fat, disgusting Communist. Communists have killed 94 million. Looks like it was payback time."[285]

198. Mike "Enoch" Peinovich similarly opined that "the murderer is not the driver of the car. . . . He did nothing wrong. Frankly, he should get a medal."[286] White-nationalist

[281] *Heimbach Defends Violence*, *supra* note 205 (2:58, 5:56 marks).
[282] *Id.* (5:54 mark).
[283] *Id.* (4:27 mark).
[284] Jason Kessler, TWITTER, Aug. 24, 2017, 3:40 PM, https://twitter.com/TheMadDimension/status/900805089174138881.
[285] Matt Pearce, *Tweet from the Account of Charlottesville Rally Organizer Insults Slain Protester Heather Heyer*, L.A. TIMES, Aug. 19, 2017, http://www.latimes.com/nation/la-na-charlottesville-organizer-20170818-story.html.
[286] Wilson, *supra* note 277.

attendee Kyle Hanophy concluded that Heyer "shouldn't be standing out in traffic, I suppose."[287] And Christopher Cantwell insisted that "none of our people killed anybody unjustly,"[288] and that Heyer's death "was more than justified."[289] Those crushed by Fields's vehicle were simply "a bunch of stupid animals who don't pay attention."[290] Heyer, he maintained, was "a fucking rioter [who] was blocking fucking traffic."[291]

199. On September 12, 2017, The Virginia Flaggers—a group that glorifies Confederate emblems and memorials—uploaded a video to its Facebook page depicting liberal activists at the University of Virginia. One commenter suggested that "it might be time for someone to make a return trip to Charlottesville." Within hours, other users posted the following responses:

- "I just want to know, when can we start shooting?"
- "Kill them and the knee grows!"
- "Unleash Hell on their asses"
- "Kill them all."
- "Shoot em."[292]

[287] *Exclusive Interview with an American Nationalist Who Participated in Charlottesville*, YOUTUBE, Aug. 18, 2017, https://www.youtube.com/watch?v=ezeXse5t4iQ.
[288] *Race and Terror*, *supra* note 1 (19:53 mark).
[289] *Id.* (20:43 mark).
[290] *Id.* (20:33 mark).
[291] *Cantwell and Kessler: Malcolm X vs MLK & Who Is a Backstabbing Buddyfucker in the Alt-Right Movement*, REAL NEWS WITH JASON KESSLER, Sept. 4, 2017, https://soundcloud.com/realnewswithjasonkessler/cantwell-kessler-malcolm-x-vs-mlk-who-is-backstabbing-who-in-the-alt-right (32:01 mark).
[292] *Virginia Flagger Supporters Suggest Killing Peaceful Protesters, Spout White Power Slogans on Flagger Facebook Page*, RESTORING THE HONOR, Sept. 13, 2017, http://restoringthehonor.blogspot.com/2017/09/virginia-flaggers-supporters-suggest.html.

H. The Militia Defendants Will Attempt to "Keep the Peace" at Future Alt-Right Rallies in Charlottesville by Engaging in Paramilitary Activity

200. Aware that the Unite the Right rally would involve more than the peaceful expression of ideas, Defendant Kessler solicited the presence of private militia groups. He reached out to Defendants Yingling and the Pennsylvania Light Foot Militia to provide protection. The "Charlottesville 2.0" Discord chats reveal that decision unfolding in real time, with Kessler first floating the idea on July 15, 2017. He reflected that "I think we need a contingent of people circling and guarding the statue . . . . I bet we could reach out to some of these militia groups to help." Another user responded that "[V]anguard has members in the pa militia we could do some networking." Kessler made the same appeal to C.J. Ross and the Virginia Three Percenters. Ross agreed that his group would "provide a security presence" on August 12.[293]

201. Private militias will likely appear at contentious public gatherings in Virginia even if alt-right leaders cease to actively recruit them. In an August 13, 2017, Facebook video, Defendant Yingling made clear his intentions: "In [my] first video, I stated, 'It is time to put up or shut up.' . . . I'm gonna reiterate that right now. If you call yourself militia, then you have to support the Constitution."[294] On August 21, Yingling created a GoFundMe account on behalf of the Pennsylvania Light Foot Militia Laurel Highlands Ghost Company. He appealed to those who "support what we do, and would like to see us keep doing it," asking for "money to travel to different states to defend people's constitutional rights."[295] And in a Facebook comment soon

[293] McKenzie, *supra* note 217.
[294] Yingling, *supra* note 33 (35:24 mark).
[295] Christian Yingling, *Help Support the Constitution*, GOFUNDME, Aug. 21, 2017, https://www.gofundme.com/help-support-the-constitution.

after the rally ended, Yingling promised that "I will continue to fight until my last breath is drawn."[296]

202. Defendant Curbelo, too, publicly reaffirmed his militia's commitment in a Facebook video on August 13, 2017. He deemed it "important that whenever—*whenever*—there is any attempt at shutting down free speech, . . . patriotic Americans stand in opposition to that attempt."[297] Charlottesville was "a wakeup call for the patriot movement. . . . [A]re you truly willing to stand for the enforcement of everybody's rights here in the United States?"[298] Private militias must "keep [their] presence up"[299] rather than "sit back and do nothing."[300] As for Curbelo himself, he was "looking forward to the next one."[301] Curbelo also stated in a Facebook comment on August 22, 2017, that "I would do it again."[302]

203. After returning home from Charlottesville, Defendant Curbelo claimed that his New York Light Foot Militia would send men to a right-wing rally scheduled for Washington, D.C. in September 2017.[303] He had also pledged his group's attendance in a July 14, 2017, Facebook video.[304] One of Curbelo's subordinates queried, "If we don't, who's going to do it?"[305]

204. Defendants Yingling and Curbelo indeed travelled to D.C. with their Light Foot regiments on September 16, 2017, for the so-called Mother of All Rallies. In a Facebook video

[296] Yingling, *supra* note 33.
[297] Curbelo, *supra* note 14 (41:56 mark).
[298] *Id.* (43:10 mark).
[299] *Id.* (35:35 mark).
[300] *Id.* (35:51 mark).
[301] *Id.* (42:36 mark).
[302] George Curbelo, FACEBOOK, Aug. 22, 2017, https://www.facebook.com/george.curbelo/posts/1593681324015592.
[303] Wallace, *supra* note 15.
[304] Liberty Den Home of the American Patriot (George Curbelo), FACEBOOK, July 14, 2017, https://www.facebook.com/TheLibertyDen/videos/1598745356810320/ (6:32 mark).
[305] Wallace, *supra* note 15.

recorded that morning from the Washington Mall, Curbelo predicted that "[i]t's probably gonna be a few hundred of us here today, just as part of a security element."[306] Curbelo was excited to be collaborating again with Yingling, who is "kind of a hero to us."[307]

205. After describing the frequency of his paramilitary missions, Defendant Marion stated that he and American Freedom Keepers are "always trying to . . . organize and plan for the next event that's coming up."[308]

206. Defendant Baker made the same commitment on behalf of his group, American Warrior Revolution: "Mark my words. This is my first time ever to come to Charlottesville, but I can assure you of one thing—this will not be our last!"[309] Perceived inaccuracies in media coverage were "damn sure not gonna keep us from coming back to Charlottesville, Virginia, again!"[310]

207. Many militia groups in the Mid-Atlantic and Northeast maintain "mutual defense agreements," ensuring maximum coverage at events expected to pose a risk of injury.[311] Defendant Marion has explained that "being networked and coordinated across the country" allows militia groups to "bolster our numbers at these events."[312] Defendant Curbelo celebrated—and tapped into—such support structures in a Facebook video on July 14, 2017,

[306] Liberty Den Home of the American Patriot (George Curbelo), FACEBOOK, Sept. 16, 2017, https://www.facebook.com/TheLibertyDen/videos/1669632733054915/ (1:17 mark).
[307] *Id.* (:35 mark).
[308] Marion, *supra* note 35 (:9:43 mark).
[309] Patriot Media, *Truth About Charlottesville*, FACEBOOK, Aug. 12, 2017, https://www.facebook.com/joshgemmipatriotmedia/videos/335928490197751/ (1:53 mark).
[310] *Id.* (6:46 mark).
[311] Duggan, supra note 30.
[312] Marion, supra note 35 (1:03:40 mark).

appealing directly to his viewers: "We're asking you for your participation, whether it's through time or financial support, to any one of these organizations."[313]

208. Defendant Redneck Revolt, too, "look[s] forward to building stronger defense networks together" with groups like Defendant Socialist Rifle Association.[314]

209. In sharp contrast to the Militia Defendants' enthusiasm for attending future alt-right rallies, the Three Percenters National Council issued a stand-down order for its members following the Unite the Right rally. The organization "strongly reject[ed] and denounce[d] anyone who calls themselves a patriot or a Three Percenter that has attended or is planning on attending any type of protest or counter protest related to these white supremacist and Nazi groups."[315]

VI.
CAUSES OF ACTION

Count 1

(Article I, Section 13 of the Virginia Constitution – Strict Subordination)

210. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 209 above.

211. Article I, Section 13 of the Virginia Constitution guarantees that "in all cases the military should be under strict subordination to, and governed by, the civil power."

212. Because no further legislation is required to make it operative, the Strict Subordination Clause—like most of the Virginia Constitution's Bill of Rights—is self-executing

[313] *What is the Measure of Your Resolve?*, Liberty Den Home of the American Patriot (George Curbelo), July 14, 2017, FACEBOOK, https://www.facebook.com/TheLibertyDen/videos/1598745356810320/.
[314] *Reportback: Charlottesville*, *supra* note 55.
[315] *The Three Percenters Official Statement Regarding the Violent Protests in Charlottesville*, THE THREE PERCENTERS, Aug. 12, 2017, https://www.thethreepercenters.org/single-post/2017/08/12/The-Three-Percenters-Official-Statement-Regarding-the-Violent-Protests-in-Charlottesville.

and gives rise to a private right of action. *See Gray v. Virginia Sec'y of Trans*., 276 Va. 93, 103 (2008).

213. On August 12, 2017, Defendants Traditionalist Worker Party, Vanguard America, League of the South, National Socialist Movement, Pennsylvania Light Foot Militia, New York Light Foot Militia, Virginia Minutemen Militia, American Freedom Keepers, American Warrior Revolution, Redneck Revolt, and Socialist Rifle Association organized as "military" units within the meaning of Article I, Section 13 of the Virginia Constitution.

214. On August 12, 2017, Defendants Matthew Heimbach, Cesar Hess, Spencer Borum, Michael Tubbs, Jeff Schoep, Christian Yingling, George Curbelo, Francis Marion, and Ace Baker were members and/or commanders of their respective military units. Defendants Jason Kessler and Eli Mosley—as co-organizers of the Unite the Right rally—solicited the presence of paramilitary organizations, facilitated attendees' instruction in military techniques, and issued tactical commands to the other Alt-Right Defendants on August 12.

215. Defendants did not follow the statutory prerequisites for acting as a military unit and are not responsible to, or under the command of, the civil power in Virginia.

216. Defendants intend to operate as a military unit, or as members and commanders thereof, in Virginia in the immediate future.

217. Defendants' continued operation as military units, or as members and commanders thereof, independent of the civil power in Virginia will violate Article I, Section 13 of the Virginia Constitution.

218. Defendants' planned conduct will cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

Count 2

(Virginia Code § 18.2-433.2(1) – Unlawful Paramilitary Activity)

219. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 218 above.

220. At the Unite the Right rally on August 12, 2017, as well as before arriving, Defendants Matthew Heimbach, Cesar Hess, Spencer Borum, Michael Tubbs, Jeff Schoep, Jason Kessler, Eli Mosley, Christian Yingling, George Curbelo, Francis Marion, and Ace Baker taught and/or demonstrated to others the use of firearms and other techniques—including the use of shields, flagpoles, and batons as offensive weapons—capable of causing injury or death.

221. Defendants Heimbach, Hess, Borum, Tubbs, Schoep, Kessler, Mosley, Yingling, Curbelo, Marion, and Baker knew and intended that these techniques would be used in and/or in furtherance of a "civil disorder" within the meaning of § 18.2-433.2 of the Virginia Code.

222. The Unite the Right rally was a "civil disorder" within the meaning of § 18.2-433.2 of the Virginia Code because it was a public disturbance in the United States that involved acts of violence by assemblages of three or more persons, which caused both immediate danger of damage and injury, and actual damage and injury, to persons and property.

223. Defendants Heimbach, Hess, Borum, Tubbs, Schoep, Kessler, Mosley, Yingling, Curbelo, Marion, and Baker intend to teach and/or demonstrate the use of firearms and other techniques capable of causing injury and death again in Virginia in the immediate future. The above Defendants know, have reason to know, and/or intend that such techniques will be used in and/or in furtherance of a "civil disorder" within the meaning of § 18.2-433.2 of the Virginia Code.

224. Defendants' planned conduct in this manner will violate § 18.2-433.2(1) of the Virginia Code.

225. Defendants' continued unlawful paramilitary activity will cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

226. Because Plaintiffs will suffer irreparable and incalculable harm from Defendants' planned conduct, the Court has authority to enjoin Defendants from violating § 18.2-433.2(1) in the future. *See Black & White Cars, Inc. v. Groome Transp., Inc.*, 247 Va. 426, 430 (1994).

Count 3

(Virginia Code § 18.2-433.2(2) – Unlawful Paramilitary Activity)

227. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 226 above.

228. At the Unite the Right rally on August 12, 2017, as well as before arriving, Defendants Traditionalist Worker Party, Vanguard America, League of the South, National Socialist Movement, Pennsylvania Light Foot Militia, New York Light Foot Militia, Virginia Minutemen Militia, American Freedom Keepers, American Warrior Revolution, Redneck Revolt, and Socialist Rifle Association assembled with multiple persons for the purpose of training with, practicing with, and/or being instructed in the use of firearms and other techniques—including the use of shields, flagpoles, and batons as offensive weapons—capable of causing injury or death.

229. Defendants Traditionalist Worker Party, Vanguard America, League of the South, National Socialist Movement, Pennsylvania Light Foot Militia, New York Light Foot Militia, Virginia Minutemen Militia, American Freedom Keepers, American Warrior Revolution, Redneck Revolt, and Socialist Rifle Association intended that these techniques would be used in

and/or in furtherance of a "civil disorder" within the meaning of § 18.2-433.2 of the Virginia Code.

230. The Unite the Right rally was, in fact, a "civil disorder" within the meaning of § 18.2-433.2 of the Virginia Code because it was a public disturbance in the United States that involved acts of violence by assemblages of three or more persons, which caused both immediate danger of damage and injury, and actual damage and injury, to persons and property.

231. The Defendant groups indicated above intend to assemble for the purpose of training with, practicing with, and/or being instructed in the use of firearms and other techniques capable of causing injury or death again in Virginia in the immediate future. Defendants know and intend that such techniques will be used in and/or in furtherance of a "civil disorder" within the meaning of § 18.2-433.2 of the Virginia Code.

232. Defendants' planned conduct in this manner will violate § 18.2-433.2(2) of the Virginia Code.

233. Defendants' continued unlawful paramilitary activity will cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

234. Because Plaintiffs will suffer irreparable and incalculable harm from Defendants' planned conduct, the Court has authority to enjoin Defendants from violating § 18.2-433.2(2) in the future. *See Black & White Cars, Inc.*, 247 Va. at 430.

Count 4

(Virginia Code § 18.2-174 – Falsely Assuming the Functions of Peace Officers and/or Other Law-Enforcement Officers)

235. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 234 above.

236. Defendants Pennsylvania Light Foot Militia, New York Light Foot Militia, Virginia Minutemen Militia, American Freedom Keepers, American Warrior Revolution, Redneck Revolt, and Socialist Rifle Association purported to "keep the peace" at the Unite the Right rally on August 12, 2017, by engaging in paramilitary activity. In so doing, they falsely assumed the functions of state and local peace officers and other law-enforcement officers.

237. These Defendants intend to "keep the peace" at future alt-right rallies occurring in Virginia.

238. Defendants' continued false assumption of law-enforcement functions will violate § 18.2-174 of the Virginia Code.

239. Defendants' planned conduct will cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

240. Because Plaintiffs will suffer irreparable and incalculable harm from Defendants' planned conduct, the Court has authority to enjoin Defendants from violating § 18.2-174 in the future. *See Black & White Cars, Inc.*, 247 Va. at 430.

Count 5

(Public Nuisance)

241. Plaintiffs reallege and incorporate by reference all allegations set forth in paragraphs 1 through 240 above.

242. At the Unite the Right rally on August 12, 2017, Defendants Jason Kessler, Eli Mosley, Traditionalist Worker Party, Matthew Heimbach, Cesar Hess, Vanguard America, League of the South, Spencer Borum, Michael Tubbs, National Socialist Movement, Jeff Schoep, Pennsylvania Light Foot Militia, Christian Yingling, New York Light Foot Militia, George Curbelo, Virginia Minutemen Militia, American Freedom Keepers, Francis Marion,

American Warrior Revolution, Ace Baker, Redneck Revolt, and Socialist Rifle Association engaged in paramilitary activity independent of any civil authority in public streets, public parks, and other public areas, substantially interfering with public health, safety, peace, and comfort, and the general welfare.

243. Defendants' conduct in this manner constituted a public nuisance.

244. Defendants plan to return to return to Virginia for the purpose of engaging in paramilitary activity in public areas independent of any civil authority.

245. When Defendants engage in paramilitary activity in public areas independent of any civil authority, their conduct necessarily threatens public health, safety, peace, and comfort, and the general welfare.

246. Defendants' planned conduct will continue the public nuisance and cause irreparable harm to Plaintiffs, for which no adequate legal remedy exists.

247. Because Plaintiffs will suffer irreparable harm from Defendants' planned conduct, the Court has authority to enjoin Defendants from engaging in activity that constitutes a public nuisance. *See Ritholz v. Commonwealth*, 184 Va. 339, 350 (1945).

VII.
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter an order:

1) Declaring that Defendants' conduct in organizing and acting as military units independent of the civil authority in Virginia violates Article I, Section 13 of the Virginia Constitution;

2) Declaring that Defendants' conduct in teaching and/or demonstrating the use of firearms and/or other techniques capable of causing injury or death at future public gatherings in Virginia violates § 18.2-433.2(1) of the Virginia Code;

3) Declaring that Defendants' conduct in assembling to train with, practice with, and/or be instructed in the use of firearms and/or other techniques capable of causing injury or death at future public gatherings in Virginia violates § 18.2-433.2(2) of the Virginia Code;

4) Declaring that Defendants' conduct in falsely assuming the functions of peace officers and/or other law-enforcement officers violates § 18.2-174 of the Virginia Code;

5) Declaring that Defendants' conduct in engaging in paramilitary activity constitutes a public nuisance;

6) Enjoining Defendants and their directors, officers, agents, and employees from violating Article I, Section 13 of the Virginia Constitution; violating § 18.2-433.2 and § 18.2-174 of the Virginia Code; and engaging in conduct that constitutes a public nuisance; and

7) Providing such other and further relief as this Court may deem just and proper.

October 12, 2017

Respectfully Submitted,

R. LEE LIVINGSTON (VSB #35747)
KYLE MCNEW (VSB #73210)
MichieHamlett PLLC
500 Court Square, Suite 300
Charlottesville, VA 22902
Tel: (434) 951-7200

MARY B. MCCORD*
JOSHUA A. GELTZER*
AMY L. MARSHAK*
ROBERT FRIEDMAN*
DANIEL B. RICE*
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
Tel: (202) 662-9042

Counsel for Plaintiffs

S. CRAIG BROWN (VSB #19286)
City Attorney
P.O. Box 911
605 East Main Street
Charlottesville, VA 22902
Tel: (434) 970-3131

Counsel for the City of Charlottesville

**Pro hac vice* motion pending.

The Washington Post
Democracy Dies in Darkness

This legal tactic can keep neo-Nazi protests out of your city

Most states already have laws that rein in armed groups. Officials should use them.

By **Mary McCord** and **Michael Signer**

August 10, 2018 at 12:41 p.m. EDT

One year ago, an ad hoc coalition of armed far-right paramilitary groups marched into Charlottesville as part of the now-infamous Unite the Right rally. Many of their members wore matching uniforms, marched in military-style formations, openly chanted white-supremacist slogans, and invited confrontation with counterprotesters and law enforcement. In some cases, their gear and maneuvers imitated those used by armies of the past, and their weapons, whether firearms or cruder instruments such as shields, bats, batons and flagpoles, were deployed in coordination to intimidate and signal that they were, as they put it, "ready to crack skulls." The day's fateful events culminated in the death of 32-year-old Heather Heyer, for which one marcher has been charged with first-degree murder and two federal hate crimes.

In response, advocates of nonviolence and tolerance have advanced various strategies for dealing with these and other extremist groups. The British group Hope Not Hate endorses infiltrating, naming and shaming white-nationalist organizations. In the wake of Unite the Right, a joint congressional resolution called for increased federal action, including through prosecutions against those committing hate crimes motivated by ethnic or racial animus. The Aspen Institute's Justice & Society Program suggests that organizations serving young Americans teach tolerance. Some have even advocated counter-violence against neo-fascists, arguing that it's okay to "punch a Nazi," an ugly, illegal tactic.

But there is another tool, sitting right in front of us, for reining in these groups: Most states have constitutional language, criminal statutes or both barring unauthorized paramilitary activity. Every state except New York and Georgia has a constitutional provision, akin to Virginia's, requiring that "in all cases the military should be under strict subordination to, and governed by, the civil power." In other words, private armies are proscribed in 48 states. You can't legally organize with others into battalions to fight those with whom you disagree. As University of Virginia law professor A.E. Dick Howard, who formerly directed the Virginia Commission on Constitutional Revision, has written, this provision "ensures the right of all citizens . . . to live free from the fear of an alien soldiery commanded by men who are not responsible to law and the political process" — an accurate description of the militant groups that invaded Charlottesville. (Washington, D.C., the site of alt-right protests planned for this weekend, has no such provisions.)

In addition to constitutional provisions, 28 states have criminal statutes that prohibit individuals from forming rogue military units and parading or drilling publicly with firearms, while 25 states have criminal statutes that bar two or more people from engaging in "paramilitary" activity, including using firearms or other "techniques" capable of causing injury or death in a civil disorder. A dozen states have statutes that prohibit falsely assuming the functions of law enforcement or wearing without authorization military uniforms or close imitations. On the books for years, these laws are rarely invoked. But with the invasion of public spaces and intimidation of citizens that we've seen in Charlottesville and around the country, it's time states employ them to prohibit the coordinated use of weapons at demonstrations and rallies, whether through permitting conditions and other restrictions or criminal enforcement when warranted.

For democracy to work, the state must have, as sociologist Max Weber once described it, "the monopoly of the legitimate use of physical force." We often take that idea for granted in the United States. But the recent tide of political violence has called it into question. It wasn't just Charlottesville: There was also the "Battle of Berkeley ," where protesters and counter-protesters repeatedly clashed over plans to bring right-wing and white-nationalist speakers to campus, and the recent Patriot Prayer rallies in Portland, Ore., that capped a series of violent protests. Most alarming has been the increased adoption of paramilitary techniques and weaponry.

To prevent rogue militia groups from repeating the violence of the Unite the Right rally, we used Virginia's anti-paramilitary laws to bring a lawsuit in Charlottesville, led by Georgetown's Institute for Constitutional Advocacy and Protection on behalf of the city and several businesses and associations there. The suit didn't seek money damages for injuries suffered during the rally. Instead, we sought court orders prohibiting white-nationalist and neo-Nazi groups and their leaders; militia organizations purporting to defend the First Amendment rights of these groups; and a self-described "anti-fascist, anti-racist" organization — that, without authorization, deployed armed members to create a security perimeter around a park used by counter-protesters during the rally — from returning to Charlottesville as coordinated armed groups during demonstrations, rallies, protests or marches.

Although many of those who had watched with horror as Unite the Right devolved into violence lamented that little could be done, given the First Amendment's protection of free speech and the Second Amendment's protection of the right to bear arms, the Charlottesville lawsuit was carefully crafted to respect constitutionally recognized rights. As Judge Richard E. Moore wrote in rejecting motions to dismiss the case, the relief requested would not deny anyone "their right to speak, to assemble and protest, or even to bear firearms." By restricting paramilitary activity and the usurpation of military and police powers by private groups, the court orders sought by the lawsuit would restore the long-standing public-private equilibrium disrupted by those who descended on Charlottesville last August.

And we won.

In total, 21 defendant individuals and organizations, including rally organizers Jason Kessler and Elliott Kline, and prominent white-nationalist organizations Vanguard America, Traditionalist Worker Party, League of the South, and the Nationalist Socialist Movement, entered settlements prohibiting them from returning to Charlottesville in groups of two or more, acting in concert while armed with any type of weapon during any demonstration, rally, protest or march. Leftist militia Redneck Revolt also settled. Two other defendants that failed to respond to the suit were subjected to similar prohibitions.

Although the court orders don't resolve all the dangers revealed in Charlottesville last year — for example, they apply only to the named defendant individuals and groups, plus their successors — they nevertheless provide a tool that officials can use to prevent or mitigate the potential for violence at rallies. Should any of the defendants violate the court orders, they will be in contempt of court and open to prosecution. Such cases are not without precedent: Violation of a court order prohibiting paramilitary activity under North Carolina's laws resulted in the conviction of the leader of the Carolina Ku Klux Klan in the mid-1980s. That's a powerful deterrent.

Individuals and groups not named as defendants in the case, and not subject to the court orders, also have good reason to avoid attempting to reprise last year's clashes. That's because the anti-paramilitary statutes we used in our lawsuit are criminal statutes, and breaking those laws risks criminal prosecution.

Other jurisdictions can also dust off constitutional provisions and state laws to restrict weapons and paramilitary activity at events — whether through the permitting process or public announcements — where anticipated attendance by extremists poses serious threats to public safety. Shelbyville and Murfreesboro, Tenn., where White Lives Matter rallies were planned last October, did just that, avoiding the violence of Unite the Right. A spokesman for the League of the South, which organized the Tennessee rallies, later said he'd "had some intel Murfreesboro was a lawsuit trap" and cancelled the event there.

Charlottesville is still working to address the social and economic wounds caused by generations of white supremacy, exacerbated by the impact of Unite the Right on marginalized communities. The Charlottesville lawsuit is just one example of how we can, as a nation, innovate against hate. Government can maintain civic order by asserting its monopoly on the organized use of force, preserving the conditions that allow citizens to speak their minds freely and petition for redress of grievances without intimidation.

We can't predict what will happen in Charlottesville this year; Kessler dropped his effort to obtain a permit for an anniversary rally, but that doesn't guarantee that smaller groups of white nationalists won't gather, for which permits might not be required. It does mean demonstrators will have to toe the line and assemble peacefully as citizens expressing their points of view, rather than mimicking Brownshirt-style paramilitaries.

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@MikeSianer

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Public Safety While Preserving Rights

by Mary B. McCord
January 2, 2019

More than 40 years ago, the American Nazi Party announced its intention to march through the streets of Skokie, Illinois, a city with the largest population of Holocaust survivors in the United States. Years of court battles made it clear that one of the U.S. Constitution's most revered amendments protected the right of the Nazis to march in Skokie, despite the fact that their hateful, racist speech was abhorrent to the majority of the population there and elsewhere. Their views, and their right to associate with others who espouse those views, are protected by the First Amendment. But the First Amendment does not protect *violent conduct*, nor speech that incites imminent violence.

Fast forward to 2016. By then, the United States had seen a resurgence of white nationalism fueled by "anti-other" rhetoric during the presidential campaign. Hate crimes rose dramatically. Between 2016 and 2017, the number of hate crimes reported to the FBI (believed to significantly undercount those crimes because of the voluntary nature of the reporting) rose 17 percent to more than 7,000 incidents.

Neo-Nazis, Neo-Confederates, KKK, and Skinheads—many of whom previously had confined their hate-filled rants to the internet—recognized that the new political environment was permissive enough that they could step out of their chat rooms and into the physical space. And they were joined by a new cadre of white supremacists who deemed themselves the "alt-right." Through speeches by the likes of Richard Spencer and Milo Yiannopoulos, and recruitment on college campuses by European far-right groups like Identity Evropa and Atomwaffen, this movement sought to normalize white nationalism among college-aged white males.

And that was how Jason Kessler, a relative nobody who previously had participated in the far-left "Occupy Wall Street" movement, was able to bring these groups together in the biggest racist, anti-Semitic white supremacist rally this country had ever seen. Dubbed "Unite the Right," the rally ostensibly was organized to protest a decision by the city of Charlottesville, Virginia, to remove Confederate statues in two of its downtown parks. But in reality, Unite the Right was a deliberate attempt by the white supremacist movement to flex its muscle, incite fear, and provoke violence.

What we saw on Aug. 12, 2017, was a militaristic show of force and violence. Medieval-looking battalions of mostly white men with shields, helmets, clubs, and flagpoles marched through the small city's streets, flying their banners and engaging in hand-to-hand combat, protected by heavily armed private militias. The day culminated with the death of Heather Heyer, killed when one of the rally-goers, James Fields, plowed his car into a group of counter-demonstrators in an act of domestic terrorism.

First and Second Amendment Myths

As video of the melee spread across the globe, many commentators in the U.S. suggested that the protest was protected by the First Amendment and the arms-bearing was permitted by the Second Amendment. But the First Amendment does not protect violence or incitement to violence, and the Second Amendment, while protecting an individual right to bear arms for one's own self-protection, has never been held to allow private citizens to band together to create their own armed militias, wholly unaccountable to the civilian government.

This is important, for in the immediate aftermath of the Unite the Right rally, Kessler and other prominent white supremacist figures went beyond pronouncing the event's resounding success in showing the world that the movement was more than a meme. They also vowed to return to Charlottesville, as often as necessary, to avenge what they decried as the city's violation of *their* rights when it declared an unlawful assembly, cutting short the opportunity for additional bloodshed.

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But while Kessler thought he could weaponize the First Amendment, we at the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown Law, knew that he could not. State constitutional and statutory provisions in nearly every state prohibit private paramilitary activity like what occurred at Unite the Right.

Indeed, 48 states have a provision in their constitutions requiring the military to be "strictly subordinate" to civilian authorities. Twenty-eight states have statutes barring private individuals from organizing as military units, parading, or drilling with firearms in public. And 25 states, including Virginia, have statutes that prohibit two or more people from assembling to train in or practice the use of firearms or "techniques" capable of causing bodily injury or death in furtherance of civil disorder.

The discovery of these legal tools—thanks to a Lawfare post by University of Virginia history professor Phillip Zelikow—gave us the idea for a lawsuit. Not a lawsuit for money damages incurred by the victims of Unite the Right, but a forward-looking lawsuit seeking a court injunction preventing individuals and groups from returning to Charlottesville to engage in prohibited paramilitary activity.

This would be a content-neutral lawsuit based on *conduct*, not *speech*. As such, it would not infringe on First Amendment rights to peaceably assemble and express viewpoints even as reprehensible as those of the white supremacists. Nor would it trample anyone's Second Amendment right to carry a firearm for individual self-protection. But what it could prevent was a repeat of the violence of the 2017 rally.

Conduct Prohibited Under Virginia Law

By viewing and listening to hundreds of hours of video and podcasts, searching hundreds of photographs, combing through thousands of private chats on the Discord platform (a free voice and text chat platform built for gamers, but used by right-wing extremist groups to plan for Unite the Right), and interviewing numerous people who had been at Unite the Right, we identified the individuals and groups whose conduct fell most clearly within the prohibitions of Virginia's anti-private-militia and anti-paramilitary provisions. These included four of the prominent far-right groups that participated in the rally—Vanguard America, Traditionalist Worker Party, National Socialist Movement, and League of the South—as well as many of their leaders.

The groups also included several of the most heavily armed self-professed militias, such as the Pennsylvania Light Foot Militia, the New York Light Foot Militia, and the III% People's Militia of Maryland, which claimed to have been there not to espouse white supremacist ideology, but instead to protect the First Amendment rights of the protesters. The groups also included a left-wing militia, Redneck Revolt, that believes in armed community defense and deployed to Charlottesville to provided heavily armed protection to counter-protesters. Finally, they included the organizers of the rally, Jason Kessler and Elliott Kline (a.k.a. Eli Mosley).

The city of Charlottesville, anxious to take action to prevent a reprise of the rally that had caused so much physical and emotional pain and tarnished the city's image, readily signed on as a plaintiff, as did a number of small local businesses and neighborhood associations. The lawsuit was filed two months to the day after the rally. It sought injunctive relief under the state constitution, the state anti-paramilitary statute, the common law of public nuisance, and a state statute barring the false assumption of the duties of law enforcement officers (something that the self-professed militias and Redneck Revolt had done).

The lawsuit was met with outrage by the defendants, vows to fight it in court on First and Second Amendment grounds, and fundraising campaigns for attorney's fees. But as the case progressed, many of the defendants were unable to secure legal representation, and even among those who did, many became disenchanted with the idea of participating in a second Unite the Right rally, as Kessler continued to promise. This was likely the result of many factors, particularly infighting and fractures in the alliances between right-wing groups whose interests did not align perfectly and a plethora of other lawsuits against many of them seeking money damages.

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Within eight months of filing suit, all but two of the defendants (individuals, organizations, and their successor organizations) had voluntarily entered into consent decrees by which they agreed, permanently, not to return to Charlottesville "as part of a unit of two or more persons acting in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march." The Court signed these consent decrees, giving them the force and effect of court orders, the violation of which is prosecutable civilly or criminally.

In June 2018, less than two months before the one-year anniversary of the rally—the date for which Kessler had sought a permit for Unite the Right 2.0—the case was heard by Charlottesville Circuit Court Judge Richard Moore on the remaining defendants' demurrers, otherwise known as motions to dismiss. The demurrers argued that the case should not be permitted to go to trial, then scheduled for July 31, because the relief sought would violate the First and Second Amendments, there was no right to sue for injunctive relief based on state constitutional provisions and criminal statutes, and other arguments.

But these arguments were rejected by Judge Moore in an opinion issued on July 7, 2018. Notably, the judge wrote, "I cannot find that the City must sit idly by and wait for [the defendant] groups to show up and break the law and cause (or increase the risk of) harm, fear, injury, or death."

Within days of the issuance of Judge Moore's opinion, the remaining two defendants—including Unite the Right organizer Jason Kessler himself—entered into consent decrees, providing the city and the other plaintiffs with exactly what they had sought when bringing the lawsuit and obtaining some measure of assurance that a repeat of the violence of the Unite the Right rally would not occur again in Charlottesville. Indeed, not long thereafter, Kessler called off his plans for a repeat rally in Charlottesville, instead moving the rally to Washington, D.C., where his small cohort was overwhelmed by thousands of counter-protesters and no violence ensued.

Are there other uses for the state anti-private-militia and anti-paramilitary laws? You bet. They can be the legal basis for content-neutral time, place, and manner restrictions during protests and rallies where there is reason to believe violence may break out. Cities like Murfreesboro, Tennessee, have used them successfully as the grounds for prohibiting weapons and paramilitary activity from demonstrations on public property. And the threat of a lawsuit can also be a deterrent. Local jurisdictions can and should look to these state-law sources as one legal tool to protect public safety while also protecting constitutional rights.

IMAGE: Demonstrators march near the University of Virginia campus in Charlottesville, Virginia, on Aug. 11, 2018, one year after the violent white nationalist rally that left one person dead and dozens injured. (Photo by LOGAN CYRUS/AFP/Getty Images)

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About the Author(s)

Mary B. McCord

Senior litigator and visiting professor of law at Georgetown Law's Institute for Constitutional Advocacy and Protection (ICAP). Previously served as Acting Assistant Attorney General for National Security at the U.S. Department of Justice.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES, SETH WISPELWEY, MARISSA BLAIR, TYLER MAGILL, APRIL MUNIZ, HANNAH PEARCE, MARCUS MARTIN, NATALIE ROMERO, CHELSEA ALVARADO, and JOHN DOE,

Plaintiffs,

v.

JASON KESSLER, RICHARD SPENCER, CHRISTOPHER CANTWELL, JAMES ALEX FIELDS, JR., VANGUARD AMERICA, ANDREW ANGLIN, MOONBASE HOLDINGS, LLC, ROBERT "AZZMADOR" RAY, NATHAN DAMIGO, ELLIOT KLINE a/k/a/ ELI MOSLEY, IDENTITY EVROPA, MATTHEW HEIMBACH, MATTHEW PARROTT a/k/a DAVID MATTHEW PARROTT, TRADITIONALIST WORKER PARTY, MICHAEL HILL, MICHAEL TUBBS, LEAGUE OF THE SOUTH, JEFF SCHOEP, NATIONAL SOCIALIST MOVEMENT, NATIONALIST FRONT, AUGUSTUS SOL INVICTUS, FRATERNAL ORDER OF THE ALT-KNIGHTS, MICHAEL "ENOCH" PEINOVICH, LOYAL WHITE KNIGHTS OF THE KU KLUX KLAN, and EAST COAST KNIGHTS OF THE KU KLUX KLAN a/k/a EAST COAST KNIGHTS OF THE TRUE INVISIBLE EMPIRE,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiffs, by their undersigned attorneys, allege upon knowledge as to themselves and their own actions and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. Over the weekend of August 11 and 12, 2017, hundreds of neo-Nazis and white supremacists traveled from near and far to descend upon the college town of Charlottesville, Virginia, in order to terrorize its residents, commit acts of violence, and use the town as a backdrop to showcase for the media and the nation a neo-nationalist agenda.

2. Plaintiffs in this action are University of Virginia undergraduates, law students and staff, persons of faith, ministers, parents, doctors, and businesspersons—white, brown, and black; Christian and Jewish; young and old. While Plaintiffs come from different backgrounds, they share a deep love of this country, their city, and our values. They also share a fierce determination to defend those values. Each Plaintiff in this action was injured as a result of the events in Charlottesville on August 11 and 12. Four plaintiffs were struck in a car attack. Others suffered and continue to suffer deep and debilitating psychological and emotional distress that prevents them from resuming their former lives or from enjoying the basic sense of peace, safety, and tranquility that most in this country can take for granted.

3. Defendants are the individuals and organizations that conspired to plan, promote, and carry out the violent events in Charlottesville. They are neo-Nazis, Klansmen, white supremacists, and white nationalists. They embrace and espouse racist, anti-Semitic, sexist, homophobic, and xenophobic ideologies. Defendants brought with them to Charlottesville the imagery of the Holocaust, of slavery, of Jim Crow, and of fascism. They also brought with them semi-automatic weapons, pistols, mace, rods, armor, shields, and torches. They chanted "Jews will not replace us," "blood and soil," and "this is our town now." Starting at least as early as the beginning of 2017 and continuing through today, they have joined together for the purpose of

inciting violence and instilling fear within the community of Charlottesville and beyond, wherever their messages are received.

4. There is one thing about this case that should be made crystal-clear at the outset—*the violence in Charlottesville was no accident*. Under the pretext of a "rally," which they termed "Unite the Right," Defendants spent months carefully coordinating their efforts, on the internet and in person. They exhorted each other: "If you want to defend the South and Western civilization from the Jew and his dark-skinned allies, be at Charlottesville on 12 August," and, "Next stop: Charlottesville, VA. Final stop: Auschwitz." In countless posts on their own websites and on social media, Defendants and their co-conspirators promised that there would be violence in Charlottesville, and violence there was. As Defendant Eli Mosley, one of the lead organizers for the rally, declared: "We are [] going to Charlottesville. Our birthright will be ashes & they'll have to pry it from our cold hands if they want it. They will not replace us without a fight."

5. The violence, suffering, and emotional distress that occurred in Charlottesville was a direct, intended, and foreseeable result of Defendants' unlawful conspiracy. It was all according to plan—a plan they spent months working out and whose implementation they actively oversaw as events unfolded on the ground.

6. The events of August 11 and 12—now commonly referred to simply as "Charlottesville"—were part of Defendants' coordinated campaign to intimidate, harass, incite, and cause violence to people based on their race, religion, ethnicity, and sexual orientation in violation not only of the values that thousands of American soldiers have died for, but also numerous state and federal laws. As the Utah Senator Orrin Hatch said: "We should call evil by

its name. My brother didn't give his life fighting Hitler for Nazi ideas to go unchallenged here at home."

7. By this lawsuit, Plaintiffs seek to challenge Defendants' actions under the laws of the United States of America and the Commonwealth of Virginia. Plaintiffs seek compensatory and injunctive relief. The aim of this lawsuit is to ensure that nothing like this will happen again at the hands of Defendants—not on the streets of Charlottesville, Virginia, and not anywhere else in the United States of America.

JURISDICTION AND VENUE

8. The court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

9. Venue is properly in the Western District of Virginia pursuant to 28 U.S.C. § 1391(b) because Plaintiffs' claims arose in Charlottesville, Virginia, which is located in the Western District of Virginia.

THE PARTIES

A. Plaintiffs

10. Plaintiff Reverend Seth Wispelwey was born and raised in Charlottesville and attended UVA. He moved back to Charlottesville four years ago with his wife and daughter. Wispelwey has worked at numerous non-profit organizations that advocate for human rights, including as the head of an organization protecting victims of human trafficking. Wispelwey is an ordained Minister with the United Church of Christ and the Directing Minister of Restoration Village Arts. He is also the co-founder of a membership organization for clergy of different faiths from across the country, called Congregate, which organized numerous trainings in non-violent protest for residents of Charlottesville leading up to the events of August 11 and 12. As a result of Defendants' intentional and coordinated plans to commit violence against those who

stood up for minority residents in Charlottesville, Wispelwey was harassed, intimidated, and assaulted by Defendants and their co-conspirators. Since the events of the weekend, Wispelwey has suffered extreme emotional distress that has manifested in physical symptoms including constricted chest pain, difficulty sleeping (including nightmares concerning the events of August 11 and 12), and the inability to return full-time to work.

11. Plaintiff April Muñiz is a Mexican-American resident of the Commonwealth of Virginia. Before the events of August 12, she was the Director of Clinical Operations at a company that helps develop new treatments for patients suffering from incurable diseases. On August 12, Muñiz peacefully protested Defendants' planned event. As a result of Defendants' intentional and coordinated plans to commit violence against minority residents, Muñiz was intimidated and harassed on multiple occasions on August 12. Among other things, Muñiz was close to being hit by the car that Defendant Fields intentionally drove into a crowd of protestors in an act of domestic terrorism. Muñiz has suffered severe emotional injury, has been diagnosed with acute stress disorder and trauma, and was unable to return to work for months. She has suffered economic loss as a result of her injuries.

12. Plaintiff John Doe is an African-American resident of the Commonwealth of Virginia and a student at UVA. On August 11, John Doe peacefully protested Defendants' planned event. On the basis of his race, John Doe was intimidated, harassed, assaulted, and sprayed with caustic substances.

13. Plaintiff Hannah Pearce is a dermatologist who lives in Charlottesville with her husband and four children. Pearce and her family are active members of Congregation Beth Israel. On August 12, Pearce and her son peacefully protested Defendants' planned event. On the basis of her religion, Pearce was threatened, harassed, intimidated, and physically assaulted.

Subsequently, a few days after the Unite the Right "rally," Defendants Andrew Anglin and Moonbase Holdings, LLC's website, Daily Stormer, intending to intimidate Pearce and her son, posted their picture online.

14. Plaintiff Elizabeth Sines, a resident of the Commonwealth of Virginia, is a second-year law student at UVA Law School, and a graduate of Cornell University. On August 11 and 12, Sines peacefully protested Defendants' planned events. As a result of witnessing the events of the weekend, including the domestic terrorist attack on August 12 where Defendant Fields drove a car into a crowd, Sines has suffered from severe emotional distress and shock.

15. Plaintiff Marissa Blair is a multi-racial resident of the Commonwealth of Virginia. She works as a paralegal. On August 12, Blair was peacefully protesting when Defendant Fields drove his car into a crowd of protestors, killing Blair's co-worker and friend, Heather Heyer. Fields's car narrowly missed Blair only because her fiancé, Plaintiff Marcus Martin, pushed her out of the way before being hit himself. Blair suffered physical injuries and continues to suffer from severe emotional distress as a result of Defendants' actions.

16. Plaintiff Marcus Martin is an African-American resident of the Commonwealth of Virginia. He works as a landscaper. On August 12, Martin was peacefully protesting the Unite the Right "rally." He was struck by Defendant Fields, who drove his car into a crowd of protestors in an act of domestic terrorism. Martin pushed his fiancée out of the way of the speeding car, but he was severely injured by the attack, including sustaining a broken leg and ankle that required surgery. He continues to suffer severe emotional distress as a result of Defendants' actions.

17. Plaintiff Natalie Romero is a Colombian-American undergraduate at UVA. On August 11, Romero was one of a group of community members and students who were

surrounded by torch-bearing neo-Nazis and white supremacists at the Rotunda. On August 12, Romero peacefully protested Defendants' planned event. Romero was on Fourth Street when Defendant Fields intentionally drove a car into the crowd of protestors in an act of domestic terrorism. Romero was struck by the vehicle driven by Fields and sustained many injuries. The car knocked her unconscious, fracturing her skull and leaving her with a concussion. The car also fractured the root of one tooth and left severe contusions across her body. Romero continues to suffer vertigo and debilitating headaches. It is unclear when Romero's symptoms will subside. In addition to her physical injuries, Romero also suffered severe emotional distress as a result of the planned event and terrorist attack on August 12, and has feared returning to the UVA campus. As a result of her physical and emotional trauma, Romero has already missed a semester of school.

18. Plaintiff Chelsea Alvarado is a resident of Richmond, Virginia. She works as a crisis counselor for the homeless and mentally ill. On August 12, Alvarado peacefully protested Defendants' planned event. She was struck by Defendant Fields when he drove his car down Fourth Street into a crowd of protestors. She narrowly missed being hit again by Fields when he drove his car backwards up the street. The car knocked Alvarado to the ground, causing her to suffer serious injuries, including a concussion and severe contusions on her legs. Alvarado continues to experience side-effects of the concussion including confusion, forgetfulness, and difficulty processing normal conversations. Alvarado has also suffered severe emotional distress as a result of the August 12 events.

19. Plaintiff Thomas Baker is a resident of Charlottesville. He works as conservation biologist for a landscape architecture company. On August 12, Baker observed the Unite the Right event. He was walking on Fourth Street with a group of counter-protestors after the event

when Defendant Fields drove into the crowd. Fields rammed Baker with his car, hurling Baker through the air. Baker suffered severe injuries from the attack, including a concussion, torn ligament in his left wrist, and a torn labrum in his right hip. He had to undergo major surgery, many hospital visits and medical treatments, and physical therapy, among other things, because of his injuries. He had to miss more than a month of work while he recovered, and he still cannot lift heavy weights, run, jump, or play competitive team sports, or stay still or stand for long periods without pain. He will likely need a hip replacement and may never fully regain his strength. He suffered severe emotional injuries and continues to suffer severe emotional distress as a result of Defendants' actions.

B. Defendants

20. Defendant Jason Kessler is a white nationalist and a member of the Proud Boys. A resident of Charlottesville, Virginia, Kessler uses the handle "MadDimension" on Discord and @The_MadDimension on Twitter. Together with Defendant Mosley, Kessler led the organizing efforts for the Unite the Right "rally" in Charlottesville. Kessler is also the president and founder of Unity and Security for America, a grassroots organization that claims it is dedicated to "defending Western civilization" and is a contributor to websites like VDare.com, a xenophobic, nativist publication, and the Daily Caller, a conservative news outlet. Kessler was the lead organizer for the Unite the Right "rally" and was one of the names featured on a promotional poster for the "rally." In January 2017, Kessler attacked a man in downtown Charlottesville while collecting signatures for his petition to remove the African-American vice mayor, Wes Bellamy, from the Charlottesville City Council. In April, Kessler pleaded guilty to a misdemeanor charge for the assault and was then charged with felony perjury for lying to the police in connection with the assault.

21. Defendant Richard Spencer, a resident of the Commonwealth of Virginia who attended UVA, is the head of the white nationalist "think tank," National Policy Institute. In 2010, Spencer created an online publication called altright.com. Spencer organizes his followers to act in furtherance of his ideology, calling for an "ethnic cleansing." Spencer planned and led the violent torchlight rally at his alma mater on Friday evening. Spencer actively promoted the Unite the Right "rally" on Saturday to his numerous followers on social media and encouraged and incited intimidation and violence based on racial, religious, and ethnic animosity.

22. Defendant Christopher Cantwell is a resident of New Hampshire and is a white nationalist and a self-proclaimed fascist. He hosts "Radical Agenda," a podcast and YouTube show streamed live multiple times a week, and runs the website christophercantwell.com. Cantwell has stated that once he "realized that [Jewish people] were responsible for the communism," he decided, "let's fucking gas the kikes and have a race war." He has written: "I think chemical and biological weapons can do a great deal of good for mankind. Releasing nerve gas or some kind of lethal virus into a left wing protest could prepare the bodies for physical removal without making a big scene for the cameras or destroying anything of value." In connection with the Unite the Right "rally" in Charlottesville on August 11 and 12, Cantwell was charged with two felony counts of illegal use of tear gas and one felony count of malicious body injury by means of a caustic substance. He was indicted on December 4 on a felony charge of illegal use of tear gas.

23. Defendant James Alex Fields, Jr., a resident of Ohio, is a member of Defendant Vanguard America. Motivated by racial, religious, and ethnic animosity, and in furtherance of Defendants' conspiracy, on August 12, Fields committed an act of domestic terrorism by driving a Dodge Challenger into a crowd of protesters, injuring dozens and killing a 32-year old woman,

Heather Heyer. On December 18, he was indicted on one count of first degree murder, three counts of malicious wounding, three counts of aggravated malicious wounding, two counts of felonious assault, and one count of hit and run (leaving the scene of an accident).

24. Defendant Vanguard America is an unincorporated association pursuant to Virginia Code § 8.01-15. Members of Vanguard America voluntarily join for the common purpose of promoting white nationalism and believe that people with "white blood" have a special bond with "American soil." It was formed in California in 2015 and is comprised of twelve chapters across the country. The group's website states that to join the group, a person must be "of at least 80% white/European heritage." Defendant Fields is a member of Defendant Vanguard America; he wore their uniform and carried a Vanguard America shield at the Unite the Right event on August 12.

25. Defendant Andrew Anglin is a resident of Ohio, a neo-Nazi, and the founder of Daily Stormer—an organization that operates through a website that Anglin publishes. Daily Stormer has called its website the "world's most genocidal" website. Daily Stormer was named after Der Stürmer, a Nazi propaganda tabloid known for virulently anti-Semitic caricatures and published by Julius Streicher, who was later convicted of crimes against humanity at Nuremberg. Until recently, Daily Stormer had a website at www.dailystormer.com. Anglin and his associates at Daily Stormer, including Defendant Robert "Azzmador" Ray, use Daily Stormer "as a hardcore front for the conversion of masses into a pro-white, Anti-Semitic ideology," to "sell [] global white supremacy," and to "make a racist army." The website, which became the most visited hate site on the Internet in 2016, includes sections entitled "Jewish Problem" and "Race War." The Chief Technical Officer of Daily Stormer has posited that Daily Stormer "has been effective at what [it is] doing" by "the manifestation of our people on the ground in the real

world." Followers of Anglin and Daily Stormer, who call themselves "Stormers," communicate on the website's forum, which is moderated by Anglin and accessible only with a special "dark web" tor browser. On Anglin's orders and under his continuing supervision, Stormers have formed local chapters, called "Stormer Book Clubs," as part of Anglin's plan to "build an invisible empire." Anglin uses the Daily Stormer forum to actively monitor the Book Clubs and uses the website to issue orders on how to organize. "Official Operations" of Stormer Book Clubs include firearms training, organizing for protests, and being ready to respond to "challenges" issued by Anglin. Daily Stormer established "meet ups" and chat rooms that co-conspirators and attendees used throughout the August 11 and 12 weekend to coordinate their violence. The Daily Stormer released its own poster promoting the "rally" that read, "UNITE THE RIGHT/ Join Azzmador and the Daily Stormer to end Jewish influence in America," accompanied by a Nazi-like figure wielding a hammer, ready to smash a Jewish star. For months before the Unite the Right events on August 11 and 12, Anglin organized his followers to attend and prepared them to commit racially motivated violent acts in Charlottesville. Although Anglin did not attend the rally himself because he is currently in hiding to evade service in connection with a separate lawsuit relating to events in Whitefish, Montana, Anglin orchestrated the movements of Daily Stormer followers and incited them to violence on a live feed that streamed contemporaneously with the events as they occurred on August 11 and 12 in Charlottesville. Moreover, Anglin uses the Daily Stormer to entice his followers to harass and intimidate "Jew/feminist/etc." individuals by mandating in its "style guide" that the authors always include the targeted individuals' social media accounts because "[w]e've gotten press attention before when I didn't even call for someone to be trolled but just linked them and people went and did it."

26. Defendant Moonbase Holdings, LLC is an Ohio, for-profit, limited-liability corporation registered by Defendant Anglin that operates the Daily Stormer's website. Defendant Anglin has encouraged readers to financially support the Daily Stormer by sending donations using bitcoin, checks, and credit cards, noting that "it won't say 'Daily Stormer' on your credit card bill, but will instead say 'Moonbase Holdings,' which either sounds like a hobby shop or a multi-level marketing scheme run by reptoids. Anyway, it looks innocuous on your statement."

27. Defendant Robert "Azzmador" Ray, a resident of Texas, is a neo-Nazi and a writer for Daily Stormer's website. He has held himself out as a representative of Daily Stormer, and served as an agent of Daily Stormer in organizing the Unite the Right events. He is the leader of the "Dallas Fort Worth Stormer Book Club," which is one of many local Daily Stormer groups across the country. In his articles published on Daily Stormer's website, Ray encouraged extremists to attend the events in Charlottesville on August 11 and 12 and incited them to violence. Ray attended the "rally" himself and had a planning meeting with certain other Defendants in Charlottesville on August 11.

28. Defendant Nathan Damigo, a resident of California, is a white nationalist and the founder of a white supremacist organization, Defendant Identity Evropa. Defendant Damigo was arrested on April 15, 2017 for assaulting a woman at the "Battle for Berkeley" rally, which Damigo described as a test run for the "rallies" in Charlottesville. Defendant Spencer has stated that Damigo and his group, Identity Evropa, took the lead in organizing white supremacist participation among people from outside Charlottesville in connection with the events on August 11 and 12.

29. Defendant Eli Mosley, who is a resident of Pennsylvania, is a white supremacist and was the leader of Identity Evropa from August to November 2017. He is also a co-founder with Defendant Richard Spencer of Operation Homeland, a new organization that aims to take white nationalist activism "to the next level." He has described himself as the "command soldier major of the 'alt-right'" and as the organizer of the Unite the Right "rally." On certain social media networks, Mosley has used the handles @NotEliMosley and @ThatEliMosley. Mosley was one of the key figures who planned and led the events of August 11 and 12.

30. Defendant Identity Evropa is an unincorporated association pursuant to Virginia Code § 8.01-15. Members of Identity Evropa voluntarily joined for the common purpose of promoting a "white American identity." It was founded in March 2016 by Defendant Damigo, and on August 27, 2017, Defendant Mosley succeeded him as "chief executive officer." The group is currently led by Patrick Casey, Identity Evropa's former Chief of Staff. The group adopted and popularized the white supremacist slogan, "You will not replace us" that Defendants and co-conspirators chanted as they marched on August 11 and 12.

31. Defendant Matthew Heimbach, a resident of Indiana, is the chairman of Defendant Traditionalist Worker Party ("TWP"). In 2013, Heimbach and Defendant Matthew Parrott founded the neo-Nazi Traditionalist Youth Network, a white nationalist group that promotes a racist interpretation of Christianity. Alongside Defendant Jeff Schoep, the leader of National Socialist Movement ("NSM"), Heimbach co-chairs the Nationalist Front, an umbrella organization of approximately twenty white supremacist organizations, including racist skinhead crews, Klan groups, and neo-Nazi groups. He has said, "Of course we look up to men like Adolf Hitler . . . as inspirations for what we can achieve." Heimbach organized and led marchers from TWP on August 12.

32. Defendant Matthew Parrott, a resident of Indiana, is the co-founder of the Traditionalist Youth Network along with his stepson-in-law, Defendant Heimbach. He is currently the Chief Information Officer and Director of Defendant TWP. On August 12, Parrott refused to leave Emancipation Park after a state of emergency was declared and was arrested by the police for failing to disperse. Parrott wrote an account of his experiences at the Unite the Right "rally," in "Catcher in the Reich: My Account of my Experiences in Charlottesville." In it, he wrote that Defendants TWP, League of the South, NSM, and other Nationalist Front groups joined together to "help create two shield walls" for "the fight."

33. Defendant Traditionalist Worker Party ("TWP") is an unincorporated association pursuant to Virginia Code § 8.01-15, and a national political party committee registered with the Federal Election Commission since 2015. Members of TWP voluntarily joined for the common purpose of promoting anti-Semitism. According to Defendant Heimbach, the TWP has three dozen active chapters and an estimated 500 members across the country. The TWP was created by Defendants Heimbach and Parrott. The TWP has said: "Trust nobody who fails to name the Jew, who fails to explicitly and consistently oppose the Jew, and who preaches cleverness or nuance on the JQ [Jewish Question]." Members of the TWP prompted, attended, and fully participated in the events in Charlottesville on August 11 and 12, including by engaging in violence.

34. Defendant Michael Hill, a resident of Alabama, is the co-founder and President of Defendant League of the South, a white nationalist organization. In 2014, Hill and the League of the South announced the formation of an armed, paramilitary unit dubbed "the Indomitables," tasked with advancing southern secession by any means necessary. In May 2015, Hill published an article in which he asserted: "We Southern nationalists do not want a race war (or any sort of

war). But if one is forced on us, we'll participate. . . . Southern whites are geared up and armed to the teeth. . . . So if negroes think a "race war" in modern America would be to their advantage, they had better prepare themselves for a very rude awakening." Hill, whose name was featured on a promotional poster for the "rally," encouraged League of the South followers to attend by urging them not to "miss out on the fun" in dealing with counter-protestors—their purported enemies. On August 12, League of the South, led by Hill, marched through Charlottesville after Vanguard America. Like Vanguard America, they marched with coordinated shields and flags and carried rods and other weapons.

35. Defendant Michael Tubbs, a resident of Florida, is the "Chief of Staff" of Defendant League of the South. Tubbs is captured on a video from August 12 ordering League of the South to attack by yelling "charge!" After receiving this command, the group streamed past him to attack counter-protestors. Defendant Hill later boasted that "Mr. Tubbs was everywhere the chaos was." Tubbs previously served a four-year prison sentence for planning to bomb Jewish- and black-owned businesses in Florida.

36. Defendant League of the South, a privately held company located in Alabama, is a white supremacist group that advocates Southern secession. Prior to the events on August 11 and 12, Defendant Hill posted in the League's Facebook group that he wanted "no fewer than 150 League warriors, dressed and ready for action, in Charlottesville, Virginia, on 12 August." Numerous members of the League of the South participated in Saturday's violent events together with co-defendants.

37. Defendant Jeff Schoep, a resident of Michigan, is the leader of Defendant National Socialist Movement, the largest neo-Nazi coalition in the United States. On April 22, 2016, Schoep formed the Aryan Nationalist Alliance, later renamed the Nationalist Front, which

is the umbrella organization for hate groups such as the TWP, the Aryan Terror Brigade, and many regional factions of the Ku Klux Klan. Schoep has said that if he could meet Adolf Hitler today, he would say, "Thank you for your sacrifice, and I hope we have honored you in some small way by carrying on the fight." Schoep participated actively in the events of August 11 and 12 and tweeted afterwards that, "It was an Honor to stand with U all in C'Ville this weekend. NSM, NF, TWP, LOS, VA, ECK, CHS, and the rest, true warriors!"[1]

38. Defendant National Socialist Movement ("NSM") is an unincorporated association pursuant to Virginia Code § 8.01-15. Members of NSM voluntarily joined for the common purpose of promoting a "greater America" that would deny citizenship to Jews, non-whites, and LGBT persons. Located in Michigan, NSM is paramilitary in structure; its members claim to be lieutenants, sergeants, or other military ranks. Defendant Schoep, the head of NSM, has served as its "Commander" since 1994. Chapters of the groups are termed "units." NSM maintains a business through NSM88 Records LLC selling neo-Nazi flags, swastikas, gear, etc. Members of NSM participated in the violence that took place in Charlottesville on August 11 and 12.

39. Defendant Nationalist Front is an unincorporated association pursuant to Virginia Code § 8.01-15, whose members voluntarily joined for the common purpose of promoting white nationalism and white supremacy. Formerly known as the Aryan National Alliance, Nationalist Front is an umbrella organization consisting of white supremacist and white nationalist groups, including neo-Nazi and Klan groups. The Nationalist Front is led by Defendants Schoep, Heimbach, Hopper, and Hill. The Nationalist Front was conceived to be "the thread that would

[1] This tweet refers to Defendants Nationalist Front, TWP, League of the South, Vanguard America, and East Coast Knights.

unite white supremacist and white nationalist circles." Various members of the Nationalist Front engaged in acts of violence and intimidated residents of Charlottesville on August 11 and 12.

40. Defendant Augustus Sol Invictus, formerly Austin Mitchell Gillespie, a resident of Florida, is a white nationalist, a white supremacist, and a member of Defendant Fraternal Order of Alt-Knights ("FOAK"), the "military wing" of the Proud Boys, a group described as a "'pro-Western fraternal organization' for men who 'refuse to apologize for creating the modern world.'" He has said that a violent, second Civil War is necessary in order to preserve "Western civilization." On August 14, 2017, Invictus announced his candidacy as a Republican for the 2018 Senate election in Florida. Invictus, whose name was featured on a promotional poster for the "rally," drafted the "Charlottesville statement" along with Spencer and others, and participated in the torchlit rally on August 11 with co-Defendants.

41. Defendant Fraternal Order of the Alt-Knights ("FOAK") is an unincorporated association pursuant to Virginia Code § 8.01-15 and is self-described as the "tactical defensive arm" of Proud Boys, formed to focus on "street activism, preparation, defense, and confrontation." Defendant Invictus is second in command at FOAK and FOAK attended the "rally" in part to provide security to him.

42. Defendant Loyal White Knights of the Ku Klux Klan ("Loyal White Knights") is an unincorporated association pursuant to Virginia Code § 8.01-15. Members of Loyal White Knights voluntarily joined for the common purpose of promoting white nationalism and white supremacy. Based in Pelham, North Carolina, the association only accepts "native-born white American Citizen[s]" as members. Following the events in Charlottesville on August 11 and 12, the Loyal White Knights changed their outgoing voicemail message to say: "Nothing makes us more proud at the KKK than when we see white patriots such as James Fields, Jr., age 20, taking

his car and running over nine communist anti-fascist, killing one nigger-lover named Heather Heyer. James Fields hail victory. It's men like you that have made the great white race strong and will be strong again."

43. Defendant East Coast Knights of the Ku Klux Klan a/k/a East Coast Knights of the True Invisible Empire ("East Coast Knights") is an unincorporated association pursuant to Virginia Code § 8.01-15. Members of East Coast Knights voluntarily join for the common purpose of promoting white nationalism and white supremacy. It is active in several states, and has a subdivision or "klavern" in the state of Maryland. Tom Larson is the imperial wizard of the East Coast Knights of the True Invisible Empire. The East Coast Knights, using the handles @tightrope33_6 and @Tightrope336, frequently tweets racist images and comments; on September 19, 2017, it tweeted pictures of burning crosses, labeled an image of lynched black men as "Alabama wind chimes," and tweeted a cartoon of a Klansman using two black men hung from trees as a hammock in which to read the newspaper and drink an iced tea. The East Coast Knights was a key participant in the July 8 Klan rally, and conspired with the Nationalist Front and other Defendants to organize and participate in the violent events of August 12.

FACTS

44. Defendants are white supremacist, white nationalist, and neo-Nazi organizations and individuals, who have as part of their mission to engage in racial, religious, and ethnically motivated violence, threats, intimidation, and harassment. The events in Charlottesville are part of Defendants' recent concerted efforts to move from the shadows of anonymous, disassociated, online chatrooms and into a more open, organized, physical presence in our parks and on our streets. Defendants are co-conspirators with each other and others unnamed.

I. Defendants And Unnamed Co-Conspirators Conspired To Commit Acts Of Violence, Intimidation, And Harassment Against The Citizens Of Charlottesville, Virginia

A. Defendants Targeted Charlottesville in the Months Prior to August 11 and 12 ("the Summer of Hate")

> When the Jews took over our society and turned it into a kiked-out living hell, they marked their achievement by declaring a "Summer of Love." . . . They took everything away from us. That age is ending now. We are taking back our birthright. This summer, a Black Sun will pass over America. . . . I am declaring the summer of 2017 the Summer of Hate.
>
> *Defendant Andrew Anglin*

45. In furtherance of their above-stated goal, Defendants plotted to target Charlottesville, Virginia as part of what they called the "Summer of Hate."

46. Defendants selected Charlottesville because, among other things, the city was engulfed at the time in a debate over the statue of General Robert E. Lee in a small city park. In February 2017, the Charlottesville City Council voted to remove the Lee statue and, in June 2017, it voted to rename the park in which it stood from Lee Park to Emancipation Park.

47. Defendants used the planned removal of the Lee statue as a rallying cry for their followers, seeking to preserve its place in the park, and use the debate about the statue as a means to stir up violence and harass, threaten, and intimidate the residents of Charlottesville.

48. For example, Defendants Kessler and Spencer invited white supremacist groups to visit and hold events around the statue with the intent of intimidating nonwhite and Jewish individuals and their allies.

49. On May 13, 2017, hundreds of neo-Nazis and white supremacists carried lit torches and surrounded the statue of Robert E. Lee, in an event organized and planned by, among others, Defendants Kessler, Spencer, Damigo, Heimbach, Identity Evropa, Vanguard America,

TWP, and League of the South. Defendants and participants carried altright.com-branded signs[2] reading "we will not be replaced." They chanted "you will not replace us" and "blood and soil." "Blood and soil" is a translation of "Blut und Boden," a German nationalist philosophy that lay at the heart of Nazi policies. The slogan expresses the idealization of a racially defined national body ("blood") unified with a settlement area ("soil"). It is inextricably linked with the contemporary German idea of *Lebensraum*—the belief that the German people needed to reclaim historically German areas of Eastern Europe into which they could expand—which was the driving ideology behind Hitler's invasion of neighboring countries and the mass murder of their citizens.

50. The May 13 event was planned and intended to intimidate, threaten, and harass Charlottesville residents on the basis of race, religion, and ethnicity. Defendant Kessler said he hoped that the May event would be a "fantastic first event" in a "cultural 'civil war.'" Defendants' avowed goal was to promote and create an atmosphere of religious and racial subordination on the streets of Charlottesville, ideally through the infliction of violence or emotional distress.

51. At a lunch before the event, Defendant Spencer—sharing a podium with Peinovich, Defendants Damigo and Kessler, as well as co-conspirator Sam Dickson—explained: "What brings us together is that we are white, we are a people. We will not be replaced."

52. Defendants later acknowledged the success of their careful, deliberate, and months-long planning. The Daily Stormer's website reported that "[t]he 200+ honorable whites marched to the base of the statue as they carried torches reminiscent of the 3rd Reich." In an essay about the May 13 event, entitled "Why We Fight," Vanguard America explained:

[2] Altright.com is Defendant Spencer's website.

> "The purpose of the gathering was not simply over some metal sculpture atop a pedestal in a small Southern City. It was about defending the images of white history, white heroes, and white America. . . .
>
> [T]he greatest spectacle of the event came as we lit our torches for the night march. As we approached Lee Park for the last time, our footsteps shook the whole city. . . . This movement must begin as a spiritual movement. . . . To quote a wise /pol/lak, "If you want to gas the Jews, you must first gas the Jew within yourself."
>
> After a few words from Spencer and Dickson, we blew out our torches, our spiritual cups filled for perhaps the first time in all of our lives and once again shouted our deafening chants, shaking the entire city with our might.
>
> There will be many more of these events. This march on Charlottesville was just the beginning of the inevitable Revolution of our people.
>
> Hail Victory!

53. This May event would later be referred to by conspirators as "Charlottesville 1.0."

54. Capitalizing on the perceived success of the May event, and motivated by the same desire to achieve racial and religious subordination of city residents, Defendants began planning for additional events in Charlottesville. On May 30, Kessler submitted an application for a permit to hold the Unite the Right "rally" on the weekend of August 11 and 12.

55. In June, Defendant Kessler invited Defendants and others to come to Charlottesville for a "Proud Boys" event, which was designed to promote violence and intimidate minority residents in advance of the Unite the Right "rally."[3] As one of the Proud

[3] As part of the weekend, Kessler was beaten in an alley in Charlottesville by Proud Boys members until he could name five breakfast cereals. This "cereal beat-in" is the "second degree" of initiation into the Proud Boys. The first degree is a declaration of allegiance to the Proud Boys. The second degree is the cereal beat-in and a renouncement of masturbation (although Proud Boys "Pope" Dante Nero has framed the rule as requiring that a man should only ejaculate within a yard of a woman). The third degree involves getting a tattoo and the fourth degree requires a "major fight for the cause," meaning you "kick the crap out of antifa" and possibly get arrested.

Boys in attendance noted, the group wanted to bait protestors because "a lot of us kinda like to see them bleed." Another Proud Boy reminded others: "This of course is just the beginning. There are also bigger [ ] events planned for . . . Charlottesville on August 12."

56. On July 8, 2017, a third white supremacist event was held in Charlottesville, this time by Defendant Loyal White Knights. Nearly fifty Klansmen marched through the streets shouting "white power," and carrying signs that read: "Jews are Satan's children." Some wore white Klan robes, and many carried guns.

57. Plaintiff Romero peacefully protested at the July 8, 2017 Klan march. Following July 8, Romero received the first of four harassing phone calls from a member of the Klan. In the first call, the man explained that as a member of the Klan, he loved going to Charlottesville to demonstrate the organization's power, and asked Romero if she understood that white people are the superior race. As described in paragraphs 274 and 275 below, the later calls, which occurred after Romero was seriously injured by Fields's act of domestic terror on August 12, were more threatening.

58. Kessler attended and live-streamed the Klan march on Twitter. He shared a tweet with his followers: "#UniteTheRight against these shitlibs in Charlottesville on August 12th is going to be so much fun. You've got a month to be there."

B. Defendants Planned and Coordinated a Scheme to Incite Violence, Threaten, Intimidate, and Harass Charlottesville Residents on August 11 and 12

> The age of ultraviolence is coming. I don't know when, but I do know that most of you will live to see it.
>
> There is rapidly approaching a time when in every white Western city, corpses will be stacked in the streets as high as men can stack them.
>
> And you are either going to be stacking or getting stacked . . .

> There will be leaders. You need to be prepared to recognize them for who they are, and you need to be prepared to do whatever they tell you to do, exactly as they tell you to do it . . .
>
> *Defendant Andrew Anglin*

59. Defendants and their co-conspirators conspired to incite violence and to threaten, intimidate, and harass the civilian population of Charlottesville, and in particular, racial, ethnic or religious minorities, and to commit other unlawful acts as described herein. For weeks, Defendants acted on the basis of racial, religious, and/or ethnic animus, and with the intention to deny Jewish people and people of color, as well as people advocating for the rights of Jewish people and people of color, equal protection and other rights that they are guaranteed under state and federal law. Defendants' conspiracy ultimately achieved its stated goals and did in fact repeatedly, systematically, and unmistakably violate the rights of religious and racial minorities in Charlottesville.

60. The application for the Unite the Right permit submitted by Defendant Kessler claimed that the event would be a protest of the removal of the Lee monument, but Defendants also intended that the rally would instill fear in Charlottesville's minority population and cause violence. They wanted to use the events of the weekend to intimidate the broader civilian population and recruit more followers to Defendants' groups.

61. An article by Defendants Anglin and Ray published on the Daily Stormer's website on August 8 explained that the purpose of the "rally" had shifted from being "in support of the Lee Monument, which the Jew Mayor and his Negroid Deputy have marked for destruction" to "something much bigger than that . . . . It is now an historic rally, which will serve as a rallying point and battle cry for the rising Alt-Right movement."

62. Defendants Kessler, Spencer, Anglin, Ray, Cantwell, Mosley, Damigo, Invictus, Heimbach, Parrott, Hill, Tubbs, Fields, and Schoep, on behalf of themselves and the groups to which they belong, and Defendants Identity Evropa, FOAK, Vanguard America, TWP, League of the South, NSM, Nationalist Front, Loyal White Knights, and East Coast Knights, along with Daily Stormer (Defendant Moonbase Holdings), through their leadership and members, all agreed and coordinated with and among each other to plan, organize, promote, and commit the unlawful acts that injured Plaintiffs and countless others in Charlottesville. They also coordinated with numerous named and unnamed co-conspirators.

63. Defendant Spencer and co-conspirator Evan McLaren, a member of Defendant Identity Evropa, met in person at the Trump Hotel in Washington, D.C. to organize and direct the "rally" in Charlottesville, with the purpose and result of committing acts of violence, intimidation, and harassment against the citizens of Charlottesville.

64. Defendants Cantwell and Kessler met in Charlottesville on August 9 to plan and direct the unlawful acts of violence, intimidation, and denial of equal protection of law.

65. Defendants Ray, Cantwell, and Mosley and co-conspirator David Duke attended another in-person meeting on August 11 to plan and direct the unlawful acts of violence, intimidation, and the denial of equal protection of law.

66. Defendants Nationalist Front, NSM, TWP, League of the South, Vanguard America, East Coast Knights, and "other allies," coordinated their attendance as a "joint operation" in advance of August 12 to plan, direct, and prepare for unlawful acts of violence, intimidation, harassment, and denial of equal protection to Charlottesville citizens.

67. Defendants also frequently coordinated the illegal acts planned for the Unite the Right event online. They made use of websites, social media (including Twitter, Facebook,

4chan, and 8chan), chat rooms, radio, videos, and podcasts to communicate with each other and with their co-conspirators, followers and other attendees and did so to plan the intended acts of violence, intimidation, and the denial to citizens of the equal protection of laws.

68. For years, Defendants and others unnamed have used the Internet to, in Defendant Anglin's terms, "solidify a stable and self-sustaining counter-culture." Use of the Internet is part of the ways, manner, and means of how Defendants' conspiracy operated and operates.

69. Defendants and co-conspirators coordinated by posting articles on their own websites, and by using social media to send and share messages for the "rally" and to encourage attendance and the commission of illegal acts. They interviewed one another about the plans for the "rally," and shared those messages on podcasts or other video-streaming services. They agreed to mobilize their respective members and followers to attend and be violent and suppress the equal rights of Charlottesville citizens. According to Spencer, for example: "Damigo and his group [Identity Evropa] took the lead to organize white supremacist participation among people from outside Charlottesville."

70. One Internet tool Defendants used extensively to plan and direct illegal acts was the chat platform Discord. Originally developed as a messaging platform for group "game play," Discord is set up as a series of private, invite-only servers, each providing a space for real-time group discussion. Each server is organized into "channels," indicated by a "#" before the name. Participants in the chat use "handles" or nicknames to identify themselves. Participants can request to be "tagged" as a member of a group. Once tagged, the participants can read and participate in that group's chats.

71. A "Charlottesville 2.0" server was established on Discord in June 2017. This server was used to direct and plan unlawful acts of violence, intimidation, and denial of equal

protection of law at the Unite the Right "rally." One user explained that Discord was "for closed, top super secret communications intended for the elite inner circle of the alt-right."[4] Defendants used Discord as a tool to promote, coordinate, and organize the Unite the Right "rally," and as a means to communicate and coordinate violent and illegal activities "in secret" during the actual events of that weekend.

72. Discord was moderated, reviewed, directed, and managed by Defendants Kessler and Mosley, along with their co-conspirators. As moderators of the group, they were able to view all of the posts, invite or reject participants, and delete messages they did not condone. The group was "invite only" and not open to the public.

73. Individual Defendants, including Heimbach, Parrott, Cantwell, and Ray, were all participants on Discord, and participated in the direction, planning, and inciting of unlawful and violent acts through Discord.

74. These Defendants and their co-conspirators used Discord for regular "leadership" meetings through which they shared information and plans. Defendants also used Discord to distribute what they called "Orders" to co-conspirators and attendees. One document posted by Defendant Mosley was entitled "General Orders" for "Operation Unite the Right Charlottesville 2.0."

75. There were at least 43 channels set up on Discord as a means of sharing specific information. Those channels included:

#announcements	#news	#ma_ct_ri
#dixie-lyrics	#safety_planning	#vt_nh_me
#mod_help	#alex_jones_chat	#great_lakes_region
#confirmed_participants	#pictures_and_video	#midwest_region
#shuttle_service_information	#beltway_bigots	#ky_tn

[4] Another user explained, "unless Jason or Eli made this server public without telling me. . . this isn't a public server. It's invite only through our trusted, pre-vetted alt-right servers. Not sure who told you it's public."

#code_of_conduct	#voice_chat	#tx_ok
#self_promotion	#friday-night	#florida
#flags_banners_signs	#sunday-night	#georgia
#promotion_and_cyberstrike	#chants-	#carolinas
#gear_and_attire	#virginia_laws	#california_pacific_nw
#antifa_watch	#lodging	#carpool_available
#demonstration_tactics	#lodging_wanted	#ny_nj
#sponsors_only	#lodging_available	#pennsylvania
#i_need_a_sponsor	#carpool_wanted	#dc_va_md

76. They also had a channel called #questions_for_coordinators, where participants could ask questions of the organizers, and a channel for the "leadership," reserved for conversations among the main organizers of the event about "planning" and "infrastructure," as a leader of Defendant Vanguard America later described it. With the permission of a moderator, individuals could be "tagged" as members of certain organizations. Defendants Vanguard America, Identity Evropa, TWP, and League of the South, as well as Daily Stormer (Moonbase Holdings) and its "book club" chapters, all had "private organization channel[s]" on the Charlottesville 2.0 Discord server that allowed their tagged members to participate in private group communications in advance of the "rally."

77. Defendants enlisted other co-conspirators to coordinate and organize the "rally," through Discord and other means. For example, one individual, using the Discord handle "Tyrone" (hereinafter Tyrone), agreed with Defendant Kessler that he would coordinate transportation for attendees on August 12. Others were tasked with helping Defendants Kessler and Mosley moderate the Discord server. Another individual, using the Discord handle "Caerulus Rex," was the coordinator between various "security details" that were established by Defendants and their co-conspirators. "Caerulus Rex" has also been identified as a frequent bodyguard of Defendant Spencer.

78. Promotional materials, often promoting and inciting violence, were added to Discord in order to be shared and utilized more broadly.

79. Defendants also used Discord to coordinate how they would communicate on other social media. For example, they told followers to use #UniteTheRight and #Charlottesville on Twitter, so that they and their followers could closely communicate during the weekend of the "rally." They shared that hashtag through Discord.

80. Additional Discord servers were used by Defendants and co-conspirators to spread the word about the events in Charlottesville and to encourage followers to show up and be prepared for violence.[5] For example, Defendant Vanguard America has at least one Discord server, called Southern Front, which was established for members of the group living in southern states. Vanguard America leaders, who were active on the Charlottesville 2.0 Discord server, used the Southern Front server to coordinate attendance of additional Vanguard members and to provide channels of communication between Vanguard members and the main organizers of the Charlottesville event.

81. Certain co-conspirators in a self-styled "anti-Antifa" group, called "Anticom,"which purports to provide defensive violence at white supremacist events like the "Battle for Berkeley," organized in their own Discord server. The leader of Anticom was active on the Charlottesville 2.0 server, and then used the Anticom server to tell followers to attend the event and bring weapons, pursuant to the directives of the "rally" organizers.

82. Although certain posts on the Charlottesville 2.0, Southern Front, and Anticom Discord servers have been made public, numerous other Discord servers and channels were used

[5] In this First Amended Complaint, references to "Discord" are to the Charlottesville 2.0 Discord server, except where otherwise indicated.

along with the aforementioned servers to plan and coordinate attendance and violent acts at the events of August 11 and 12. These additional servers and channels have not yet been made public. Likewise, the #leadership channel on the Charlottesville 2.0 server remains undisclosed.[6]

83. Defendants Anglin and Ray likewise established "meet ups" and chat rooms through the Daily Stormer's website that co-conspirators and attendees were told to use throughout the weekend to coordinate their actions.

84. A "Charlottesville Statement" was distributed by Defendant Spencer, setting out the philosophy and ideology underlying the "rally." He was aided in drafting his manifesto by Defendant Invictus, co-conspirator McLaren, and others. Among other things, the Charlottesville Statement holds that "'Judeo-Christian values' might be a quaint political slogan, but it is a distortion of the historical and metaphysical reality of both Jews and Europeans" and that "Nations must secure their existence and uniqueness and promote their own development and flourishing. . . . Racially or ethnically defined states are legitimate and necessary."

C. Defendants Promoted Attendance, Violence, and Imagery Designed to Threaten, Intimidate and Harass

> [T]his will clearly be an earth-shaking day that will go down in the history books . . . our time has come.
>
> August 12, 2017 is going to be a shot heard around the world . . . . There will be before Charlottesville 2.0, and there will be after Charlottesville 2.0. there is no way to exaggerate the significance of this. We can make all the noise on the internet that we want, and this is great, but our real power will come only from numbers in the streets. . . .
>
> [T]hanks to the magnitude of this event, I truly believe—more than I ever did before—that we will eventually win this

[6] One co-conspirator, an organizer of the Unite the Right event and leader of Defendant Vanguard America, who was active on the Southern Front and Charlottesville 2.0 Discord servers, posted in the Southern Front server in response to reports that certain Discord conversations had been made public: "We have been aware of that. The chat logs were released to unicorn riot. They have months of conversations. It was the general chat not the leadership though so they got very little in the way of planning or infrastructure."

> struggle and secure the existence of our people and future for white children. It is our destiny. **Next stop: Charlottesville, VA. Final stop: Auschwitz**. See ya there, faggots.
>
> *Daily Stormer*

85. Defendant Anglin, through Daily Stormer, told followers: "We are angry . . . There is a [sic] atavistic rage in us, deep in us, that is ready to boil over. *There is a craving to return to an age of violence. We want a war*." He advised followers that "the hardcore message is what sells" and told them to "[b]e ready to die for [the fight]."

86. On Defendant Spencer's website, altright.com, one article on the upcoming August "rally" explained: "Our ideas dominate the internet . . . Now it's time to dominate the streets. . . . You might think it's just a rally, but really, it's so much more . . . . We are telling the anti-White establishment and it's [sic] attack dogs that we are not going to give another inch . . . And now we have come to the tipping point."

87. Defendant Ray declared: "We are stepping off the Internet in a big way. . . . We have been organizing on the Internet. And so now they are coming out. We have greatly outnumbered the anti-white, anti-American filth. At some point we will have enough power that we will clear them from the streets forever . . . you ain't seen nothing yet."[7] In an interview during the torchlight rally, Defendant Ray also stated that Defendants' goal was to "stop" the "usurp[ation]" of "our country" "by a foreign tribe called the Jews."

88. Defendant Mosley tweeted: "We are [] going to Charlottesville. This is our country and it is our right that me and thousands fought for already . . . Our birthright will be

[7] Vice released a 22-minute documentary following Defendants throughout the day. The video can be found at https://news.vice.com/story/vice-news-tonight-full-episode-charlottesville-race-and-terror.

ashes & they'll have to pry it from our cold dead hands if they want it. They will not replace us without a fight."

89. One promotional image created by Defendant TWP and distributed on Discord stated: "This is not an attack on your heritage this is an attack on your racial existence. FIGHT BACK OR DIE."

90. The Daily Stormer released its own poster, which was later shared by Defendant Vanguard America:

91. Using Daily Stormer's website, Defendants Anglin and Ray commanded the Daily Stormer community to attend ("You must make it there!"). They told their members:

"[w]e need to do everything we can to get as many people to attend this rally as possible. . . . There is a rising nationalist movement in America and it is not going away. Having thousands of nationalists come out for this rally will put the fear of god into the hearts and minds of our enemies." A writer on Spencer's website, altright.com, enthused that Daily Stormer was "going to bring a lot of young new cadres to the rally," including Identity Evropa.

92. Anglin also urged his followers: "We are now taking these [Stormer Book Clubs] to the next level . . . We are going to have challenges (which will include getting you in fit and fighting shape and learning useful masculine skills) . . . . We are going to build an invisible empire. This has all been worked out in my mind a long time ago, and this summer, the Summer of the Black Sun, is when we are going to bring it all together." On Defendant Vanguard America's Southern Front Discord server, Defendant Ray told Vanguard members in July 2017, "You don't think the [Daily Stormer Book Clubs] have anything to do with books do you? . . . Think boots, not books."

93. Defendant Hill encouraged followers of Defendant League of the South to attend by urging them not to "miss out of the fun" in dealing with their purported enemies. Defendant East Coast Knights exhorted individuals to attend: "We will be there! Join us!"

94. Another co-conspirator on Discord posted an image of a raised fist holding a dagger by its blade, dripping blood, over the words "FIGHT UNTIL THE LAST DROP."

95. Defendants' intent to engage in violence, to ensure that others engaged in violence, and to orchestrate and direct that violence against racial and religious minorities was open and explicit. For example, on a podcast run by Michael Peinovich, the Daily Shoah, a co-conspirator, discussing the "rally," asked: "Now come on, beating up the wrong negro . . . is that even a possibility? Beat up the wrong nigger . . . ." A member of Defendant Vanguard America blithely asked on Discord, "When can we gas the reprobates. . . ." Tyrone, a co-conspirator, wrote: "Most efficient is how you get six million Jews in a Cadillac. 3 in the front 3 in the rear 5,999,994 in the ash tray."

96. On Discord, moderated and controlled by Defendants Kessler and Mosley, there were countless exhortations to violence, including:

- "I'm ready to crack skulls."
- "If you don't have a flame thrower you're wrong,"
- "It's going to get wild. Bring your boots."
- "Studies show 999/1000 niggers and feminists fuck right off when faced with pepper spray."
- "Bringing women to a protest/rally where we expect violence is fucking retarded . . . even if you aren't expecting violence you should prepare for it."

- "Let there be no mistake – these two side have irreconciable [sic] differences that will never reach compromise – the only question is the level of conflict to decide the victor."

- "You have a week, bros. Best spend it having four or five of your friends simulate jumping you. Go light, don't get injured before the event, and focus on blocking and pushing back in ways that don't look like assault."

- "Let's make this channel great again. The Carolinas (kind of) started the Revolutionary War and the Civil War, so why not add the Race War / Second Civil War to the list?"

97. Defendants took no steps to prevent any violence. To the contrary, consistent with their conspiracy to encourage and enable violence, Defendants and co-conspirators reinforced a false narrative of a larger—necessarily violent—racial and religious war in which Unite the Right events were a critical moment. This strategy was intended to—and foreseeably resulted in—violence directed at the racial and religious minorities.

98. For example, Defendant Hill tweeted on July 24: "If you want to defend the South and Western civilization from the Jew and his dark-skinned allies, be at Charlottesville on 12 August."

99. Defendant Mosley published "General Orders" for the "rally" which divided attendees into "Friendlies" and "Enemies/Counter Protesters." Individuals opposed to the ideas advanced by the Unite the Right "rally" were described as "hostile."

100. The General Orders further instructed co-conspirators and attendees that if they ended up losing their permit to gather in the park then they may "have to initiate plan red or have to take the ground by force with plan yellow." Plan Red was described as "incredibly dangerous" and called for meeting early at a rally point and marching to the park. The General Orders also promised that there would be "security forces . . . to reduce the threat" presented by "hostiles."

101. Co-conspirators on Discord incited attendees to bring weapons and engage in violence. This incitement was known to and promoted by Defendants.

102. Tyrone posted a quote from Hitler's close associate and "Reich Plenipotentiary for Total War," Paul Joseph Goebbels, on Discord: "Whoever can conquer the street will one day conquer the state, for every form of power politics and any dictatorship-run state has its roots in the street."

103. Defendants expressly acknowledged that their false narrative of "self-defense" was merely a pretext for violence. Tyrone, for example, had the following exchange on Discord:

> Tyrone: "What if we are sociopathic and want [antifa] to show up, for . . . self defense purposes?"
>
> Americana – MD: If you're concerned about antifa showing up and being violent I present you 2 valid options. 1. Don't attend [emoji of a woman] or 2. Be better at violence than they are.
>
> Tyrone: It's not just about you (collective you not personal) violence like this is a team game.

Tyrone then told others: "The best defense is a good offense, my grandpappy taught me."

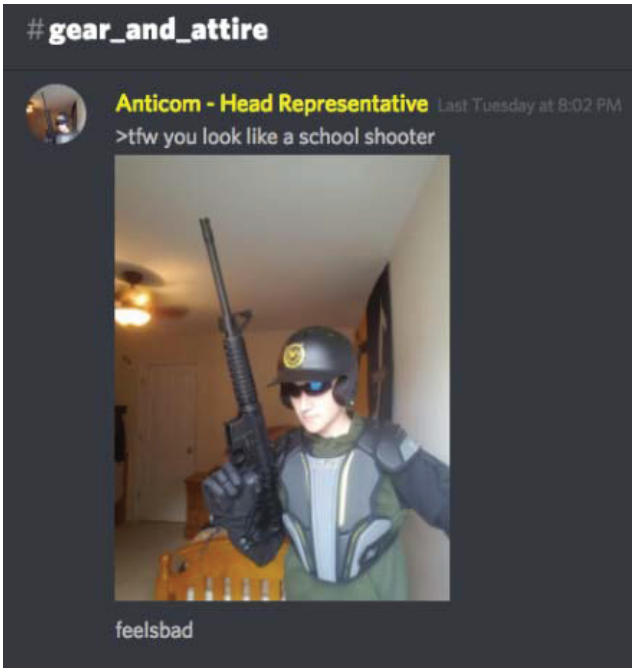
104. One Discord participant told people to "purchase self defense insurance," while another quipped that the ability to make out a self-defense claim "[d]epends how much of a jew your lawyer is."

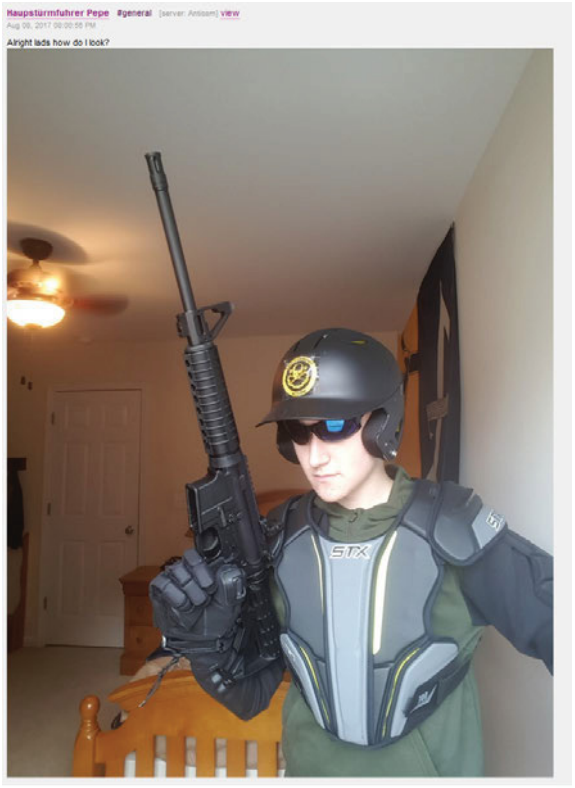
105. Using Discord and other mediums, Defendants gave orders to each other, co-conspirators, and followers in advance of the Unite the Right weekend, including what weapons to bring, what protective armor to wear, and instructions for uniforms. In particular, they advised other participants to bring firearms or improvised weapons. They engaged in these acts with the intention that they and their co-conspirators would in fact engage in violence and

harassment against racial and religious minorities and threaten the broader Charlottesville population.

106. Defendant Cantwell expressly "encourage[d]" Radical Agenda followers "to carry a concealed firearm."

107. One co-conspirator, who was active on the Charlottesville 2.0 Discord server as the "Head Representative" of Anticom on the server, told his followers in the Anticom server on August 7: "@everyone Bring as much gear and weaponry as you can within the confines of the law. I'm serious. . . . You still have a few days to get some protection from Home Depot and bring any guns you have . . . This isn't just Anticom. Spencer, organizers, everyone are behind this." He added: "This is the time to get off Discord and take action." On August 8, he simultaneously posted on the Charlottesville 2.0 and Anticom servers the a photograph of himself in tactical gear carrying a rifle (see images below from the Charlottesville 2.0 server, left, and Anticom server, right). He told his followers: "I wasn't kidding when I made an announcement to bring as much weaponry as legally feasible. . . This was discussed with the organizers." An Anticom follower responded: "Yeah I also recommended crowdfunding a 50 dollar campaign to hand out pepper spray to fellow goers."

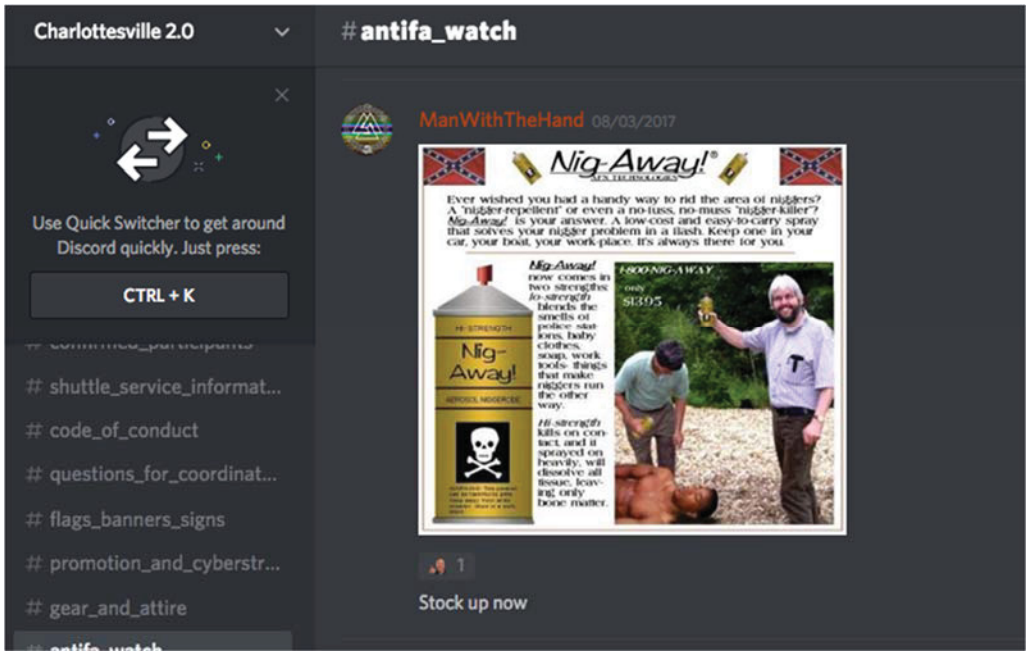




108. Defendants and co-conspirators posted photos of themselves posing with automatic weapons and tactical gear, and boasted about the weapons they were bringing. Tyrone, for example, bragged on the Charlottesville 2.0 server that he would be bringing "Mosin-Nagants with bayonets attached," referring to military rifles used by Russian and Soviet armed forces, which "will shoot clean through a crowd at least four deep." Tim "Baked Alaska" Gionet, a co-conspirator and attendee of the events of August 11 and 12, posted the following on Twitter:

109. Defendant Ray wrote on Discord: "Well I also come barehanded and barefisted, bc officers don't duck lol. But my guys will be ready with lots of nifty equipment."

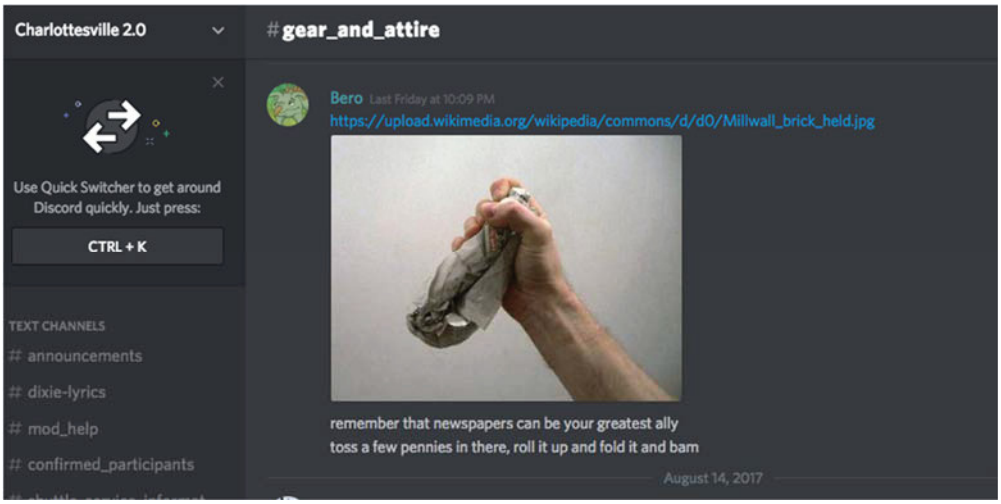
110. One co-conspirator on Discord posted a fake advertisement for a product that looked like pepper spray called "Nig-Away"—"a no-fuss, no-muss 'nigger-killer,'" promised to "kill[] on contact . . . dissolv[ing] all tissue, leav[ing] only bone matter" in order to "rid the area of niggers." He commented beneath the photo, "stock up now."



Discord was rife with discussions by co-conspirators of weapons and the use of everyday objects to inflict harm:

- "I'm conceal carrying."
- "[A] real man knows how to make a shield a deadly weapon."
- "[K]nives and guns are more legal than blunt weapons or batons, but its [sic] better to only carry what would only be perceived as a defensive tool. I figure knives would cause the police more alarm over a can of pepper spray or a rugged and abrasive shield."
- "[G]et standard OC spray. I personally use Fox Labs."
- "[R]emember that newspapers can be your greatest ally / toss a few pennies in there, roll it up and fold it and bam."
- "[A]void batons . . . just get hardwood dowel (that fits in your hand) from a store and cut it to size."
- "If you get PVC get schedule 80 for thicker thumping."
- "Don't carry anything that's explicitly a weapon. Flag poles and signs work, but openly carrying obvious weaponry is probably not a good idea."
- "A wrench with a wrist lanyard gets the same job [as a blackjack/billyclub] accomplished."

- "Just carry a pocket full of rocks. They can be in a sock or something."



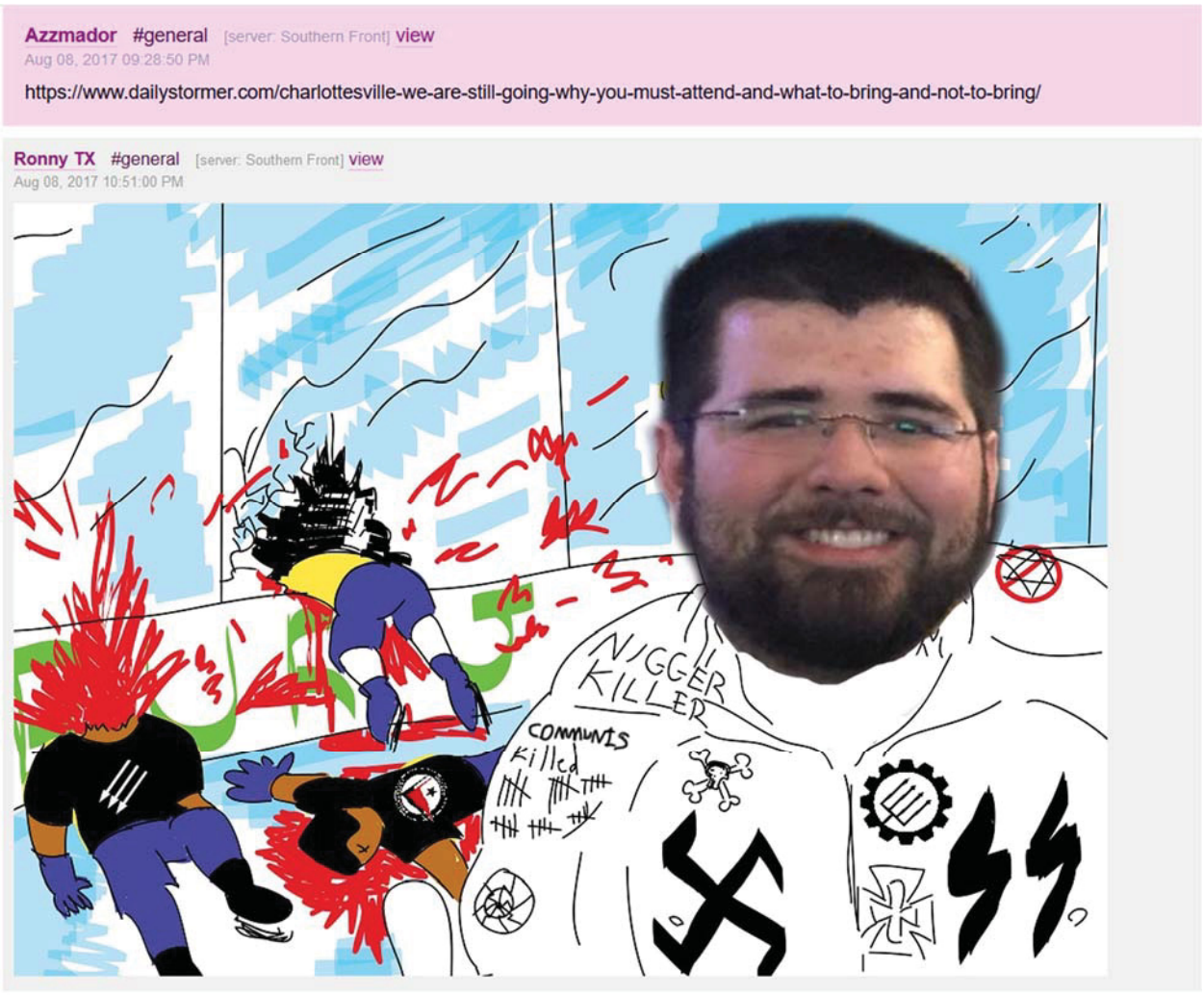
111. On June 7, 2017, Kessler posted in the #announcement channel of the Charlottesville 2.0 Discord server, "@everyone . . . I recommend you bring picket sign post, shields and other self-defense implements which can be turned from a free speech tool to a self-defense weapon should things turn ugly."

112. One co-conspirator on Discord posted a link to his store, Resistance Tools, along with a coupon code (UNITETHERIGHT2017), and wrote "FOR PEOPLE NOT CONCEALED CARRYING IN C'VILLE: I sell stun guns, tasers, pepper spray, batons, and other self-defense stuff."

113. Defendant Vanguard America, through its leaders and members, encouraged its members to attend the rally on its own Discord server, Southern Front. An individual with the username "Thomas Ryan," on information and belief Thomas Ryan Rousseau, a leader of Vanguard America, repeatedly urged members to contact him directly if they planned to attend the "Unite the Right" event and if they wanted to travel together in a "hate bus," saying: "This event is a **BIG DEAL** and offers a chance to link up Vanguard Guys from across the nation." He also issued orders on the proper Vanguard uniform for the event.

114. Defendant Vanguard America members were instructed to arrive at the rally in matching khaki pants and white polos, about which one member on the server commented: "I like the polos. it's a good fighting uniform." Rousseau also told his Vanguard America co-conspirators, "Self defense items are not listed on the gear list, some individuals will have concealed carry, some will not." On August 7, one co-conspirator asked: "Serious question, why are they saying not to bring fire arms?" Another replied, "Sounds like they are scared lol . . . I always carry a collapsible baton now it's my new favorite." "Thomas Ryan" replied: "It's concealed carry only . . . Concealed knives have dozens of laws around them. Open knives do not, but it looks really dumb to carry an open large knife so we're not doing that . . . Not sure about batons."

115. Defendant Ray, a "good friend" of Defendant Vanguard America, according to their leader Rousseau, also used the Southern Front server to encourage Vanguard America members to attend the rally, posting a link to the Daily Stormer article "Charlottesville: Why You Must Attend and What to Bring and Not to Bring!" A Vanguard America member responded to Ray's post with a violent drawing of Defendant Heimbach wearing a shirt bearing Nazi and Defendant TWP symbols and the words "nigger killer" above a tally of "communists killed," smiling in front of decapitated black men wearing logos associated with anti-fascist movements:



116. One member of Defendant Vanguard America explained on the Southern Front server after the event that Vanguard America had coordinated with Defendant National Socialist Movement because the Charlottesville event was about violence: "In cville we needed numbers, NSM fought so hard regardless of their optics. Do we need them at normie events? No. We need them in a fight? Yes."

117. In addition to directives being circulated on Discord, Defendants Ray and Anglin issued directives using Daily Stormer's website in advance of the Unite the Right weekend. In articles titled "Operational Security for Right Wing Rallies" and "Charlottesville: Why You

Must Attend and What to Bring and Not to Bring!," "Stormers" were told that they were required to bring tiki torches and should also bring pepper spray, flag poles, flags, and shields.

118. Indeed, the evidence that Defendants were planning to arm themselves in advance of the "rallies" was so pervasive that the Charlottesville Police Department received private threat assessments from the Federal Bureau of Investigation indicating that "Unite The Right supporters would bring bats, batons, flag sticks, knives, and firearms to confront their political opponents."

119. Defendants and co-conspirators provided guidance and instructions to co-conspirators and participants about how to try to avoid the legal ramifications of their violence. For example, they set up a channel on Discord devoted to understanding Virginia law, where one co-conspirator suggested that rallygoers buy self-defense insurance. Defendants also assured co-conspirators that they would be protected when they engaged in violent acts intended, incited, strategized, and encouraged by Defendants. The "General Orders" told attendees that if they found themselves arrested, there would be "money and a legal team set aside for you after." Defendant Spencer put out a call for attorneys on his website, altright.com. Daily Stormer advised attendees:

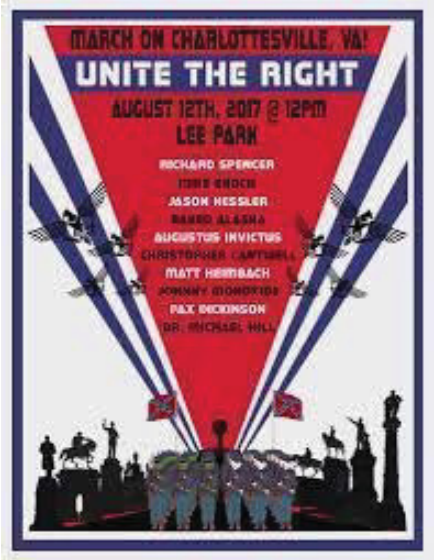
> [I]f you end up in some heavy stuff and are not yet charged with anything, use your moments of freedom to get really difficult to find. Do not wait around for bad processes to begin against you. Exit from any risky situation as quickly as you can. If you make yourself easy to serve with legal process, legal process will be likely be served to you.

120. Defendants and co-conspirators told each other to bring shields, uniforms, flags, and signs decorated with iconography that would instill fear along racial and religious lines, while also identifying rallygoers with the hate groups to which they belong. The Texas and

Louisiana chapters of Defendant Vanguard America, for example, planned to have shields with their logos painted on.

121. Defendants also discussed and intended for followers to come with paraphernalia bearing racist and anti-Semitic imagery. Defendant Kessler, for example, explained: "The Confederate flag is THE BEST optics because it's beloved by legions of Southerners who are on the doorstep of becoming just like us if we can move them beyond 'heritage not hate.'"

122. The "official" poster for the event contained Nazi and confederate iconography, including imperial eagles reminiscent of Nazi Germany's national emblem, confederate flags and monuments, and confederate soldiers in formation.



D. Defendants Coordinated Funding, Logistics, Transportation, and Legal Support For Co-Conspirators and Attendees

123. Defendants furthered their conspiracy and its illegal, injurious objectives by coordinating attendance at the rally through Discord, the Daily Stormer website, and other media.

124. On Discord, Defendants established the #sponsors_only and #i_need_a_sponsor channels to provide financial support to others who wanted to travel to Charlottesville.

Defendants also used channels like #carpool_wanted and #carpool_available to organize carpools in "Hate Van[s]" and "full blown hate convoy[s]."[8]

125. On the Daily Stormer website, attendees were advised: "If you want to come but can't find a way, get on the BBS [a Daily Stormer forum] and ask for help. Go to the Book Club section and find the nearest book club to you and post in that thread that you want to go but need assistance. If you happen to have hit a dead thread, start a thread in General Discussion asking for help. If you are going and have an extra seat or seats, start a thread to offer a ride."

126. Cantwell asked listeners of his Radical Agenda podcast and readers of his website to send money to him if they "want[ed] to help," but could not attend the "rally."

127. RootBocks, and WeSearchr—sites that were set up to raise money for hate-based causes—facilitated the attendance of co-conspirators. On July 28, for example, RootBocks tweeted "@BakedAlaska was banned from @GoFundMe so go help him out here." Baked Alaska a/k/a Tim Gionet has advocated racial and religious based violence, including by circulating an image of a Jewish woman in a gas chamber. David Duke also tweeted, "Help my friend Baked Alaska get to the #UniteTheRight rally. Please donate to make this happen. rootbocks.com/projects/get-b . . ."

[8] The "Hate Van" and "hate convoy" suggested by conspirators in this case has historical precedent. During the Civil Rights Era, George Lincoln Rockwell, the founder of the American Nazi Party, and his supporters drove a two-vehicle caravan that included a blue and white van dubbed the "Hate Bus" through the South. The exterior of the van was plastered with the words "LINCOLN ROCKWELL'S HATE BUS" and the phrases, "WE DO HATE RACE MIXING" and "WE HATE JEW-COMMUNISM." Rockwell pledged solidarity with the Klansmen who attacked the Freedom Riders (black and white civil rights activists who rode interstate busses in a campaign of desegregation) and hoped to confront the "Communist, nigger-loving" Riders when they arrived in New Orleans. In New Orleans, they demonstrated with signs that read "America for Whites, Africa for Blacks" and "Gas Chamber for Traitors." After Rockwell's assassination in 1967, the American Nazi Party broke into two factions, one of which became the Defendant NSM, run by Defendant Schoep. See RAYMOND ARSENAULT, FREEDOM RIDERS: 1961 AND THE STRUGGLE FOR RACIAL JUSTICE 195 (1961).

128. On the August 8 "Charlottesville Unite the Right Announcement Special" podcast with Peinovich, Defendant Mosley told listeners that they'd be setting up a general legal fund using Rootbocks. On that same program, Mosley told listeners how to get help with transportation.

129. Defendants and co-conspirators also coordinated travel for the day of the "rally" on Saturday. After consulting with Defendant Kessler, Tyrone took responsibility for helping organize shuttles. One co-conspirator instructed Discord participants: "Nobody is going to the park on their own. We will be arriving as a group."

E. When Plaintiffs and Others Sought to Prepare for the Events of August 12, They Were Targeted for Additional Threats and Harassment

130. Plaintiffs and community members understood that August 12 could be (and ultimately was) the largest public gathering of hate groups in decades.

131. Anticipating a need for a designated, separate space for peaceful protesters, a UVA professor received permits for McGuffey Park and Justice Park for the periods during which the Unite the Right "rally" was to take place.

132. A broad group of concerned citizens, including Plaintiff Wispelwey, recognized the need to organize community members in advance of the rally weekend in order to provide a sense of solidarity for Charlottesville and give guidance on non-violent protest.

133. Wispelwey, an ordained minister, co-created a membership-organization, "Congregate," to join interfaith clergy from around the country to "stand against white supremacy and bear witness to love and justice." Congregate's goal was to bring 1000 clergy-members to Charlottesville to stand up for equality and against hate. Working with other religious leaders and community organizers and organizations, Congregate planned an interfaith service for August 11 at St. Paul's Memorial Church on University Avenue ("St. Paul's"), the

night before Defendants' permit to gather in Emancipation Park. Congregate also helped plan an interfaith "sunrise service" for August 12 at the African-American First Baptist Church on West Main Street so that community members could gather, feel supported, and pray.

134. As a result of its work in support of the Charlottesville community, Congregate was targeted. Defendant Kessler advised his followers of Congregate's work in a video released prior to the Unite the Right weekend. In doing so, Kessler intended to have others threaten, and potentially cause violence to, the organization—a practice that is not uncommon among Defendants and co-conspirators. For example, after a photograph was published of a young woman giving the middle finger to a man in a confederate army uniform, a prominent member of the East Coast Knights tweeted out the young woman's home address and wrote: "We will be having a rally at this address next week. Bring your own torch."

135. On August 2, one co-conspirator posted on Discord screenshots from a Facebook event for an upcoming community "Back to School Block Party" in Charlottesville. He commented: "Negro block party about 1 mile SW of Lee park." Following that post, one Discord participant suggested that a white supremacist group "go to the bloc party after and beat them at kick ball." Another replied, asking, "What happens if we lose? I hear niggers are pretty good at sports ball." A third replied, "We shank them."

136. Defendant Kessler along with other co-conspirators posted various photographs on Discord and provided names and identifying information of individuals planning to protest in Charlottesville, as well as the community groups organizing the protest. On August 10, Kessler, Defendant Mosley, and others hosted a voice chat on Discord, during which an unidentified voice offered a "solid gold medal" to any person who would shave the "Bearded Lady," referring to a photograph of an expected protestor.

137. Congregation Beth Israel, the synagogue to which Plaintiff Pearce belongs, also learned of Defendants' online, public threats to Charlottesville's Jewish population. In reasonable fear and apprehension of Defendants and their co-conspirators, the Temple made the painful decision to move and hide its sacred Torah scrolls off site in advance of the weekend. Among the Torahs at the Synagogue was one salvaged from a neighborhood of Eastern European Jews who were massacred during the Holocaust that is displayed in a glass cabinet. Unfortunately, that Holocaust Torah could not be moved because of its fragile condition. Plaintiff Pearce thought at the time of how ironic it was that a Torah that managed to survive the Holocaust was again being threatened by Nazis.

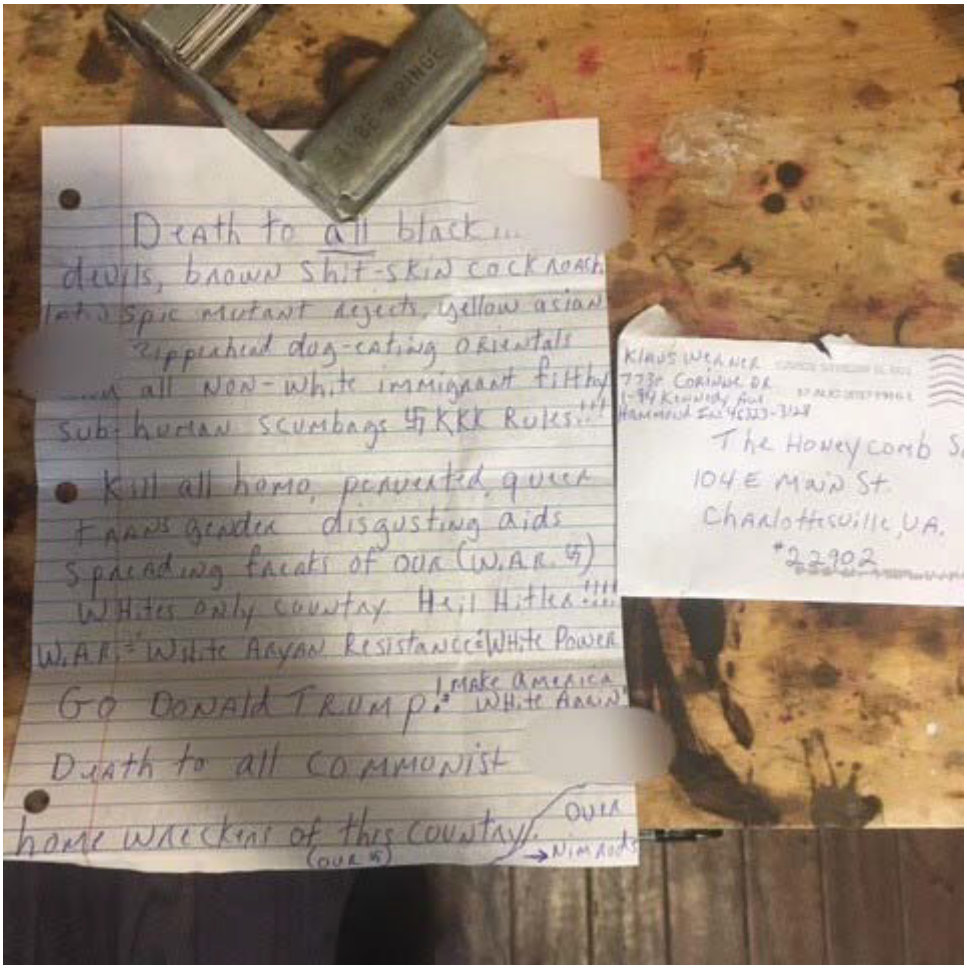
138. The Temple also decided it needed to move its Saturday Shabbat services up an hour, so that it could close in the afternoon when Defendants and other neo-Nazis and white supremacists were expected to be in Charlottesville. The Temple took further safety precautions, including hiring a security guard, to keep the congregation safe while they were there for services, re-directing substantial resources.

139. Stores, restaurants, and bars around town created signs that they posted in their windows showing the businesses' support for equality and diversity. Those stores and restaurants were also targeted by Defendants.

140. In June, for example, Defendant Kessler encouraged Discord participants to obtain the names of local businesses whose owners signed a petition to ask the government to cancel Kessler's permit. In August, co-conspirator Griffin tweeted about targeting a local restaurant, Brazos Tacos. Defendant Mosley also tweeted about targeting several restaurants, namely Brazos Tacos, Cinema Taco, Commonwealth Restaurant and Skybar, Mudhouse, and the Whiskey Jar. Defendant Spencer tweeted a picture of Commonwealth Restaurant, which had a

sign in the window reading: "If equality & diversity aren't for you then neither are we." On August 10, Peinovich tweeted, "Do these white business owners and shitlibs in CVille think that their virtue signaling mean they will be spared somehow? Lol."

141. By identifying these businesses, Defendants intended that their co-conspirators and followers would threaten these businesses. A number of these businesses thereafter received in person and mailed threats:



II. On August 11 and 12, Defendants Successfully Implemented the Violence and Intimidation They Had Planned

A. Friday, August 11, 2017

1) The "Secret" Torch Parade

142. Defendants, including Mosley, Spencer, Kessler, Ray, Anglin, Cantwell, and Invictus, along with their co-conspirators, organized a torchlight march through campus culminating at the statue of Thomas Jefferson near the Rotunda on August 11 at the Grounds at UVA.

143. The permit Defendant Kessler applied for and received was for the following day, August 12, in Emancipation Park. Defendants did not publicly disclose the time or location for the August 11 torch parade "because it was a secret arrangement."

144. The torch parade was the result of weeks of planning by Defendants and co-conspirators. They had established a #friday_night channel on Discord to coordinate attendance, dress code, and plans. They advised co-conspirators that the event was intended to be a secret and that they should bring torches.

145. For example, the Daily Stormer website stated:

> Tiki Torches: Yes – required. Pick up tiki torches before you leave your hometown. There will be a torchlight ceremony and the tiki torches will all be gone from the shelves of the local stores. Dollar stores are your best bet. Wal-Mart has them cheap as well. Make sure and get some tiki torch fuel/oil too. Otherwise they won't burn.

146. On a planning call conducted through Discord, Defendant Mosley instructed Defendants and co-conspirators: "We are doing a torch light event on Friday. . . . Anyone who doesn't have tiki stuff now should go out and get it tonight or tomorrow morning and if you could get extras that would be great." Defendant Kessler ordered attendees to buy torches for

Friday, but to do so outside of Charlottesville, so that they would not "tip our enemy off." He instructed that people "buy extras for those who are flying in or unprepared."

147. Defendant Mosley ordered individuals to arrive at Nameless Field, a large area behind UVA's Memorial Gymnasium, at 9:30 p.m., so that they could march once darkness fell at 9:47 p.m. He told them not to arrive earlier to avoid tipping off counter-protestors, and stressed that "it's extremely important that nobody mention this outside our circle."

148. While planning their torchlight march, Defendants were aware of the fact that open fires are illegal on UVA's campus without authorization. Nearly one month before the planned torchlight march, a Discord participant posted a link to UVA's guidelines against open fires. A co-conspirator, and moderator on Discord, "pinned" the regulation to the chat, meaning that it was highlighted for participants.

149. The choice to use lit torches was a deliberate decision to harass and intimidate the people of Charlottesville and counter protesters, especially people of color and Jewish people. Defendants and co-conspirators intentionally drew on the history of torch-bearing mobs, and in particular, the Ku Klux Klan's use of torches in the late 1800s and in the twentieth century, and the Nazi's use of torches in their rallies in the 1930s. In both historical cases, just as with cross-burning, the use of torches was connected with racial violence; torches were chosen by Defendants and co-conspirators as part of a deliberate plan to evoke fear of the same kind of violence. As one co-conspirator on Discord explained: "Tiki torches are the last stand of implicit whiteness." Defendant Ray explained the purpose of the torch parade as follows: "Our country is being usurped by a foreign tribe, called the Jews. We are going to stop it." Defendant Invictus explained to a reporter, "Somebody forgot the pitchforks at home, so all we got is torches."

150. On the morning of August 11, Defendant Cantwell and other co-conspirators gathered at a Walmart outside of Charlottesville. Cantwell then travelled to McIntire Park to prepare for the evening. In an interview with a reporter from *Vice*, Cantwell said: "I'm trying to make myself more capable of violence. . . . I'm here to spread ideas, talk, in the hopes that somebody more capable will come along and do that."

151. On Friday evening, using Discord, Defendant Mosley alerted co-conspirators that they should go to UVA: "Everyone can start assembling at nameless field right now with your torches to start staging. We will step off from the field at 10 pm."

152. Starting around 7:30 p.m., approximately 300 neo-Nazis and white supremacists—Defendants and their co-conspirators—began arriving at Nameless Field. They carried unlit tiki torches, and many wore khaki pants and white polo shirts (the uniform of Defendant Vanguard America) and pins marking their affiliations with different hate groups. A little after 8:00 p.m., Defendant Spencer texted a reporter: "I'd be near campus tonight, if I were you. After 9:00 p.m., Nameless field."

153. By early evening, Plaintiff Wispelwey was inside St. Paul's Church, along with an overflow crowd of an estimated 1,000 people. Dozens of local and national clergy members visiting Charlottesville for the weekend participated and spoke at the service.

154. Plaintiff John Doe, along with other UVA students, peacefully walked to the Rotunda where Defendants were believed to be holding their event.

155. Plaintiff Natalie Romero had spent the afternoon of August 11 painting banners and posters for use during the planned peaceful protest of the August 12 "rally." Romero then learned that Defendants would be holding a rally on the UVA campus at the Rotunda. With a group of other UVA students, Romero peacefully made her way to the Rotunda.

156. At the same time, at Nameless Field, Tyler Magill observed Defendants and their co-conspirators barking and grunting loudly, making sounds that resonated for blocks. Defendants Cantwell, Kessler, Ray, and other co-conspirators were issuing orders to the other white supremacists and neo-Nazis, telling them to get in specific formations and assigning people either to march with a torch or on the side as "security."

157. Defendants and their co-conspirators filled their tiki torches with fuel, formed a long column, and lit the flames. They then started marching two-by-two from Nameless Field to the Rotunda, and down to the Jefferson Statue. Defendants and co-conspirators deliberately took a circuitous route that included marching through student housing on the Lawn, which Plaintiff Sines observed, and which was intended to threaten, intimidate, and harass as many bystanders as possible.

158. Defendants marched in an organized, coordinated fashion. Organizers, including Defendant Cantwell, wore earpieces, carried radios, and shouted specific orders at the marchers. They shouted to keep pace, avoid gaps, stay in line "two-by-two," and march alongside a "security guard." Defendant Invictus said it was a "tight operation" and, in his live video feed, frequently enthused "high T!," meaning high testosterone.

159. Defendant Cantwell marched on the outside of the column, along with other "guards" who were selected for their willingness to "get physical" with counter-protestors.

160. Plaintiffs Sines and Romero heard the marchers chanting slogans chosen for their intimidating and racially harassing effect. These slogans included, "You will not replace us!" "Jews will not replace us!" "Blood and soil!" "White lives matter!" and "This is our town now!" Romero also heard the marchers chant "go back to where you came from," an apparent reference to Romero's Hispanic heritage.

161. The marchers also barked like dogs and performed Nazi salutes. Again, these actions were intentionally chosen for their racially threatening, intimidating, and harassing effect.

162. Defendants intended to send a clear message through the torch parade: Jewish people, black people, and their allies should be afraid for their safety, livelihoods, and lives.

2) The Attack at the Rotunda

163. The torch march eventually reached the steps on the far side of the Rotunda. Hundreds of neo-Nazis and white supremacists, including Defendants Kessler and Spencer, charged toward a small group of fewer than 30 people, mostly students and community members, including Plaintiffs John Doe and Romero, who had locked arms around the statue of Thomas Jefferson.

164. As Defendants and their co-conspirators rushed down the steps that surround the Rotunda and streamed toward the Jefferson statue, they continued to shout "Blood and soil," "Jews will not replace us," and "You will not replace us," and to bark like dogs. They also made monkey noises at the black protesters. Plaintiff John Doe, one of the few African-American men present, was terrified and feared for his life. Plaintiff Romero, one of the few Hispanic-Americans present, had never been more afraid in her entire life.

165. As they reached the statue, Defendants and co-conspirators stood shoulder to shoulder and encircled the students to trap them. Seeing the mob surround the students, Magill, who had followed the white supremacists and was warning others to steer clear, ran through the crowd and locked arms with the small group, which included Plaintiffs John Doe and Romero. One co-conspirator yelled, "we need some more people to fill in this way to block these people off." After the fact, one protestor tweeted: "They surrounded us at the statue / They wouldn't let us out"; Defendant Spencer retweeted this, adding "Fact check: true."

166. One co-conspirator on Defendant Vanguard America's Southern Front Discord server posted a tweet from Hatewatch, saying "Anti fascists are surrounded by hundreds of fascists at Jefferson statue. No police." Another replied: "DO IT . . . TIME TO PHYSICALLY REMOVE THEM"

167. Defendants and co-conspirators began to kick and punch the protesters around the statue, using their torches as weapons, and to beat individuals onto the ground. Defendant Ray claimed that the group of white supremacists "went through [the protestors] like shit through a goose!"

168. From the crowd, Defendants, co-conspirators, and others threw an unidentified fluid at the peaceful protesters around the statue, including on Plaintiffs John Doe and Romero. Looking down at the fluid on their clothing, which they feared was fuel or other flammable liquid, and the hundreds of lit torches around them, John Doe believed that he might be killed. Co-Conspirators and others then threw their lit torches through the air, aimed and directed at many of the protesters around the statue. At one point, Defendant Ray shouted, "The heat here is nothing compared to what you're going to get in the ovens!"

169. Plaintiff Sines witnessed co-conspirators throwing fuel and tiki torches at the peaceful protestors around the statute.

170. Plaintiff Romero witnessed co-conspirators removing their helmets and swinging them at peaceful protestors. Romero was also spit on by co-conspirators.

171. Defendants and co-conspirators, including Defendant Cantwell, attacked the protestors with mace. The Daily Stormer included the below photo of Cantwell spraying a protestor in the eyes in its live feed with the caption ". . . might be the greatest photo I've ever

seen." The same photo was retweeted by Defendant Mosley under a caption: "He protect / He atack / But most importantly he got your back."

172. Due to Defendants' conduct, and consistent with their intention to terrorize, Plaintiff John Doe feared that he was in imminent danger. Encircled by Defendants and co-conspirators, John Doe felt trapped and did not believe that he could escape safely. He knew that as an African-American man, if he had tried to escape before the group dispersed, he would have been attacked. For approximately ten minutes, he remained in place, and while confined within the circle of Defendants and co-conspirators, was sprayed with mace.

173. Fearing for their lives, Plaintiffs John Doe, Romero, and the other protesters struggled to escape the mob. Once away from the mob, Romero attempted to wash off the mace that had been sprayed in her eyes and all over her shoulders by Defendants and co-conspirators. After the trauma of the torchlight rally, Romero had trouble sleeping that night.

174. Defendants and their co-conspirators climbed to the top of the Thomas Jefferson statue and waved their torches high in the air, yelling, "Hail Spencer! Hail victory!" Defendant Spencer spoke briefly to the crowd, saying, "We own these streets! We occupy this ground!" He told the crowd that they were "risking their lives" for their future. This was consistent with the unlawful plan developed by Defendants through their conspiratorial acts in the weeks and months preceding these events, and as operationalized and modified by Defendants in response to developments on the ground.

175. These acts of violence were not isolated or unplanned incidents. The torch rally was planned with the specific intent of engaging in racially-motivated violence, threats, intimidation, and harassment. The attacks upon the students were coordinated both in advance and on the day that they occurred. Defendants and co-conspirators intentionally formed a circle trapping the students and either directly participated in the ensuing violence or continued to incite it—including through the chants described above—as the violence was occurring.

3) St. Paul's Memorial Church

176. During the attack at the Rotunda, hundreds of people were across the street at St. Paul's Church, listening to civil rights and religious leaders speak of peace and equality. At least one white supremacist, Defendants' co-conspirator, was within the church, live-streaming the interfaith service to his followers.

177. Some of the individuals within the church, including Plaintiff Wispelwey, along with people who had volunteered to serve in a security role outside the church, could see and hear the mob charging through the Rotunda, chanting and wielding torches.

178. After seeing the mob surround and attack the peaceful protestors at the Rotunda, Plaintiff Wispelwey and others were reasonably afraid that the mob would come

towards the church to cause violence to the building and the individuals inside, particularly given the racial and religious make-up of the assembled group and the fact that Defendant Kessler had specifically targeted Congregate, in advance, for harassment and intimidation.

179. At around 10:00 p.m., when the service at St. Paul's ended, the organizers asked everyone in attendance to leave in groups through the back doors to avoid the neo-Nazis and white supremacists. However, after learning more details of the violence occurring at the Rotunda, Plaintiff Wispelwey reasonably apprehended that force would be used against those still within the church if they went outside. The church was filled with children and elderly individuals who were particularly vulnerable to any violence that could occur. Accordingly, a few minutes later, everyone at St. Paul's was asked to return to their seats. They remained in the church for nearly an hour after the service was supposed to end.

180. After the church re-opened its doors, Plaintiff Wispelwey drove some of his fellow clergy back to their hotels to make sure they were safe. From his car, Wispelwey saw co-conspirators carrying baseball bats and torches—carried for the purpose of threatening, intimidating, and harassing residents.

181. Directly outside of the Graduate Hotel, Plaintiff Wispelwey saw Defendant August Invictus harass and intimidate a friend. Invictus then walked towards Wispelwey, who was wearing a collar, until they were mere inches apart. Invictus kept moving forward even as Wispelwey pulled back. Once he was directly face-to-face with Wispelwey, Invictus began demanding, in a challenging and highly aggressive tone, that Wispelwey reveal what church he belongs to. Defendant Augustus Invictus then asked "What the hell are you doing," and continued hounding Wispelwey to state his church denomination.

4) Defendants Celebrated the Torch Parade as an Advertisement for the "Unite the Right" Rally the Following Day

182. David Duke, the former Grand Wizard of the Ku Klux Klan, and co-conspirator, posted the following:

183. Co-conspirator McLaren posted a photo of the march and tweeted: "White peoples never agreed to become minorities in their own lands, in numbers and spirit." Defendant Kessler tweeted a picture of the torchlight marchers surrounding the protestors at the statue and wrote: "Incredible moment for white people who've had it up to here & aren't going to take it anymore. Tomorrow we #UniteTheRight #Charlottesville." Spencer retweeted that tweet.

184. Co-conspirator Thomas Ryan Rousseau, a leader of Defendant Vanguard America, kept his co-conspirators informed on the Southern Front Discord server, posting "All VA members safe and accounted for," while another co-conspirator wrote "I had a lot of fun tonight. Can't wait for the big event tomorrow."

185. Defendant Invictus told watchers of his livestream to come on Saturday to the most important "rally" of the year. Anticipating and strategizing violence, Defendant Anglin wrote on his Daily Stormer website that people should "be at Lee Park by noon, preferably by 11:00." Although he wouldn't be there, Anglin said that he had given Defendant Ray words to relay to the crowd. He told readers: "Make sure you're with a crew. Don't park alone, don't walk to your car alone . . . If you wanna stay up all night with Stormers, or arrange to travel to the park together tomorrow, get in this thread and start sending people PMs." He signed off for the evening saying "[w]e are on the verge of breaking through into a whole other realm."

B. Saturday, August 12, 2017

1) Defendants Intentionally Planned A Violent Confrontation With Counter-Protesters

186. On August 12, Defendants, their co-conspirators, and others acting at their direction executed their plan to carry out racial, religious, and ethnic violence, intimidation, and harassment. Defendants Kessler, Cantwell, Mosley, Heimbach, Hill, Invictus, Ray, Spencer, Damigo, Fields, Parrott, Tubbs, the Nationalist Front, League of the South, NSM, TWP, Vanguard, the East Coast Knights, the Loyal White Knights, FOAK, and hundreds of Stormers (many of them from Stormer Book Clubs) all participated in the violent events of the day together with co-conspirators, including Duke and the Proud Boys.

187. Defendants and co-conspirators planned to arrive early and anticipated and encouraged the use of violence to assist the rally. As one co-conspirator explained: "Me, the rest of TWP and LS [League of the South] have been to more than one rodeo. / And shit NSM will be there early too / Those guys are nuts / In a good way." Defendant Kessler promised that there would be hundreds of members of TWP and League of the South at the park as early as 8:00 a.m.

188. Defendants Mosley, Kessler, and co-conspirators exhorted rallygoers to arrive before the park opened to form "a white bloc barrier or square around the entire statue + podium . . . . given that they know we're coming, we'll all need as many people as possible to be there right when the park opens."

189. Defendant Kessler told Discord participants: "EVERYONE needs to get to the park as early as possible and defend our territory." He suggested that camping out at the monument the night before would give them "[t]he most extremely prepared position." In these

remarks, Kessler referred to (and actively encouraged) preparation for violence against racial and religious minorities and anyone who supported their cause.

190. A co-conspirator asked the Discord group: "So are we going to occupy very early? Or try and force this commie scum out after the fact? I'm good with either." Another participant responded, "We will be fine as long as we have bodies there and willing to remove whoever is in our way. Vanguard is fabricating 20 additional shields. We should have a good amount between organizations. We just need to make sure we have bodies there ready to rock."

191. Consistent with the conspiracy's effort to organize and maximize violent acts, a co-conspirator and moderator on Discord told participants "we'll be putting out a video for basic formation, roles, and commands to all of the group leaders shortly," and posted a "Shields & Shield Tactics Primer" made by the "Detroit Right Wings," as well as a video illustrating shield fighting techniques, to be studied by participants. Defendant Mosley said: "I run this [the Unite the Right "rally"] as a military operation . . . I was in the army."

192. Defendants took no steps to prevent, or aid in preventing, the intimidating, threatening, and otherwise illegal conduct they knew was being planned and coordinated.

2) The Events On August 12 Were Intentionally Violent In Accordance with Defendants' Planning

193. According to former Charlottesville Police Chief Al S. Thomas, Jr., Defendants refused to follow a plan that had been worked out to keep them separated from the counter-protesters. For example, instead of entering the park from one entrance, they came in from all sides.

194. Most of the Defendant groups arrived in military formations, armed like paramilitary forces—carrying, among other things, guns, shields, protective gear, flags, and rods. They shouted commands at their groups to "move forward" or "retreat." Governor Terry

McAuliffe stated that "80 percent of the people here had semiautomatic weapons . . . you saw the militia walking down the street, you would have thought they were an army."

195. Four members of Defendants Nationalist Front, League of the South, NSM, TWP, and Vanguard America met at a pre-set location in order to march to Emancipation Park in formation.

196. Defendant Vanguard America marched to the Park first, chanting "Blood and soil!" Members of the group were in uniforms, as instructed, dressed in helmets, white or black polos, and khakis, and wielded matching shields and flags. Defendant Fields (who was wearing the uniform white polo, khakis and carrying a black shield with the Vanguard logo) marched with Vanguard America.

197. Defendant League of the South, led by defendant Michael Hill, followed. Like Defendant Vanguard America, they marched with coordinated shields and flags and carried rods and other weapons.

198. One member of Defendant League of the South explained that he attended the Unite the Right "rally" because: "I intend to stand for the South and die for it if need be. They will not replace us."

199. Defendant TWP marched behind Defendant League of the South, and Defendant Parrott marched with TWP. Defendant Heimbach guided the group, wearing a black combat helmet with a bodyguard close on his heels.

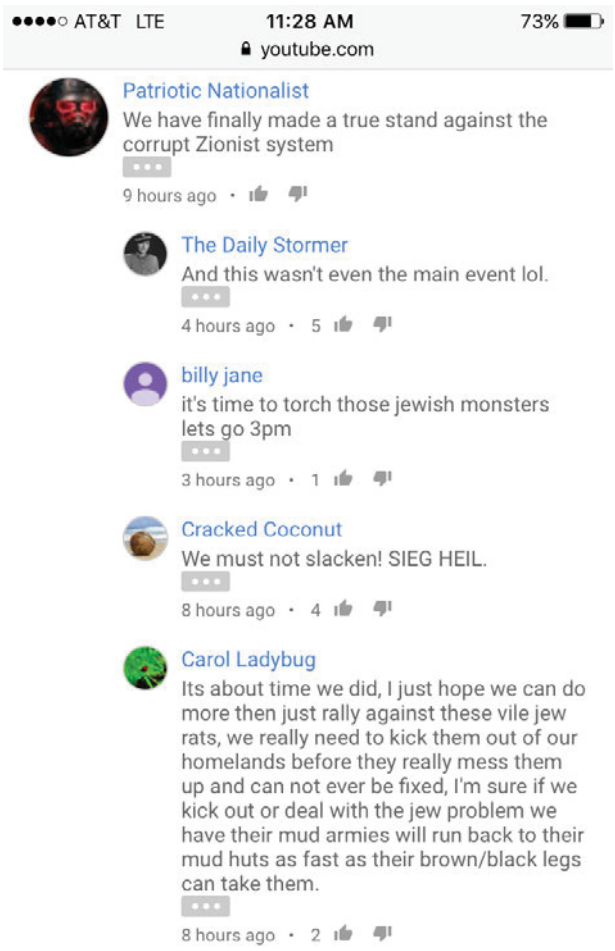
200. As the Nationalist Front groups and other Defendants and co-conspirators marched towards Emancipation Park, they shouted threatening, harassing, and intimidating language at Charlottesville residents and protesters on the basis of their race, religion, and ethnicity or their support for people of different races, religions, and ethnicities. These included

statements like, "Get the fuck out of our country, bitches! Yeah, come up to me! Come up to me, bitch!"

201. Marching down Jefferson Street, Defendants and co-conspirators passed the synagogue where Plaintiff Pearce is a member. During the Shabbat services, three co-conspirators in uniforms and semi-automatic rifles stood across from the temple. As others paraded past, they shouted, "There's the synagogue!" followed by chants of "Sieg Heil" and other anti-Semitic language. Some carried flags with swastikas and other Nazi symbols. Defendant Ray, intending to threaten, intimidate, and harass Charlottesville's Jewish population, carried a banner (later posted on Daily Stormer's website) that read "Gas the kikes, race war now!"[9] Defendant Ray also told a woman to "put on a fucking burka" and called her a "sharia whore." He ended by proclaiming: "Hitler did nothing wrong." These acts were fully consistent with the broader campaign of racial and religious suppression at the heart of Defendants' conspiracy.

202. Later that day, in a thread with Daily Stormer, co-conspirators suggested meeting at 3:00 p.m. to "torch those Jewish monsters." After seeing their exchange, the Charlottesville mayor made a frantic appeal to the Secretary of Public Safety asking for police protection at the Temple.

[9] As made clear in the Daily Stormer "style guide," references like this are only meant to seem hyperbolic to the uninitiated. The Daily Stormer is aware that "[m]ost people are not comfortable with material that comes across as vitriolic, raging, non-ironic hatred," and so "[t]he undoctrinated should not be able to tell if we are joking or not. There should also be a conscious awareness of mocking stereotypes of hateful racists." But according to Defendant Andrew Anglin, who drafted the style guide, "[t]his is obviously a ploy and I actually do want to gas kikes."



203. By contrast, Plaintiff Wispelwey had organized a 6:00 a.m. interfaith prayer "sunrise" service that was held at the historical African-American First Baptist Church on West Main Street.

204. After the service, a number of community members left the church to hold a peaceful march from the nearby Jefferson School African American Heritage Center to McGuffey Park. Others, including Plaintiff Wispelwey, silently marched with other clergy members directly from the sunrise service to Emancipation Park.

205. When Plaintiff Wispelwey and his fellow clergy arrived at Emancipation Park, around 8:00 a.m., they were confronted by heavily armed militiamen and extremists, many in full military attire with semiautomatic rifles and pistols. Plaintiff Wispelwey and other clergy members locked arms and knelt before them.

206. As they had planned, Defendants and their co-conspirators approached Emancipation Park in coordinated waves of passenger vans. Peinovich, flanked by his "security team," approached Emancipation Park in the "third or the fourth wave."

207. Consistent with their elaborate planning and lessons in battlefield tactics, Defendants and their co-conspirators charged through the peaceful clergy when they arrived at the park. Many of the clergy were pushed to the ground, and Plaintiff Wispelwey was knocked into a bush. A co-conspirator stood staring Plaintiff Wispelwey directly in the eyes and repeatedly shouting "fuck you, faggot" at him.

208. The violence by the Defendants at the entrance to Emancipation Park followed a consistent pattern according to their pre-set plan. The Defendants would "use shields, flags, or fists" to break through the blockade of counter-protestors, would succeed in entering the park, and then another wave would arrive. In between each wave, counter-protestors would attempt to reassemble before the next arrived. This played out at least half a dozen times.

209. After the being assaulted, Plaintiff Wispelwey and other clergy were afraid that they could get seriously injured or would suffer another, more serious attack. As a result of Defendants' and their co-conspirators' actions, and as the violence escalated, Plaintiff Wispelwey was forced to end his peaceful protest and leave the park where he and others were lawfully standing.

210. Plaintiff Romero experienced a similar attack by Defendants and their co-conspirators. Having linked arms with a group of women facing Defendants and co-conspirators, who were clad in shields and helmets outside Emancipation Park, Romero was pushed against a police car as the Defendants and co-conspirators sought to move through Romero's group. During this assault, Romero was also spit on.

211. Defendants bragged about their violence after the fact. Defendant Parrott, for example, wrote an account of the Unite the Right "rally" in "Catcher in the Reich: My Account of my Experience in Charlottesville." He wrote that Defendants TWP, League of the South, NSM, and other Nationalist Front groups joined together "to help create two shield walls" for "the fight." He explained, "While most of the Identity Evropa men were occupied on other fronts, they sent a detachment of fighters to assist us and to relay intelligence to Jason Kessler and other organizers. They offered more fighters, but we had our positions amply covered." He further said, in an interview with the *Los Angeles Times*:

> With a full-throated rebel yell, the League broke through the wall of degenerates and TradWorker managed to enter the Lee Park venue itself while they were largely still reeling. Michael Tubbs, an especially imposing League organizer towered over and pushed through the antifa like a Tyrannosaurus among raptors as league fighters with shields put their training to work.

212. Defendant Hill later exclaimed that: "Mr. Tubbs was everywhere the chaos was."

213. By around 10:00 a.m., having charged through protesters, pushing and shoving them with their shields and rods, Defendants TWP, NSM, and League of the South lined up inside Emancipation Park, led by, among others, Defendants Schoep, Hill, Heimbach, and Parrott. Defendant Parrott explained that they had "stuck with the original plan to define and secure the event perimeter."

214. Once inside the Park, Defendants' racial, religious, and ethnically motivated violence did not stop. It escalated.

215. As they had planned, Defendants used their shields and rods to plow through people and knock them over. They used rods and flags to assault protesters.

216. Defendants also encouraged violence by others. Over the course of the morning, Daily Stormer, through a livefeed maintained by Defendants Anglin and Ray and other Daily Stormer staff on the ground, encouraged followers to organize in groups and deliberately incited them to engage in violent acts. Among other exhortations, they told followers: "WHITE SHARIA NOW!" and "WE HAVE AN ARMY! THIS IS THE BEGINNING OF A WAR!"

217. Members of Defendant Vanguard America also communicated over the Southern Front server, sharing live feed streams and encouraging co-conspirators on the ground in Charlottesville to "Just incite a riot already." One co-conspirator on the Anticom Discord server, reported to the group: "Vanguard shields are holding the line."

218. Having witnessed the events of Friday and the anti-Semitic chants of defendants and their co-conspirators, Plaintiff Pearce struggled with whether she should attend the peaceful protest and whether she should identify herself as Jewish. On the one hand, she believed that it was important to peacefully protest, but she also feared for her safety. As she left her house, she made a Star of David out of duct tape and attached it to her shirt which bore a Hebrew letter in rainbow colors to show her support for the LGBT community. She went to Emancipation Park to peacefully protest the neo-Nazis and white supremacist presence in Charlottesville.

219. One of the rallygoers, a co-conspirator, saw Plaintiff Pearce on the street, pointed at her, and, shouted: "Oh good, they are marking themselves for us, so it is easy to find them." At the Park, Pearce was joined by her son, who also wore a Star of David and carried a rainbow flag.

220. While Plaintiff Pearce was standing, peacefully, outside of the Park, expressing her solidarity with other Jewish and non-white members of her community, another white-supremacist and co-conspirator threw an open bottle filled with a foul liquid at her—a common

tactic of Defendants and their co-conspirators. Indeed, in advance of the rally, co-conspirators had encouraged others to "[p]ee in balloons and throw them at communists / In self defense," and to "[f]eel free to urinate and defacate on your nearest antifa terrorist faggot pussy." The bottle struck Pearce on her leg and she could smell the foul liquid on her body.

221. In short order, peaceful protesters, including Plaintiffs Wispelwey and Pearce, were forced to leave the area of Emancipation Park as Defendants and co-conspirators attacked people with clubs, smoke bombs, and pepper spray, in fulfillment of their premeditated strategy of inflicting injury.

3) The Authorities Declared the Rally an Unlawful Assembly and Defendants and Co-Conspirators Intentionally Spread the Violence Outside Emancipation Park

222. By 11:22 a.m., before the permit for the "rally" even began, Charlottesville officials declared the gathering in Emancipation Park an unlawful assembly, defined under Virginia law as "whenever three or more persons assembled share the common intent to advance some lawful or unlawful purpose by the commission of an act or acts of unlawful force or violence likely to jeopardize seriously public safety, peace or order."

223. At 11:28 a.m., Governor McAuliffe declared a state of emergency, stating: "It is now clear that public safety cannot be safeguarded without additional powers, and that the mostly out-of-state protestors have come to Virginia to endanger our citizens and property. I am disgusted by the hatred, bigotry and violence these protestors have brought to our state over the past 24 hours."

224. Daily Stormer wrote shortly thereafter: "Someone is getting gassed! . . . LET'S HOPE IT'S JEWS!"

225. Jason Kessler and other Defendants directed the mob to move to McIntire Park. Some Defendants and co-conspirators, loaded into white vans, and Defendants Cantwell and Ray

shared one van. In his interview with *Vice* that day, Ray explained: "We're showing to this parasitic class of anti-white vermin that this is our country. This country was built by our forefathers. It was sustained by us. It's going to remain our country."

226. Daily Stormer encouraged its followers to go to McIntire Park and assemble "behind" Defendants Ray and Cantwell, and incited the crowd to violence:

> **12:42 PM:**
>
> STREETS BELONG TO US!
>
> COPS WON'T INTERVENE!
>
> > Clash between protesters and counter protesters. Police says "We'll not intervene until given command to do so." #Charlottesville pic.twitter.com/UkRDINn2mv
> >
> > — ACLU of Virginia (@ACLUVA) August 12, 2017
>
> **GET TO MCINTIRE PARK NOW AND FIND AZZMADOR, CANTWELL OR SACCO VANDAL! STAY IN THE GROUP! DO NOT SEPARATE ONCE YOU ARE BEHIND ONE OF THESE THREE MEN!**
> **12:33 PM:**
>
> EVERYONE GO TO MCINTIRE PARK!
>
> GOOGLE MAP COORDINATES HERE!
>
> **12:31 PM:**
>
> FUCK YOU FAGGOTS!

227. Among those who followed their direction was Defendant Vanguard America. Defendant Schoep also marched to McIntire Park, attacking protestors along the way. He explained, "I was offered a ride to safety and declined to leave until the women and others were safe, so we just marched back through antifa . . . We went right through [antifa] like warriors." Defendant Parrott refused to leave Emancipation Park and was arrested by the police for failing to disperse. Parrott described his detention as being "a political prisoner for about 20 minutes."

228. By 1:00 p.m., Defendant Spencer and Peinovich, and their followers, had mostly reassembled in McIntire Park. Violence again broke out. One woman protesting Defendants' message was choked by co-conspirator Steven Balcaitis, who was wearing a t-shirt advertising a white nationalist and anti-Semitic website, Red Ice. As he grabbed her neck, he looked at a bystander and said, "Don't save her."

229. Defendant Spencer and Peinovich spoke to their followers at McIntire Park. Peinovich called the counter-protestors "savages."

230. Defendants at McIntire Park discussed returning to Emancipation Park in defiance of police orders. Defendant Mosley sought people with guns: "I need shooters," he said. "We're gonna send 200 people with long rifles back to that statue." According to a Defendant NSM twitter account, Defendant Schoep "led a group of 40 back the 1.3 miles from the 2nd park back to Lee Park, through Antifa and police interference!" They jeered: "So much respect for my Commander Jeff Schoep. I will go into battle with you anytime Sir 83/88!"

231. A few minutes after 1:00 p.m., Daily Stormer posted:

1:08 PM:

Apparently everyone is getting kicked out of McIntire park.

Everyone is getting kicked out of everywhere.

My advice is this:

HOLD YOUR FUCKING GROUND WHEREVER YOU ARE.

12:56 PM:

> Daily Stormer reccomendation: HOLD YOUR FUCKING GROUND. DON'T RETREAT. DON'T GIVE AN INCH. https://t.co/rYIXmSBidS
>
> — Daily Stormer Status (@rudhum) August 12, 2017

232. Defendants took no steps to prevent, or aid in preventing, the violent actions that they knew was being planned.

233. Some Defendants and co-conspirators stayed in the parks while others dispersed and began to terrorize residents in the downtown area of Charlottesville, near the pedestrian mall. Muñiz, wearing a t-shirt with a representation of women of color, witnessed the marchers walk back to town from McIntire Park and then followed herself to join a group of peaceful counter-demonstrators.

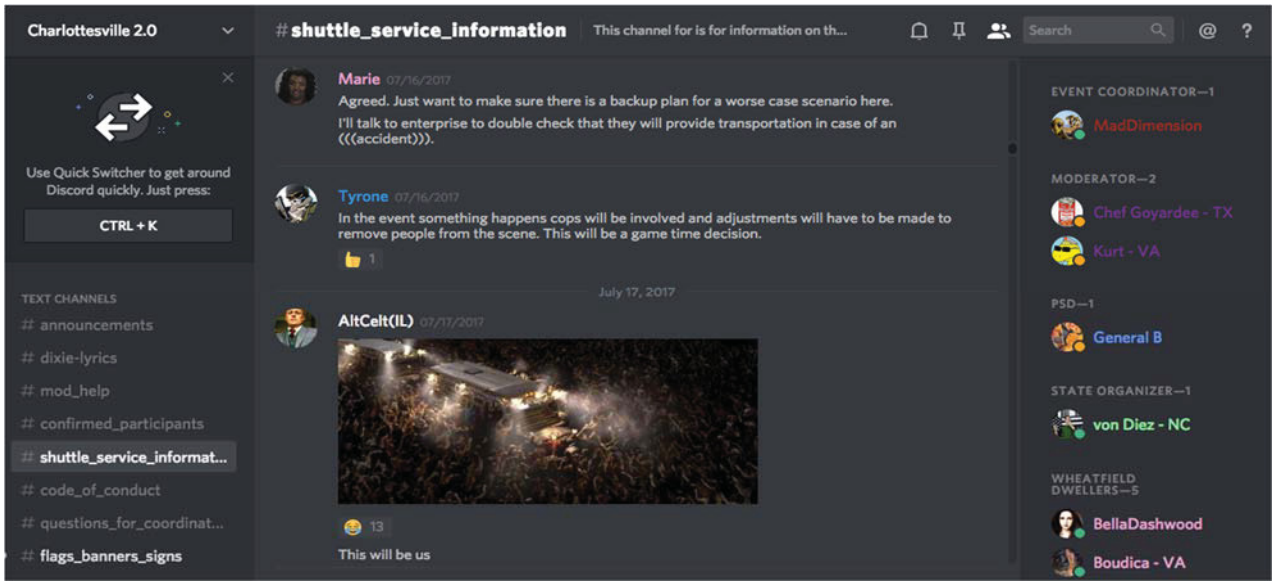
234. On the mall, Defendants and co-conspirators again brought violence. One co-conspirator, for example, was caught on video punching two peaceful counter-protestors directly in the face.

4) The Car Attack

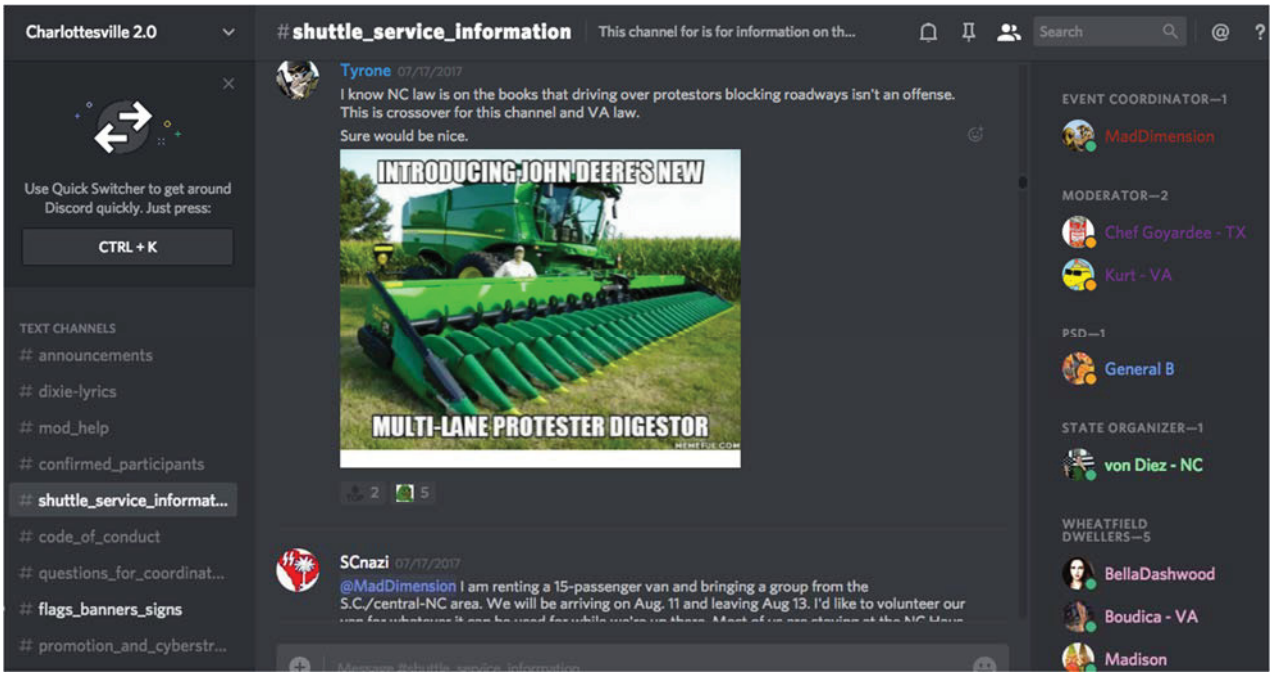
235. "Run Them Over" is a popular anti-Black Lives Matter and anti-racial justice protest catchphrase and shows up in memes and comments across the Internet.[10] In late January 2017, Fox Nation, the opinion website operated by Fox News, tweeted out a "Reel Of Cars Plowing Through Protestors Trying To Block The Road." The author of the video piece, which originally appeared on the Daily Caller, wrote: "Here's a compilation of liberal protesters getting pushed out of the way by cars and trucks" and "Study the technique; it may prove useful in the next four years." On Facebook, the author bragged about the popularity of the piece, boasting that he "[m]ade a profit for the company today. Went from 400,000 to 2 million views in a 24 hour timespace #winning."

[10] Over the past two years, the imagery of running protestors over with a car has gained currency among Defendants and others. Defendant Heimbach encouraged a police car to mow down peaceful protestors. An article reports that Heimbach was walking near the parade route when he encountered a group of demonstrators holding signs about water preservation. A black SUV with police plates drove up and stopped in front of the demonstrators. An officer leaned out the window and asked them to step aside so that they could pass. "Don't stop, officer," shouted Heimbach as the SUV made its way through the group, "Fucking step on the gas!"

236. The same trope was used as part of planning for the Unite the Right "rally." On Discord, for example, in response to a post from Tyrone that if "something happens . . . adjustments will have to be made to remove people from the scene," co-conspirator "AltCelt(IL)" responded with an image from a famous scene in the movie *Dawn of the Dead*, in which the protagonists retrofit buses with chainsaws and barbed wire to escape a mall by running over thousands of swarming zombies. AltCelt(IL) added a "crying laughing" emoji and wrote "This will be us."



237. Tyrone replied with picture of a John Deere tractor captioned "Introducing John Deere's new multi-lane protestor digestor" and commented, "I know NC law is on the books that driving over protesters blocking roadway isn't an offense… Sure would be nice."



238. On the same day (July 17, 2017), Tyrone asked the #virginia_laws channel, "*Is it legal to run over protestors blocking roadways? I'm NOT just shitposting. I would like clarification. I know it's legal in NC and a few other states. I'm legitimately curious for the answer.*" Two participants reacted to this post with red heart emojis.

239. Another co-conspirator on Discord, using the #virginia_laws channel, posted a photo of an armored military tank and wrote: "Is this legal in VA?" Eleven participants responded with emojis expressing approval.

240. Similarly, when Defendant Kessler asked the #demonstration_tactics channel for advice on planning a march, one co-conspirator, "PrimitveXaoc," encouraged the use of sidewalks because "straight through the streets like they did a few weeks ago for the 'community defense' March was awful (Antifa)." He posted several photos from that march and wrote: "These fools had babies and children in the streets dragging banners over cars blocking their

view and such. Too bad the civilians didn't just make new speed bumps for some of these scum."

241. At approximately 1:40 p.m., in furtherance of the conspiracy, Defendant Fields drove his Dodge Challenger onto Fourth Street, idled for a moment while his vehicle faced the peaceful protesters, and then deliberately accelerated into the crowd.

242. Plaintiffs Martin, Blair, Sines, Muñiz, Alvarado, Baker, and Romero were marching up Fourth Street when Fields attacked. Plaintiff Muñiz had walked to the front of the crowd when it was at the intersection of Fourth Street and Water Street to take a picture of the gathering. When the crowd turned left onto Fourth Street, Muñiz was still towards the front of the crowd.

243. Plaintiffs Martin and Blair were approaching the same intersection, walking up Fourth Street towards the downtown mall, with their friend, Heather Heyer. As he saw the car speeding down the road, Martin pushed Blair out of the path of the moving car. She fell to the ground and sustained injuries, including a hematoma on her left side and a gash on her right arm. Martin was hit directly by the car, sustaining serious injuries, including a broken leg, fractured ankle, and multiple bruises.

244. He is pictured below, flying through the air after the car slammed into his body.

245. Looking for Martin on the street, Blair saw people lying on the ground and bleeding. She stepped over them looking for Martin.

246. Blair found Martin on the ground, where people were trying to help him. Fifteen minutes after the attack, Martin was taken to the hospital and Blair rode in the ambulance with him. Blair did not receive immediate treatment for her injuries because she was looking after Martin.

247. While waiting in the hospital, Blair learned that a woman had died in the car attack. She feared that she knew who it was, and began asking everyone around her if they knew who it was. Eventually she learned that it was her friend, Heather Heyer, who had been struck and killed.

248. Plaintiff Baker also was thrown through the air when he was struck by Defendant Fields's car. In the picture above, he is upside-down as he flipped over the car during the attack. Baker suffered severe injuries, including a concussion, torn ligament in his left wrist, lacerations, and a torn labrum in his right hip.

249. Plaintiff Romero was hit directly by Defendant Fields's car. The impact threw her against a parked car, which she hit before falling to the ground. Plaintiff Romero recalls wanting to lie down and close her eyes, but she thought that if she closed her eyes and gave up, she would die. She attempted to get up, but struggled and was told by a bystander to sit back down.

250. Romero is pictured below receiving initial care from bystanders:

251. Covered in blood from a skull fracture sustained during the attack, Romero was carried to an ambulance, where a medic informed her that she had been unconscious as they

helped her down Fourth Street. Before falling unconscious, Romero had begged bystanders to call her mother, as she had lost her phone when struck by Fields's car.

252. Plaintiff Alvarado, who attended the events with Plaintiff Romero, was also hit by Defendant Fields's car. The impact of the car knocked her to the ground. Initially filled with adrenaline, she immediately picked herself up and looked for her friend Romero, who had been hit. Alvarado then watched as Defendant Fields drove his car in reverse into the crowd she was standing in. Fields narrowly missed hitting Alvarado again because she was able to press closer to the adjoining wall. Alvarado continued to fear that the car would come back down the street.

253. Plaintiff Alvarado then went to assist Plaintiff Romero. She supported Romero as they walked up the street until Romero was put into the ambulance. Alvarado was subsequently directed to the medical tent, where she was treated for her injuries.

254. Plaintiffs Muñiz and Sines narrowly escaped being struck by the car. They witnessed belongings and bodies flying in the air. When they saw Defendant Fields speed his car in reverse—backing over many of the bodies he already hit—they were sure that he was going to come charging back into the crowd. Plaintiff Muñiz feared that the cars would be coming from all directions.

255. Plaintiff Muñiz ran away and collapsed on the side of the road. She suffered an acute stress reaction. Plaintiff Sines ran into an alleyway and was so shocked that she had difficulty forming any words. Fearing other attacks, she ran to her closest friend's house downtown.

256. Plaintiff Muñiz saw volunteer medics arriving. Muñiz was shaken and terrified and could not stand up. Muñiz feared that the incident was no longer over. Finally, when Muñiz

felt that no other attack was forthcoming, the medic got Muñiz to her feet and walked her to the trauma center.

257. Plaintiff Wispelwey was not at Market Street when the car attack occurred. When he learned of what happened, he sprinted to the site with other clergy to provide assistance, to support victims, and to help control the crowds so that medical vehicles could reach victims.

258. Plaintiff Pearce also rushed to the scene to provide care and, with the help of her son, tried to suppress the crowds so that medical vehicles could reach those injured.

259. But as Plaintiffs mourned and tried to care for one another, Defendants and co-conspirators celebrated and encouraged others to leave town immediately, before they found themselves in trouble.

260. Defendant Spencer tweeted "My recommendation: Disperse. Get out of Charlottesville city limits." Defendant Kessler retweeted him. At 2:25 pm, Defendant Hill tweeted "The League of the South had a good day in Charlottesville, Virginia. Our warriors acquitted themselves as men. God be praised!"

261. Concluding its live feed for the day, Daily Stormer posted: "THE STREET WAR HAS ENDED. WE WON. WE SHOWED THAT OUR IDEAS HAVE TO BE SHUT DOWN WITH VIOLENCE."

5) <u>After the Fact, Defendants Celebrated Their Successful Plan to Incite Violence</u>

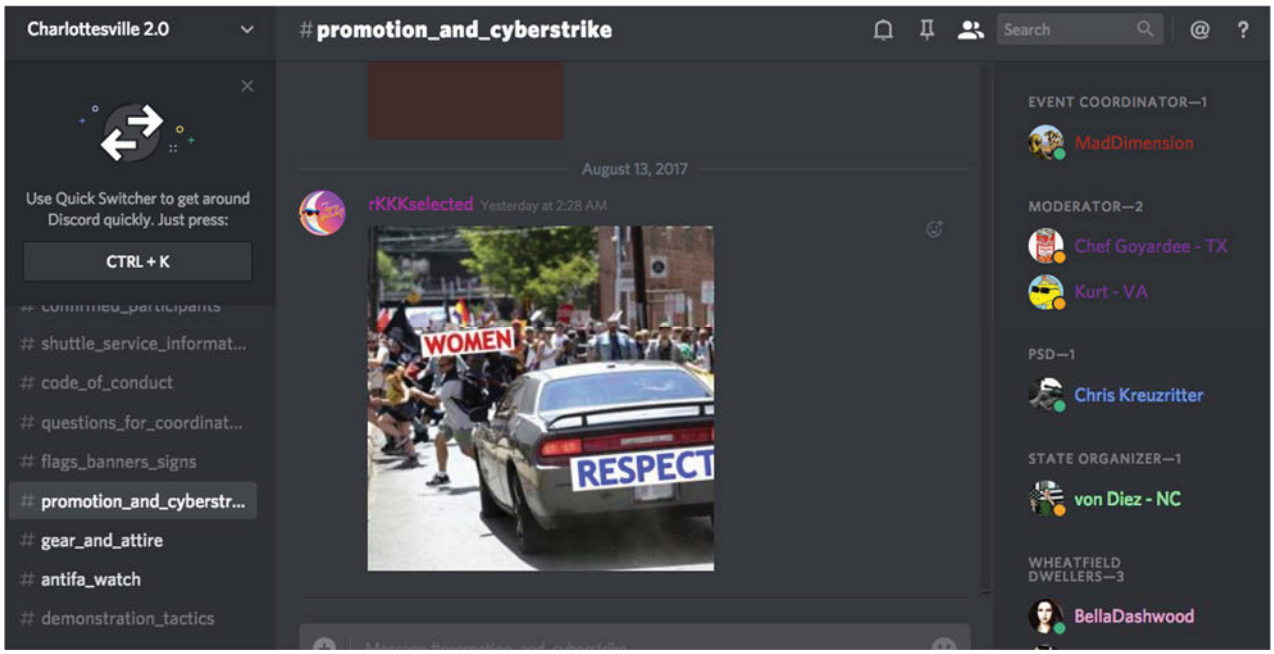
262. As news about the car attack spread, Defendants celebrated what they believed was their "victory" and mocked the death of Heather Heyer.

263. Only one hour after the car attack, Defendant East Coast Knights's prominent member "Kneuss" tweeted: "At least nobody important got hurt. #Charlottesville," followed by

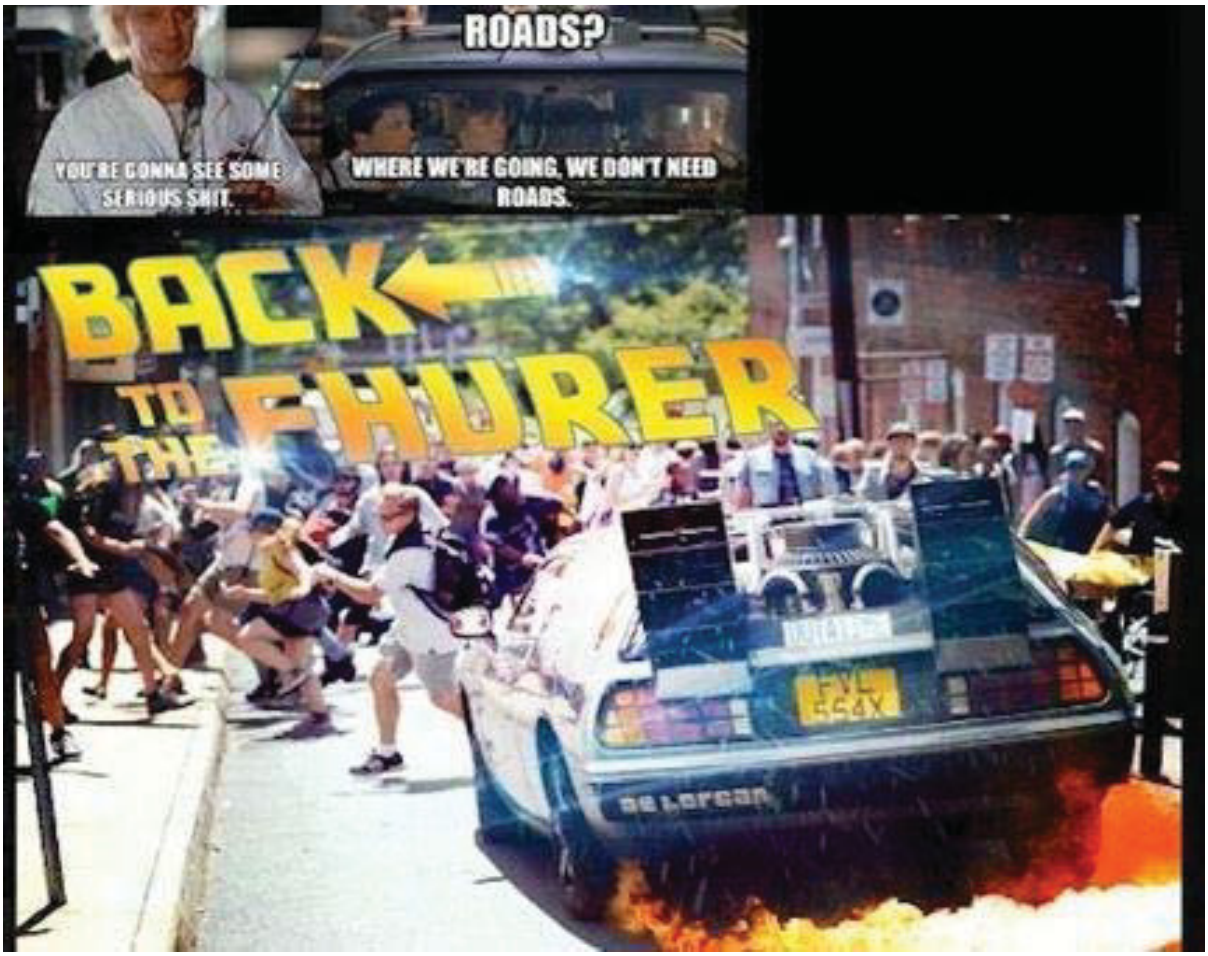
another tweet stating, "Dirty apes playing in the street gotta learn the hard way #Charlottesville."[11] Both tweets were liked by the East Coast Knights Twitter account.

264. Later that evening, Defendant Anglin posted a message: "Roadkill Nights Powered by Dodge. It's going down Saturday Aug. 12th from 11am to 10 pm."

265. The following day, Discord participants posted memified photos of Defendant Fields driving his car into the crowd, one labeling the car "RESPECT" and the crowd "WOMEN." Another meme circulated online labeled the image "BACK TO THE FHURER."



[11] Kneuss, who uses the handle "@realDRKNEUSS" on Twitter, interacts frequently with the East Coast Knights on Twitter and they retweet each other frequently; often they are each other's only retweet. On August 12, at 3:43 p m., Kneuss tweeted "Big shout out to League of the South, TWP, and NSM the East Coast Knights greatly appreciate you and everything you do. #Charlottesville." The East Coast Knights' Twitter account retweeted this tweet. On September 19, Kneuss tweeted a stylized image saying ECK 33/6, which is a reference to the East Coast Knights.



266. In Southern Front, the Discord server set up for southern members of Vanguard America, and the organization to which Defendant Fields belonged, members posted similar memes, such as a picture of Plaintiff Martin flying through the air with the caption "Can't Dodge This" and another labeling Fields a "USA Patriot." One co-conspirator wrote: "I don't think we should hand out shields anymore @everyone . . . We should hand out dodge challengers instead."

267. Daily Stormer encouraged followers to find out the details of Heather Heyer's funeral and to attend. A tweet from Defendant Kessler's account referred to Heather Heyer as a communist and said: "Communists have killed 94 million. Looks like it was payback time." Kessler claimed he was on a mixture of prescription drugs and alcohol when he wrote that message and did not remember it; an agent of Daily Stormer claimed credit for hacking Kessler's account and posting the tweet.

268. Defendant Heimbach said of the rally: "We achieved all of our objectives. We showed that our movement is not just online, but growing physically. We asserted ourselves as the voice of white America. We had zero vehicles damaged, all our people accounted for, and

moved a large amount of men and materials in and out of the area. I think we did an incredibly impressive job."

269. White supremacists debriefed on Discord, celebrating that protesters "got btfo [blown the fuck out] by all objective measures / only people who moved us a single inch were the zog-cops." "Kneuss" of the Defendant East Coast Knights celebrated: "3 fatalities in #Charlottesville. How many WN's [white nationalists]? NOT 1. Fuck the left, Fuck commies, and all kayaks belong in ovens. Amen." This tweet was liked by the East Coast Knights' official Twitter account.

270. A Vanguard America co-conspirator posted a Daily Stormer article on the Southern Front Discord server and wrote: "This was the biggest victory for our movement history. It was glorious. https://www.dailystormer.com/charlottesville-complete-victory-event-debriefing/" they celebrated, "We fucked up many commies . . . We hospitalized dozens . . . We got our guys out, without police help. We won. . . . Now you make the next rally and fight for your people." After the Saturday events, Thomas Ryan Rousseau, a leader of Vanguard America, reassured co-conspirators on the Southern Front Discord server: "I'm safe, with a dozen or so guys hanging out at a hotel sharing stories of the day."

271. Defendant Schoep tweeted: "It was an Honor to stand with U all in C'Ville this weeknd. NSM, NF, TWP, LOS, VA, ECK, CHS, and the rest, true warriors!" "Kneuss" and other co-conspirators retweeted and liked this. A co-conspirator posted on Facebook: "Don't feel ashamed of Cville. This is your future. This is the enemy."

272. Speaking of Charlottesville in an interview, the Grand Dragon for Defendant Loyal White Knights, said: "I'm sorta glad that them people got hit and I'm glad that girl died. They were a bunch of Communists out there protesting against somebody's freedom of speech,

so it doesn't bother me that they got hurt at all." Defendant Loyal White Knights also changed their outgoing voicemail message to say: "Nothing makes us more proud at the KKK than we see white patriots such as James Fields, Jr, age 20, taking his car and running over nine communist anti-fascist, killing one nigger-lover named Heather Heyer. James Fields hail victory. It's men like you that have made the great white race strong and will be strong again."

273. Likewise, Defendant Spencer told the *New York Times* that August 12 was "a huge moral victory." Defendant Cantwell told a *Vice* reporter: "I'd say it was worth it. Nobody on our side died . . . none of our people killed anybody unjustly . . . our rivals are just a bunch of stupid animals who don't pay attention that couldn't just get out of the way of the car." Speaking of counter-protesters like Plaintiffs, he said: "These people want violence and the right is just meeting market demand."

274. In addition to celebrating the August 12 "rally" as a success, Plaintiff Romero continued to be harassed and intimidated. Following her release from the hospital, Romero received three more phone calls from the same Klansman who had harassed her in July. On these phone calls, the man explained that he was trying to sell silver Dodge Challengers—the color, make, and model used by Defendants Fields in his car attack—in Charlottesville. Five minutes after Romero hung up, he called again with the same foreboding pitch.

275. Later, Romero received a fourth call, again from the same individual, in which the caller said, "Don't you hate it when there are random pedestrians blocking the road, and shit like that? There was one girl named Natalie Romero, she got caught in the accident? She should have died in the hospital." These calls terrified Romero and she continues to worry about her safety.

276. Plaintiff Romero, and several other of the Plaintiffs, also appeared on a list purporting to identify "members of Antifa" who had attended the August 12 "rally." The list identified who had been injured, and who among those "members of Antifa" were "known to be violent."[12] None of the Plaintiffs were identified on the list as among those "known to be violent." The list was created by a former member of Defendant Identity Evropa, who then joined Vanguard America in July 2017 and became an active participant on its Southern Front Discord server, bragging "I really can help track most Antifa" and "[m]y info is good and I will do everything I can to help VA [Vanguard America]."

277. The list he created was circulated on Gab, a Twitter-like social media site where neo-Nazis and white supremacists, many of whom have been kicked off of traditional social media platforms, share and post information. On Gab, at least one distribution of the purported "Antifa" list was directed to Defendant Cantwell, among others.

III. Defendants' Actions Have Caused and Will Continue to Cause Damage to Plaintiffs

A. The Unlawful Acts By Defendants, Co-Conspirators, and Others Acting at Their Direction Caused Serious Injury, Including To Plaintiffs

1) Defendants' Actions Caused Serious Bodily Injury and Damage to Property

278. The planned violence brought about by Defendants in Charlottesville on August 11 and 12 left an indelible mark on Plaintiffs, Charlottesville, and the rest of the country. Three innocent people lost their lives: a peaceful protestor, Heather Heyer, and two state law enforcement officers, Lieutenant H. Jay Cullen and Trooper Pilot Berke M.M. Bates. At least 34 individuals, including Plaintiffs, were injured and countless others were victims of assault. Hundreds, if not thousands, were subjected to verbal abuse, threats, harassment, and intimidation

[12] Defendants considered any individual opposing their "rally" as being "Antifa," regardless of whether they were violent or intended to be violent.

when Defendants, co-conspirators, and their followers chanted and shouted overtly anti-Semitic, racist, xenophobic, and homophobic messages.

279. Countless public officials, including Virginia's governor Terry McAuliffe, Attorney General Jeff Sessions, and Senators Cory Gardner, Ted Cruz, and Ron Wyden, have recognized that the Unite the Right "rallygoers" were motivated by racism, xenophobia, and anti-Semitism, that the "rallygoers" engaged in hate-based violence, and that the events that unfolded were properly characterized as domestic terrorism.

280. On September 12, 2017, Congress passed a unanimous and bipartisan joint resolution "rejecting white nationalists, white supremacists, the Ku Klux Klan, neo-Nazis, and other hate groups," recognizing that they engaged in a "horrific and violent display of bigotry" in Charlottesville, and condemning "the violence and domestic terrorist attack that took place during events between August 11 and August 12, 2017."

281. The joint resolution also documented that the hate-based groups are "organizing similar events" around the country, and urged the President to "speak out against hate groups that espouse racism, extremism, xenophobia, anti-Semitism, and white supremacy," and address "the threats posed by those groups," which are currently growing within the United States.

282. President Trump signed the resolution, and issued a signing statement "oppos[ing] hatred, bigotry, and racism in all forms."

2) Plaintiffs Suffered And Continue To Suffer Serious Injuries

283. Plaintiff Martin: As a result of the car attack, Martin was diagnosed with a shattered tibia in his left leg, a fractured ankle, and significant ligament damage. He underwent surgery and had two screws placed in his ankle. He experienced swelling in both ankles, and he could not walk for 3 or 4 days. He has been told to expect swelling in his left ankle for at least a

year. Due to the nature of his job, he will not be able to work for at least 8-9 months. He has suffered severe emotional distress that includes having mental flashbacks to the events of the "rally." Martin is going to mental counseling twice a week to seek support for his emotional trauma.

284. Plaintiff Blair: For days after the attack, Blair found herself short of breath, shaking, and crying uncontrollably at times. To this day she has trouble focusing, including at work, and finds herself often uncharacteristically angry. She is scared of Dodge challengers and loud noises. She is also experiencing flashbacks. She is withdrawn and reticent in ways she never was before. She has lost about ten pounds since the attack due to lack of appetite. She cannot walk by the location of the attack.

285. Plaintiff Romero: As a result of her assault and false imprisonment at the torchlight rally, Romero experienced burning in her eyes and on her shoulders, and the fear and anxiety she felt that night prevented her from sleeping. The car attack the following day left Romero with severe physical injuries and emotional trauma. Romero suffered a skull fracture, concussion, severe contusions, a fractured tooth, and scratches all over her body. She suffers from severe vertigo and experiences debilitating headaches that prevent her from leaving the house. She also cannot be exposed to bright light or look at white paper without experiencing pain. Her doctors are unsure of when these symptoms will subside. In addition to her physical injuries, Romero suffered severe emotional trauma as a result of the torchlight rally and car attack. Romero did not return to campus for classes this fall because of anxiety and fear associated with her assaults on August 11 and 12.

286. Plaintiff Alvarado: The car attack on August 12 caused Alvarado serious physical injuries and emotional trauma. Alvarado suffered a concussion and severe contusions to her

legs. As a result of her concussion, she continues to experience confusion, forgetfulness, and difficulty processing conversations. In addition to her physical injuries, the car attack also left her with severe emotional trauma. Alvarado suffers from depression, which has led to weight gain, isolation from her family and friends, and an inability to do daily tasks.

287. Plaintiff Baker: Baker suffered severe physical injuries and emotional distress. He tore the ligament in his left wrist, tore the labrum in his right hip, and suffered a concussion and several lacerations from the car attack. His arm was in a cast for six weeks. His injury required major surgery, with an eight-month recovery, including four months of physical therapy and four weeks out of work to heal. He cannot run or jump, and he had to give up some of his favorite activities, including soccer, lacrosse, and weight lifting. Baker will likely need a hip replacement as a result of the attack. He still suffers from these injuries, and cannot use his hip as well as he could before the attack.

288. Additionally, Baker continues to suffer from emotional distress. Everyday situations now make him anxious and can trigger flashbacks. He gets panic attacks. He feared making public statements about his experience for over 18 months. Baker was justifiably afraid for the safety of himself and his wife if he spoke out.

289. Plaintiff Wispelwey: Wispelwey continues to suffer from emotional distress. Wispelwey's emotional distress has manifested in physical symptoms including constricted chest pain, difficulty breathing, and chronic sleep issues. He regularly wakes up with night terrors recalling the events of August 11 and 12 and has had to take time off from his work in order to cope with the trauma of the weekend. He has seen a trauma-informed therapist, has been proscribed with sleep medication, and diagnosed with acute stress disorder. Wispelwey has also become hyper-vigilant, especially in crowds.

290. Plaintiff Muñiz: After experiencing the car attack, and being verbally harassed on August 12, Muñiz has suffered severe emotional injury. For the first week following the attack, Muñiz could not drive a car. She was afraid even to be a passenger without covering her left eye, because the sight of oncoming traffic was terrifying. Muñiz has since experienced triggers—moments where she relives the fear of that day and she shakes and trembles. She has suffered a few episodes, in which she has fallen to the ground in a catatonic state and can do nothing but cry and drool for long periods. She has been sleeping erratically, has suffered short term memory issues, and has become socially withdrawn. She has been unable to obtain medical care for other conditions due to her stress, so she continues to suffer from other ailments. She is seeing a therapist multiple times per week and has started therapy for post-traumatic stress. At work, Muñiz used to manage a department of around twenty people, with two managers beneath her.

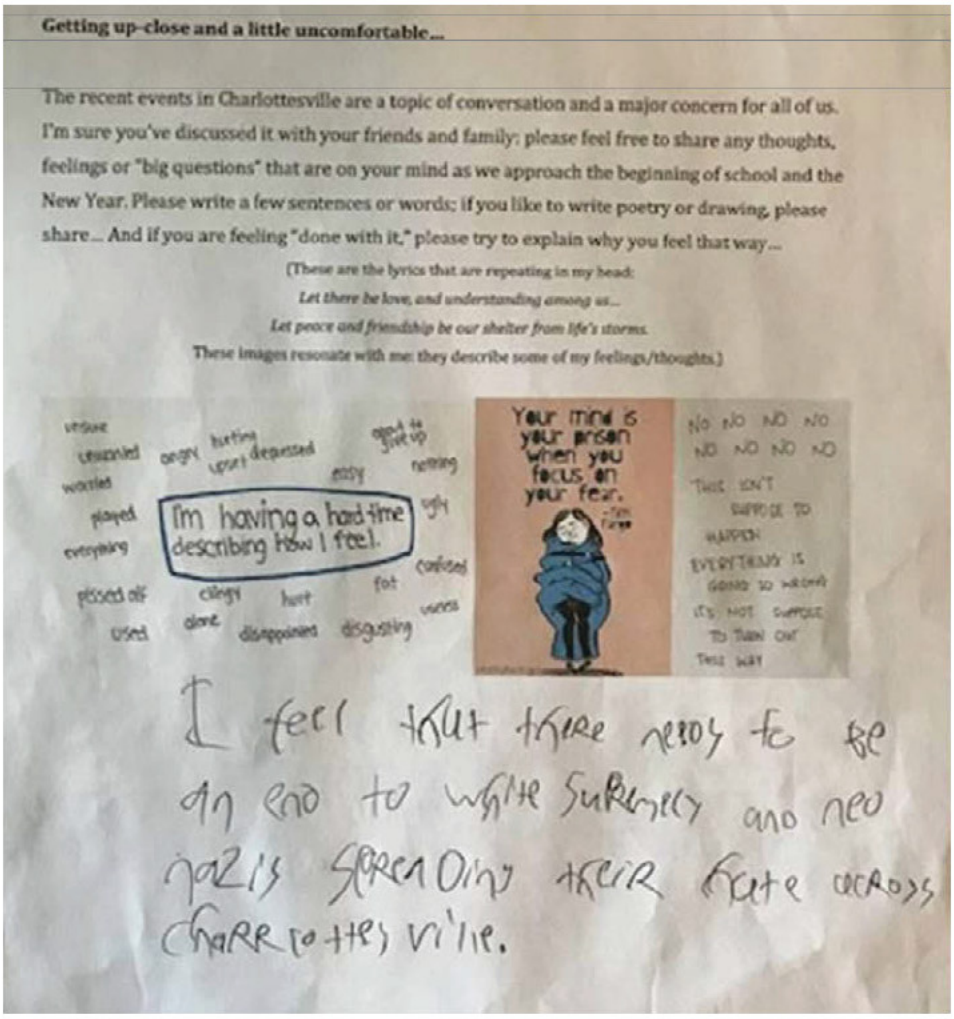
291. Unable to return to work, Muñiz was on leave for disability during which time she was paid 70% of her pay, and has lost other financial benefits, such as tuition reimbursement. She returned to work on a reduced schedule on November 1, but her company made a decision that she is not capable of doing that job anymore so she was placed in a new role with less responsibility. Medical professionals have diagnosed Muñiz with acute stress disorder. Muñiz returned to work full-time on January 2, although in her new role with less responsibility. She is undergoing weekly therapy for her symptoms.

292. Plaintiff John Doe: As a result of being barked at, yelled at, and physically assaulted, John Doe has suffered numerous emotional injuries. He has had difficulty focusing in school and is constantly recalling the trauma of Friday evening. When he walks past the Thomas Jefferson statue on his campus, he is immediately triggered by the recollection of the events on

August 11. Since the "rally," John Doe has had difficulty sleeping and has developed a heightened, anxious, sense of awareness in public spaces. John Doe also had to miss two weeks of work.

293. Plaintiff Sines: Upon witnessing the car attack and nearly being hit, Sines suffered extreme emotional distress and shock. She often wakes up with nightmares of the car attack and her academic performance has suffered in law school as a result. Sines is unable to focus, and has missed classes due to her emotional distress. Sines is also now hyper-vigilant, and afraid in her own home.

294. Plaintiff Pearce: In addition to the physical and verbal, religious-based assault Pearce experienced on August 12, she continues to suffer serious emotional distress. In his Hebrew school class, Pearce's son was asked to answer several writing prompts. In response to the question, "what makes me uncomfortable about being Jewish," he wrote "neo Nazis."



Since August 12, and in response to threats made against it by Defendants and co-conspirators, Pearce's synagogue Beth Israel has adopted a new, elaborate security protocol that limits parents' ability to pick up their children from Hebrew school. Whereas prior to August 11, student pick up was a relaxed, joyful process during which parents would chat and children would play, parents must now enter a code to a locked, secure door, after which they are permitted to wait quietly inside the door for their child to be retrieved. Moreover, Plaintiff Pearce is now afraid for her safety and for the safety of her family at the Synagogue. And since

the attack, she has had to explain to her son why there are always police officers standing guard outside the synagogue.

B. Defendants Will Continue to Cause Violence and Intimidation Unless Restrained: "We Will Be Back"

295. In the weeks after the "rally" and the mass of injuries in Charlottesville, Defendants not only claimed "victory," but swore that they would return. Already, they have followed through on their promise.

296. Defendant Spencer said: "To Mayor Mike Signer and Wes Bellamy and all these little creeps of this little town who don't understand who they're dealing with—the local little losers—we are never backing down. We are going to be back."

297. Defendant Anglin wrote on August 14: "As for media rumors that the [Daily Stormer] site will be shut down . . . . You should know better. It's going to take bullets to stop us."

298. Co-conspirator McLaren tweeted: "Brothers & sisters across the Alt Right—this is a taste of how it feels to be the tip of the spear entering our civilizational crisis." A few days later, he tweeted: "If you were there in #Charlottesville, you're amused at the pronouncements of the Alt Right's death. We are only just beginning."

299. "There's no way in hell I'm not going back to Charlottesville," Defendant Spencer declared at a press conference with Defendant Damigo. Defendant Mosley told the Huffington Post: "Our people are feeling real good right now…This day was a milestone pushing us into our next stage. We had a large turnout. We're coming back to Charlottesville."

300. The Daily Stormer also vowed that it would hold similar events "soon." A post on the website read: "We are going to start doing this nonstop. Across the country . . . We are

going to go bigger than Charlottesville. We are going to go huge." Furthermore, it told readers that "[w]e are now at war," and promised to "take over the country."

301. Defendant Kessler promised: "We're going to have bigger and bigger events in Charlottesville."

302. Defendants plan for these other events to be violent. After the Unite the Right "rally," Defendant Cantwell explained, "I came pretty well prepared for this thing today," while pulling out three pistols, two semi-automatic machine guns, and a knife. Of the next "alt-right protest," he said, "it's going to be tough to top but we're up to the challenge . . . I think a lot more people are going to die before we're done here, frankly."

303. Following his release on bond for the offenses committed on August 12, Defendant Cantwell remarked that after his stint in prison, he wants to "turn it up to 11."

304. One week after the Unite the Right "rally," Richard Spencer's website, Vincent Law, published "The Alt-Right is Finished Debating: No More Words, Only Preparation Now":

> Now, what happens next? Our side certainly isn't ready for mass action . . . yet. And there are no street actions planned for the near future. Still, the lines have been drawn. Think about those brave young men at Charlottesville. There is no going back for them. . . .
>
> The public will see very soon that debate is pointless. There are no principles at play anymore. Only our tribe and theirs. And only one group out there has drawn a line in the clay and decided to make a stand for what is theirs by birth, by blood and by the will of God. The Alt-Right is finished debating, negotiating, surrendering. We're ready to close ranks and fight for what is ours. Post-Charlottesville our fleet lies at the bottom of a deep and troubled sea and we can only march on forward like Cortez once did. And like him, we stand poised to conquer the continent.

305. On Saturday, October 7, Defendant Spencer and other co-conspirators returned to Charlottesville. The called the event "Charlottesville 3.0." Again, they carried tiki torches, and

again they chanted "You will not replace us." But this time, they added: "We will be back, we will be back."

306. On November 27, 2017, Defendant Kessler filed an application for a permit to hold another "rally" in Charlottesville. Although that application was denied, Kessler has indicated that it will proceed nonetheless. It is scheduled to occur on August 11 and 12, 2018.

C. **Defendants Continue Their Efforts of Mutual Support and Coordination**

307. Using many of the same platforms the Defendants used to fund their pre-"rally" coordination and planning, Defendants have since provided mutual support to defray the costs associated with their unlawful conduct.

308. Defendant Cantwell posted bail in connection with his felony indictment by crowdfunding on white-supremacist supportive sites Hatreon and GoyFundMe. Cantwell's GoyFundMe page solicited donations for the "1433 Justice Fund," a personalized version of the popular white supremacist numeric symbol "1488." The "14" stands for the 14 Words slogan, which is the heart of Cantwell and his co-conspirators' ideology: "We must secure the existence of our people and a future for white children." In place of the usual "88," which is shorthand for "Heil Hitler" (H being the 8th letter of the alphabet), "33" is a stand-in for "CC" or "Chris Cantwell."

309. While in prison, Defendant Cantwell continued to broadcast his podcast Radical Agenda with the assistance of Peinovich. Moreover, Peinovich assisted Cantwell in his fundraising by distributing recordings of phone calls from jail in which Cantwell makes pleas for donations.

310. Similarly, Defendant Damigo, founder of co-Defendant Identity Evropa, established a purported "Identity Evropa Defense Fund," and solicited donations for himself,

Defendant Mosley, and Defendant Identity Evropa. Mosley and Damigo also appeared together with Defendant Spencer on "Red Ice TV" to solicit donations.

CONSPIRACY ACTS

311. As detailed above, all Defendants had an agreement and understanding to engage in, promote, and incite racial, religious, and ethnicity-based harassment and violence. They did so through, among other things, using and encouraging the use of weapons and caustic substances, military-style marches, burning torches, intimidating iconography, and threats of violence. They did so in order to (a) injure black and Jewish residents of Virginia by denying them the equal privileges and immunities of citizenship, and the use, benefits and privileges of property and/or contractual relationships, (b) further Defendants' cause of recruiting new followers to engage in racial, religious, and ethnically-motivated violence referenced above both at the Unite the Right "rally" and in the future, and (c) compel the city of Charlottesville to maintain the statue of Robert E Lee in Emancipation Park as a means of furthering their aforementioned goals.

312. All Defendants, with the exception of Defendant Fields, on behalf of themselves or the organizations for which they are agents, planned and coordinated the Unite the Right "rally," encouraged attendance, actively organized followers to attend, coordinated logistical support to attendees, promoted the "rally" as violent, and encouraged attendees to prepare for and commit violent acts.

313. Among other things, they used online and media platforms to encourage attendance at the Unite the Right "rally," to discuss and promote causing harm to Jewish people and people of color, and to promote violence.

314. Defendant Spencer and co-conspirator McLaren met in person to plan unlawful acts of violence, intimidation, and denial of equal protection for the Unite the Right events.

315. Defendants Cantwell and Kessler met in person in Charlottesville to plan unlawful acts of violence, intimidation, and denial of equal protection for the Unite the Right events.

316. Defendants Ray, Cantwell, and Mosley and co-conspirator David Duke attended an in-person planning meeting on August 11 to plan unlawful acts of violence, intimidation, and denial of equal protection at the Unite the Right events.

317. Defendants Anglin and Ray (using, among other things, Daily Stormer's website), Hill, and East Coast Knights organized and caused others to attend the Unite the Right events and commit acts of violence, intimidation, and denial of equal protection.

318. Defendants Nationalist Front, NSM, TWP, League of the South, Vanguard America, East Coast Knights, and "other allies," coordinated their attendance as a "joint operation" in advance of August 12, in order to plan unlawful acts of violence, intimidation, and denial of equal protection at the Unite the Right events.

319. Defendant Damigo and his group Identity Evropa took a lead role in organizing white supremacist participation among people from outside Charlottesville to engage in unlawful acts of violence, intimidation, and denial of equal protection at the Unite the Right events.

320. Defendants Kessler and Mosley organized the "rally" and coordinated logistics, along with co-conspirator Tyrone, for attendees on August 12 in Charlottesville so that they would engage in unlawful acts of violence, intimidation, and denial of equal protection at the Unite the Right events.

321. Defendant Kessler and Mosley moderated, reviewed, and managed the Charlottesville discussion forum on the application named Discord to direct and plan unlawful acts of violence, intimidation, and denial of equal protection at the Unite the Right events. Along with Kessler and Mosley, Defendants Heimbach, Parrott, Cantwell, Ray, an agent of Daily Stormer (and, hence, Defendants Anglin and Moonbase Holdings), and co-conspirator Tyrone were all participants in Discord and in the direction, planning, and inciting of such unlawful acts through Discord, including the use of weapons and objects to inflict harm and intimidate. Defendants Vanguard America, Identity Evropa, TWP, League of the South, and Moonbase Holdings (through Daily Stormer) all had members on the Discord channel.

322. Defendants Cantwell, Ray, and Anglin, among others, advised rallygoers on bringing weapons.

323. Using Discord, Defendants Kessler and Mosley set up a channel for co-conspirators to coordinate unlawful acts at the Unite the Right events, including acts of violence, intimidation, and denial of equal protection.

324. Defendants Anglin, Ray, and, through Daily Stormer, Moonbase Holdings, set up a channel for co-conspirators to coordinate unlawful acts, including acts of violence, intimidation, and denial of equal protection, at the Unite the Right events.

325. Defendants Cantwell, Kessler, Mosley, Anglin, Ray, and others, raised funds, planned for legal support, and arranged travel for the participants who engaged in unlawful acts of violence, intimidation, and denial of equal protection at the Unite the Right events.

326. Defendants Invictus, Kessler, Spencer, Cantwell, Heimbach, and Hill were featured in the promotional poster for the Unite the Right "rally."

327. Defendants Cantwell, Mosley, Spencer, Kessler, Ray, Anglin, and co-conspirators planned and organized a "secret" torch parade at UVA for August 11, with a plan and intent to intimidate, threaten and harass Charlottesville residents, particularly Jews, blacks, and other minority residents.

328. Defendants Cantwell, Mosley, Spencer, Kessler, Ray and Invictus attended and participated in the violent August 11 torch parade, and directed and incited physical assaults and violence, the use of open flames, and the intimidation of minority residents and those who advocate for equal rights for minority citizens.

329. Defendant Cantwell assaulted peaceful protestors with mace, a caustic substance, during the August 11 march.

330. Co-conspirators attended the torchlight march on August 11 and engaged in acts of intimidation, harassment, and violence.

331. All Defendants, with the exception of Anglin, attended and participated in the Unite the Right "rally" on August 12, during which they threatened, intimidated, and harassed protestors and minority residents, and incited and engaged in violence. Defendant Fields attended with Vanguard America, wearing the uniform white polo and khakis, and carrying a black shield with the Vanguard logo.

332. All Defendants, with the exception of Defendant Fields, directed and incited acts of violence and intimidation at the Unite the Right "rally" on August 12.

333. Co-Conspirators attended the Unite the Right "rally" on August 12 and engaged in acts of intimidation, harassment, and violence.

334. Defendant Fields deliberately drove his Dodge Challenger into a crowd of peaceful protestors on August 12, intending to instill fear in the community and to cause injuries on a mass scale.

CAUSES OF ACTION

COUNT I: 42 U.S.C. § 1985(3)

335. Plaintiffs incorporate herein by reference the averments contained in all preceding paragraphs.

336. This Count is brought against all Defendants by all Plaintiffs except that (i) Plaintiff Baker asserts this claim only against Defendants Kessler, Spencer, Cantwell, Fields, Vanguard America, Ray, Damigo, Mosley, Identity Evropa, Heimbach, Parrott, Traditionalist Worker Party, Hill, Tubbs, League of the South, Schoep, National Socialist Movement, and Nationalist Front; and (ii) Plaintiff Pearce asserts this claim only against Defendants Anglin, Moonbase Holdings, LLC, East Coast Knights, FOAK, Invictus, and Loyal White Knights.

337. Defendants plotted, coordinated, and executed a common plan to engage in violence and intimidation in the streets of Charlottesville.

338. In furtherance of a conspiracy to violate the rights of Plaintiffs and other black and Jewish people and their supporters, Defendants repeatedly engaged in campaigns of violence, threats, and intimidation at Lee Park and throughout the city of Charlottesville.

339. Defendants have committed numerous overt acts in furtherance of the conspiracy to violate Plaintiffs' rights, which are set forth in the paragraphs above. Defendants have sought to create an atmosphere of violence against Plaintiffs, and to violate Plaintiffs' equal rights, including those under U.S.C. § 1982.

340. Co-conspirators whose identities are not known committed numerous additional acts in furtherance of the conspiracy to violate Plaintiffs' rights, including those alleged herein.

341. The illegal activities described were undertaken by Defendants, their agents, and co-conspirators as express overt acts pursuant to an unlawful conspiracy, the purpose of which was and is to discriminatorily deprive black, Jewish, nonwhite individuals, and their white supporters, of their rights to the equal protection of the laws and their rights to the equal enjoyment of the privileges and immunities of citizens of the United States guaranteed by the Constitution and laws, because of their race, religion, and open and obvious advocacy for the rights of nonwhite individuals.

342. As a result of the acts set out in the above paragraphs committed in furtherance of this conspiracy, Plaintiffs suffered injuries to their person or property and/or suffered the discriminatory deprivation of one or more of their rights or privileges guaranteed by the Constitution or laws because of one or more of the illegal overt acts of Defendants and their agents. These rights include but are not limited to their rights to be free of the badges and incidents of slavery pursuant to the Thirteenth Amendment, as well as their rights protected by 42 U.S.C. § 1982.

343. Because of Defendants' violation of Plaintiffs' rights, Plaintiffs have suffered numerous and various injuries, including bodily injury, injuries to property, lost income, and severe emotional distress.

COUNT II: 42 U.S.C. § 1986

344. Plaintiffs incorporate herein by reference the averments contained in all preceding paragraphs.

345. This Count is brought against all Defendants by all Plaintiffs except that (i) Plaintiff Baker asserts this claim only against Defendants Kessler, Spencer, Cantwell, Fields, Vanguard America, Ray, Damigo, Mosley, Identity Evropa, Heimbach, Parrott, Traditionalist Worker Party, Hill, Tubbs, League of the South, Schoep, National Socialist Movement, and Nationalist Front; and (ii) Plaintiff Pearce asserts this claim only against Defendants Anglin, Moonbase Holdings, LLC, East Coast Knights, FOAK, Invictus, and Loyal White Knights..

346. Defendants all possessed actual knowledge of the Section 1985(3) anti-civil rights conspiracy described in this complaint that was planned and then undertaken against the class of American citizens described—including a number of the Plaintiffs named herein.

347. Defendants, as organizers, planners, promoters, and leaders of the conspiracy, were each in a position and had the power to have stopped the anti-civil rights conspiracy or to aid in stopping it.

348. Each of the Defendants failed and refused to take any steps to attempt to stop this conspiracy or any of the overt acts committed in furtherance of the conspiracy so as to stop the injuries which occurred to Plaintiffs or to other members of the class of citizens targeted by the anti-civil rights conspiracy described.

349. The failure of Defendants to take any steps to aid in preventing the actions described herein, by informing the lawful authorities or otherwise, violated the command of 42 U.S.C. § 1986.

350. Plaintiffs suffered their injuries as a result of the individual Defendants' failure to stop the described conspiracy.

COUNT III: CIVIL CONSPIRACY

351. Plaintiffs incorporate herein by reference the averments contained in all preceding paragraphs.

352. This Count is brought against all Defendants by all Plaintiffs except that (i) Plaintiff Baker asserts this claim only against Defendants Kessler, Spencer, Cantwell, Fields, Vanguard America, Ray, Damigo, Mosley, Identity Evropa, Heimbach, Parrott, Traditionalist Worker Party, Hill, Tubbs, League of the South, Schoep, National Socialist Movement, and Nationalist Front; and (ii) Plaintiff Pearce asserts this claim only against Defendants Anglin, Moonbase Holdings, LLC, East Coast Knights, FOAK, Invictus, and Loyal White Knights.

353. Each Defendant conspired together and combined with one or more other persons to accomplish, through the concerted action described above, unlawful and tortious acts, including:

a. Subjecting persons to acts of intimidation or harassment, motivated by racial, religious, or ethnic animosity, in violation of Virginia Code § 8.01-42.1.

b. Directing violence at another person, motivated by racial, religious, or ethnic animosity, in violation of Virginia Code § 8.01-42.1.

c. Directing vandalism at a person's real or personal property, motivated by racial, religious, or ethnic animosity, in violation of Virginia Code § 8.01-42.1.

d. Causing or producing a riot, in violation of Virginia Code § 18.2-408.

e. Directing, inciting, or soliciting other persons participating in a riot to acts of force or violence in violation of Virginia Code § 18.2-408.

f. Causing public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof in violation of Virginia Code § 18.2-415.

g. Assembling a collection of people for the purpose and with the intention of committing, and actually committing, an assault or battery on another person, in violation of Virginia Code §§ 18.2-38, 18.2-42, and 18.2-42.1.

h. Assembling a collection of people for the purpose and with the intention of committing, and actually committing, an act of violence (as defined in Virginia Code § 19.2-297.1), in violation of Virginia Code §§ 18.2-38, 18.2-42, and 18.2-42.1.

i. Maliciously causing another person bodily injury by use of any explosive or fire, in violation of Virginia Code § 18.2-52.

j. Burning an object with the intent to intimidate on a highway or other public place in a manner having a direct tendency to place another person in reasonable fear of apprehension of death or bodily injury, in violation of Virginia Code § 18.2-423.01.

k. Burning an object with the intent to intimidate on the private property of another without permission, in violation of Virginia Code § 18.2-423.01.

l. Committing an act of violence with the intent to intimidate a civilian population at large, or influence the conduct or activities of a government through intimidation, in violation of § 18.2-46.5.

m. Possessing, using, selling, giving, distributing, or manufacturing a weapon or imitation weapon that could cause serious bodily harm in connection with an act of terrorism in violation of Virginia Code § 18.2-46.5.

n. Inviting, soliciting, recruiting, encouraging, or otherwise causing another to participate in an act of terrorism in violation of Virginia Code § 18.2-46.5.

o. Knowingly providing material support to an individual or organization whose primary objective is to commit an act of terrorism, with the intent to further the individual or organization's objectives, in violation of Virginia Code § 18.2-46.5.

p. Engaging in an overt act intended to inflict bodily harm, or intended to place the victim in fear or apprehension of bodily harm (assault).

q. Committing an unwanted touching that was neither consented to, excused, or justified (battery).

r. Causing reasonable apprehension that force will be used unless a person willingly submits and causing him to submit to the extent that he is denied freedom of action (false imprisonment).

354. Each of the Plaintiffs suffered damages resulting from acts committed in furtherance of the conspiracy.

355. As co-conspirators, Defendants are civilly liable to Plaintiffs for the actions of all individuals who acted in pursuit of the common conspiratorial scheme.

COUNT IV: NEGLIGENCE PER SE

(By Plaintiffs Muñiz, Sines, Blair, Martin, Alvarado, Baker, and Romero Against Defendant Fields)

356. Plaintiffs incorporate herein by reference the averments contained in all preceding paragraphs.

357. Pursuant to Virginia Code 18.2-46.5, any person who commits or conspires to commit or aids and abets the commission of an act of terrorism is guilty of a felony.

358. Virginia Code 18.2-46.4 defines an "act of terrorism" as, among other things, an act of violence committed with the intent to intimidate the civilian population at large.

359. Virginia Code 18.2-46.5 was enacted to protect the civilian population from acts of terrorism and violence.

360. Fields intentionally drove his vehicle into a group of civilians and counter-protestors with the intent to murder, injure, and intimidate the civilian population at large, in violation of Virginia Code § 18.2-46.5.

361. Plaintiffs, as members of the civilian population, belong to the class of persons for whose benefit Virginia Code § 18.2-46.5 was enacted and the violation of the Statute constitutes negligence per se.

362. The injuries suffered by Plaintiffs were the type of harm against which Virginia Code 18.2-46.5 was designed to protect.

363. Defendant's violation of Virginia Code § 18.2-46.5 directly and proximately caused the Plaintiffs harm.

COUNT V: VIOLATION OF VIRGINIA CODE § 8.01-42.1
CIVIL ACTION FOR RACIAL, RELIGIOUS, OR ETHNIC HARASSMENT

(By Plaintiffs Wispelwey, Muñiz, John Doe, Sines, Blair, Martin, Alvarado, and Romero Against Defendants Fields, Mosley, Spencer, Kessler, Ray, Cantwell, and Invictus)

364. Plaintiffs incorporate herein by reference the averments contained in all preceding paragraphs.

365. Virginia Code 8.01-42.1 creates a civil cause of action for any person who is subjected to the following if motivated by racial, religious, or ethnic animosity: (1) acts of intimidation or harassment; (2) violence directed at his or her person; or (3) vandalism directed against his or her real or personal property.

366. Plaintiffs Wispelwey, Muñiz, John Doe, Sines, Blair, Martin, Alvarado, and Romero were subjected to acts of intimidation and/or harassment, violence directed at their persons, and/or vandalism directed against their real and/or personal property.

367. These acts were motivated by Defendants' racial, religious, or ethnic animosity.

COUNT VI: ASSAULT AND BATTERY

(By Plaintiffs Muñiz, Sines, Blair, Martin, Alvarado, Baker, and Romero Against Defendant Fields)

368. Plaintiffs incorporate herein by reference the averments contained in all preceding paragraphs.

369. As a result of the intentional and unlawful acts of Defendants as described herein, Plaintiffs Muñiz, Sines, Blair, Martin, Alvarado, Baker, and Romero were placed in apprehension of harmful and/or offensive bodily contact, and suffered harmful, offensive bodily touching which was neither consented to, excused, or justified.

COUNT VII: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(By Plaintiffs Muñiz, Sines, Blair, Martin, Alvarado, Baker, and Romero Against Defendant Fields)

370. Plaintiffs incorporate herein by reference the averments contained in all preceding paragraphs.

371. Defendant Fields intentionally and/or recklessly drove his car into a crowd of counter-protestors with the intent to murder, severely injure, and intimidate a civilian population.

372. As a result of Defendant Fields's outrageous and extreme actions, Plaintiffs Muñiz, Blair, Martin, Alvarado, Baker, and Romero suffered severe emotional distress that no reasonable person could be expected to endure.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request an award of the following relief:

373. A declaratory judgment that the actions described herein deprived Plaintiffs of their rights under federal and state law.

374. Injunctive relief enjoining Defendants from future violations of rights guaranteed by state and federal law.

375. Compensatory and statutory damages in an amount to be determined at trial.

376. Punitive damages in an amount to be determined at trial.

377. Such other relief as the Court deems necessary and just.

Respectfully submitted,

s/ Robert T. Cahill

Robert T. Cahill (VSB 38562)
COOLEY LLP
11951 Freedom Drive, 14th Floor
Reston, VA 20190-5656
Telephone: (703) 456-8000
Fax: (703) 456-8100
Email: rcahill@cooley.com

Of Counsel for all Plaintiffs:

Roberta A. Kaplan (*pro hac vice*)
Julie E. Fink (*pro hac vice*)
Gabrielle E. Tenzer (*pro hac vice*)
Joshua A. Matz (*pro hac vice*)
Michael Low Bloch (*pro hac vice*)
KAPLAN HECKER & FINK, LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
Telephone: (212) 763-0883
Email: rkaplan@kaplanhecker.com
Email: jfink@kaplanhecker.com
Email: gtenzer@kaplanhecker.com
Email: jmatz@kaplanhecker.com
Email: mbloch@kaplanhecker.com

Alan Levine (*pro hac vice*)
Philip M. Bowman (*pro hac vice*)
COOLEY LLP
55 Hudson Yards
New York, NY 10001
Telephone: (212) 479-6000
Fax: (212) 479-6275
Email: alevine@cooley.com
Email: pbowman@cooley.com

David E. Mills (*pro hac vice*)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Telephone: (202) 842-7800
Fax: (202) 842-7899
Email: dmills@cooley.com

Karen L. Dunn (*pro hac vice*)
William A. Isaacson (*pro hac vice*)
Jessica E. Phillips (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
1401 New York Ave, NW
Washington, DC 20005
Telephone: (202) 237-2727
Fax: (202) 237-6131
Email: kdunn@bsfllp.com
Email: wisaacson@bsfllp.com
Email: jphillips@bsfllp.com

Joshua J. Libling (*pro hac vice*)
Yotam Barkai (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
55 Hudson Yards, 20th Floor
New York, NY 10001
Telephone: (212) 446-2300
Fax: (212) 446-2350
Email: jlibling@bsfllp.com
Email: ybarkai@bsfllp.com

J. Benjamin Rottenborn (VSB 84796)
Erin B. Ashwell (VSB 79538)
WOODS ROGERS PLC
10 South Jefferson St., Suite 1400
Roanoke, VA 24011
Telephone: (540) 983-7600
Fax: (540) 983-7711
Email: brottenborn@woodsrogers.com
Email: eashwell@woodsrogers.com

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES, SETH WISPELWEY, MARISSA BLAIR, TYLER MAGILL, APRIL MUNIZ, HANNAH PEARCE, MARCUS MARTIN, NATALIE ROMERO, CHELSEA ALVARADO, and JOHN DOE,

Plaintiffs,

v.

JASON KESSLER, RICHARD SPENCER, CHRISTOPHER CANTWELL, JAMES ALEX FIELDS, JR., VANGUARD AMERICA, ANDREW ANGLIN, MOONBASE HOLDINGS, LLC, ROBERT "AZZMADOR" RAY, NATHAN DAMIGO, ELLIOT KLINE a/k/a/ ELI MOSLEY, IDENTITY EVROPA, MATTHEW HEIMBACH, MATTHEW PARROTT a/k/a DAVID MATTHEW PARROTT, TRADITIONALIST WORKER PARTY, MICHAEL HILL, MICHAEL TUBBS, LEAGUE OF THE SOUTH, JEFF SCHOEP, NATIONAL SOCIALIST MOVEMENT, NATIONALIST FRONT, AUGUSTUS SOL INVICTUS, FRATERNAL ORDER OF THE ALT-KNIGHTS, MICHAEL "ENOCH" PEINOVICH, LOYAL WHITE KNIGHTS OF THE KU KLUX KLAN, and EAST COAST KNIGHTS OF THE KU KLUX KLAN a/k/a EAST COAST KNIGHTS OF THE TRUE INVISIBLE EMPIRE,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

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PRELIMINARY STATEMENT

On August 11 and 12, 2017, Defendants and their followers subjected people of color, Jewish people, and supporters of racial and religious equality to a premeditated, two-day campaign of violence and intimidation. Motivated by racial animus and armed with deadly weapons, Defendants filled the City of Charlottesville, Virginia, with echoes of slavery and the Holocaust. Their acts of domestic terrorism inflicted traumatic injuries on many innocent people, including the men and women who filed this case. Although Defendants now seek to portray themselves as peaceful protesters—who just happened to somehow get caught up in violence and destruction that none of them anticipated—nothing could be further from the truth. The particularized factual allegations set forth in the First Amended Complaint ("FAC"), including dozens of private exchanges between Defendants and their followers on secret online platforms, reveal that their brutal and destructive course of conduct was no accident. It reflected months of extensive, coordinated, and militaristic planning by Defendants and their co-conspirators. This common plan to commit acts of racial violence and intimidation violated numerous state and federal laws, including the Ku Klux Klan Act, 42 U.S.C. § 1985(3).[1]

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[1] This Memorandum addresses the five pending motions to dismiss under Rule 12(b)(6):

- ECF 201: Motion filed by Michael Hill, League of the South, and Michael Tubbs ("Hill Br.");
- ECF 205 & 206: Motion filed by Christopher Cantwell, Nathan Damigo, Matthew Heimbach, Identity Evropa, Jason Kessler, Elliot Kline, National Socialist Movement, Nationalist Front, Matthew Parrott, Robert Azzmador Ray, Jeff Schoep, Traditionalist Worker Party, Vanguard America ("Kessler Br.");
- ECF 207: Motion filed by Nationalist Front ("Nationalist Front Br.");
- ECF 209: Motion filed by Richard Spencer ("Spencer Br."); and
- ECF 212 & 213: Motion filed by Michael Enoch Peinovich ("Peinovich Br.").

Defendants Anglin, Moonbase Holdings LLC, East Coast Knights of the Ku Klux Klan, and Invictus have not filed motions to dismiss. The purported responses of Defendants Loyal White

In asking the Court to dismiss Plaintiffs' claims, Defendants repeatedly disregard a cardinal rule of federal practice: "[A] motion to dismiss is not the appropriate stage for the Court to make factual conclusions or resolve factual disputes." *McDonough* v. *Aetna Life Ins. Co.*, No. 3:09-cv-71, 2010 WL 1418878, at *5 (W.D. Va. Apr. 8, 2010). This is particularly true of Defendants' First Amendment arguments, which depend entirely on an alternative factual narrative that bears no resemblance to the allegations set forth in the FAC (or to reality). Plaintiffs do not seek to impose liability on Defendants for expressing hateful ideas or for using militaristic rhetoric, or even for some pushing and shoving incidental to a peaceful protest. Plaintiffs instead charge Defendants with forming, overseeing, and executing a common plan to engage in acts of targeted violence and intimidation at pre-selected locations in Charlottesville over the weekend of August 11 and 12. Such conduct finds no shelter in the First Amendment. *See Rice* v. *Paladin Enters., Inc.*, 128 F.3d 233, 243-47 (4th Cir. 1997); *see also Wisconsin* v. *Mitchell*, 508 U.S. 476, 484 (1993); *Brown* v. *Hartlage*, 456 U.S. 45, 54-55 (1982); *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949); *United States* v. *Amawi*, 695 F.3d 457, 482 (6th Cir. 2012).

Defendants' alternative account of reality requires them to ignore over 165 detailed paragraphs in the FAC alleging that they intentionally organized, strategized, supervised, and then carried out acts of targeted violence and intimidation. Indeed, even before any formal discovery, Plaintiffs' particularized factual allegations of a common plan to commit violence are overwhelming. The FAC describes how Defendants meticulously planned their descent on Charlottesville through scores of private exchanges in the first half of 2017. In these

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Knights of the Ku Klux Klan and Fraternal Order of the Alt-Knights were stricken. (*See* ECF 166, 210.) Defendant Fields has answered. (*See* ECF 196.)

conversations—which occurred on private chat rooms and social media platforms—Defendants and their co-conspirators discussed in detail topics including how to evade police, how to employ militaristic tactics, which firearms and improvised weapons to bring, how best to injure blacks and Jews using those weapons, how to manufacture additional weapons after arriving in Charlottesville, how to overcome "hostiles," how to coordinate their movements in real time, and who would command their forces. They also discussed when to arrive, where to meet, how to travel, where to obtain funding, and which symbols of Nazism and white supremacy to wear and carry. Through this constant web of communications, Defendants and their co-conspirators formed an agreement to travel to Charlottesville—and to act in concert once there—with the common purpose of using violence to subjugate racial and religious minorities and their supporters. In these exchanges, violence was not discussed as a mere remote possibility; it was anticipated, studied, and strategized. Defendants promised that there would be violence in Charlottesville—and violence there was. As Defendant Mosley declared: "Our birthright will be ashes & they'll have to pry it from our cold hands if they want it. They will not replace us without a fight."

Defendants' agreement to engage in acts of targeted violence and intimidation is further confirmed by their conduct on August 11 and 12. Over a single weekend, hundreds of white supremacists—including Defendants and their co-conspirators—arrived in Charlottesville.[2] As they wreaked havoc, they displayed extraordinary coordination and cohesion. They charged and retreated on command; they marched in a designated order and used their weapons exactly as planned; they defied police orders in tandem; they executed militaristic tactics in waves to

[2] All the individual Defendants except Defendant Anglin, who was directing events remotely via *Daily Stormer*, were present in Charlottesville that weekend.

encircle "hostiles" and seize control of public spaces; they dressed in matching uniforms with matching symbols; they attacked and intimidated the precise racial and religious groups that they had discussed in advance; they used shared social media platforms to disseminate up-to-date orders from widely acknowledged leaders; they deployed shield walls and complex defensive formations; and they jointly went on the offensive when faced with unarmed citizens (including Plaintiffs) protesting their violent conduct. In other words, this was no peaceful rally unexpectedly gone awry. This violence was the result of meticulous planning.

Defendants' unlawful conspiracy is also confirmed by how they reacted in the aftermath of the devastation: not by expressing the surprise or dismay that one would expect from peaceful protesters whose rally unexpectedly turned violent, but rather by celebrating the loss of life and injuries that occurred as the consequence of the execution of their plan. For example, Defendant Cantwell told a *Vice* reporter: "I'd say it was worth it. Nobody on our side died . . . none of our people killed anybody unjustly . . . our rivals are just a bunch of stupid animals." Defendant Schoep similarly tweeted at National Socialist Movement ("NSM") and Traditionalist Worker Party ("TWP"), among other Defendants: "It was an Honor to stand with U all in C'Ville this weeknd. . . . true warriors!" And Defendant Spencer told *The New York Times* that August 12 was "a huge moral victory." This is obviously not how people react to unanticipated bloodshed. It is how they react when their violent conspiracy achieves its intended results.

At bottom, Defendants' legal arguments are all directed against a strawman, an alternative version of reality, rather than against the case that Plaintiffs actually filed. On the basis of this factual narrative, which simply ignores the FAC, Defendants argue that Plaintiffs "attempt to frame idle chit chat, edgy jokes, memes, and conversations about the possibility of violence from Antifa thugs as a coordinated plan to attack the residents of Charlottesville."

(Peinovich Br. at 8; *see also* Spencer Br. at 15.) But what happened in Charlottesville was surely no joke. The FAC alleges with great particularity how Defendants formed, oversaw, and executed a common plan to arm themselves, travel to Charlottesville, and attack minorities—all in violation of our nation's civil rights statutes. No court has ever held that illegal conspiracies to plan and perpetrate violence are shielded by the First Amendment. That is why Defendants had to invent a completely different version of the alleged facts. Under well-established precedent, however, the appropriate way to resolve factual disputes between parties is through discovery, the presentation of admissible evidence, and trial—not a motion to dismiss.

RELEVANT FACTUAL BACKGROUND[3]

I. THE HIGHLY COORDINATED VIOLENCE OF CHARLOTTESVILLE 2.0

Over a single weekend in August 2017, Defendants and their co-conspirators descended on Charlottesville with the intent to injure and intimidate racial minorities and their supporters. They called it "Charlottesville 2.0"; it was not the first time they had come to Charlottesville and it would not be the last. As the FAC alleges in detail, Defendants displayed an extraordinary level of coordination and organization as they terrorized this small college town.

A. Friday Night: The "Secret" Torch Parade

At 7:30pm on August 11, 2017, approximately 300 white supremacists—including many Defendants and their co-conspirators—began arriving at an athletic field next to the University of Virginia ("UVA") library, known as Nameless Field. (¶153.) They had been directed to assemble there by Defendant Mosley. (¶152.) This plan had not been approved by UVA; rather, it had been kept secret as part of the conspiracy, plotted over a period of months on secret social

[3] Facts relevant to this motion are set forth in the FAC and incorporated fully herein. References to "¶_" are to paragraphs of the FAC. Capitalized terms used herein have the same meaning as in the FAC.

media channels. (¶145.) As the crowd swelled, Defendants Cantwell, Kessler, and Ray issued orders to create military-style formations accompanied by "security" personnel. (¶157.) Executing this plan, the assembled marchers—dressed in a uniform of white polo shirts and khaki pants—filled tiki torches with fuel, formed a long column, and lit the flames. (¶158.) As they marched, they displayed cohesion and uniformity. (¶159.) Organizers—including Defendant Cantwell—wore earpieces, carried radios, and ordered their co-conspirators to keep pace, avoid gaps, and stay in line "two-by-two." (*Id.*) On his live video feed, Defendant Invictus praised a "tight operation." (*Id.*) The marchers barked like dogs and performed Nazi salutes. (¶162.) They also chanted "Jews will not replace us!" and "This is our town now!" (¶161.) Defendant Cantwell marched on the outside of the column, along with other "guards" who were hand-chosen for their willingness to "get physical" with anyone opposed to them. (¶160.)

When they reached the Rotunda, hundreds of white supremacists—including Defendants Kessler and Spencer—deliberately encircled and trapped a much smaller group of students and their supporters near the Thomas Jefferson statue, shouting "Blood and soil" and "Jews will not replace us." (¶¶164-165.) When a gap appeared, one co-conspirator yelled, "we need some more people to fill in this way to block these people off." (¶166.)

Then the marchers began to kick and punch the unarmed, peaceful protesters around the statue, using their torches as weapons. (¶168.) Plaintiff Doe, one of the few African-American men present, was trapped and believed that he faced mortal peril. (¶165.) Plaintiff Romero, one of the few Hispanic-Americans present, had never been more afraid in her life. (*Id.*)

Later, Defendant Ray proudly claimed that the group of white supremacists "went through [the protestors] like shit through a goose!" (¶168.) As their assault unfolded, some marchers threw an unidentified fluid (which Plaintiffs Doe and Romero feared was tiki torch

fuel) at the trapped protesters, causing them to fear that they would die. (¶169.) The marchers also threw their lit torches through the air at the protesters. (*Id.*) Defendant Ray shouted, "The heat here is nothing compared to what you're going to get in the ovens!" (*Id.*) Some of the marchers—including Defendant Cantwell—attacked the protesters with mace. (¶172.) When the students and community members finally escaped, Defendants and their co-conspirators climbed to the top of the statue. (¶175.) Waving their torches, they yelled, "Hail Spencer! Hail victory!" (*Id.*) Defendant Spencer declared, "We own these streets! We occupy this ground!" (*Id.*)

As this attack unfolded, hundreds of people were across the street inside St. Paul's Church, listening to religious leaders preach about human dignity and peace. (¶177.) Defendants knew this. They had planted a co-conspirator within the church to live-stream the service. (*Id.*) Determined to protect children and the elderly from the organized violence taking place only a short distance away, the churchgoers prolonged the service and remained inside. (¶180.)

That night, Plaintiff Wispelwey was menaced by Defendant Invictus while trying to deliver fellow clergy safely to their hotels from St. Paul's Church. (¶¶181-182.) Directly outside of one hotel, Wispelwey saw Invictus harass one of Wispelwey's friends. Invictus then walked towards Wispelwey, who was wearing a collar, until they were mere inches apart. Invictus kept moving forward even as Wispelwey pulled back. Once he was directly face-to-face with Wispelwey, Invictus began demanding, in a challenging and highly aggressive tone, that Wispelwey reveal to what church he belonged. Invictus then asked, "What the hell are you doing?" and continued hounding Wispelwey. (*Id.*)

B. Saturday Morning: The Siege of Emancipation Park

On the morning of August 12, 2017, Defendants and their co-conspirators violently seized control of Emancipation Park, which is located in the center of town. In so doing, they deliberately ignored plans meant to separate them from counter-protesters and prevent mayhem.

(¶194.) Pursuant to an agreed-upon strategy, white supremacist groups—including many Defendants—entered the Park sequentially. (¶¶192, 197-201.) As planned, they marched in formation, armed with guns, shields, protective gear, flags, and rods. (¶195.) They moved in unison and obeyed commands from their leaders to "move forward" or "retreat." (*Id.*) Members of certain groups decorated their weapons with matching colors and logos. (¶¶197-198.) In Emancipation Park, the marchers repeatedly threatened Charlottesville residents and protesters on the basis of their race, religion, and ethnicity—or their support for people of different races, religions, and ethnicities. (¶201.) For example, they chanted, "Get the fuck out of our country, bitches!" (*Id.*)

Around 8:00am, Plaintiff Wispelwey, joined by community members and clergy, silently marched to Emancipation Park. (¶¶205-206.) There, the clergy were confronted by heavily armed militiamen, many in full military attire with semiautomatic rifles and pistols. (¶206.) Wispelwey and other clergy locked arms and knelt before them. (*Id.*) Consistent with their planning, co-conspirators charged into the unarmed clergy, knocking many to the ground. (¶¶208-209.) One co-conspirator stared Wispelwey directly in the eyes and repeatedly shouted at him, "fuck you, faggot." (*Id.*) Faced with escalating violence, the religious leaders were forced to abandon their peaceful protest. (¶210.)

By 10:00am, Defendants' armed footmen—including members of Defendants TWP, NSM, and League of the South—had seized control of the Park, a public space. (¶214.) That effort had been led by, among others, Defendants Schoep, Hill, Heimbach, and Parrott. (*Id.*) Defendant Tubbs ordered League of the South members to attack counter-protestors, yelling "charge!" (¶35.) Parrott stated that the morning's violence was consistent with "the original plan to define and secure the event perimeter." (¶214.) This plan involved elaborate coordination:

Defendants and their co-conspirators approached Emancipation Park in distinct waves of passenger vans. (¶207.) Defendant Peinovich, flanked by his "security team," approached Emancipation Park in the "third or the fourth wave." (*Id.*) The violence by the Defendants at the entrance to Emancipation Park followed a consistent pattern and plan. (¶209.) Defendants would use shields, flags, and fists to break past the blockade of protestors; they would succeed in entering the park; and then another wave would arrive. (*Id.*) This played out at least half a dozen times and reflected the military-style strategy developed by Defendants.

Once inside the Park, Defendants' violent tactics only escalated. (¶215.) Defendants and their co-conspirators used shields, flags, rods, clubs, smoke bombs, and pepper spray to assault anyone who did not share their racist beliefs. (¶¶216, 222.) As the assault progressed, some Defendants collaborated to undertake and command further violence. For example, *Daily Stormer*—through a livefeed maintained by Defendants Anglin and Ray—encouraged followers to organize in groups and engage in violent acts. (¶217.) These defendants wrote, "WE HAVE AN ARMY! THIS IS THE BEGINNING OF A WAR!" (*Id.*)

By 11:22am, before the permit for the "rally" even began, Charlottesville officials declared the gathering an unlawful assembly. (¶223.) Shortly thereafter, *Daily Stormer* wrote, "Someone is getting gassed! . . . LET'S HOPE IT'S JEWS!" (¶225.)

C. Saturday Afternoon: McIntire Park

After their co-conspirators were expelled from Emancipation Park, Defendant Kessler and other Defendants redirected them to McIntire Park, approximately 1.5 miles away. (¶226.) *Daily Stormer* urged followers to assemble "behind" Defendants Ray and Cantwell. (¶227.)

12:42 PM:

STREETS BELONG TO US!

COPS WON'T INTERVENE!

> Clash between protesters and counter protesters. Police says "We'll not intervene until given command to do so." #Charlottesville pic.twitter.com/UkRDINn2mv
>
> — ACLU of Virginia (@ACLUVA) August 12, 2017

GET TO MCINTIRE PARK NOW AND FIND AZZMADOR, CANTWELL OR SACCO VANDAL! STAY IN THE GROUP! DO NOT SEPARATE ONCE YOU ARE BEHIND ONE OF THESE THREE MEN!
12:33 PM:

EVERYONE GO TO MCINTIRE PARK!

GOOGLE MAP COORDINATES HERE!

12:31 PM:

FUCK YOU FAGGOTS!

Consistent with the agreed-upon plan, Defendant Schoep also headed toward McIntire Park, attacking protesters along the way. (¶228.) By 1:00pm, Defendants Spencer and Peinovich, and their followers, had mostly reassembled in McIntire Park and unleashed violence. (¶229.) One woman protesting their message was choked by a co-conspirator, Steven Balcaitis; as he grabbed her neck, Balcaitis looked at a bystander and said, "Don't save her." (*Id.*)

Defendants at McIntire Park discussed returning to Emancipation Park in defiance of police orders. (¶231.) To that end, Defendant Mosley sought people with guns. He said, "I need shooters . . . [w]e're gonna send 200 people with long rifles back to that statue." (*Id.*) According to an NSM twitter account, Defendant Schoep "led a group of 40 back the 1.3 miles from the 2nd park back to Lee Park, through Antifa and police interference!" They jeered: "So much respect for my Commander Jeff Schoep. I will go into battle with you anytime Sir . . . !" (*Id.*) At this time, *Daily Stormer* (directed by Defendant Anglin from an undisclosed location) posted: "HOLD YOUR FUCKING GROUND WHEREVER YOU ARE." (¶232.)

Following orders, some Defendants and co-conspirators stayed in the parks. (¶234.) Others dispersed throughout the downtown area of Charlottesville, near the pedestrian mall, where they terrorized Charlottesville residents. (*Id.*)

D. The Car Attack

At approximately 1:40pm, in furtherance of the Defendants' conspiracy, Defendant Fields deliberately drove his Dodge Challenger into a crowd of peaceful protesters. (¶¶23, 242.) Plaintiffs Martin, Blair, Sines, Muñiz, Alvarado, and Romero were marching up Fourth Street when Fields attacked. (¶243.) Martin and Blair were approaching the intersection with their friend, Heather Heyer. (¶244.) Martin pushed Blair out of the way and was hit directly by the car, sustaining serious injuries. (*Id.*) Blair fell to the ground and suffered a hematoma and a gash. (*Id.*) Alvarado and Romero were also hit by the car. (¶¶249-252.) Heyer was killed. (¶248.) Many Plaintiffs suffered related injuries. (¶¶244-258.)

Car attacks had been part of the planning that led up to Charlottesville 2.0. Specifically, planning discussions on Discord referenced driving cars into crowds of people, when it is legal to attack people with cars, and the prophetic statement, "This will be us." (¶¶237-241.) Before August 11, for example, Defendant Kessler had asked white supremacist Discord participants for

advice on planning a march in Charlottesville. In response, a co-conspirator lamented that "civilians" had not made anti-racist demonstrators and their "babies and children" into "new speed bumps" at a recent anti-racist march in Charlottesville. (¶241.) These discussions were part of Defendants' shared plan of committing violent acts against Jews, blacks, and their supporters. Indeed, Defendants enthusiastically celebrated Heyer's death. (¶¶259-273.)[4]

II. THE CONSPIRACY TO VIOLENTLY ADVANCE WHITE SUPREMACY

The violence and intimidation that occurred in Charlottesville on August 11 and 12 were no accident. To the contrary, they were the result of careful planning. Hundreds of people knew about the "secret" Friday night rally—and also knew what to wear, what to bring, who to obey, what security formations to deploy, who to attack, and how to attack them. On Saturday, an even larger group of white supremacists displayed exceptional coordination in timing, location, weaponry, clothing, movement, communication, organizational hierarchy, and preferred targets. This coordination was not limited to the planning involved in a political rally. Rather, it was specifically reflected in their battle strategy, use of violence, and racialized intimidation. That level of military-style organization would be inconceivable without extensive discussion, planning, and agreement—all of which was well known to Defendants, many of whom played a leading role in organizing and directing the conspiracy.

A. Defendants Conspired in Advance of Charlottesville 2.0

Each of the pending motions to dismiss asserts that Defendants acted autonomously, with no involvement in a broader plan to commit acts of violence and intimidation. (*See* Hill Br. at

[4] Defendant Kessler contends that Plaintiffs have not adequately pleaded a conspiracy involving Defendant Fields. (*See* Kessler Br. at 10.) At this early stage of the case, the Court need not reach questions about the scope of the conspiracy. In all events, the allegations set forth in the FAC at paragraphs 236-277 and 312-335 support a reasonable inference that Fields was a member of the conspiracy and that the car attack was in furtherance of the conspiracy.

12-13; Peinovich Br. at 7; Spencer Br. at 20-21; Kessler Br. at 6-8; Nationalist Front Br. at 3.) But the FAC includes detailed factual allegations to the contrary. As early as May 2017, Defendants were in regular communication with each other about their plans for "Charlottesville 2.0."

Some of these discussions occurred in person—demonstrating that Defendants knew each other and formed plans together. For example, Defendants Spencer, Damigo, Peinovich, and Kessler shared a podium at a luncheon in Charlottesville on May 13, 2017, where Spencer announced "we are white . . . We will not be replaced." (¶52.) That night, Defendants Kessler, Spencer, Damigo, Peinovich, Heimbach, Identity Evropa, Vanguard America, TWP, and League of the South participated in a march meant to intimidate Charlottesville residents on the basis of race, religion, and ethnicity. (¶¶50-51.) In June 2017, Kessler invited Defendants and others to promote violence against minority residents in Charlottesville. (¶56.) In July 2017, Kessler also live-streamed Defendant Loyal White Knights' white power march in Charlottesville. (¶59.)

As Charlottesville 2.0 drew near, the pace of these meetings intensified. Defendant Spencer and co-conspirator Evan McLaren, a member of Defendant Identity Evropa, met in person to plan and direct their activities in Charlottesville. (¶64.) Defendants Cantwell and Kessler met in Charlottesville on August 9 to plan and direct acts of violence and intimidation. (¶65.) And Defendants Ray, Cantwell, and Mosley, as well as co-conspirator David Duke, attended yet another meeting on August 11 to plan and direct acts of violence and intimidation. (¶66.) These meetings among the conspiracy's leaders indicate coordination and cohesion.

As one might expect, most of Defendants' communications occurred online. From May through August 2017, Defendants made use of websites (including *Daily Stormer*, run by Defendants Anglin, Ray, and Moonbase Holdings), social media (including Twitter, Facebook,

4chan, and 8chan), chat rooms (including Discord), and podcasts to communicate with each other—and they did so to develop a plan for racialized violence and intimidation in Charlottesville. (¶68.) They developed this plan and conveyed its essential details by posting articles on their own websites and sharing messages on social media. (¶70.) In addition, Defendants, including Cantwell, Kessler, Mosley, Anglin, Ray, and Peinovich, used these platforms to raise funds, organize legal support, and arrange travel for co-conspirators—all with the intention that attendees would engage in acts of violence and intimidation. (¶326.) Defendants, including Anglin, Ray, Hill, Nationalist Front, NSM, TWP, League of the South, Vanguard America, and East Coast Knights, also used these platforms to coordinate the logistics of their "joint operation." (¶¶318-319.) Working with these groups, Defendant Damigo and Identity Evropa organized white supremacist participation among people from outside Charlottesville. (¶320.)

The principal online forum that Defendants used to plan and direct their illegal acts was the chat platform Discord. (¶71.) Discord is set up as a series of private, invite-only servers, each providing a space for real-time group discussion. (*Id.*) Each server is organized into "channels," indicated by a "#" before the name. (*Id.*) A "Charlottesville 2.0" server was established in June 2017, and was thereafter used to direct and plan the conspiracy. (¶72.) As one user explained, Discord was "for closed, top super secret communications intended for the elite inner circle of the alt-right." (*Id.*) The Charlottesville 2.0 server was moderated, reviewed, and managed by Defendants Kessler and Mosley, along with their co-conspirators. (¶73.) As moderators of the "invite only" group, they were able to view and manage all of the posts, and invite or reject participants. (*Id.*) On this server, Defendants, including Heimbach, Parrott, Cantwell, and Ray, helped direct and plan Charlottesville 2.0. (¶74.) Defendants Vanguard America, Identity

Evropa, TWP, League of the South, and *Daily Stormer* also created unique channels for their members. (¶77.) From June through August, Defendants and their co-conspirators used Discord for "leadership" meetings through which they shared information and plans. (¶¶72, 75.) Ultimately, Defendants established at least 43 channels on Discord. (¶76.) These channels covered everything from "#gear_and_attire" and "#demonstration_tactics" to "#friday-night" and "#safety_planning." (*Id.*) They also included a "#leadership" channel designed for "planning" and "infrastructure." (¶77.) On one of these channels, a co-conspirator with the handle "Caerulus Rex"—who serves as a bodyguard to Defendant Spencer—coordinated the various "security details" created by Defendants. (¶78.)[5]

Defendants used Discord to announce how they would convey orders on other social media during Charlottesville 2.0. (¶80.) In addition, Defendants used Discord to issue "Orders" to each other and to co-conspirators. (¶75.) Notably, Defendant Mosley posted a document entitled "General Orders" for "Operation Unite the Right Charlottesville 2.0." (*Id.*) These "General Orders" split the city into "Friendlies" and "Enemies/Counter Protesters," and described counter-protesters as "hostile." (¶100.) They further instructed co-conspirators that if they ended up losing their permit, they may "have to initiate plan red or have to take the ground by force with plan yellow." (¶101.) Plan Red was described as "incredibly dangerous" and called for meeting early at a rally point and unlawfully marching to the park. (*Id.*) The General Orders promised "security forces ... to reduce the threat" presented by "hostiles." (*Id.*)

These "General Orders" were consistent with many other communications by Defendants in Discord chatrooms and through other media channels in which they plotted violence and

[5] As explained in the FAC, only some communications on Discord are available. Others will be the subject of discovery.

commanded co-conspirators to obey their orders. (*See* ¶¶78-123.) Defendant Anglin, for example, explained that "the age of ultraviolence is coming … [and] there will be leaders. You need to be prepared to recognize them for who they are, and you need to be prepared to do whatever they tell you to do, exactly as they tell you to do it." (¶60.)

This was more than heated rhetoric. Defendants' intention to engage in violence, to organize others to engage in violence, and to orchestrate and direct that violence against racial and religious minorities was open and explicit. (¶96.) On the "Daily Shoah," a podcast run by Defendant Peinovich, a co-conspirator discussed the plan for Charlottesville and asked, "Now come on, beating up the wrong negro . . . is that even a possibility?" (*Id.*) Defendant Damigo was arrested on April 15, 2017, for battering a woman at a rally in Berkeley, California, and later described his conduct there as a test run for Charlottesville. (¶28.) Similarly, Discord included many descriptions of anticipated violence, including:

- "I'm ready to crack skulls."
- "You have a week, bros. Best spend it having four or five of your friends simulate jumping you. Go light, don't get injured before the event, and focus on blocking and pushing back in ways that don't look like assault."
- "Studies show 999/1000 niggers and feminists fuck right off when faced with pepper spray."

(¶97.) One co-conspirator, who was active on the Charlottesville 2.0 Discord server told his followers on August 7: "Bring as much gear and weaponry as you can within the confines of the law. I'm serious. . . . You still have a few days to get some protection from Home Depot and bring any guns you have . . . [Defendant] Spencer, organizers, everyone are behind this." (¶108.) He added: "This is the time to get off Discord and take action." (*Id.*)

Because they intended violence, Defendants and their co-conspirators discussed how to remain coordinated and inflict maximum damage. On Discord, they issued instructions for

uniforms and protective armor. (¶¶102, 106.) They also repeatedly commanded their followers to bring firearms or other weapons. (¶¶106, 323.) For instance, Defendant Cantwell expressly "encourage[d]" followers "to carry a concealed firearm." (¶107.) Many other Defendants boasted about the weapons that they intended to carry. (¶109.) Defendant Ray wrote on Discord: "I also come barehanded and barefisted, bc officers don't duck lol. But my guys will be ready with lots of nifty equipment." (¶110.) Statements by other co-conspirators include:

- "[A]void batons . . . just get hardwood dowel (that fits in your hand) from a store and cut it to size."
- "Don't carry anything that's explicitly a weapon. Flag poles and signs work, but openly carrying obvious weaponry is probably not a good idea."
- "A wrench with a wrist lanyard gets the same job [as a blackjack/billyclub] accomplished."

(¶111.) On the *Daily Stormer*, Defendants Ray and Anglin commanded their followers to bring torches, pepper spray, flag poles, and shields. (¶118.) While plotting their arsenal, Defendants paid careful attention to decoration. They told each other to bring shields, uniforms, flags, and signs decorated with iconography in order to instill fear along racial and religious lines. (¶121.)

Defendants and their co-conspirators also planned for the consequences of their intended violence. For example, one Discord participant told people to "purchase self defense insurance." (¶105.) Elsewhere, Defendants provided guidance to co-conspirators about how to try to avoid the legal ramifications of violence. (¶120.) To allay anxiety, Defendants assured co-conspirators that they would be protected when they committed the violent acts intended and strategized by Defendants. (*Id.*) The "General Orders" thus told attendees that if they found themselves arrested, there would be "money and a legal team set aside for you after." (*Id.*)

In sum, Defendants engaged in numerous, wide-ranging, and continuing conversations—in person and online—while planning Charlottesville 2.0. Most of these exchanges occurred on

secret, invite-only servers moderated by Defendants Kessler and Mosley. While only a small number of those records have been made public, they confirm that Defendants and their co-conspirators carefully planned their campaign of racial violence and terror. (¶83.) Anyone who participated in Defendants' private communications would have known that the "rally" was, in fact, an event where illegal tactics would be used to advance their white supremacist objectives. They would also have known that this plot involved violence and intimidation—as evidenced by Defendants' repeated promise that violence would occur, their detailed analysis of which weapons and military formations to use, their battle tactics and General Orders, and their vow to cover legal defense costs. This understanding of Defendants' plan is consistent not only with the allegations in the FAC, but also with the organized violence that subsequently took place.

B. Consistent with Their Plan, Defendants Actively Coordinated the Violence and Intimidation that Occurred in Charlottesville on August 11 and 12

As described above, the violence that occurred on August 11 and 12 was remarkably well organized. Much of that organization occurred in advance and was overseen by Defendants on their preferred online platforms. Some of it, however, took place as events unfolded. That real-time coordination echoed the pre-event planning in its manner, personnel, and use of online platforms. This confirms that Defendants acted in concert to plan and direct an illegal course of conduct.

Orchestrating the Friday night event on the UVA campus, for example, was no small undertaking. It reflected weeks of planning by Defendants and co-conspirators. (¶145.) They had established a "#friday_night" channel on Discord to coordinate the night's events, and they had advised co-conspirators that the event was intended to be a secret. (*Id.*) Moreover, they had issued orders that attendees should bring tiki torches—even though someone had posted on Discord that UVA forbade open fires without authorization. (¶¶145-147, 149.) *Daily Stormer*

suggested purchasing tiki torches at Walmart before arriving in Charlottesville. Defendant Kessler similarly ordered attendees to do so out-of-town to avoid "tip[ping] our enemy off." (¶147.) The selection of lit torches was meant to intimidate people of color and Jewish people; as one co-conspirator on Discord explained, "tiki torches are the last stand of implicit whiteness." (¶150.)

Defendants' advance planning was fully activated on August 11. That morning, Defendant Cantwell and others gathered at a Walmart to prepare for the evening. (¶151.) Then, that night, Defendant Mosley used Discord to summon his co-conspirators to Nameless Field. (¶152.) As the march proceeded—accompanied by "security forces"—Defendants exercised careful control over the marchers' conduct. That remained true after Defendants and their co-conspirators engaged in open violence: Defendants participated in and directed assaults on peaceful protesters, including attacks involving the use of caustic substances. Later, when first-hand accounts of the violence were posted on social media, Defendants Mosley and Spencer retweeted them with pride and approval. (¶¶166, 172.)

Consistent with their advance planning, Defendants' coordination continued on August 12. Defendants Kessler, Cantwell, Mosley, Heimbach, Hill, Invictus, Ray, Spencer, Damigo, Peinovich, Fields, Parrott, Tubbs, Schoep, the Nationalist Front, League of the South, NSM, TWP, Vanguard America, the East Coast Knights, the Loyal White Knights, and FOAK all participated in the violent events of the day (¶187), while Defendant Anglin directed his followers from afar through the *Daily Stormer* (¶227). They planned to arrive early and anticipated engaging in violence. (¶188.) As one co-conspirator explained, "Me, the rest of TWP and LS [League of the South] have been to more than one rodeo. / And shit NSM will be there early too / Those guys are nuts / In a good way." (*Id.*) When their followers adhered to the plan

and assembled by 8:00am, Defendants Mosley and Kessler instructed them to create a defensive formation in "the most extremely prepared position"—namely, "a white bloc barrier or square around the entire statue + podium." (¶¶189-190.) Meanwhile, on Discord, co-conspirators promised extra supplies: "Vanguard is fabricating 20 additional shields." (¶191.) Another co-conspirator and moderator on Discord had told participants that "we'll be putting out a video for basic formation, roles, and commands to all of the group leaders shortly." (¶192.) He then posted a "Shields & Shield Tactics Primer," as well as a video on shield-fighting techniques. (*Id.*)

This coordination of battle strategy was consistent with the conspiracy's deliberate approach to violence. As Defendant Mosley remarked, "I run this ["rally"] as a military operation . . . I was in the army." (*Id.*) To coordinate their actions, Defendants Anglin and Ray established "meet ups" on *Daily Stormer*'s website; this allowed members of the conspiracy to coordinate while events unfolded. (¶84.) And that is exactly what happened: as the day's events unfolded, Defendants told their followers where to go, when to meet, who to attack, which weapons to use, whether to resist police, and what battlefield strategies to execute.

C. The Conspirators Celebrated Charlottesville 2.0 as a Success

As noted above, while Plaintiffs found the events of August 11 and 12 to be profoundly disturbing, Defendants boasted that the weekend had gone *exactly* as planned. Defendant Kessler tweeted a picture of the Friday night rally and wrote, "Incredible moment for white people who've had it up to here & aren't going to take it anymore." (¶184.) Defendants East Coast Knights, Anglin, and Heimbach tweeted celebrations of Heather Heyer's death at the hands of Defendant Fields. (¶¶262-273.) Defendant Heimbach added: "We achieved all of our objectives." (¶268.) "Kneuss" of the Defendant East Coast Knights celebrated: "3 fatalities in #Charlottesville. How many WN's [white nationalists]? NOT 1." (¶269.) In addition, one member of Defendant Vanguard America later explained that his group had coordinated with

Defendant NSM because the Charlottesville event was *meant* to be violent: "In cville we needed numbers, NSM fought so hard regardless of their optics. Do we need them at normie events? No. We need them in a fight? Yes." (¶117.)

Defendant Parrott wrote an account of the "rally" in "Catcher in the Reich: My Account of my Experience in Charlottesville." (¶212.) He explained that Defendants TWP, League of the South, NSM, and other Nationalist Front groups had joined together "to help create two shield walls" for "the fight." (*Id.*) He elaborated, "While most of the Identity Evropa men were occupied on other fronts, they sent a detachment of fighters to assist us and to relay intelligence to Jason Kessler and other organizers. They offered more fighters, but we had our positions amply covered." (*Id.*) In an interview with the *Los Angeles Times*, he added, "Michael Tubbs, an especially imposing League organizer towered over and pushed through the antifa like a Tyrannosaurus among raptors as league fighters with shields put their training to work." (*Id.*)

Defendant Parrott's account accurately captures the militaristic methods, intent to be violent, and coordination at the heart of Defendants' conspiracy. They viewed Charlottesville as "the fight." (¶212.) They brought heavily armed "detachment[s] of fighters," which they deployed as necessary to "other fronts" and "positions." (*Id.*) They "put their training to work." (*Id.*) They made their decisions based on a "relay [of] intelligence to Jason Kessler and other organizers." (*Id.*) And they used these tactics to achieve a shared goal: violence and intimidation against blacks, Jews, and their supporters.

D. Defendants and Their Co-Conspirators Inflicted Injuries on Plaintiffs

Defendants repeatedly describe this case as merely a clash of political ideologies. (Spencer Br. at 6-11; Peinovich Br. at 5-6.) That framing is profoundly mistaken and directly at odds with the particularized allegations in the FAC. Defendants' conduct inflicted terrible injury on the Plaintiffs in this case. Tyler Magill, for example, an employee of the UVA library,

suffered a trauma-induced stroke after the events on August 11 and 12. (¶10.) Marcus Martin was hit by the car driven by Defendant Fields, and suffered a broken leg and ankle. (¶17.) Natalie Romero, an undergraduate at UVA, was severely injured by Fields's car attack and has already missed a semester of school. (¶18.) Chelsea Alvorado, a crisis counselor for the homeless and mentally ill, was also struck by Fields's car. (¶19.) And the other Plaintiffs have been diagnosed with trauma, shock, extreme emotional distress, or other injuries that have prevented them from returning to work, school, or life as they once knew it. (¶¶10-19, 283-295.)

STANDARD OF REVIEW

"A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a complaint to determine whether the plaintiff has properly stated a claim." *Morris* v. *Fletcher*, No. 7:15-cv-00675, 2017 WL 1161888, at *1 (W.D. Va. Mar. 27, 2017). "In considering a Rule 12(b)(6) motion, a court must accept all factual allegations in the complaint as true and must draw all reasonable inferences in favor of the plaintiff." *Id.* To survive, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible if the complaint contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," and if there is "more than a sheer possibility that a defendant has acted unlawfully." *Id.*

ARGUMENT

I. PLAINTIFFS HAVE STATED A CLAIM UNDER 42 U.S.C. § 1985(3)

"Section 1985(3) was originally enacted by Congress as part of the Ku Klux Klan Act, in order to enforce the Civil War amendments to the Constitution, and to provide a means of redress for persons victimized by the Klan's acts of terror and intimidation." *Bergman* v. *United*

States, 551 F. Supp. 407, 413 (W.D. Mich. 1982). This case thus evokes the Act's core original purpose. Defendants, including Ku Klux Klan organizations, plotted a conspiracy to deprive racial minorities of the equal protection of the laws. While the formation of their plan involved distinctly modern methods, their campaign of racial subjugation violated historic laws meant to safeguard fundamental constitutional rights. *See Ziglar* v. *Abbasi*, 137 S. Ct. 1843, 1865 (2017).

In *United Brotherhood of Carpenters* v. *Scott*, 463 U.S. 825 (1983), the Supreme Court held that a § 1985(3) claim has four elements:

> (1) a conspiracy;
>
> (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and
>
> (3) an act in furtherance of the conspiracy;
>
> (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.

Id. at 828-29 (citations omitted). The Supreme Court has further held that § 1985(3) applies to private actors as well as public officials. *See Griffin* v. *Breckenridge*, 403 U.S. 88, 101 (1971).

Defendants cannot and do not dispute that the FAC alleges that they held class-based, discriminatory animus. *See Carpenters*, 463 U.S. at 836 ("The predominate purpose of 1985(3) was to combat the prevalent animus against Negroes and their supporters."); *Ward* v. *Connor*, 657 F.2d 45, 48 (4th Cir. 1981) ("[R]eligious discrimination . . . falls within the ambit of § 1985([3])."). Further, Defendants cannot and do not deny that the FAC alleges that each Plaintiff suffered injury as a result of overt acts committed by members of the conspiracy. (*See* ¶¶10-19, 283-295.)

This leaves only two elements: (1) the existence of a conspiracy; and (2) the objective of the conspiracy. Defendants' arguments on these elements rest on their own version of disputed

facts. Time and again, Defendants simply ignore the particularized factual allegations that *are* contained in the FAC, while relying heavily on "facts" that *are not*. And when Defendants do address Plaintiffs' factual allegations, they repeatedly violate Rule 12(b)(6) by making improper inferences in their own favor. These deficiencies are compounded by numerous misstatements of law. Separately and together, Defendants' factual and legal errors make it clear that their motions to dismiss should be denied and this case should proceed to discovery and trial.

A. Existence of a Conspiracy

To plead a conspiracy, a plaintiff must allege facts supporting a plausible inference that defendants "positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan." *Hinkle* v. *City of Clarksburg, W.Va.*, 81 F.3d 416, 421 (4th Cir. 1996). Although this requires more than allegations of "parallel conduct," *see Twombly*, 55 U.S. at 556, it does not require "direct evidence of a meeting of the minds," *Hinkle*, 81 F.3d at 421. Indeed, because "conspiracies are by their very nature secretive operations," they often "have to be proven by circumstantial, rather than direct, evidence." *Hill* v. *City of New York*, No. 03-cv-01283, 2005 WL 3591719, at *5 (E.D.N.Y. Dec. 30, 2005). The ultimate question is whether a plaintiff has alleged "at least some facts which would suggest that [the defendants] reached an understanding to violate [his] rights." *Jiang* v. *Porter*, 156 F. Supp. 3d 996, 1010 (E.D. Mo. 2015). "[E]ach participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy." *Mendocino Envtl. Ctr.* v. *Mendocino Cty.*, 192 F.3d 1283, 1302 (9th Cir. 1999); *accord Frazier* v. *Cooke*, No. 4:17-cv-54, 2017 WL 5560864, at *3 (E.D. Va. Nov. 17, 2017).

In assessing conspiracy allegations, "the entire sequence of events in the complaint [must be] considered in context." *Soo Park* v. *Thompson*, 851 F.3d 910, 928 n.22 (9th Cir. 2017). On this basis, courts uphold conspiracy claims where "the alleged conspirators have committed acts

that 'are unlikely to have been undertaken without an agreement.'" *Mendocino*, 192 F.3d at 1301 (quoting *Kunik* v. *Racine Cty.*, 946 F.2d 1574, 1580 (7th Cir. 1991)). That includes highly coordinated action and repeated patterns of conduct. *See, e.g.*, *Geinosky* v. *City of Chicago*, 675 F.3d 743, 749 (7th Cir. 2012); *New York State Nat'l Org. for Women* v. *Terry*, 886 F.2d 1339, 1359 (2d Cir. 1989) (upholding conspiracy claim under § 1985(3)); *Johnson* v. *City of Fayetteville*, No. 5:12-cv-456, 2013 WL 12165680, at *6 (E.D.N.C. Mar. 28, 2013) (same).

Here, Plaintiffs have plausibly alleged that Defendants "positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan," *Hinkle*, 81 F.3d at 421—namely, to jointly orchestrate, engage in, and direct specific forms of racialized violence and intimidation at particular times and places in Charlottesville on August 11 and 12. Only rarely can a plaintiff point to discussions among defendants in which an illegal plan is formulated. *See Hill*, 2005 WL 3591719, at *5. But here, Plaintiffs have identified dozens of such communications—before, during, and after Charlottesville 2.0—in which individual Defendants (or groups of Defendants) *explicitly* discussed their joint operation, its white supremacist objectives, and how to use racialized violence and intimidation to achieve those goals. Unusually for the motion to dismiss stage of a case, Plaintiffs have identified the establishment of a planning resource—the Charlottesville 2.0 Discord Server—that included specific sub-groups for leadership, logistics, and general discussions, and which multiple Defendants either contributed to or led. At the pleading stage, these particularized allegations of a common plan are clearly more than sufficient. *See Mendocino*, 192 F.3d at 1302; *Nat'l Org. for Women*, 886 F.2d at 1359; *Frazier*, 2017 WL 5560864, at *3; *Johnson*, 2013 WL 12165680, at *6.

This direct evidence of a conspiracy is further supported by circumstantial allegations giving rise to the commonsense inference that Defendants acted pursuant to a shared plan. *See* *Patrick* v. *City of Chicago*, 213 F. Supp. 3d 1033, 1057 (N.D. Ill. 2016) ("[T]he existence of a conspiracy may be inferred through the combination of common sense and circumstantial evidence."). These allegations include:

- Numerous in-person meetings among Defendants and co-conspirators about their plans for Charlottesville 2.0, showing that Defendants had many opportunities to form and discuss their scheme. (*See* ¶¶49-66.)
- Many online conversations among Defendants—frequently on invite-only servers—that candidly strategized a campaign of racial terror and violence. (*See* ¶¶68-130.)
- A pattern of Defendants interviewing each other, coordinating promotional materials, and sharing each other's statements about violent plans for Charlottesville. (*See id.*)
- Detailed coordination among Defendants on weaponry, battle tactics, targets, racist symbols, funding, transportation, and defense insurance—as evidenced not only by statements before August 11, but also by their cohesion, communication, and shared strategy amid the violence that they undertook during Charlottesville 2.0. (*See id.*)
- Highly coordinated, military-style violence—much of it targeting blacks, Jews, and their supporters—that could not have occurred without advance planning and that depended on use of shared platforms for disseminating up-to-date battlefield commands from Defendants. (*See* ¶¶145-192, 203-235.)
- A repeated pattern of intimidation of blacks, Jews, and their supporters—both before and during Charlottesville 2.0—consistent with specific instructions from several Defendants (including Kessler, Spencer, Mosley, and Peinovich). (*See* ¶¶50-51, 134-142.)

- Statements by many Defendants (including Spencer, Heimbach, Cantwell, and Schoep) during and after Charlottesville 2.0 confirming that the weekend—rife with coordinated racial violence—had gone *exactly* as planned. (*See* ¶¶184, 212, 268-271.)

Given the above, this is not a case in which the Court must strain to find "at least some facts which would suggest that [Defendants] reached an understanding." *See Jiang*, 156 F. Supp. 3d at 1010. That inference follows naturally from the particularized allegations in the FAC. At minimum, it is reasonable to infer that Defendants shared "the general conspiratorial objective" of deploying specific forms of racialized violence and intimidation at agreed-upon times and places in Charlottesville on August 11 and 12. *Simmons* v. *Poe*, 47 F.3d 1370, 1378 (4th Cir. 1995).

Faced with several hundred paragraphs of detailed conspiracy allegations, Defendants attempt to sweepingly dismiss them as "conclusory." (Kessler Br. at 7.) In their view, the FAC supports only a single inference: that they engaged in ordinary "event planning." (Peinovich Br. at 7; *accord* Kessler Br. at 8; Spencer Br. at 8.) According to Defendants, "edgy humor and memes are part of internet subculture, and while some . . . may find them offensive, the sharing of such jokes and memes cannot credibly be seen as evidence of a conspiracy to commit violence." (Peinovich Br. at 8.)

This argument fails for several reasons. First, it ignores the FAC's allegations detailing a highly coordinated planning effort that expressly contemplated, organized, and strategized acts of racial violence and intimidation. At this early stage of the case, Defendants are obviously not entitled to the inference that all of these statements were an elaborate series of "edgy" jokes and memes. *See Hall* v. *DIRECTV, LLC*, 846 F.3d 757, 765 (4th Cir. 2017).

Second, it ignores the fact that Plaintiffs' allegations are not limited to Defendants' online conversations: paragraphs 143 through 311 of the FAC describe the violent conduct committed by Defendants and their co-conspirators. Given the extraordinarily close fit between Defendants' discussions of violence and their subsequent conduct, it is reasonable to infer that they acted pursuant to a common plan as they attacked minority residents of Charlottesville. *See Mendocino*, 192 F.3d at 1301. Any uncertainty about whether their discussions before August 11 were merely jokes or something more sinister is resolved by Defendants' own coordinated acts of violence. On this point, Defendants are speechless: they offer no response to the particularized allegations that they participated in and oversaw violence and intimidation. Only by pretending that most of the FAC does not exist can Defendants declare it "conclusory."

Third, even as they ignore nearly 150 paragraphs of factual allegations, Defendants rely heavily on materials *outside* the FAC to generate alternative factual narratives. For example, Defendant Peinovich argues that Plaintiffs have not plausibly alleged the existence of a conspiracy because "the Antifa" and the City of Charlottesville are truly responsible for the violence that occurred. (*See* Peinovich Br. at 5, 6, 10.) These arguments, however, depend on an improper request for judicial notice of disputed facts. *See Goldfarb* v. *Mayor & City Council of Balt.*, 791 F.3d 500, 511 (4th Cir. 2015) ("[J]udicial notice must not 'be used as an expedient for courts to consider "matters beyond the pleadings" and thereby upset the procedural rights of litigants to present evidence on disputed matters.'" (citation omitted)). Much the same is true of Defendant Spencer's claim about his own lack of responsibility for Charlottesville 2.0. (*See* Spencer Br. at 10-15, 18.) At the pleading stage, Defendants cannot defeat Plaintiffs' particularized allegations of an illegal agreement by ignoring most of the FAC and replacing it with their own version of what "really" happened. If Defendants want to present a counter-

narrative and base their legal arguments on that account of the facts, they will be free to do so at trial.

Rather than draw all reasonable factual inferences in Plaintiffs' favor, Defendants do the exact opposite. The FAC alleges substantial organization, coordination, and cohesion in Defendants' violent conduct during Charlottesville 2.0. This suggests advance planning—a reasonable inference that powerfully supports Plaintiffs' case. *See Geinosky*, 675 F.3d at 749; *Mendocino*, 192 F.3d at 1301-02. In arguing otherwise, Defendants not only deny Plaintiffs a reasonable inference to which they are entitled, but also ask the Court to embrace an unreasonable inference in their own favor. Their account of planning a peaceful rally utterly fails to explain the conduct alleged in the FAC, which includes well-organized and heavily armed violence. If any inference is "conclusory," it is Defendants' assertion that the violence of Charlottesville 2.0 was unanticipated and uncoordinated.

As a fallback position, Defendants argue that the FAC does not adequately link each of them to a common plan to commit racialized violence and intimidation. (*See* Hill Br. at 12-13; Peinovich Br. at 7-10, 12-19; Spencer Br. at 20-21; Kessler Br. at 6-8; Nationalist Front Br. at 3.) This argument is also without merit. It is well established that a member of a conspiracy can be held liable even if he does not know every single detail of the illegal plan. *See Mylan Labs., Inc.* v. *Akzo, N.V.*, 770 F. Supp. 1053, 1066 (D. Md. 1991). Each participant need only "share the general conspiratorial objective," and know the "essential nature and general scope" of their common plan when they participate in it. *Poe*, 47 F.3d at 1378. In the following paragraphs, the FAC demonstrates that this requirement is met (and exceeded) as to each individual moving Defendant:

Richard Spencer
¶¶ 21, 28, 29, 40, 42, 49, 52, 63, 64, 70, 85, 87, 92, 108, 120, 141, 143, 153, 164, 166, 175, 184, 187, 229, 230, 260, 273, 297, 300, 305-306, 311, 315, 327-329.

Michael Peinovich
¶¶ 42, 50, 52, 63, 96, 129, 141, 187, 207, 229-230, 310, 326-327.

Jason Kessler
¶¶ 20, 49-52, 55-56, 59, 61, 63, 65, 73, 78, 97, 112, 122, 130, 135, 137, 141, 143, 147, 157, 164, 179, 184, 187-190, 212, 226, 241, 260, 267, 302, 307, 316, 321-322, 324, 326-329.

Christopher Cantwell
¶¶ 22, 63, 65-66, 74, 107, 127, 143, 151, 157, 159-160, 172, 187, 226-227, 273, 277, 303-304, 309-310, 316-317, 322-323, 326-330.

Nathan Damigo & Identity Evropa
¶¶ 28-30, 50, 52, 63-64, 70, 77, 92, 187, 212, 276, 300-311, 320, 322.

Elliot Kline (a.k.a. Eli Mosley)
¶¶ 4, 20, 29-30, 63, 66, 73, 75, 78, 89, 97, 100, 129, 137, 141, 143, 147-148, 152, 172, 187, 189, 192, 231, 300, 311, 317, 321-322, 324, 326, 328-329.

Michael Hill, Michael Tubbs & League of the South
¶¶ 34-36, 39, 50, 63, 67, 77, 94, 99, 187-188, 196, 198-200, 212-214, 260, 318-319, 322, 327.

Matthew Heimbach, Matthew Parrott & TWP
¶¶ 31-33, 37, 50, 63, 67, 74, 77, 90, 116, 187-188, 196, 200, 212, 214, 228, 268, 271, 319, 322, 327.

Robert Azzmador Ray
¶¶ 27, 62-63, 66, 74, 84, 88, 92-93, 110, 116, 118, 143, 150, 157, 168-169, 186-187, 202, 217, 226-227, 317-318, 323, 325-326, 328-329.

Jeff Schoep, Nationalist Front & NSM
¶¶ 37-39, 44, 63, 67, 117, 187-188, 196, 201, 212, 214, 228, 231, 271, 319.

Vanguard America
¶¶ 24, 34, 50, 53, 63, 67, 77, 81, 91, 93, 96, 114-117, 121, 153, 167, 185, 187, 191, 196-198, 218, 228, 266, 270, 276, 319, 322, 332.

At the pleading stage, these allegations plausibly establish that each moving Defendant joined a common plan to commit premeditated acts of racially motivated violence and intimidation in

Charlottesville at designated times and locations on August 11 and 12. Accordingly, Plaintiffs do not seek to invent an unbounded "liable-by-association" doctrine. (Hill Br. at 12.) Rather, they seek to enforce the rule that defendants who conspire together can be held liable together.

B. The Object of the Conspiracy: Deprivation of the Equal Enjoyment of Rights Secured by the Law to All

The Supreme Court has "upheld the application of § 1985(3) to private conspiracies aimed at interfering with rights constitutionally protected against private, as well as official, encroachment." *Carpenters*, 463 U.S. at 833. Private conspiracies thus violate § 1985(3) when they seek to achieve deprivations of Thirteenth Amendment rights. *See Bray* v. *Alexandria Women's Health Clinic*, 506 U.S. 263, 278 (1993). Further, as Defendants admit (Kessler Br. at 3-4), § 1985(3) claims can rest upon violations of 42 U.S.C. § 1982. *See Antonio* v. *Sec. Servs. of Am., LLC*, 701 F. Supp. 2d 749, 777-79 (D. Md. 2010). Here, Defendants' conspiracy aimed to violate both of these § 1985(3) predicates.[6] (¶¶338-339.)

1. Thirteenth Amendment

"By the Thirteenth Amendment, we committed ourselves as a Nation to the proposition that the former slaves and their descendants should be forever free." *Griffin*, 403 U.S. at 105. Congress may thus outlaw "badges and incidents of slavery." *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 440 (1968). That principle encompasses "racially motivated violence." *United States* v. *Roof*, 225 F. Supp. 3d 438, 448 (D.S.C. 2016). Contrary to Defendants' position (Kessler Br. at 5), however, it also covers violence against those who support the rights of racial minorities. *See Carpenters*, 463 U.S. at 836. The Thirteenth Amendment further protects against "less formal

[6] These provisions protect Jews as well as African-Americans. *See Shaare Tefila Congregation* v. *Cobb*, 481 U.S. 615, 616-17 (1987); *St. Francis College* v. *Al–Khazraji*, 481 U.S. 604, 612-13 (1987).

but equally virulent means . . . to keep the freed slaves in an inferior status," *United States* v. *Cannon*, 750 F.3d 492, 501 (5th Cir. 2014), such as attacks on their churches and denial of access to public places, *see United States* v. *Bledsoe*, 728 F.2d 1094, 1097 (8th Cir. 1984).

Here, the object of Defendants' conspiracy was to deprive racial minorities—and their supporters—of the right to be free from the badges and incidents of slavery.[7] As alleged in the FAC, the conspiracy sought to do so in three distinct ways, each of which constitutes a classic Thirteenth Amendment deprivation.

First, the conspiracy had as its object a campaign of violence and intimidation targeted at racial minorities and their supporters. *See Cannon*, 750 F.3d at 502; *United States* v. *Hatch*, 722 F.3d 1193, 1206 (10th Cir. 2013); *Roof*, 225 F. Supp. 3d at 449.

Second, the conspiracy aimed to prevent racial minorities and their supporters from exercising rights of free speech, assembly, association, and movement in public spaces. In *Griffin* v. *Breckenridge*, the Supreme Court upheld a § 1985(3) claim premised on the Thirteenth Amendment where the plaintiffs alleged precisely these deprivations of their rights. As *Griffin* explained, "[such] allegations clearly support the requisite animus to deprive the petitioners of the equal enjoyment of legal rights because of their race." 403 U.S. at 103.

Third, the conspiracy aimed to target Jewish synagogues and church services led by black ministers for violence and intimidation. Such conduct violates core original purposes of the Thirteenth Amendment. *See Roof*, 225 F. Supp. 3d. at 448.

Defendants' responses to these allegations are non-responsive and meritless. They first argue that dismissal is required because the moving Defendants did not personally attack each

[7] Defendant Peinovich's argument (Br. at 11) that the "badges and incidents of slavery" refer only to the physical "badges that identified slaves" is frivolous. *See Cannon*, 750 F.3d at 501-02.

individual Plaintiff. (Kessler Br. at 5.) But that is not what the law of conspiracy requires: "[A] single overt act by just one of the conspirators is enough to sustain a conspiracy claim even on the merits." *Waller* v. *Butkovich*, 584 F. Supp. 909, 931 (M.D.N.C. 1984) (citing *Vietnamese Fishermen's Ass'n* v. *Knights of the KKK*, 518 F. Supp. 993 (S.D. Tex. 1981)). Indeed, the entire premise of conspiracy liability is that the named defendant need not have committed the act that harmed the plaintiff, but rather can be held liable for the injurious acts of co-conspirators. *See Poe*, 47 F.3d at 1378. In any event, for purposes of this § 1985(3) element, the ultimate question is whether the conspiracy as a whole aimed to achieve Thirteenth Amendment violations. *See Carpenters*, 463 U.S. at 832-33. For the reasons given above, there can be no doubt that it did.

Next, Defendants assert that Plaintiffs fail to allege "that anyone made any racial comments before the assaults, nor that they were the only ones assaulted, or even that they were targeted because of their race." (Kessler Br. at 6.) This is both wrong and misguided: the FAC contains extensive allegations of racial comments by Defendants and their co-conspirators throughout Charlottesville 2.0[8]; and it is no defense under § 1985(3) to observe that *other* minorities and advocates of racial equality were also brutalized by members of the conspiracy. Similarly, Defendants' assertion that Plaintiffs do not allege that they were targeted because of their race is both wrong and legally irrelevant. The FAC alleges that all Plaintiffs were injured either because of their race or because they were peacefully protesting in support of racial equality. (*See* ¶¶10-19); *see also Waller*, 584 F. Supp. at 937. Further, § 1985(3) allows any person injured by a covered conspiracy to recover against any member of that conspiracy; there is no requirement that they have been personally racially targeted. *Cf. Griffin*, 403 U.S. at 103.

[8] For example, at the Friday night rally, Defendants and their co-conspirators barked like dogs, performed Nazi salutes, and made monkey noises at black protesters. (¶¶162, 165.)

Finally, Defendants seek to minimize the racialized violence that actually occurred. For instance, they note that several Plaintiffs were doused in a foul liquid and targeted with lit torches, but emphasize that nobody actually caught fire. (Kessler Br. 6.) Similarly, Defendant Spencer suggests that the Friday night rally—which he led—resulted only in "small scuffles, without serious injuries." (Spencer Br. at 15.) These arguments can hardly be taken seriously. The FAC contains dozens of particularized allegations of racialized violence and intimidation, and describes a campaign of racial terror that inflicted significant injury on Plaintiffs—as well as many other racial minorities and advocates of equality. Plaintiffs have thus stated a claim under § 1985(3) predicated on violations of the Thirteenth Amendment.

2. 42 U.S.C. § 1982

In relevant part, § 1982 guarantees that all U.S. citizens "shall have the same right . . . as is enjoyed by white citizens . . . [to] hold . . . real and personal property." This provision "bars all racial discrimination, private as well as public," in relation to property rights. *Jones*, 392 U.S. at 413. Under § 1982, interference with property need not be "destructive, disruptive or violent." *Frazier*, 2017 WL 5560864, at *6. A defendant violates § 1982 when he engages in racially-motivated intimidation that causes a plaintiff to "fear for [his] safety" in and around his property. *Id.*; *see also United States* v. *Greer*, 939 F.2d 1076, 1091 (5th Cir. 1991). Courts have recognized that § 1982 protects not only property owners, but also members of organizations. *See id.* (holding that § 1982 covers use of a synagogue by members and their guests).

Before and during the weekend of August 11, Defendants and their co-conspirators repeatedly targeted Congregation Beth Israel—to which Plaintiff Pearce belongs—for intimidation and death threats. (¶¶138, 202.) These acts were in furtherance of the conspiracy's common purpose of subordinating Jews. Synagogue members were so terrified by these threats that they hid their sacred Torah scrolls. (¶138.) Synagogue members also changed the time that

they held prayer services out of fear for their safety. (¶139.) Since August 12, and in direct response to threats made against it by Defendants and their co-conspirators, Beth Israel has adopted a new, elaborate security protocol for pick-up of children from Hebrew school. (¶295.) Moreover, Pearce now fears for her safety while at the synagogue. (*Id.*)

In targeting Beth Israel, Defendants and their co-conspirators "aimed at interfering" with rights protected by § 1982. *Carpenters*, 463 U.S. at 833. That conclusion is confirmed by *United States* v. *Brown*, 49 F.3d 1162 (6th Cir. 1995). There, a group of white supremacists conspired to engage in a drive-by shooting of a synagogue in Nashville, Tennessee. *See id.* at 1164. Because they shot at the synagogue at 1:00am, nobody was present. *See id.* However, "a member of the synagogue described the effect of the shooting as shocking, intimidating, and perceived as life-threatening." *Id.* On these facts, the Sixth Circuit held that the conspirators had violated § 1982, which protected the right of synagogue members to hold property free of anti-Semitic threats. *See id.* at 1165-67. This analysis was supported by *United States* v. *Greer*, where the Fifth Circuit held that defendants had violated § 1982 by vandalizing a temple and Jewish Community Center in Dallas, Texas. *See* 939 F.2d at 1091.

Here, the FAC states an even stronger claim under § 1982. Defendants and their co-conspirators targeted Beth Israel over a sustained period and did so while the synagogue was occupied by Jews seeking to practice their religion. During Charlottesville 2.0, three co-conspirators with semi-automatic rifles stood across from the temple during Shabbat services. (¶202.) Others, carrying Nazi flags, shouted "There's the synagogue!" followed by chants of "Sieg Heil." (*Id.*) Defendant Ray carried a sign that read "Gas the kikes, race war now!" (*Id.*) And co-conspirators publicly suggested meeting at 3:00pm to "torch those Jewish monsters." (¶203.)

These and other acts caused members of Beth Israel—including Plaintiff Pearce—to "fear for [their] safety" in the temple. *Frazier*, 2017 WL 5560864, at *6. Defendants and their co-conspirators thus aimed at interfering with the right of synagogue members to hold property on equal terms with other citizens under § 1982. Accordingly, Plaintiffs have stated a claim for relief under § 1985(3) predicated both on the Thirteenth Amendment and § 1982.

II. PLAINTIFFS HAVE STATED A CLAIM UNDER 42 U.S.C. § 1986

Section 1986 "imparts liability on individuals with knowledge of a conspiracy under § 1985, who have the power to stop the wrong, but neglect or refuse to stop the wrong." *Coleman* v. *Boeing Co.*, No. 2:16-cv-1451, 2017 WL 2992526, at *7 (D.S.C. June 22, 2017). Here, the Defendants who seek to dismiss Plaintiffs' § 1986 claim argue only that Plaintiffs failed to state a § 1985(3) claim. (Kessler Br. at 8.) For the reasons discussed in Part I, this contention fails. Further, the FAC alleges with particularity that each Defendant knew about the common plan to commit racialized violence and intimidation, and chose to participate in it rather than seek to stop it. Plaintiffs have thus stated a claim for relief under § 1986.

III. PLAINTIFFS HAVE STATED A CLAIM OF COMMON LAW CIVIL CONSPIRACY

In Virginia, "a common law conspiracy consists of two or more persons combined to accomplish, by some concerted action, some criminal or unlawful purpose or some lawful purpose by a criminal or unlawful means." *Commercial Bus. Sys., Inc.* v. *BellSouth Servs., Inc.*, 249 Va. 39, 48 (1995). "The gist of the civil action of conspiracy is the damage caused by the acts committed in pursuance of the formed conspiracy." *CaterCorp, Inc.* v. *Catering Concepts, Inc.*, 246 Va. 22, 28 (1993) (citation omitted). It must therefore be shown that plaintiffs suffered injury "caused by the acts committed in furtherance of the conspiracy." *Dogs Deserve Better, Inc.* v. *Terry*, No. 3:14-cv-591, 2015 WL 1288324, at *3 (E.D. Va. Mar. 20, 2015).

Although Defendants raise three objections to Plaintiffs' civil conspiracy claims, not one of them succeeds. First, some Defendants contend that this claim fails because they did not conspire to commit acts of racial violence and intimidation. (*See* Hill Br. at 12-13; Peinovich Br. at 7-10, 12-19; Spencer Br. 20-21; Kessler Br. 6-8.) This argument fails for the reasons discussed above. The FAC sets forth over two hundred paragraphs of factual allegations describing "the requisite concert of action and unity of purpose." *Hui Kun Li v. Shuman*, No. 5:14-cv-00030, 2015 WL 3766182, at *12 (W.D. Va. June 16, 2015) (citations omitted).

Second, certain Defendants argue that the FAC fails to allege that each Defendant personally injured a Plaintiff. (*See* Kessler Br. at 7; Spencer Br. at 11; Peinvich Br. at 7, 10.) This argument rests on a legal error. To establish a civil conspiracy claim, a plaintiff need only prove "that someone in the conspiracy committed a tortious act that proximately caused his injury; the plaintiff can then hold other members of the conspiracy liable for that injury." *Gelber* v. *Glock*, 293 Va. 497, 534 (2017) (citation omitted).

Finally, some Defendants deny that the conspiracy caused injury to Plaintiffs through the commission of illegal acts. (*See* Kessler Br. at 7-9; Hill Br. at 12-14.) This argument misapprehends the law and ignores Plaintiffs' factual allegations. In Virginia, a defendant is liable for civil conspiracy where he has combined with other persons "to accomplish, by some concerted action, some *criminal or unlawful purpose* or some lawful purpose by a criminal or unlawful means." *Commercial Bus. Sys.*, 249 Va. at 48 (emphasis added). Here, the FAC alleges that Defendants conspired to accomplish many criminal acts. (*See* ¶351.) These predicates alone suffice to state a claim for civil conspiracy.[9]

[9] Relying on *Vansant & Gusler, Inc.* v. *Washington*, 245 Va. 356 (1993), Defendant Kessler argues that a civil conspiracy cannot be established through proof of a plan to commit criminal

Moreover, the FAC alleges that Defendants conspired to commit many intentional torts, including battery, assault, false imprisonment, and violations of § 8.01-42.1.[10] (¶351.) Each of these allegations is individually sufficient to support Plaintiffs' civil conspiracy claim.

Battery: Virginia defines battery as "an unwanted touching which is neither consented to, excused, nor justified." *Koffman* v. *Garnett,* 265 Va. 12, 16 (2003). The FAC alleges that in advance of August 11, Defendants and their co-conspirators discussed, planned, strategized, and coordinated their use of violence against Jews, blacks, and their supporters in Charlottesville. It further alleges that over the weekend of August 11 and 12, members of the conspiracy (including some Defendants) executed that agreement by conducting many acts of battery against Plaintiffs and others. On Friday night, for example, they charged, encircled, and then attacked Plaintiffs Magill, Romero, and John Doe, as well as other peaceful protesters. (¶¶165-174.) On Saturday, they charged at a group of kneeling clergy, knocking Plaintiff Wispelwey into a bush. (¶208.) That same day, members of the conspiracy committed countless acts of battery in Charlottesville. (¶¶211, 221-222.) Finally, on Saturday afternoon, Defendant Fields intentionally drove a motor vehicle into a crowd and struck Plaintiffs Martin, Romero, and Alvarado, among others. (¶¶242, 244, 249, 252.)

Assault: Assault is "an act intended to cause either harmful or offensive contact with another person or apprehension of such contact, and that creates in that other person's mind a

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acts. (*See* Kessler Br. at 8.) *Vansant*, however, held only that a specific Virginia criminal statute did not include a private right of action for damages. *See Vansant*, 245 Va. at 360. It did not state a rule inconsistent with *Commercial Business Systems, Inc.* v. *BellSouth Services, Inc.,* whose holding controls here. 249 Va. at 48.

[10] The FAC further alleges that Defendants and co-conspirators committed numerous other tortious acts in furtherance of the conspiracy that resulted in harm to Plaintiffs—including, *inter alia*, inviting or otherwise causing another to participate in an act of terrorism in violation of Virginia Code § 18.2-46.5 and causing a riot in violation of Virginia Code § 18.2-408.

reasonable apprehension of an imminent battery." *Koffman*, 265 Va. at 16. The FAC alleges that Defendants conspired to engage in many acts of violence and intimidation—including assault. Members of the conspiracy, including some Defendants, then carried out this plan. For example, at the Friday night rally, members of the conspiracy waved tiki torches and other weapons at Plaintiffs John Doe, Romero, and Magill, causing them to reasonably fear imminent battery. (¶¶169, 171.) On Saturday, after they charged Plaintiff Wispelwey, members of the conspiracy continued to menace the clergy, leading them to reasonably fear serious injury if they remained. (¶210.) Finally, when Defendant Fields drove his car into the crowd, he caused Plaintiffs Sines, Muñiz, Blair, Romero, and Alvarado to reasonably fear imminent injury. (¶¶242-261.)

False Imprisonment: "If a person is under a reasonable apprehension that force will be used unless he willingly submits, and he does submit to the extent that he is denied freedom of action, this . . . constitutes false imprisonment." *Zayre of Va., Inc.* v. *Gowdy*, 207 Va. 47, 50-51 (1966). The FAC alleges that, pursuant to their common plan, members of the conspiracy falsely imprisoned Plaintiffs Romero and John Doe at the Friday night rally. Both Romero and John Doe attended a protest at the Jefferson statue that night. Members of the conspiracy deliberately encircled the small group of protesters and used violence to trap them. As alleged in the FAC:

> Plaintiff John Doe feared that he was in imminent danger. Encircled by Defendants and co-conspirators, John Doe felt trapped and did not believe that he could escape safely. He knew that as an African-American man, if he had tried to escape before the group dispersed, he would have been attacked. For approximately ten minutes, he remained in place, and while confined within the circle of Defendants and co-conspirators, was sprayed with mace

(¶173.) Plaintiff Romero, too, was trapped and "struggled to escape the mob." (¶174.) She was also sprayed with mace. (*Id.*) This period of entrapment by Defendants and their co-conspirators constituted false imprisonment. *See Zayre*, 207 Va. at 50-51.

Virginia Code § 8.01-42.1: As set forth in detail above, the FAC alleges that each of the Defendants was part of a common conspiracy to engage in acts of intimidation, harassment, and violence "motivated by racial, religious, or ethnic animosity" in violation of § 8.01-42.1. As described below at 40-41, the FAC alleges that members of the conspiracy—including some of the Defendants—committed many violations of § 8.01-42.1, thereby injuring Plaintiffs.

In sum, Defendants formed and participated in an illegal conspiracy to commit acts of racial intimidation and violence in Charlottesville on August 11 and 12. In the course of executing that conspiracy, they and their co-conspirators committed numerous violations of Virginia criminal and tort law, and thereby injured Plaintiffs. The FAC alleges these facts with great particularity. Accordingly, Plaintiffs have stated a claim for relief under Virginia law.

IV. INDIVIDUAL PLAINTIFFS HAVE STATED CLAIMS AGAINST CERTAIN INDIVIDUAL DEFENDANTS UNDER VIRGINIA CODE § 8.01-42.1

Virginia Code § 8.01-42.1 provides as follows:

> An action for injunctive relief or civil damages, or both, shall lie for any person who is subjected to acts of (i) intimidation or harassment or (ii) violence directed against his person; or (iii) vandalism directed against his real or personal property, where such acts are motivated by racial, religious, or ethnic animosity.

A § 8.01-42.1 claim has two elements: first, an act of intimidation or harassment, violence, or vandalism; and second, evidence that the act was motivated by racial, religious, or ethnic animus. *See Frazier*, 2017 WL 5560864, at *7 (denying motion to dismiss § 8.01-42.1 claim); *Berry* v. *Target Corp.*, 214 F. Supp. 3d 530, 535 (E.D. Va. 2016) (same); *Salim* v. *Dahlberg*, 170 F. Supp. 3d 897, 912 (E.D. Va. 2016) (upholding jury verdict finding violation of § 8.01-42.1).

The FAC alleges several incontrovertible violations of § 8.01-42.1. First, Defendant Invictus harassed and intimidated Plaintiff Wispelwey after the Friday night rally. Invictus had participated in the rally and operated a live video feed. (¶159.) Later that night, he stopped

Wispelwey, demanded information about his religious denomination, and then menaced him. (¶182.) These acts were motivated by racial and religious animus. (*Id.*) And second, that same night, Defendants Mosley, Spencer, Kessler, Ray, Cantwell, and Invictus were all involved in mob violence on the UVA campus. (¶143.) Those Defendants participated in terrifying acts of racially-motivated violence, harassment, and intimidation against peaceful protesters, including Plaintiffs Magill, Romero, Sines, and Wispelwey. (¶¶166-169 (Magill); ¶¶164-166, 169 (Romero); ¶¶161, 170 (Sines); ¶178-182 (Wispelwey).)

V. DEFENDANTS' CONSTITUTIONAL OBJECTIONS ARE MERITLESS

A. The First Amendment Does Not Protect Defendants' Violent Conspiracy

Defendants broadly assert that the FAC must be dismissed on First Amendment grounds. (*See* Spencer Br. at 6-15; Peinovich Br. at 12-19.) Citing *Snyder* v. *Phelps*, 562 U.S. 443 (2011), and *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969), they seek to pass off their violent conspiracy as advocacy shielded by the Free Speech Clause. This argument reflects a basic misunderstanding of the nature of Plaintiffs' case. Plaintiffs do not allege that they were injured as a consequence of hearing Defendants' speech, as in *Snyder*. Nor do they allege that Defendants are liable for inciting third parties to commit violence, in violation of *Brandenburg*. Rather, Plaintiffs allege that Defendants *themselves* organized, oversaw, and carried out a conspiracy to commit illegal acts of violence and intimidation. And it is black letter law that "forming an agreement to engage in [illegal] activities" is unprotected conduct, "not protected speech." *Amawi*, 695 F.3d at 482.

Defendants' asserted reliance on *Snyder* and *Brandenburg* is thus categorically misplaced. And those cases are also inapposite for many other reasons. The Supreme Court's holding in *Snyder* was premised on its observation that the Westboro Baptist Church could not be held liable for peaceful, innocent, and law-abiding speech that caused others to experience emotional distress. *See* 562 U.S. at 460. But here, the FAC alleges with particularity that

Defendants were neither peaceful, innocent, nor law-abiding. More important, Plaintiffs do not complain of harm resulting merely from exposure to Defendants' speech (as in *Snyder*); rather, they argue that an illegal conspiracy formed, overseen, and executed by Defendants injured them.

Inciting imminent lawless action is just one category of speech that is not protected by the First Amendment, as established by *Brandenburg*. But it does not matter whether the conduct alleged here meets the *Brandenburg* test, since Plaintiffs allege that Defendants jointly formed an illegal agreement to commit acts of violence and intimidation, and that Defendants then actively carried out that plan together. This conduct is *also* not protected by the First Amendment. While incitement and illegal conspiracy are both unprotected under Supreme Court precedent, they are distinct categories of wrongdoing. *See, e.g.*, *United States v. Williams*, 553 U.S. 285, 298 (2008) (referring to "conspiracy" and "incitement" as distinct offenses); *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 253 (2002) (same) The *Brandenburg* test, which describes when liability can attach for general advocacy of violence, is thus irrelevant here—just as it had no application in *Griffin* or any of the other § 1985(3) conspiracy cases cited above.

Accepting the allegations in the FAC as true for purposes of Rule 12(b)(6), Plaintiffs' claims are perfectly consistent with the Constitution. Simply put, illegal conspiratorial statements and agreements are not protected by the First Amendment. *See, e.g.*, *Amawi*, 695 F.3d at 482. As the Supreme Court held in *Giboney*:

> [I]t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society.

336 U.S. at 502 (citations omitted); *accord Brown*, 456 U.S. at 54-55.

At times, Defendants seem to suggest that the First Amendment forbids any consideration of their statements *at all*. That is plainly wrong: it is commonplace to consider a person's statements in assessing his motives. As the Supreme Court explained in *Wisconsin* v. *Mitchell*, the First Amendment "does not prohibit the evidentiary use of speech to . . . prove motive or intent." 508 U.S. at 489. Here, Plaintiffs' claims under § 1985(3) and § 8.01-42.1 require proof that Defendants were motivated by class-based animus. It is therefore necessary to consider their statements for that purpose. *See Thomasson* v. *Perry*, 80 F.3d 915, 931 (4th Cir. 1996).

Further, it was partly through their exchanges that Defendants planned, implemented, and oversaw an illegal scheme to commit acts of violence and intimidation. Defendants' statements thus evidence their conspiratorial agreement for purposes of § 1985(3) and Virginia law. The First Amendment poses no bar to consideration of their words and writings as proof of such agreement. *See, e.g.*, *Wisconsin*, 508 U.S. at 489. Nor can Defendants evade liability on the ground that they intended to express a political message by attacking and intimidating racial minorities and their supporters. *See Roberts* v. *United States Jaycees*, 468 U.S. 609, 628 (1984) ("[V]iolence or other types of potentially expressive activities that produce special harms distinct from their communicative impact . . . are entitled to no constitutional protection.").

The Fourth Circuit elaborated on these principles in *Rice* v. *Paladin Enterprises, Inc*., 128 F.3d 233. There, the defendant had published a book with step-by-step instructions on how to commit a contract killing. *Id.* at 239. The estate of a murder victim, whose killer followed the book's instructions to the letter, sued the publisher for aiding and abetting the victim's wrongful death. *Id.* at 241. Following *Giboney* and *Brown*, the Fourth Circuit held that the First Amendment did not protect the publisher from civil liability. *Id.* at 242-43. It reasoned that

"speech which, in its effect, is tantamount to legitimately proscribable nonexpressive conduct may itself be legitimately proscribed, punished, or regulated incidentally to the constitutional enforcement of generally applicable statutes." *Id.* at 243. Otherwise, the Court observed, "government would be powerless to protect the public from countless of even the most pernicious criminal acts and civil wrongs." *Id.* at 244 (citing, *inter alia*, the Model Penal Code provision governing conspiracy).

That teaching applies here: just as a publisher can be held liable for knowingly aiding murder, so can Defendants be held liable for knowingly organizing, overseeing, and participating in a plot to commit illegal acts of targeted violence, terror, and intimidation.

B. The Second Amendment Does Not Protect Defendants' Use of Weapons

Several Defendants erroneously invoke the Second Amendment as a blanket defense to the FAC. (Spencer Br. at 15-18; Hill Br. at 14-15.) But Plaintiffs do not seek to impose liability solely on the basis that Defendants *carried* weapons; rather, they allege that Defendants and their co-conspirators *carried and used* weapons as part of an illegal conspiracy to violate Plaintiffs' rights through acts of violence and intimidation. Yet again, Defendants base their constitutional argument on a significant mischaracterization of Plaintiffs' claims.

To the extent Defendants assert that the laws invoked by Plaintiffs are unconstitutional as applied to them, this fails. The application of state and federal civil rights law here does not "impose[] a burden on conduct falling within the scope of the Second Amendment's guarantee," *United States* v. *Chester*, 628 F.3d 673, 680 (4th Cir. 2010), any more than finding a person liable for armed robbery would. Moreover, application of federal and state civil rights law to

Defendants would survive any level of Second Amendment scrutiny. *See, e.g.*, *Hamilton* v. *Pallozzi*, 848 F.3d 614, 623-26 (4th Cir. 2017).[11]

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' motions to dismiss.

[11] Defendant Nationalist Front argues that it should be dismissed from this case pursuant to Rule 17(b)(3) because it "is not an entity that can be sued." (ECF 105 at 1-2, 207.) The Schoep Declaration (ECF 105-1), submitted in support of that request, cannot be considered on a motion to dismiss, *see Occupy Columbia* v. *Haley*, 738 F.3d 107, 116 (4th Cir. 2013), and is insufficient to demonstrate that Nationalist Front is not an unincorporated association in any event. However, if the Court intends to consider this issue, then it should be treated as a motion for summary judgment and Plaintiffs should be given an opportunity to take discovery. *See* Rule 12(d).

Dated: February 20, 2018

Respectfully submitted,

s/ Robert T. Cahill

Robert T. Cahill (VSB 38562)
COOLEY LLP
11951 Freedom Drive, 14th Floor
Reston, VA 20190-5656
Telephone: (703) 456-8000
Fax: (703) 456-8100
rcahill@cooley.com

Roberta A. Kaplan (*pro hac vice*)
Julie E. Fink (*pro hac vice*)
Joshua Matz (*pro hac pending*)
Christopher B. Greene (*pro hac vice*)
Seguin L. Strohmeier (*pro hac vice*)
KAPLAN & COMPANY, LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
Telephone: (212) 763-0883
rkaplan@kaplanandcompany.com
jfink@kaplanandcompany.com
jmatz@kaplanandcompany.com
cgreene@kaplanandcompany.com
sstrohmeier@kaplanandcompany.com

Karen L. Dunn (*pro hac vice*)
William A. Isaacson (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
1401 New York Ave, NW
Washington, DC 20005
Telephone: (202) 237-2727
Fax: (202) 237-6131
kdunn@bsfllp.com
wisaacson@bsfllp.com

Alan Levine (*pro hac vice*)
COOLEY LLP
1114 Avenue of the Americas, 46th Floor
New York, NY 10036
Telephone: (212) 479-6260
Fax: (212) 479-6275
alevine@cooley.com

David E. Mills (*pro hac vice*)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Telephone: (202) 842-7800
Fax: (202) 842-7899
dmills@cooley.com

Philip M. Bowman (*pro hac vice*)
Yotam Barkai (*pro hac vice*)
Joshua J. Libling (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
575 Lexington Ave.
New York, NY 10022
Telephone: (212) 446-2300
Fax: (212) 446-2350
pbowman@bsfllp.com
ybarkai@bsfllp.com
jlibling@bsfllp.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2018, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

Justin Saunders Gravatt
David L. Hauck
David L. Campbell
Duane, Hauck, Davis & Gravatt, P.C.
100 West Franklin Street, Suite 100
Richmond, VA 23220
jgravatt@dhdglaw.com
dhauck@dhdglaw.com
dcampbell@dhdglaw.com

Counsel for Defendant James A. Fields, Jr.

Bryan Jones
106 W. South St., Suite 211
Charlottesville, VA 22902
bryan@bjoneslegal.com

Counsel for Defendants Michael Hill, Michael Tubbs, and League of the South

Elmer Woodard
5661 US Hwy 29
Blairs, VA 24527
isuecrooks@comcast.net

James E. Kolenich
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
jek318@gmail.com

Counsel for Defendants Jeff Schoep, Nationalist Front, National Socialist Movement, Matthew Parrott, Matthew Heimbach, Robert Ray, Traditionalist Worker Party, Elliot Kline, Jason Kessler, Vanguard America, Nathan Damigo, Identity Europa, Inc. (Identity Evropa), and Christopher Cantwell

I further hereby certify that on February 20, 2018, I also served the following non-ECF participants, via U.S. mail, First Class and postage prepaid, addressed as follows:

Loyal White Knights of the Ku Klux Klan
a/k/a Loyal White Knights Church of
the Invisible Empire, Inc.
c/o Chris and Amanda Barker
P.O. Box 54
Pelham, NC 27311

Richard Spencer
1001-A King Street
Alexandria, VA 22314
-and-
P.O. Box 1676
Whitefish, MT 59937

Michael Peinovich
a/k/a Michael "Enoch" Peinovich
PO Box 1069
Hopewell Junction, NY 12533

Moonbase Holdings, LLC
c/o Andrew Anglin
P.O. Box 208
Worthington, OH 43085

Andrew Anglin
P.O. Box 208
Worthington, OH 43085

East Coast Knights of the Ku Klux Klan
a/k/a East Coast Knights of the
True Invisible Empire
26 South Pine St.
Red Lion, PA 17356

Fraternal Order of the Alt-Knights
c/o Kyle Chapman
52 Lycett Circle
Daly City, CA 94015

Augustus Sol Invictus
9823 4th Avenue
Orlando, FL 32824

s/ Robert T. Cahill
Robert T. Cahill (VSB 38562)
COOLEY LLP
11951 Freedom Drive, 14th Floor
Reston, VA 20190-5656
Telephone: (703) 456-8000
Fax: (703) 456-8100
Email: rcahill@cooley.com

Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES, et al., Plaintiffs,	)	Civil Action No. 3:17cv00072
v.	)	**ORDER**
JASON KESSLER, et al., Defendants.	)	By: Joel C. Hoppe United States Magistrate Judge

This matter is before the Court on Plaintiffs' Motion to Strike Defendant Loyal White Knights of the Ku Klux Klan's ("LWK") Response to the Court's January 3, 2018 Order and For an Entry of Default. ECF No. 248; *see* Def. LWK's Pro Se Resp. to Order 1, ECF No. 228; Order of Jan. 3, 2018, at 1–3, ECF No. 166. Defendant LWK has not filed a response to Plaintiffs' motion.

Plaintiffs' original Complaint asserted claims against several Defendants arising out of events that occurred in Charlottesville on August 11 and 12, 2017. ECF No. 1. The Complaint identified Defendant LWK as an unincorporated association, Va. Code § 8.01-15, based in Pelham, North Carolina. Compl. ¶ 44. Plaintiffs timely filed a process server's affidavit showing that on October 24, 2017, a summons and copy of the Complaint were served on LWK's registered agent in Charlotte, North Carolina. ECF No. 56; *see* Fed. R. Civ. P. 4(h)(1), (*l*)(1), (m). Defendant LWK had until November 14, 2017, to file a responsive pleading. Fed. R. Civ. P. 12(a)(1)(A)(i). On December 11, non-party Amanda Barker filed a "Response to Summons," purportedly on LWK's behalf, denying the allegations in the Complaint. ECF No. 146. Mrs. Barker identified herself as "Imperial Kommander" of the LWK, but she did not indicate that she was a licensed attorney, and she did not note her appearance as an attorney on LWK's behalf in this matter. ECF No. 146-1; *see* Order of Jan. 3, 2018, at 1; W.D. Va. Gen. R. 6(a)–(b), (d), (i).

On January 3, 2018, the Court entered an Order directing Defendant LWK to retain a licensed attorney and to have that attorney note his or her appearance in this matter and file a proper responsive pleading to the Complaint within fourteen days. Order of Jan. 3, 2018, at 1–2; *see also* Pls.' First Mot. to Strike 1–5, ECF No. 155. The Order explained that "'artificial entities'" such as Defendant LWK "'may appear in the federal courts only through licensed counsel,'" and that Mrs. Barker could "not represent LWK in this Court" because "she does not appear to be a licensed attorney." *See* Order of Jan. 3, 2018, at 1 (quoting *Rowland v. Calif. Men's Colony*, 506 U.S. 194, 202–03 (1993)). The Order also expressly warned that the failure to comply within the time allowed would result in the pro se "Response to Summons" being stricken and default being entered against Defendant LWK. *See id.* at 2.

Plaintiffs filed their first Amended Complaint on January 5, 2018. ECF No. 175. The Amended Complaint again identified Defendant LWK as an unincorporated association that is subject to suit under Virginia Code § 8.01-15. Am. Compl. ¶ 43; *see* Fed. R. Civ. P. 9(a), 17(b)(3). In late February, Plaintiffs filed a process server's affidavit showing that on February 1, 2018, the process server personally delivered a summons addressed to Defendant LWK and a copy of the Amended Complaint to an individual identified as "Christopher Barker, Leader, authorized to accept service." ECF No. 239; *see* Fed. R. Civ. P. 5(a)–(b). Defendant LWK had fourteen days from the date of service (i.e., until February 15, 2018) to properly respond to the Amended Complaint. Fed. R. Civ. P. 15(a)(3); *see also* Order of Jan. 3, 2018, at 1–2. On February 15, the Court received a letter from Mrs. Barker, again purportedly filed on LWK's behalf, indicating that Defendant LWK would neither comply with the Court's Order nor properly file a responsive pleading within the time allowed:

> We have received your letter, dated 1/3/18, concerning our representation. If this action proceeds to trial we will, of course, arrive with appropriate counsel. The

> law, as we understand it, states that organizations and corporations should have legal counsel in federal court. And it specifically states (In) court. We are not in a court of law at this time, and only responding to motions and orders as they are issued. Further, we have—and may exercise—our full rights to representation, as The Loyal White Knights consist of only myself, Amanda Barker, and my husband Chris Barker . . . . We are, as stated above, two individuals, who will appear as individuals at all appropriate times. We also ask at this time that you dismiss the entire action against us . . . .

Def. LWK's Pro Se Resp. to Order 1 (paragraph breaks omitted). Amanda and Chris Barker are not named in their personal capacities as "individual" defendants to this action. *See generally* Am. Compl. 1, 8–18. As of today's date, a licensed attorney has neither entered an appearance nor filed a responsive pleading on behalf of Defendant LWK. Plaintiffs have moved to strike the pro se "response" letter as improperly filed and for entry of Defendant LWK's default.

Although individuals "may plead and conduct their own cases" in federal court, 28 U.S.C. § 1654, an organization that is a party to a lawsuit "cannot appear pro se as an artificial entity in *any* federal court litigation," *Tweedy v. RCAM Title Loans, LLC*, 611 F. Supp. 2d 603, 605 n.2 (W.D. Va. 2009) (emphasis added). And, because Mrs. Barker apparently concedes that she is not an attorney, *see* Order of Jan. 3, 2018, at 1–2, she cannot properly sign or file any documents on Defendant LWK's behalf in this case. *Freedom Hawk Kayak v. Ya Tai Elec. Appliances Co.*, 908 F. Supp. 2d 763, 766 n.2 (W.D. Va. 2012) (disregarding "corporation's pro se filings" submitted by non-attorney individual purporting to be the corporate defendant's "sole owner" because "[a] corporation may not appear pro se"); *see also* Fed. R. Civ. P. 11(a). The record in this matter shows that Defendant LWK was served with a summons and copy of the Amended Complaint, and that, despite being on notice of its obligation to do so, LWK "has failed to plead or otherwise defend" against this action within the time allowed. Fed. R. Civ. P. 55(a); *see Capital Concepts, Inc. v. CDI Media Grp. Corp.*, No. 3:14cv14, 2014 WL 3748249, at *4 (W.D. Va. July 29, 2014) ("[R]eturns of service like those present on this record act as *prima*

facie evidence of valid service."); *Tweedy*, 611 F. Supp. 2d at 605 n.2 ("[T]he clerk did not acknowledge the [pro se] response as an answer and properly entered RCAM's default pursuant to Rules 12(a)(1)(A)(i) and 55(a)."); Order of Jan. 3, 2018, at 1–2.

Accordingly, Plaintiffs' Motion, ECF No. 248, is hereby GRANTED. The Clerk is DIRECTED to STRIKE Defendant LWK's pro se responses, ECF Nos. 146, 228, from the docket as improperly filed, and to ENTER Defendant LWK's default in accordance with Rule 55(a) of the Federal Rules of Civil Procedure.

It is so ORDERED.

The Clerk shall deliver a copy of this Order to counsel of record and to Amanda and Christopher Barker.

ENTER: March 15, 2018

Joel C. Hoppe
United States Magistrate Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ELIZABETH SINES ET AL.	MISC. ACTION
VERSUS	NO. 18-4044
JASON KESSLER ET AL.	SECTION "I" (2)

ORDER AND REASONS ON MOTION

This matter arises from a civil action pending in the United States District Court for the Western District of Virginia concerning the violent, racially and ethnically charged disturbances that occurred in Charlottesville, Virginia, during the summer of 2017. Plaintiffs are individuals who allege that their constitutional rights were violated and that they were physically and/or emotionally injured when defendants and others engaged in a conspiracy and then conducted a planned and coordinated series of violent and threatening demonstrations in Charlottesville, financed by solicitations and/or donations and resulting in numerous injuries and three deaths. Defendants are a collection of individuals and organizations, all of whom allegedly espouse and act upon white nationalist/supremacist, Neo-Nazi and racist views.

Seven causes of action are asserted. Two are federal claims, including conspiracy to violate plaintiffs' constitutional rights in violation of 42 U.S.C. § 1982 and failure to prevent those violations by informing lawful authorities in violation of 42 U.S.C. §1986. The remaining causes of action are Virginia state law and statutory claims, including civil conspiracy; negligence per se through acts of terrorism and violence; racial, religious or

ethnic harassment; assault and battery; and intentional infliction of emotional distress. Record Doc. No. 175 (First Amended Complaint at ¶¶ 336-70).

On January 24, 2018, the clerk of the United States District Court for the Western District of Virginia issued a subpoena duces tecum, which was served upon David Duke, a resident of Mandeville, Louisiana, on January 26, 2018. Compliance through document and ESI ("electronically stored information") production was required to occur in this judicial district on February 26, 2018. Record Doc. No. 12-3 at p. 2 (Affidavit of Service); Record Doc. No. 1-2 at p. 6 (Subpoena). Although Duke is not a named defendant in the Western Virginia case, he is specifically identified in plaintiffs' first amended complaint as a co-conspirator with the named defendants who allegedly participated himself in the coordination, planning, fund-raising for and execution of defendants' activities in Charlottesville that are the basis of the lawsuit. See, e.g., Record Doc. No. 175 (First Amended Complaint at ¶¶ 66, 128, 187, 317).

On February 23, 2018, 28 days after he was served with the subpoena and three days before the compliance date, Record Doc. No. 1-2 at p. 43 (Certificate of Service of Movant's Objections), Record Doc. No. 238 in Case No. 17-72 (W.D. Va.) (Certificate of Service of W.D. Va. Motion to Quash), Duke served[1] on plaintiff's counsel both objections to the subpoena under Fed. R. Civ. P. 45(d)(2)(B) and a motion to quash under Fed. R. Civ. P. 45(d)(3),which were physically filed in the Western District of Virginia record on the

[1]Service of this kind of "paper" is "complete upon mailing." Fed. R. Civ. P. 5(b)(2)(c).

compliance date, February 26, 2018. Record Doc. Nos. 235, 237 in Case No. 17-72 (W.D. Va.). The court in Virginia denied the motion to quash, but only on grounds that it had been filed in the wrong court. The denial was without prejudice to re-filing the motion to quash here. Record Doc. No. 297 in Case No. 17-72 (W.D. Va.).

In light of that ruling and 12 days after it issued, on April 18, 2018, Duke filed the instant motion to quash the subpoena in this court. Record Doc. No. 1. Plaintiffs filed a timely opposition memorandum. Record Doc. No. 12. Considering the motion papers, the public record of the case pending in the Western District of Virginia and the applicable law outlined below, IT IS ORDERED that the motion is GRANTED IN PART AND DENIED IN PART as follows.

ANALYSIS

(1) General Legal Standards

Subpoenas duces tecum "'are discovery devices which, although governed in the first instance by Rule 45, are also subject to the parameters established by Rule 26.'" Garvin v. S. States Ins. Exchg. Co., No. 1:04cv73, 2007 WL 2463282, at *5 n.3 (N.D. W. Va. Aug. 28, 2007) (quoting In re Application of Time, Inc., 1999 WL 804090, at *7 (E.D. La. Oct. 6, 1999), aff'd, 209 F.3d 719, 2000 WL 283199 (5th Cir. 2000)); see Nicholas v. Wyndham Int'l, Inc., No. 2001/147-M/R, 2003 WL 23198847, at *1-2 (D.V.I. Oct. 1, 2003) (the "clear majority position [is] that use of Rule 45 subpoenas constitutes discovery"); Mortg. Info. Servs. v. Kitchens, 210 F.R.D. 562, 566-67 (W.D.N.C. 2002) ("a Rule 45

subpoena does in fact constitute discovery"); accord Martin v. Oakland Cnty., No. 2:06-CV-12602, 2008 WL 4647863, at *1 (E.D. Mich. Oct. 21, 2008); Fabery v. Mid-S. Ob-GYN, No. 06-2136, 2000 WL 35641544, at *1 (W.D. Tenn. May 15, 2000). Thus, both Fed. R. Civ. P. 45 and 26(b) apply to the instant motion.

Fed. R. Civ. P. 45(d)(1) requires that the party issuing a subpoena to a non-party "must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." On timely motion, the court for the district where compliance is required must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply . . . or (iv) subjects a person to undue burden."

A person – like Duke – who receives a subpoena and moves to quash or modify it "has the burden of proof to demonstrate that compliance would impose undue burden or expense. Wiwa v. Royal Dutch Petroleum Co., 392 F.3d 812, 818 (5th Cir. 2004) (emphasis added). Proof actually establishing the extent of the alleged undue burden is required to obtain relief, not mere unsupported generalizations, conclusory statements or assertions. "Generally, modification of a subpoena is preferable to quashing it outright." Id. In determining whether a particular subpoena presents an undue burden, the court must consider "(1) relevance of the information requested; (2) the need of the party for the [subpoenaed materials]; (3) the breadth of the . . . request; (4) the time period covered by the request; (5) the particularity with which the party describes the requested [materials]; and (6) the burden imposed. Further, if the person to whom the . . . request is made is a

non-party, the court may also consider the expense and inconvenience to the non-party." Id.

As to Rule 26, the scope of permissible discovery is established in Fed. R. Civ. P. 26(b)(1) and extends only to that which is both relevant to claims and defenses in th case and within the Rule's proportionality limits. Relevance focuses on the claims and defenses in the case, not its general subject matter. Proportionality analysis involves consideration of various factors, including the importance of the issues at stake, the amount in controversy, the parties' relative access to information, the parties' resources, the importance of the discovery in resolving the issue, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In addition, "[o]n motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules . . . if it determines that (i) the discovery sought is unreasonably cumulative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; [or] (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action." Fed. R. Civ. P. 26(b)(2)(C) (emphasis added).

(2) Timeliness of Movant's Objections

Plaintiffs argue that Duke's motion is untimely and should be denied for that reason because his objections were not filed within 14 days after the subpoena was served, as required by Fed. R. Civ. P. 45(d)(2)(B). I reject this argument for the following reasons.

When a non-party to a lawsuit, like Duke, is served with a subpoena duces tecum, the non-party has two procedural mechanisms by which to challenge the subpoena, both of which Duke exercised in this case. First, the non-party "**may** serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises – or to producing electronically stored information in the form or forms requested." Fed. R. Civ. P. 45(d)(2)(B) (emphasis added). Significantly, this rule uses the permissive "**may**." It does not use the mandatory "shall" or "must." The non-party is not required to serve written objections. Instead, serving written objections is a less formal, easier, usually less expensive method of forestalling subpoena compliance when compared to the separate option of filing a motion to quash or modify the subpoena, as discussed below. However, if the subpoena recipient chooses to serve written objections rather than file a motion to quash or modify, the objections must be served on the issuing party "before the earlier of the time specified for compliance or 14 days after the subpoena is served." Id.

> This fourteen-day objection period only applies to subpoenas demanding the production of documents, tangible things, electronically stored information, or the inspection of premises . . . . A failure to object within the fourteen-day period usually results in waiver of the contested issue. However, the district court, in its discretion, may entertain untimely objections if circumstances warrant.

9A C. Wright, A. Miller, M. Kane, R. Marcus, A. Spencer, A. Steinman, Federal Practice and Procedure § 2463 (3d ed. 2017) (hereinafter "Wright & Miller") (available on Westlaw at FPP § 2463).

Thus, even untimely objections may be excused when, for example, a subpoena is overly broad on its face or places a significant burden on a non-party. See D. Lender, J. Friedmann, J. Bonk, Subpoenas: Responding to a Subpoena 6 (Thomson Reuters 2013) (hereinafter "Lender") (available at https://www.weil.com, search "subpoenas") (citing Semtek Int'l, Inc. v. Merkuriy Ltd., No. 3607, 1996 WL 238538, at *2 (N.D.N.Y. May 1, 1996)). Moreover, as noted above, subpoenas duces tecum are discovery devices governed by Rule 45, but also subject to the parameters established by Rule 26. "[T]he court retains discretion to decline to compel production of requested documents when the request exceeds the bounds of fair discovery, even if a timely objection has not been made." Schooler v. Wal-Mart Stores, Inc., No. 14-2799, 2015 WL 4879434, at *1 (E.D. La. Aug. 14, 2015) (citing Fifty-Six Hope Rd. Music, Ltd. v. Mayah Collections, Inc., No. 2:05-cv-01059-KJD-GWF, 2007 WL 1726558, at *4 (D. Nev. June 11, 2007); Lucero v. Martinez, No. 03-1128, 2006 WL 1304945, at *2 (D.N.M. Mar. 11, 2006)).

Serving written objections under Rule 45(d)(2)(B) may provide the recipient with several advantages. For example, asserting objections can be done informally without going to court, shifts the burden and expense of commencing motion practice in court to the issuing party and affords the subpoena recipient additional time in the event the recipient is ultimately obligated to comply with the demands in the subpoena. Lender, supra, at p. 7.

The non-party's second option, under Rule 45(d)(3), is to file a motion to modify or quash the subpoena as a means of asserting its objections to the subpoena. Unlike serving Rule 45(d)(2)(B) written objections, a motion to quash is not subject to the 14 day requirement. Instead, the rule provides simply that the motion to quash must be "timely." Fed. R. Civ. P. 45(d)(3)(A). As the leading commentators and the case law they rely upon explain, the "14-day requirement to object to a subpoena is **not relevant** to a motion to quash a subpoena," Wright & Miller § 2463 (emphasis added) and cases cited therein at n.10, including COA Inc. v. Xiamei Houseware Group Co., No. C13-771, 2013 WL 2332347, at *2 (W.D. Wash. May 28, 2013) (citing King v. Fidelity Nat. Bank, 712 F.2d 188, 191 (5th Cir. 1983)); In re Kulzer, No. 3:09-MC-08, 2009 WL 961229 (N.D. Ind. Apr. 8, 2009), aff'd, 2009 WL 2058718 (N.D. Ind. July 9, 2009), rev'd on other grounds sub nom. Heraeus Kulzer, GmbH v. Biomet, Inc., 633 F.3d 591 (7th Cir. 2011) (motion to quash was timely even though not served within 14-day time limit).

""While 'timely' is not defined in [Rule 45(d)(3)(A)] nor elaborated upon in the advisory committee notes . . . , [i]n general, courts have read 'timely' to mean within the time set in the subpoena for compliance."" In re Ex Parte Application of Grupo Mexico SAB de CV, No. 3:14-MC-0073-G, 2015 WL 12916415, at *3 (N.D. Tex. Mar. 10, 2015), aff'd sub nom. Grupo Mexico SAB de CV v. SAS Asset Recovery, Ltd., 821 F.3d 573 (5th Cir. 2016) (quoting U.S. ex rel. Pogue v. Diabetes Treatment Ctrs. of Am., Inc., 238 F. Supp. 2d 270, 278 (D.D.C. 2002)). "It is well settled that, to be timely, a motion to quash

a subpoena must be made prior to the return date of the subpoena." Estate of Ungar v. Palestinian Auth., 451 F. Supp. 2d 607, 610 (S.D.N.Y. 2006) (emphasis added). In addition, "[c]ourts may excuse delay for the same reasons that justify delay in serving written objections." Lender, supra, at p. 9 (citations omitted).

In this case, plaintiffs served the subject subpoena on January 26, 2018. The return date provided in the subpoena for production of the documents was February 26, 2018. Although it was formally filed in the Virginia court's record on February 26th, Duke's motion to quash in the Virginia court was served on February 23, 2018, Record Doc. No. 10, three days before the return date. The motion was therefore timely within the meaning of Rule 45(d)(3)(A) and preserved Duke's objections.

Plaintiffs cite two reported decisions issued by other Louisiana-based United States Magistrate Judges in support of its argument that Duke waived his objections to the subpoena by failing to serve written objections within 14 days of his receipt of the subpoena, despite his subsequent, timely filing of a motion to quash. Record Doc. No. 12 at p. 5. I recognize that both Duplantier v. Bisso Marine Co., No. 09-8066, 2011 WL 2600995 (E.D. La. June 30, 2011), and Payne v. Forest River, Inc., No. 13-679-JWD-RLB, 2014 WL 7359059 (M.D. La. Dec. 23, 2014), graft the Rule 45(d)(**2**) 14-day period for serving written objections onto the separate and distinct Rule 45(d)(**3**) motion to quash or modify procedure. However, neither decision recognizes that the motion need only be "timely." Duplantier did so conclusorily, with no discussion or analysis of the law

discussed above. Payne states that, "[h]aving been served with a Rule 45 subpoena, [the recipient] had a duty to serve its objections 'before the earlier of the time specified for compliance or 14 days after the subpoena is served.'" Id. at *4. No such duty exists, unless the recipient chooses the Rule 45(d)(**2**) written objections procedural vehicle as his exclusive means of challenging the subpoena. In Payne, the subpoena recipient opted to file a motion to quash or modify. It was undoubtedly true, as the Magistrate Judge stated, that the recipient in Payne "provided no legal authority for its argument that the filing of a motion to quash a Rule 45 subpoena . . . suffices as a timely objection . . . by the non-party." Id. Yet, that authority exists in the structure and plain language of Rule 45 itself, the expert commentary and the case law discussed above.

In my view, Payne and Duplantier are erroneous as a matter of law. Their reasoning is unpersuasive, and they are not Fifth Circuit precedent binding upon me. Rules 45(d)(**2**) and 45(d)(**3**) provide a non-party subpoena recipient with two separate and distinct procedural vehicles for asserting objections to a subpoena. One is not dependent upon or tied to the other. One must be filed within 14 days of receipt; the other must merely be "timely," ordinarily meaning filed before the date set in the subpoena for compliance. In this case, Duke properly asserted his objections in a timely motion to quash filed in the Virginia federal court under Rule 45(d)(3).

(3) Particulars of the Subpoena

The principal objections to the subpoena asserted in the motion are that it is overly broad, including that the requests lack "a time window of any kind," Record Doc. No. 1-1 at p. 3, and that it exposes the subpoena recipient to undue burden and expense.

The objection that the production requests in the subpoena are unlimited in time is sustained. The "time period covered by the request" is one of the factors the court must consider. In both their discussions with movant in attempting to resolve their dispute and in their memorandum in opposition to the motion, Record Doc. Nos. 12 at p. 10 and 12-7 at p. 2, plaintiffs expressed their willingness to restrict the time period covered by the requests to June 1, 2017, to the present. The principal events on which the complaint is based occurred on August 11-12, 2017. Record Doc. No. 175. Six weeks before these dates to the present is a reasonable time period during which to address the systematic planning and coordination of the events and their aftermath allegedly involving defendants and Duke, whom the complaint specifically alleges was a co-conspirator with defendants who actively participated in the planning, coordination and funding of the activities upon which plaintiff's claims are based. Accordingly, IT IS ORDERED that the subpoena is modified, in that all requests as to which this order requires movant to make production are limited to the time period June 1, 2017, to the present.

Subject to the foregoing time limitation, all other objections as to Requests Nos. 1, 2, 3, 4, 6, 8, 9, 10, 11 and 12 are overruled. These requests are narrowly drawn in that they are limited to events or occurrences described with great particularity and that have clear

and substantial relevance to the claims asserted in the complaint. They are proportionate to the needs of the case, considering the factors enumerated in Rule 26(b)(1). Specifically, the issues at stake in the litigation are important matters of interest both to the parties themselves and to the public at large. The discovery these requests seek is important to resolving plaintiffs' claims of conspiracy, coordination, planning and funding – all of which are significant to the intent element of several of the causes of action. The subpoena recipient's access to the requested information is vastly superior to plaintiffs'. While plaintiffs' legal representation resources appear superior to movant's, the court has no information concerning the resources of the parties themselves. The amount in controversy is unspecified, but appears substantial in light of the significant extent of physical and emotional damages alleged by the numerous plaintiffs. Plaintiffs have substantial need for this discovery.

While some burden may be imposed upon movant in responding to these requests, I cannot conclude that his burden or expense is outweighed by the likely benefit to the truth-finding objective of requiring production, especially considering the other factors addressed above. As to burden and expense, movant broadly avers in his memorandum in support of the motion, without substantiation or evidentiary support, that he

> does hundreds of hours of radio programming every year. To require him to identify all instances in which he made mention of any of the defendants in the lawsuit or any comments about Charlottesville would require listening very closely for hundreds of hours and is unreasonable and impractical. Movant . . . receives hundreds of thousands of emails every year/Movant's email client [list] alone has an astounding 46 gigabytes of text data . . . .

> Most email addresses don't have the person's name or personal information. Many times people write and don't identify themselves, so simply identifying and or attempting to identify the defendants' emails or any correspondence is a task that would take many lifetimes of effort, and no search could identify the references sought by plaintiff with any degree of certainty.

This objection is hyperbolic. Each of these requests contains express reference to some particularly identified occurrence, event, date or person. The particularity of each request makes a focused, keyword search of Duke's database of responsive materials reasonably able to be accomplished. Plaintiff need only make a reasonable keyword-phrased, good faith search, using the particularly described dates, events, occurrences or persons identified in each request, and produce those materials uncovered by such a focused keyword search. He need not review each and every email in his database, for example, which do not refer to the events, dates or persons specified in these requests or engage in a deciphering effort as to his entire database to determine if materials that do not refer to the events, dates or persons specified in these requests were nevertheless sent by a defendant when the sender is not identified.

The motion is granted in part in that the subpoena is modified to delete Requests Nos. 5, 7, 13 and 14. No response to these requests is required. These requests are so broadly worded as to seek production of much that could be expected to be irrelevant to the claims in the Western Virginia case. In addition, insofar as some subset of these requests might seek materials that are relevant to the Western Virginia lawsuit, they are unreasonably cumulative or duplicative of other requests identified above as to which

movant must make responsive production. Fed. R. Civ. P. 26(b)(2)(C)(i). For example, Request No. 5 is so broadly worded that it conceivably would include any materials identifying any entity with which Duke is affiliated. Relevant and discoverable information concerning financial support from such entities for the Charlottesville events should be produced in response to Request No. 12. Requests Nos. 13 and 14 are so broadly worded that they conceivably would include all communications with these defendants and others, even if they have nothing to do with the claims asserted in this lawsuit. Relevant and discoverable communications with the persons and entities identified in these requests should be produced in response to other requests as to which responses are being required.

Accordingly, the subpoena is modified as provided above. IT IS ORDERED that, no later than June 18, 2018, subpoena recipient David Duke must produce to plaintiffs all materials responsive to Requests Nos. 1, 2, 3, 4, 6, 8, 9, 10, 11 and 12, within the time period of June 1, 2017 through the present.

New Orleans, Louisiana, this 16th day of May, 2018.

JOSEPH C. WILKINSON, JR.
UNITED STATES MAGISTRATE JUDGE

CLERK TO NOTIFY:
HON. JOEL C. HOPPE
UNITED STATES MAGISTRATE JUDGE
WESTERN DISTRICT OF VIRGINIA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

* * * * * * * * * * * * * * * * *

ELIZABETH SINES, ET AL., * CIVIL ACTION NO. 3:17-cv-72
* MAY 24, 2018 10:28 A.M.
Plaintiff, *
* CHARLOTTESVILLE, VIRGINIA
vs. * VOLUME 1 OF 1
*
JASON KESSLER, ET AL., *
*
Defendant. *

* * * * * * * * * * * * * * * * *

TRANSCRIPT OF MOTIONS TO DISMISS
BEFORE THE HONORABLE NORMAN K. MOON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:

ROBERTA ANN KAPLAN
JOSHUA MATZ
Kaplan & Company, LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
(212) 763-0884

KAREN L. DUNN
Boies Schiller Flexner, LLP
1401 New York Avenue NW
Washington, DC 20005
(202) 237-2727

BEN ROTTENBORN
Woods Rogers
10 South Jefferson Street
Suite 1400
Roanoke, VA 24011
(540) 983-7540

Court Reporter: Tracey Aurelio, CRR, RDR
1101 Court Street
Lynchburg, VA 24504
traceya@vawd.uscourts.gov

Proceedings recorded by mechanical stenography, transcript produced by computer.

Appearances (Continued):

For the Plaintiffs:

DAVID E. MILLS
Cooley, LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
(202) 776-2865

For the Defendants:

JAMES EDWARD KOLENICH
Kolenich Law Office
9435 Waterstone Boulevard
Suite 140
Cincinnati, OH 45249
(513) 444-2150

BRYAN JEFFREY JONES
Bryan J. Jones, Attorney at Law
106 West South Street, Suite 211
Charlottesville, VA 22902
(434) 260-7899

JOHN A. DiNUCCI
8180 Greensboro Drive
Suite 1150
McLean, VA 22102
(703) 821-4232

MICHAEL ENOCH PEINOVICH (PRO SE)
P.O. Box 1069
Hopewell Junction, NY 12533
(917) 747-9238

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(Call to Order of the Court at 10:28 a.m.)

THE COURT: Good morning.

I'd ask the clerk to call the case, please.

THE CLERK: Yes, Your Honor. Civil Action No. 3:17-CV-72, *Elizabeth Sines, and others, versus Jason*

Kessler, and others.

THE COURT: Plaintiffs ready?

MS. KAPLAN: We are, Your Honor.

THE COURT: Defendants ready?

MR. KOLENICH: Yes, Your Honor.

THE COURT: All right. Thank you. We're here on the defendants' motions. And we are only to determine here -- this argument is over whether the pleadings are sufficient to state a cause of action against the defendants. There will be no evidence, of course. And I've given you a rough schedule of, you know, how much time allotted.

But, remember, this is -- the argument is for my benefit to try to help me understand what the case is about, not necessarily for your benefit. So if we need to, we'll bury that. It's not written in stone.

But do remember, we have looked at the briefs very carefully. So it's not necessary to just repeat what's in your brief.

All right. Who is going to argue first for the defendant?

MR. KOLENICH: Good morning, Your Honor.

THE COURT: Good morning.

MR. KOLENICH: Sir, my name is Jim Kolenich. I'm admitted pro hac vice from Ohio. I represent Jason Kessler, Christopher Cantwell, Vanguard America, Robert Ray, Nathan

Damigo, Elliot Kline, Identity Evropa, Matthew Heimbach, Matthew Parrott, the Traditionalist Worker Party, Jeff Schoep, National Socialist Movement, Nationalist Front. All those defendants have filed a motion to dismiss this complaint for failure to state a claim.

The central argument of our motion, Your Honor, is that the plaintiffs have failed to establish the elements of a conspiracy either under federal or state law.

The plaintiffs rely heavily on a good amount of conclusory allegations, such as that are highlighted in our brief, with a very few specific factual allegations thrown in. But what they mostly rely on -- and it is good lawyering. There's no denying that -- is that they've taken a conspiracy to show up in Charlottesville for a political rally and, because violence happened at that rally, tried to turn it into a conspiracy to commit violence, specifically racial violence in violation of Section 1985, the Thirteenth Amendment in Section 1982.

Now, in support of this allegation, they bring forth numerous Internet communications, blog postings stating crude things, uncivilized things, impolite things, offensive things, and also stating outlandish and implausible things, such as alleging that there's a chemical that can be deployed that will dissolve a man on the spot leaving nothing but bones laying there. This, of course, is hypobole. No such chemical

exists. Such as bringing forth a blog post that lists fictional farm equipment that can be used to run over pedestrians who are blocking traffic. No such equipment exists.

They wish to use this, apparently -- I guess they'll speak for themselves, but it seems to me they wish to use this to establish the element of a plan, a preexisting plan, a conspiracy to commit that type of violence with equipment that does exist. Obviously, vehicles exist. Mace exists. Bats, sticks, fists, those all exist. But what's lacking in their complaint, 112 pages of it and 56 pages of supporting brief is any preexisting conspiracy to actually perpetrate this violence.

Undoubtedly, some violence occurred. Undoubtedly, some violence that exceeded the limits of the law occurred at the rally. And the state courts have determined that certain rally participants are guilty of crimes related to that violence. But what is not apparent from the face of the complaint is that there was a preexisting agreement to engage in that violence.

If I could, Your Honor, since you've allotted me a good amount of time, I would like to go over some of the specific paragraphs that the plaintiffs have cited in their supporting brief claiming that they have established the elements of a conspiracy.

Excuse me, Your Honor.

The plaintiff directs us to Paragraph 37 and 39 of their amended complaint as to Defendant Jeff Schoep. I'm having some technical difficulties here, Your Honor. If you'd give me one minute.

THE COURT: Okay.

MR. KOLENICH: The plaintiff was kind enough to give me a hard copy, Your Honor. We can proceed.

Paragraph 37 and 39 of the amended complaint. They say that this is part of their case against Jeff Schoep. "Defendant Schoep, a resident of Michigan, is the leader of Defendant National Socialist Movement, the largest neo-Nazi coalition in the United States. On April 22, 2016, Schoep formed the Aryan Nationalist Alliance, later renamed the Nationalist Front, which is an umbrella organization of hate groups such as TWP, the Aryan Terror Brigade, regional factions of the Ku Klux Klan. Schoep has said if he could meet Adolf Hitler today, he would say, 'Thank you'" and various other kind things about Hitler.

And he tweeted after the events in Charlottesville, "It was an honor to stand with you all in C'ville this weekend." Various groups and the rest are true warriors.

Moving to Paragraph 38. "Defendant National Socialist Movement is an unincorporated association." It goes on to say it maintains business in Michigan.

And Paragraph 39, Nationalist Front is an unincorporated association maintaining a website. Their complaint goes on and on like that. And I realize those are introductory paragraphs identifying a defendant, but it is heavy on paragraphs just like that.

There is no specific allegation in those paragraphs that says Schoep or the NSM or anybody else engaged in any conspiracy to do anything except go to Charlottesville for a political rally.

Now, where -- later on, let's go -- they cite us to paragraph -- we'll go further -- 187 and 188. 187, "On August 12" -- this is under a heading "Defendants Intentionally Planned a Violent Confrontation with Counter-Protesters."

"On August 12, defendants, their co-conspirators and others" -- although it's either defendants and their co-conspirators. I don't know what others might be there, "acting at their direction executed their plan to carry out racial, religious, and ethnic violence, intimidation, and harassment."

(Court reporter asked for clarification.)

MR. KOLENICH: "Defendants Kessler, Cantwell, Mosley, Heimbach, Hill, Invictus, Ray, Spencer, Damigo, Peinovich, Fields, Parrott, Tubbs, Nationalist Front, all the defendants who were there all participated in violent events of the day."

Now, that paragraph adds nothing. It's a conclusory paragraph. It doesn't say what they did or didn't do, where their agreement is. It doesn't add anything.

Okay. They are going to say that's an introductory paragraph to a section.

Moving on. 188. "Defendants and co-conspirators planned to arrive early and anticipated and encouraged the use of violence to assist the rally." Now, they put a quote in here. "As one co-conspirator explained: 'Me, the rest of TWP, League of the South have been to more than one rodeo. And shit NSM will be there early too. Those guys are nuts in a good way.' Defendant Kessler promised there would be hundreds of members of TWP and League of the South at the park."

Again, colorful language, but where is there evidence of a conspiracy or an agreement to do anything except show up at the park?

It doesn't even -- if you take -- as you must -- if you take the plaintiff's allegations in each of these paragraphs in the best possible light, it doesn't allege that they've ever been responsible for violence at any of their prior political rallies. It merely alleges that they got into fights. That's not sufficient to sustain a conspiracy allegation here.

They specifically sued the defendants for planning to

come to Charlottesville and physically assault with racial animosity, not merely physically assault but for racial and religious reasons the local citizens or at least the local counterprotesters. They have to have proof of an a priori agreement to do that.

Now, they've a lot of proof -- and we'll just concede for purposes of this motion, Your Honor, that these guys knew each other and had an opportunity to communicate with each other prior to coming to Charlottesville. They certainly had an opportunity to conspire. We're not denying that. The question is did they conspire? Is there sufficient allegation that they conspired?

They came to Charlottesville. They knew each other. They planned to come to Charlottesville, but where is the allegation they planned to engage in racial violence?

They say a lot of racial things on the Internet. They came to Charlottesville to chant and say a lot of racial things. Yes, they did. But the Skokie, Illinois, case may explain that that doesn't matter. You can't sue over that.

If in the 1970s in Skokie, Illinois, you can't actually wear a replica Nazi uniform, fly Nazi flags through a predominantly Jewish community, and if that's First Amendment protected speech, then saying the same kind and doing the same kind of things today, you know, that case hasn't been overruled. Perhaps the Court will have a different look at

it, but you are running up against existing precedence if you say that's not First Amendment protected speech.

So they need more. And they try to give them more because violence occurred, but they need a preexisting conspiracy. Not to show up and offend people, not to show up and yell at people, not to show up and look offensive, ridiculous, however they want to characterize it, scary. They need a preexisting condition to actually physically attack people or otherwise impede their rights in a colorable, actionable way. They don't have it. They want to say that because it happened they must have conspired ahead of time.

Now, the leading case or at least a case from the Western District, *Frazier v. Cooke,* which is cited in our brief, was a case where there were two men, white men sitting on a porch, a black man across the street playing basketball. The white man said same racially insensitive comments. One of the black men comes across the street onto the white man's property and says, you shouldn't talk like that, you shouldn't say that.

The allegation there was that the two white men looked at each other and then in concert stood up, got off the porch and beat the black man up there on the white people's front yard. That stated a claim for 1985 conspiracy.

So we must admit and we do that the conspiracy can happen in an instant, right there in the moment. But they

have to have agreement, as is plain from the cases cited in our brief, from each member of the conspiracy in order to hold them liable.

So if there's ten men on that porch and only two of them look at each other and get up and go beat up the black man, the other eight haven't conspired to exist in a 1985 conspiracy.

Even if they all think that it's funny, the racially insensitive language or insulting language is funny, there's no 1985 conspiracy. They have to take action to do that.

Now, the vast majority and in some cases all of the allegations against some of my clients are that they conspired to go to Charlottesville. That's it. They went to Charlottesville to have a rally.

Yes, they are provocative people. Yes, they have a far-right political ideology. Yes, they carried torches. While carrying those torches, the plaintiffs have alleged that certain plaintiffs were physically assaulted.

I have two things to say about that. One is plausibility. We live in an era -- you know, since Ashcroft and Iqbal, plausibility is mandatory. They have alleged that lighter fluid was thrown on the people, followed by lit torches, and yet nothing catches on fire. I don't know how we are going to test that here in court. Bring in a grill or something and see how that works? But if lighter fluid and a

torch is thrown on somebody, something should catch on fire. That allegation in and of itself is implausible, we will submit to the court.

Secondarily, there were hundreds of people at this torch rally, according to their complaint. Limiting ourselves to the universe of our complaint as we must, there were hundreds of people carrying torches at this rally. Only a couple, and none of my clients, are alleged to have assaulted people with the torches and the lighter fluid.

So going back to Frazier and Cooke, if there's ten people on that porch and only two of them look at each other, step off the porch and assault a racial minority, if the other eight haven't conspired, then they don't have a sufficient allegation of a conspiracy against all the people carrying torches. Only the people who actually physically assaulted plaintiffs have engaged in a conspiracy that was agreed upon there in the moment.

Moving to the next day, the actual August 12 rally, they want to say that there's a conspiracy to do violence because certain of the Internet postings by organizers, some of my clients, Mr. Kessler, Mr. Cantwell, stated bring signs, bring sign posts because you can use that if things get violent. They want you to reach the conclusion that that means they planned to use the sign posts and other implements for purposes of committing racial violence, but it doesn't say

that. That's not a reasonable implication from that.

They were going to a political rally. Of course they're going to have signs. They're going to have posts. They're going to be chanting. They need to show that there was a conspiracy beforehand to use that stuff for violent acts.

Now, maybe somewhere in that complaint that I haven't found they've got that agreement there in the moment where two guys are, like, all right, let's charge over there. You know, the melee starts and two guys decide to jump in, as happened with some of the criminal convictions. A melee started. Some other guys jumped in, and they ended up convicted of crimes.

We're not arguing that that's not possible. We're not arguing that you should dismiss a claim if they've shown that. I just can't find it. Maybe I didn't carefully enough read 160-whatever pages, but they're arguing that all this stuff was planned out ahead of time. In fact, they used this language for months and months and months ahead of time, the alt-right marchers came here planning to assault people, to racially assault people.

They do have a specific allegation against one of my clients, Robert Ray, that he verbally berated somebody while standing next to men carrying AR-15 rifles -- or I'm sorry. They used the phrase "rifles." I don't think they specified the kind -- outside of a synagogue, but that allegation is

deficient. It doesn't say that they knew it was a synagogue or Mr. Ray knew it was a synagogue. It has somebody screaming, there's the synagogue. It doesn't say that Ray knew or that he heard that person screaming. It doesn't say that he harassed anybody in an anti-Semitic way. It says he specifically referenced the phrase "white sharia," which is, if anything, an anti-Muslim phrase or an anti-feminist phrase. It's certainly not an anti-Semitic phrase, at least not until this case.

It doesn't say that he attacked anybody. It doesn't say that he swung at anybody. It doesn't say that he pointed a gun at anybody, threw a rock, nothing. Just ran his mouth while wearing anti-Semitic language on his shirt. I can't remember what the language is, but we'll concede that it's anti-Semitic.

Again, if all you're doing is marching and using language, provocative and insulting though it may be, the Skokie case precludes saying that's actionable. It's First Amendment protected speech, however much it may be a problem for people witnessing the speech, however scared certain people might get having to witness that speech.

Now, in the Skokie case itself, the judges there, you know, said that, you know, if they're coming back every day with this stuff, maybe that presents a different case. If they're coming back frequently maybe it presents a different

case. But once or once a year, we don't have any choice but to allow it. It's speech. It's political speech, and it's protected by the First Amendment, however afraid certain residents might be of it and of the people using it.

So it is our contention in this motion that that is all the plaintiffs have brought to this court. They have brought no a priori or preexisting conspiracy to do violence, but rather there's a conspiracy to come to Charlottesville and be provocative in their political speech which is protected.

We are not arguing that the First Amendment protects violence or that the Second Amendment protects criminal violence. Certainly not. We're not arguing that you're allowed to bring a gun to a political rally and then point it at people, no, or use it to intimidate people, no.

What we are arguing is that torches, chants, raising your voice, all of that goes along with a political rally, and it is not actionable. It is First Amendment protected speech.

And to the extent that they had any 1985 conspiracy in this complaint drawn from the Thirteenth Amendment from 1982, wherever, it is a spur-of-the-moment conspiracy between limited numbers of people, none of which are my clients. Everything they've got against my clients is before they got to Charlottesville. And it's all protected by the First Amendment.

They do have state law claims, state law conspiracy

and then a state law racial harassment statute. And they have problems there as well.

As to my clients, you know, the only person that they said racially harassed somebody or religiously harassed somebody was a plaintiff, Wispelwey. And Wispelwey claims that he was assaulted by a defendant named Augustus Invictus. It's not one of my clients. It doesn't say that one of my clients was standing there agreeing with Invictus to do this. And it specifically doesn't have any allegations that there was an a priori agreement to hunt down Plaintiff Wispelway or anybody else and harass them face to face. That's not what was agreed to. That's not what was discussed. There's no discussion beforehand, an allegation of a discussion beforehand in the complaint to go hunt down the synagogue or hunt down a reverend and harass them on the street or anywhere else.

That's not to say that the plaintiffs weren't worried about being assaulted. They may well have been, but they weren't. And the fact that the defendants are scary-looking individuals saying and doing scary-looking things isn't the same thing as assaultive behavior. And however worried they may have been doesn't transform it into a 1985 conspiracy.

Again, back to Frazier and Cooke. Had the two looked at each other, stepped off the porch and walked past the black man, is there a conspiracy? Even though he was nervous he was

going to get hit, we would submit to the court no.

Now, as to the Virginia law, their complaint as to the Virginia conspiracy is heavy on Section 18 of the Virginia code, the criminal code. Now, Virginia law based on the Vansant case we've cited doesn't automatically allow a civil cause of action for violations of a criminal statute.

The plaintiffs in arguing against that point cite to a case called BellSouth. It's in their pleading. That says that a civil cause of action will lie but only if you -- and it states -- the case is explicit -- if you injure the plaintiff in their trade or business. And none of these plaintiffs, to my knowledge as I stand here, have argued that they were injured in their trade or business. They would argue that they were personally injured.

So their argument is off base. Virginia law does not allow civil liability in these circumstances for violations of a criminal statute. And that's what their Virginia conspiracy is about, violations of criminal statutes, causing a riot and so forth.

As to their racial and religious harassment state law claim, again they just had Augustus Invictus. They don't bring my clients into it.

They do mention the presence of some of my clients at the torchlight rally. But, again, they don't say -- and they know who my clients are. They've obviously sued my clients.

They've identified my clients. Their clients have identified my clients, but they specifically do not say that any of my clients who were at the torchlight rally threw any lighter fluid, threw any torches or any such thing and, importantly, conspired to do any such thing.

Now, there is the business about mace, people being maced. But again, which of my clients agree with somebody else to mace the participants? That is deficient in this complaint, the First Amendment complaint.

So I hope that it's clear what our argument is. It is a defect in their conspiratorial arguments as well as state law defects, and that is what we wish to present to the Court.

THE COURT: Thank you.

MR. KOLENICH: Thank you, Your Honor.

THE COURT: All right.

MR. JONES: Good morning, Your Honor. My name is Bryan Jones. I'm representing League of the South, Michael Hill, and Michael Tubbs.

To survive a 12(b)(6) motion, plaintiffs must allege sufficient facts to nudge a claim beyond being merely conceivable, to be plausible. And conclusory legal statements are not enough.

In their memorandum of law in support of their motion in opposition to our motion to dismiss, plaintiffs list on page 30 all of the instances where my three clients are named

in their -- in the complaint. There are 24 paragraphs where my clients are listed in the complaint.

What is just as important as what is listed is what is missing from their complaint. Plaintiffs allege that much of this conspiracy was planned online using platforms such as Discord. Plaintiffs have obtained numerous communications on Discord between participants at the rally and some of the defendants.

None of my clients are alleged in the complaint to have made any actual statements on Discord. There are no agreements from my clients to commit any acts, no agreements even to do anything, no statements whatsoever on Discord.

The facts in the plaintiffs' complaint merely allege that --

THE COURT: Who has access to Discord? Who has it? I mean, can anyone access Discord?

MR. JONES: I don't know if that's alleged in the complaint, but it is alleged in the complaint and we must accept as true the League of the South had a Discord channel, but there's no allegation that any of communications --

THE COURT: I'm just curious. Could someone not, say, associated with one of the defendants post anything on Discord?

MR. JONES: I'm not sure, Your Honor. It's my understanding that you have to be invited onto Discord, onto

the specific channels.

So the facts in the complaint simply allege that my clients participated in the rally on August 12. There is no specific allegations that they were present on August 11, before that.

The allegations are that they marched in formation from the parking garage to the park, that Michael Hill's name was on the poster, that after the rally he tweeted, "League of the South had a good day in Charlottesville. Our warriors acquitted themselves as men. God be praised."

There's allegations that there was some scuffling between Michael Tubbs and some of the counterprotesters. No allegation that that was a violation of those counterprotest -- no names or none of the plaintiffs are alleged to have been any of those counterprotesters.

So we have a similar argument, Your Honor, that this is alleged to be a conspiracy. They don't have facts to support sufficiently carrying the claims beyond merely conceivable to plausible.

They've been able to infiltrate the secret communications between the parties, but they have not been able to plead specific facts against my three clients, Your Honor.

That would be my initial argument. Thank you.

THE COURT: Thank you, sir.

All right.

MR. DiNUCCI: Good morning, Your Honor. My name is John DiNucci. I represent Mr. Spencer. Just entered an appearance yesterday. Pleasure to be here, Your Honor.

If I can raise two points, which candidly I have not seen in any of the defendants' motion, memorandum of points in authorities.

There is a request in the case for injunctive relief. But from my quick and dirty reading of the complaint, after several quick and dirty readings, I don't see any facts pleaded that would entitle the plaintiffs to injunction of any sort. None whatsoever.

Secondly, and very briefly again -- this too was not in any of the briefs that I've seen -- I would argue that the plaintiffs who seek punitive damages haven't pleaded the requisite facts to get punitive damages. Although there's language about racial animus and the like, I don't see any of the boilerplate standard allegations that one would make to get punitive damages. There's nothing about hatred, spite, malice. There's certainly no such allegation made about my client, Mr. Spencer. So I would suggest that both the prayers for relief should be stricken with respect to the conspiracy allegations, which seem to be the heart of the matter.

I'm referring to several cases from the Western District as well from the Fourth Circuit. The *Muhammad v.*

Taylor case, which was decided by Judge Kiser in 2017, I quote, "Allegations of 'parallel conduct and a bare assertion of a conspiracy' are not enough for a conspiracy claim to proceed," citing *Society Without a Name v. Virginia,* 655 F.3d 342.

The *Weathers v. Ebert* case involving Mr. Ebert, a commonwealth's attorney from Prince William County dismissing a conspiracy claim, and I quote, "The other allegations are only general statements that he," Mr. Ebert, "acted in concert with others. These" -- and this is the key -- "unsupported by averments of communication, consultation, cooperation, or command, do not make him responsible under 1983 for the acts of others."

Averments of communication, consultation, cooperation or command, which allegations are not made in this case. And I'll get to some of the illustrative paragraphs in a moment.

And then going back to the *Society Without a Name v. Virginia* case, 1985(3) claims dismissed. The court saying, I quote, "The complaint fails to allege with any specificity the persons who agreed to the alleged conspiracy, the specific communications amongst the conspirators, or the manner in which any such communications were made." That's the framework.

The complaint does not sufficiently allege communications, consultations, commands by Mr. Spencer or for

that matter, I suppose, any of the other defendants.

As an example, Paragraph 64, and I quote, "Defendant Spencer and co-conspirator Evan McLaren, a member of Defendant Identity Evropa, met in person at the Trump Hotel in Washington, D.C., to organize and direct the 'rally' in Charlottesville, with the purpose and result of committing acts of violence, intimidation, and harassment against citizens of Charlottesville."

With the purpose and result, but there's nothing said in that paragraph about what the communications were. What did these gentlemen say? These are purely conclusory allegations not based on any pleaded fact.

Paragraph 230, "Defendants Spencer and Peinovich" -- if I pronounce that correctly -- "spoke to their followers at McIntire Park. Peinovich" -- if I pronounce that correctly -- "called the counterprotesters savages."

There's nothing about what Mr. Spencer allegedly said there, assuming he was there. It has to be taken as truth of the matter he was there. Nothing about what he said. Nothing about communication he had with Mr. Peinovich or anybody else.

Paragraph 315. "Defendant Spencer and co-conspirators McLaren met in person to plan unlawful acts of violence, intimidation, and denial of equal protection for the Unite the Right events."

Again, no allegation of what was said. It's talking

about to plan to do something. And, in fact, in those paragraphs I'm quoting from, they don't say they actually came to a conclusion on a plan.

Then they cite various what I'll call anodyne statements by Mr. Spencer that don't amount to incitement of violence and don't evidence -- they actually don't constitute a direct communication with any other alleged co-conspirator and don't amount in and of themselves to conspiracy.

Paragraph 52. This is Mr. Spencer. "What brings us together is that we are white, we are a people. We will not be replaced." That's not evidence of a conspiracy. That's not communication with another individual to plan something. It's not urging anyone to act or agree to act. It's not an incitement to violence.

Paragraph 85. And I may garble this one. I can't read my own writing, Your Honor. "A 'Charlottesville Statement' was distributed by Defendant Spencer, setting out the philosophy and ideology underlying the rally." And it quotes it.

It indicates that Mr. Spencer went on to say, "Racially or ethically defined states are legitimate and necessary." That's not a communication with another alleged co-conspirator designed to create an agreement. He's just making a public statement.

Paragraph 120, and this was after the events started

to occur on Saturday. "Defendants" -- I believe it was Saturday. "Defendant Spencer put out a call for attorneys on his website, altright.com." And that's not, again, a direct communication with any of the other alleged co-conspirators. It's certainly not an incitement to violence. He's saying people may need legal counsel given what's going on.

Paragraph 141. "Defendant Spencer tweeted a picture of Commonwealth Restaurant, which had a sign in the window reading, 'If quality and diversity aren't for you, then neither are we.'"

Now, the plaintiffs in the following paragraph, 142, try to suggest that somehow that was an invitation for people to wreak havoc on, vandalize, I suppose, that restaurant or perhaps others. But that's not -- actually, that's after the conspiracy had been performed. As other counsel said, you've got to have a prior agreement that results in these acts. That's not an indication of any prior agreement.

If I read the complaint correctly, what it consists of primarily where it talks about alleged acts or communications to conspire, they're collective allegations about the defendants. They don't specifically say Mr. Spencer said this, communicated with this guy, or the same is true as to other defendants.

Paragraph 68. "Defendants also frequently coordinated the illegal acts planned for the Unite the Right

event online." It doesn't say Mr. Spencer. "They made use of websites, social media, including Twitter, Facebook, 4chan, 8chan" -- I don't know what those are -- "chat rooms, radio, videos, and podcasts to communicate with each other and their co-conspirators, followers and other attendees and did so to plan the intended acts of violence and intimidation, and the denial to citizens of equal protection of law."

It doesn't mention Mr. Spencer. It doesn't say Mr. Spencer engaged in any particular communication. That's not specificity to support a conspiracy claim. And they don't identify in that paragraph the actual communications they're taking about.

Paragraph 71, "One Internet tool defendants used extensively" -- and defendants collectively, not identifying Mr. Spencer or anybody else.

"One Internet tool defendants used extensively to plan and direct illegal acts was the chat platform Discord." No reference to Mr. Spencer. Nowhere in the complaint is there indication that Mr. Spencer had access to that platform, if that's the right word, or actually utilized it. No allegation whatsoever.

And if I recall the brief that the plaintiffs have submitted for purposes of this hearing, they indicate that that was the principal means by which the defendants allegedly communicated to form this alleged conspiracy. The principal

means, but no reference to Mr. Spencer as to accessing the Discord platform.

Paragraph 72. "Defendants" -- again defendants collectively -- "used Discord as a tool to promote, coordinate, and organize the Unite the Right rally, and as a means to communicate and coordinate violent and illegal activities in secret during the actual events of that weekend."

No reference to Mr. Spencer. Just a collective allegation. If there is evidence to support the claim here, it would be in there. Why don't they say Mr. Spencer did these things?

And that's important because if you go to Paragraph 74, there's a technique used in this complaint I want to point out. It says, "Individuals including Heimbach, Parrott, Cantwell, and Ray, were all participants in Discord, and participated in the direction, planning, and inciting of unlawful and violent acts through Discord."

Individual defendants including the three or four people. I can't count. No mention of Mr. Spencer. Doesn't say including Mr. Spencer. By definition that means he wasn't part of it, because if he was they would have said so. If they had evidence, they would have said so. They haven't pleaded he was part of any communication through Discord.

Same thing in Paragraph 97: "On Discord, moderated

and controlled by Defendants Kessler and Mosley, there were countless exhortations to violence, including," and then it goes on.

"Moderated and controlled by Defendants Kessler and Mosley." Doesn't say moderated and controlled by Defendant Spencer. Doesn't say Defendant Spencer accessed, used, participated in the use of Discord.

There's other such references with the word "including." Paragraph 102, actually it is a little bit different, Your Honor. Paragraph 102, "Co-conspirators on Discord incited attendees to bring weapons and engage in violence. The incitement was known to and promoted by defendants." But again, no reference to Mr. Spencer. No reference to Mr. Spencer.

How then can they say he is part of this conspiracy? They don't plead any -- really don't plead any communications by Mr. Spencer. And then to the extent they in a general fashion talk about communications, they don't mention Mr. Spencer. They're just collective allegations about defendants.

In short, there is not any -- there is no sufficient allegation of communication, consultation, cooperation, or command by Mr. Spencer. They don't allege -- they don't sufficiently alleged he is part of a conspiracy.

With respect to -- and the same problem, of course, I

would respectfully submit, infects, if you will, their civil conspiracy claim under Virginia law. They simply haven't pleaded the necessary communications or the like to indicate he was part of a conspiracy.

THE COURT: Is there any difference in whether it be a civil conspiracy or a criminal conspiracy? Not him, but in the law is there any difference in a civil and a criminal conspiracy?

MR. DiNUCCI: Other than with respect to burden of proof, I would think not. But I'll be blunt, Your Honor. I wasn't prepared for that question. I've just gotten in this case. But the simple fact is -- well, they -- for whatever purpose, they have simply not pleaded facts. This, as counsel has pointed out, are purely conclusory.

THE COURT: I understand that. But, I mean, we try these drug cases. There's people acting all over everywhere, and no one has said a word that they can convict 20 or 30 people in a drug conspiracy with nothing but actions.

MR. DiNUCCI: Understood. I mean, I understand the concept.

THE COURT: Well, I understand the law in these cases is you have to be pretty specific about what was said and done, but I was just asking.

MR. DiNUCCI: Well, if the theory is that there was of a tacit conspiracy or implied conspiracy, I would

respectfully submit that at least logically you still have to have some communication with the other alleged co-conspirators. It may just be a wink and a nod. I think the example -- I get your name butchered, but other counsel mentioned was an instant conspiracy between a couple of guys on a porch to go beat up a black man. It could be a wink and a nod, but they don't even allege a wink and a nod here. We don't have anything specific.

On 8.01-42, the Virginia civil harassment statute, there's no -- at least I don't remember seeing any allegation of any particular act by Mr. Spencer. There's again just a collective allegation that four or five defendants collectively, you know, violated the statute. They don't say what act of harassment, particular act of harassment against what particular individual Mr. Spencer engaged in.

The same. They don't allege any particular act of violence by Mr. Spencer against any particular individual. We're left to guess what they're talking about. And they certainly don't allege any vandalism of property by Mr. Spencer, which is the third component of the Virginia civil harassment statute.

I also would -- I guess I have to confess my ignorance here. I'm having a hard time defining exactly what legal theory beyond conspiracy as a general proposition the plaintiffs advance.

They -- in the complaint at, for example, Paragraph 60, 65 through 68, 315 through 322, 324 through 326, and 341, the plaintiffs allude to a deprivation of a right to equal protection. Yet, nowhere in the complaint do the plaintiffs suggest, indicate, allege that there was any state action.

So I would respectfully submit under -- not only Breckenridge but then the Carpenter case, and then the Bray case -- since the plaintiffs haven't pleaded any state action, they don't have any claim for violation of equal protection of the law.

They also talk about in Paragraphs 312 and 341 deprivation of the equal privileges and immunities of citizenship. But with one exception highlighted in the plaintiffs' brief, which is a discussion of the applicability of 1982 to incidents around the synagogue, they don't cite what privilege or immunity they're talking about. We are left to guess what the claim is about.

They don't identify any statute or principle of law that creates or constitutes a privilege or immunity of which they were deprived.

In one paragraph, 339, they say they were deprived of equal rights, but they don't tell us, in the complaint at least, what those equal rights were, again with the exception of 1982.

They also in Paragraph 342 and only in Paragraph 342 of the complaint reference the right to be free of the badges and incidents of slavery. And I'm going to address that with the Court's indulgence in a moment.

They also talk about in Paragraph 312 being deprived of the use, benefits and privilege of property and/or contractual relationships. Put aside the word "property." There is no allegations that anybody was deprived of use, benefits and privilege of contractual relationships.

Judge, if I read the brief correctly, they're saying that the principal claims seem to be -- or set of claims seems to be based on the Thirteenth Amendment.

As I understand the law, and these -- again, I will be candid only having gotten in this case -- I've seen issues that weren't necessarily addressed in other briefs. I've got copies of cases over here for both plaintiffs' counsel and the Court.

Is I understand it, the Thirteenth Amendment -- excuse me. 1985(3) creates a remedy -- a remedy -- if persons conspire to deprive a protected person of some right that is declared elsewhere such as in the constitution or a statute. One of the plaintiff's cases, *U.S. v. Bledsoe,* 728 F.2d 1094 stands for that proposition.

Great American Federal Savings & Loan Association v. Novotny, 442 U.S. 366 at page 372 referring to 1985(3), it

merely provides a remedy for violation of rights it designates. 1985(3), quote, "Provides a civil cause of action when some otherwise defined federal right" -- not state right -- "to equal protection of the laws or equal privileges and immunities under the laws is breached by a conspiracy." That's Novotny at 366.

Also, as I read again Breckenridge, Carpenter, Scott and to Bray, with limited exceptions 1985(3) does not apply to private conspiracies to deprive persons of rights. That's *United Brotherhood of Carpenters and Joiners of America, Local 610, v. Scott,* 463 U.S. 825.

That was a case in which people were alleging a deprivation of First Amendment rights, but there was no allegation of a state action.

The same principle, though, applies with conspiracy to deprive persons of the right to equal protection under the Fourteenth Amendment. If there's no state action, there's no claim. There's *Wong v. Stripling,* 881 F.2d 200, Fifth Circuit, 1983, in which case there was a dismissal of claims for deprivation of rights under the First and Fourteenth Amendments for equal protection because there was no state action. And the Fifth Circuit was relying on Scott in that case.

And then we have *Tilton v. Richardson,* 6 F.3d 683, a Tenth Circuit case from 1993 affirming a dismissal of a

1985(3) claim by conspiracy to deprive the plaintiff of rights under the First and Fifth Amendments applicable to the Fourteenth Amendment, the Court holding that absent state involvement, plaintiff did not have an actionable claim for deprivation of the First Amendment right, right to freedom of religion -- excuse me, Your Honor -- due process, right to fair and impartial trial.

Federer v. Gephardt, 363 F.3d 754, an Eighth Circuit case affirming the dismissal of a 1985(3) claim for a conspiracy to deprive of rights to freedom, association, and speech holding that state action is necessary because the First and Fourteenth Amendments only apply to action by a governmental actor.

And then we move to be to Bray, again concedes that there are instances in which a 1985(3) claim can exist against a private actor. The court there said there were a few rights that are enforceable, if you will, as against the private entity. The court said those rights are the only Thirteenth Amendment right to be free from involuntary servitude. There's no allegation of involuntary servitude being forced on anybody here.

And in the same Thirteenth Amendment context, interstate travel, there was no allegation in this case that anybody was deprived of the right to interstate travel. In other words, 1985(3) doesn't apply because there is just no

state action, and there is none of the prohibitive private action. I will get to badges of incidents in a moment, Your Honor.

Also in support of the proposition that in these circumstances there is no -- without state action there's no 1985(3) claim. *Park v. City of Atlanta,* 120 F.3rd 1157, Eleventh Circuit case from 1997, in which the Court said, among other things -- I think the point is applicable here -- 1985(3) doesn't create any general federal tort remedy.

Now, with respect to the Thirteenth Amendment, I acknowledge -- I have read Breckenridge and still have a little bit of difficulty digesting it. But as I understand it given other cases, some prior to Breckenridge and some after, the Thirteenth Amendment does give congress the authority to determine what are badges and incidents of slavery. That's the *Jones v. Alfred H. Mayer* case, 392 U.S. 400 which plaintiffs cite. And I think it's Section 2 of the Thirteenth Amendment gives the congress the power in Section 2 to enact legislation to implement the Thirteenth Amendment. And it's been construed to, again, allow the congress to enact statues, such as 1982, to ban imposition of badges of incidents of slavery, but the Thirteenth Amendment itself doesn't create a private cause of action, I guess with the limited exceptions of circumstances in Breckenridge, although I would try to distinguish that.

In support of the proposition that the Thirteenth Amendment does not create a right of action, Goss v. Stream Global Services, Inc., a case from the Northern District of Iowa from March 19, 2015. Again, I have copies. There is no official cite I have been able to find for that.

The only right the Thirteenth Amendment creates on its face is the right to be free of involuntary servitude. We mentioned *Wong v. Stripling* before, a Fifth Circuit case. That stands for the proposition that the Thirteenth Amendment does not create a right to be free from private racial discrimination in all areas of life.

In the *NAACP v. Hunt,* 891 F.2nd 1555, an Eleventh Circuit case from 1990, the court said the Thirteenth Amendment in and of itself doesn't forbid badges and incidents of slavery. There has to be some implementing legislation such as 1982 that would prohibit imposition of badges and incidents of slavery.

In the City of *Memphis v. Greene,* 451 U.S. 100, the Supreme Court noted that it had not ruled on the issue of whether the Thirteenth Amendment itself executed, but it went on in that case to form, I believe, a dismissal of the case concerning a certain allegation of the badge and incident of slavery because there was no statute to say what the defendant was accused of was wrong, was prohibited.

In Palmer v. Thompson, 403 U.S. 217, the Supreme

Court said -- that's a 1971 case. The Court doesn't have a authority to declare, legislate, and in quotes, "implementation," that is to identify badges of slavery.

THE COURT: You've used about 20 minutes. You've got 10 for rebuttal, if you want to go on and use some of that time.

MR. DiNUCCI: I would like to, Your Honor. I appreciate the Court's indulgence.

What we have here, Judge, is no citation in the complaint to any implementing statute other than 1982. So to the extent that 1982 is invoked in this case, if you will, it's on behalf of Ms. Pearce, I believe, one of the Jewish plaintiffs because of her allegation that her ability to exercise access to use of the synagogue was restricted. Put that aside for a minute. There's no other implementing statute that the plaintiffs cite or rely on.

I would argue then there is no Thirteenth Amendment claim that any plaintiff has except perhaps Ms. Pearce. So I don't know what's in the complaint. What is the cause of action? I would suggest there is no cause of action because we don't have an implementing statute cited with respect to a Thirteenth Amendment claim, and we don't have state action. At least with respect to the federal claims, there's no meat there. There's no substance there.

And briefly, with respect to Ms. Pearce's claim, I

would respectfully submit that the cases she cites, the Greer case and the Brown case, are inapposite.

I think one of the counsel used the phrase in describing what happened with respect to the synagogue as a one-off matter. This isn't a continuing thing. It wasn't a question of vandalism, which I believe was the case in Greer. In Greer, for example, a 1982 claim was upheld with respect to the synagogue, deprivation of rights to use the synagogue, people were shooting live ammunition into the synagogue. We don't have anything like that here. In fact, there is nothing pleaded that I recall seeing where Ms. Pearce actually had been unable to use the synagogue. She's been inconvenienced, but I would respectfully submit not in the Greer or Brown cases the plaintiffs cite indicates that you have a cause of action of somehow your schedule has been changed. And that's about all we have alleged in the complaint.

With respect to 1986, Your Honor, as I understand the law, what you have to allege is not only that there has been -- well, you have to allege that the defendant knew of an act about to be committed in furtherance of a conspiracy, an act about to be committed and that you had the means reasonably to prevent the commission of the act.

It's not a question of knowing there's a conspiracy and bringing it into the conspiracy. The law is you know the act about to be committed in furtherance of a conspiracy and

you fail when you could to interfere and to stop that act.

Buck v. Board of Elections of City of New York, 536 F.2d 522, a Second Circuit case from 1976. Knowledge of the acts is a statutory prerequisite to sue. Not knowledge of the conspiracy. Knowledge of the act and implementation of the conspiracy.

In the Second Circuit case, the Court cited *Hampton v. City of Chicago,* 484 F.2d 602, a Seventh Circuit case from 1973. Quote, "Liability under 1986, however, is dependent upon proof of actual knowledge by a defendant of the wrongful conduct of its subordinates."

Conduct, act, not existence of a conspiracy. It's the act that you have an -- that you know of and have an opportunity to prevent. There's no allegation here in this complaint that Mr. Spencer knew of any particular act of violence or other criminal conduct in which any other defendant or unnamed co-conspirator engaged. And there's no allegation that he could have prevented it.

For example, where is the allegation that Mr. Spencer knew about what Mr. Fields was going to do? And where's the allegation that Mr. Spencer, or for that matter any other defendant could have prevented somebody from getting in his car and running somebody down? We have no such allegations.

Mr. Spencer has not been -- there's no specific incident of misconduct that's been identified that Mr. Spencer

was aware of or could have prevented.

One last case, *Bell v. City of Milwaukee,* 746 F.2d 1205, a Seventh Circuit case from 1984. Section 1986 predicates liability on: One, knowledge that any of the conspiratorial wrongs are about to be committed. Wrong is as an act. It's not the conspiracy itself.

Two, power to prevent or to aid in preventing the commission of those wrongs. Neglect to do so. And where the wrongs were committed -- five, the wrongful acts. Acts could have been prevented by reasonable diligence. Acts. Not that you could have stopped the conspiracy, not that you should have never gotten into conspiracy, the alleged conspiracy, but that once the conspiracy was formed and acts were being committed in implementation of it, you knew what those acts were, you were there and you could have prevented them. No such allegations in the complaint.

Thank you. Your Honor.

THE COURT: Thank you. All right.

MR. PEINOVICH: May it please the Court, Your Honor. I'm Michael Peinovich. I am a defendant myself, pro se, sir.

THE COURT: Yes, sir.

MR. PEINOVICH: I'm a political podcast server, commentator, activist from New York, and it's well known that I'm a controversial speaker, often called dogmatic speaker, I have many opinions that many people may find offensive,

shocking and such like that. Nonetheless, I am -- my belief is that I'm the kind of person for which the First Amendment was designed.

And in this allegation, in this complaint by the plaintiffs here, I would like to point out I have a broadly similar argument that has already been stated, that the facts alleged do not amount to -- do not amount to survive a motion to dismiss.

And I would like to point out specifically where I am mentioned in this -- this is a full complaint, 335 paragraphs of allegations in here, and I am mentioned in only 14 of them. And much like Defendant Spencer when it comes to the Discord server on which the plaintiffs claim the primary planning for this rally was conducted, there are no allegations of any comments or any participation on my part in that server because no such allegation could be made.

I am mentioned in a number of paragraphs but only 14. And I'd like to call attention to some of those.

So in Paragraph 42, the plaintiffs introduce me. They describe who I am and what I do. They say that I have appeared at several other political events alongside Defendant Spencer, and that is true. Defendant Spencer and I have done many political events together.

There is no allegation that there was any violence or allegations of violence that have arisen from any of these

other events that we have appeared at together.

They also say in this paragraph that Defendant Spencer and myself spoke at McIntire Park August 12, 2017. And they say, quote, "In the immediate aftermath of the car attack." And there's no allegation that I had any knowledge of the car attack or any involvement in it whatsoever. They merely include this, in my opinion, in an attempt to draw the implication in the mind of the reader that there was some connection between my appearance in McIntire Park and the incident, which they have no allegation that I knew anything about, which is the car accident involving Mr. Fields.

Paragraphs 50, 52, plaintiffs talk about how I took part in a May 13, 2017, demonstration in Charlottesville with Defendant Spencer, with Defendant Damigo, among others. They talk about how we had lunch and we spoke at a pavilion. Again, this is just -- I mean, I wonder why would they even include that? There's no actionable behavior there.

Paragraph 96, which is also going to be used in this exhibit that they have, is an excerpted quotation of an off-colored joke which they allege appeared on my podcast. Of course, they're not giving -- they say it was said by a co-conspirator. They don't name the co-conspirator. They simply allege that this person was a co-conspirator without naming them. There's no indication of who this person is anywhere else in the complaint.

Now, while there is certainly an off-colored joke that some might find offensive, there's no date, there's no time stamp, there's no episode name, there's no link, there's no indication that this joke has anything whatsoever to do with the rally at all. And it's my belief that they deliberately omitted those because to give the full context of such quotation would show how absurd it is to include it in an allegation that would indicate any kind of a conspiracy.

Certainly there's off-colored jokes that appear on my podcast, but again nothing here would indicate knowledge or communication or intent of anything relating to the events of August 12, whatsoever.

Now, in Paragraph 141 they include a tweet. If you will allow me, this tweet is deliberately misconstrued in their complaint to indicate this is a threat against residents of Charlottesville. It is exactly the opposite. It is a warning to them of the possibility of violence from counterprotesters who, you know, attended with the expressed intent of disrupting the events. So this is a deliberate misconstruction of my intent with that tweet.

So in Paragraph 207, they described that I approached Lee Park or Emancipation Park with my security team. This is true. I approached the park with a couple of friends of mine who were there to watch my back in case of trouble.

Now, there's no allegation of violence by myself or

my conspiracy -- excuse me. The word "conspiracy" has been thrown around so much that I accidentally said it -- my security team. There's no allegations that we engaged in violence. There's no allegations that we witnessed violence. There's no allegations that we were armed. There's nothing.

They said we approached the park. And now we approached the park for a legally permitted rally, which, you know, reminds me that this court had actually enjoined the City of Charlottesville to hold the rally. The City of Charlottesville attempted to revoke it. This court said, sorry, these guys have First Amendment rights. You have to allow them to speak.

So I was approaching the park with the intent to speak. There's no allegation of anything else. Simply I approached the park.

Paragraph 229. They allege that Defendant Spencer and I regrouped in McIntire Park after evacuating Lee Park. They then say that, quote, "Violence broke out again." Once again, I would say this is a carefully worded sort of equivocal statement meant to draw a connection between this alleged violence and my appearance there at McIntire Park; however, there's no direct allegation that I had any knowledge of this violence or that I was involved in this alleged violence any way.

They simply included it there hoping to draw the

inference in your mind that there is some connection, but they don't directly allege it because they can't. They can't directly allege that.

Now, in Paragraph 230 they say that in my remarks at McIntire Park I described the counterprotesters at the rally as savages. This is true. However, I believe since they have raised the issue of my remarks at McIntire Park, I can supplement them with other remarks I made there in the same speech. And I have included the full remarks and a video in my motion to dismiss, but if you will allow me a few words.

So I introduced my remarks at McIntire Park by saying this is not a rally about hate. This is not a rally against any other group of people. This is a rally for ourselves. And in my closing statement I said this is about love; this is not about hate. We love ourselves. We love our people. We love our nation. We love Europe, and we love America. We love white people, and there's nothing wrong with that.

Now, certainly some people might find such statements offensive. You know, I can't imagine why but they might. These are First Amendment protected speech, and I certainly don't see how this can be construed as a communication or incitement to violence or some other such thing. They are words indicating love and support for a certain group of people, not attacks on any other group of people.

Other factual allegations that they make about me in

the complaint are similarly innocuous. I had a guest on my podcast who announced the event, again legally permitted event. I assisted Defendant Cantwell in fundraising while he was in jail. I appeared on a poster for the event. Again, this is just First Amendment stuff.

So my argument is broadly similar, that all the facts alleged in this complaint do not suffice to indicate a conspiracy that would survive a motion to dismiss on these matters.

And that's all I have, your Honor. Thank you very much.

THE COURT: Thank you. That's all then for the defendants, I believe.

Do you need a break before you start?

MS. KAPLAN: Just five minutes, Your Honor, if that would be okay.

THE COURT: Okay.

MS. KAPLAN: Thank you. We appreciate that.

THE MARSHAL: All rise.

(Recess taken from 11:30 a.m. until 11:39 a.m.)

THE COURT: You may proceed.

MS. KAPLAN: Yes. Good morning, Your Honor. I'm Roberta Kaplan, counsel with my colleagues for the plaintiffs. And I'm going to argue why we believe all the motions to dismiss should be denied in their entirety.

As an initial matter, Your Honor, plaintiffs are obviously sensitive to the fact that Your Honor, the people who work in this courthouse, the people who live in this community have their own connections to, recollections of, and personal experiences of what happened in Charlottesville last summer.

Defendants too, as we know, have their own views about what took place. But we're here today on motions to dismiss plaintiffs' first amended complaint. And like with any motion to dismiss, the allegations of the complaint must be taken as true, and all inferences should be drawn in plaintiffs' favor.

Let me start, Your Honor, if a may, with a housekeeping notes, a couple of housekeeping matters. First of all, Defendant Fields did not move to dismiss at all. So he is in the case no matter what. He had answered the complaint.

In addition, six defendants, including Andrew Anglin, Moonbase Holdings and others have defaulted. So they too have not filed motions to dismiss. That leaves seven defendants in the case who have filed motions to dismiss, and I will try to focus on them and their arguments today.

Essentially, Your Honor, we believe -- and if you could turn to page 2 in the kind of slide thing that we did, PowerPoint without a PowerPoint, we believe that the

defendants essentially made four arguments or their arguments can be divided into four broad categories:

First, that the plaintiffs have not adequately pleaded a Section 1985(3) conspiracy claim.

Two -- and you heard a lot of this already this morning -- that particular defendants should not have been named as defendants.

Three, that the court should accept, rather than plaintiffs' interpretation of the facts, defendants' interpretation of the facts alleged by plaintiffs.

And, four, that all of this is protected speech so that no civil liability can lie in any event.

If it's okay with you, Your Honor, what I would like to do is I'm going to address the first three of those arguments. And then my colleague, Karen Dunn, from the Boies Schiller firm will address the fourth, which is the constitutional arguments.

THE COURT: All right.

MS. KAPLAN: I'm going to start with 1985(3). Well, slide three has the claims in the case, which are 1985(3), 1986, common law conspiracy, and violation of Virginia Code 8.01-42.1, but I'm going to go directly into 1985(3).

And if you could turn, Your Honor, if you would to slide five which has the history and language of Section 1985. As we all know, Section 1985(3) was passed by the reconstruct

in congress as a significant part -- and this is what Justice Kennedy said just last year -- as a significant part of the civil rights legislation passed in the aftermath of the Civil War. The statute is known as the Ku Klux Klan Act. It was passed in response to widespread violence and acts of terror directed at blacks and their supporters -- crucial fact -- and their supporters in the postwar South.

Against this backdrop of political terrorism, Congress enacted Section 1985(3), affording a remedy for the vindication of the civil rights of those being threatened and injured, notably blacks and advocates for their cause.

I'll get to this later, Your Honor, but it's very crucial. Section 1985(3) is not limited to acts just about African-Americans, or subsequent cases have held Jews. It also imposes liability for acts of violence and threats and intimidation against supporters of their cause.

So I'm going to start with the elements of the claim, which are on slide six, Your Honor. There are five elements. This comes from one of your own court's decisions. The five elements are a conspiracy of two or more persons:

Two, who are motivated by a specific class-based, invidiously discriminatory animus.

Three, to deprive the plaintiff of the equal enjoyment of rights secured by the law.

Four, which results in injury.

And, five, as a consequence of an overt act committed by the defendants in connection with the conspiracy.

So I'm just going to do it element by element kind of the old-fashioned way, if that's okay. And I'm going to start with the conspiracy element.

First thing I want to say at the outset, Your Honor -- and it addresses the question you have already asked -- is the elements of a conspiracy for purposes of Section 1985(3) are essentially the same whether it's state law, federal law, common law or even criminal law.

There's a slight difference with criminal law in the sense that in the criminal context, the agreement, the conspiracy itself is what's criminal. And you don't have to show injury the way you do in a civil case. But for all intents and purposes of what we're talking about, the essential elements and ideas of what constitutes a conspiracy are the same.

So to plead a conspiracy, Your Honor, you have to show facts supporting a plausible inference -- and we certainly agree with Iqbal and Twombly that it has to be a plausible inference -- that defendants positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

And although this requires allegations that are more than parallel conduct -- again citing directly from Twombly --

it does not require there to be direct evidence of a meeting of the minds.

And frequently in Section 1985 claims -- and I think, Your Honor, I read -- I think I read practically every 1985(3) case you yourself decided -- it is true that routinely these claims get dismissed. And they get dismissed because frequently when plaintiffs bring these allegations, either they don't show -- they allege a conspiracy in a conclusory manner, as you have held many times, or they don't show sufficient evidence of discriminatory animus. And here we think both of those are amply met.

So if you can look at Paragraph 7, staying with the conspiracy, it gives Your Honor I think a sense of the kinds of claims that routinely get dismissed. There's a citing without a name that we've already heard reference to which was whether the relocation of a homeless center outside of the city violated Section 1985(3).

There's attempts to convert what would be an ordinary unlawful search and seizure into 1985(3). That's the second case, *Smith v. McCarthy*. And then also in a criminal-related context there have been attempts to argue that misidentification of a plaintiff as a drug dealer violated Section 1985(3). And courts routinely dismiss those claims, as you yourself have, because allegations are conclusory and because there's not enough showing or allegation of a

conspiracy.

But this case, Your Honor, I would respectfully submit is very different from those cases. And it is very much more like became the cases I have on the right side of that column which really go to the heart or the core of what 1985(3) was about.

There's the *Griffin v. Breckenridge* case, Your Honor, in which some people were stopped in Mississippi believing that they were civil rights workers and were beaten up. And that's the case, as you know, where the court made very clear that state action is not required to make a 1985(3) claim.

There's the Waller case which involved an anti-Klan rally in which there was violence.

And then there's the Bergman case, also another Freedom Riders case which involved injury to Freedom Riders traveling in the South.

Here we believe that the core of our allegations in the case bring this case not even closer to the cases on the right side of the column but squarely within the right side of the column.

And, in fact, there's a slide later here in which the Supreme Court in Griffin said this case -- if this case doesn't represent the core of what congress intended in Section 1985(3), it's hard to imagine what does.

And I would say that the exact same principle is true

here, Your Honor. We are talking about racially motivated violence as the result of a carefully Klan planned conspiracy with people who showed their animus with massive -- particularized allegations which I'll get into on the conspiracy -- obviously harm to plaintiff, obviously overt acts.

So on the conspiracy, let me tell you that -- before I get there, the defendants seem to be suggesting that the only kind of conspiracy that would be sufficient here or that is sufficient under the law is if all the defendants somehow got into a room on one particular occasion and agreed on exactly what the conspiracy was. But that's not true. We all know that not to be true, your Honor.

Yourself talked about a drug conspiracy which in certain ways is analogous here where it's agreed that certain people in the conspiracy are the hub and do the planning and coordinate and maybe get the profits, and other persons in the conspiracy who may not even know each other are the spoke, although here we don't have that issue because all the defendants, we will show, did have contact with each other prior to August 11.

But among the kinds of things that we allege, we allege that defendants met in person to organize the events of August 11 and 12th.

THE COURT: Let me go back to 1983, 1985(3), and just

ask you to comment on this case, the Second Circuit case, *ALMA Society, Inc., v. Mellon*. And in that case it said the Court, referring to the Supreme Court, has never held that the amendment itself unaided by legislation as it is here reaches the badges and incidents of slavery, as well as the actual conditions of slavery and involuntary servitude. Indeed, all indications are to the contrary. And so is there a freestanding right to be free of the badges and incidents of slavery involved in this case?

MS. KAPLAN: There is, Your Honor. The courts have held interpreting the Thirteenth Amendment most frequently in the context of upholding the constitutionality of hate crimes statutes, like the Matthew Shepard Act and acts like that have specifically held -- and we cite the cases in our brief -- that racially motivated violence in and of itself is a badge and incident of slavery. And there's no question that's what happened here, Your Honor.

So, yes. It doesn't happen all that much, but this is exactly the kind of badge and incident case that the Supreme Court was talking about in Griffin.

THE COURT: Well, in Griffin, though, they did find that there was a violation of their right to traveling.

MS. KAPLAN: Correct. They said both travel -- they were clear. It was the travel, and there was the badges of incidents under the Thirteenth Amendment.

Here I'm not alleging travel, although I would say that some of the incidents have an aspect of detention to them. In particular, Friday night when our clients were surrounded by hundreds of protesters with lit torches and could not leave from around that the Jefferson statute, that has elements of detention. Same with the synagogue. Same with the church on Friday night.

I'm not saying it's interstate travel. It's not, but it gets to kind of the core of what badges and incidents of slavery were all about. And again, we have those cases cited that say racially motivated violence is enough.

So getting back, Your Honor, to the things that we allege the defendants did. They met in person.

To respond to something that was said by one of my friends on the other side, of course we don't know exactly what they said at their meetings. They were secret meetings. That's why we are going to get discovery to find out what they said.

We cite the Hill case in our brief that says conspiracies often by their very nature are secret. So we can allege that they met. I can't give you a transcript yet of what they said.

Two, they moderated, reviewed, directed and managed private online chat rooms that were used to organize and plan the violence.

They encouraged the use of weapons in their communications about August 11 and 12th. They organized the secret torch-lit march on August 11, which was unlike August 12. There was no permit for that. It was secret, but as we allege in the complaint and as we're seeing in discovery, plans were underway to do that all the way going back to the initiation of the Discord server in June. That wasn't some kind of on the spur-of-the-moment plan. It was something that had been planned as far back as June.

They coordinated which uniforms each group should wear so that they would be identifiable. It's very crucial for the James Fields allegations. They lined up and marched in Emancipation Park and preplanned regimented order on August 12. They charged at bystanders on August 12 in militaristic fashion.

THE COURT: Well, did all of them do this, though? We you say "they" --

MS. KAPLAN: Right.

THE COURT: They seem to be saying we don't -- we won't accept the broad brush of all the defendants, when you have this many defendants, to say all the defendants did so and so without being specific about what they did.

MS. KAPLAN: So I would say -- I was talking about the conspiracy as a whole. I would say -- I have three more responses to that, Your Honor.

First, any conspiracies, particularly large conspiracies, which this was, different people did different things. We don't deny that. There were people who we allege -- and most of the people actually who moved to dismiss were the leaders of the conspiracy. They were the organizers, the planners, the thinkers, for lack of a better term. We don't allege that all of them -- we may find out in discovery. We don't allege that they were the guys who were actually marching in regimented order. They were directing the marching in regimented order.

THE COURT: Were there any people -- I mean, do you allege were there any people that, say, on Saturday that were not part of this conspiracy but were there because they were just protesting the idea or they did not wish the statute to come down?

MS. KAPLAN: Yes, Your Honor.

THE COURT: People who were not members of the conspiracy. There were people. You would agree there were people there who were not members of your alleged conspiracy?

MS. KAPLAN: Absolutely.

THE COURT: Who shared or maybe shared the views of the conspirators, as you allege, but were not actually members of the conspiracy.

MS. KAPLAN: Correct, your Honor. I would not contend that every person who showed up on their side in

Charlottesville on August 11 and 12 --

THE COURT: What if some of those persons committed -- got caught up in the violence and committed violent acts?

MS. KAPLAN: They're not liable as co-conspirators. We are not seeking to hold anyone liable that way as co-conspirators. We may identify additional co-conspirators during the course of discovery. But what we're saying, we carefully chose the 25 defendants we did. We obviously, as you just noted, could have named many more. And I'm not saying we couldn't have named more. I'm just saying we couldn't have named everyone.

We chose them because with the exception of Mr. Fields, who has not moved to dismiss, these were all people who were directing, managing, kind of masterminding what happened. And so we went to the hub, to use the analogy from a drug conspiracy, to the hub of the conspiracy rather than suing all the spokes. That's not to say that there aren't spokes who could have be sued. It doesn't even mean that there are not other spokes we may ask Your Honor to name as we discover them in discovery.

But to understand our philosophy here, we went after the leaders. And I hear Your Honor's concern about the size of the conspiracy. Let me try to address that in a couple ways.

First of all, I think living here today in this country at this particular time, I think we can all agree that the Internet and modern technology is both a blessing and a curse, to quote the Bible, Your Honor. And it's certainly true here.

There's no question that this particular conspiracy could not have happened the way it did without the use of Discord, podcasts and other modern technology that the defendants explicitly used.

And to answer the question you asked earlier about Discord, it is a private chat room. It's not something open to the public. You have to ask to be admitted to one of these chat rooms, and then -- I will show you later the presentation -- be approved by one of the moderators. The two moderators here were Mr. Kessler and Mr. Mosley.

The final response I want to have to your concern about the scope is that looking back actually at the prior cases in which 1985(3) similar conspiracies were upheld, they also have been quite large.

We went back and we looked -- and I can hand up the complaint if you want it, Your Honor -- at the Waller case which was the Klan violence in Greensboro, North Carolina. In that complaint that was upheld against a motion to dismiss, there were 87 separate defendants who were named, so.

THE COURT: I don't think there is any problem how

many you name as long as you meet the Iqbal/Twombly standard and have enough facts about each one to hold them in the case, not just a generalization or conclusory language.

MS. KAPLAN: I agree, Your Honor. And we believe we have. We gave you specific paragraphs in our oppositions to the motions to dismiss. If you have specific questions, I will address them.

To give you one example with respect to Mr. Spencer, because it came up during argument, there was some discussion about whether Mr. Spencer participated in Discord. We don't know that. People use nicknames or handles, something like that on Discord. So they don't use their own names. So we only allege for the people who we knew we could identify by the handler.

However, there is an individual on Discord that we allege in Paragraph 78 of the complaint -- his handle was Caerulus Rex who was a coordinator between various security details and that he has been identified publicly as a frequent bodyguard of Spencer.

Again, we think we are going to be able to hook many more people in once we have the discovery. But we only have people -- I'm very aware of my good-faith obligations. We only allege the people on Discord who we could match their handle to the specific people.

Another issue which I think Your Honor is obviously

familiar with which is obviously in a conspiracy case circumstantial evidence alone is sufficient. That's because in the typical case, as we have already discussed, your plaintiff can only really guess at the contents of the secret communications, at least until discovery is permitted.

And indeed in the Mendocino case that we cited in our brief, the Ninth Circuit case, highly coordinated action and repeated patterns of conduct has been held to be sufficient to create a justifiable inference that preplanning occurred sufficient to allege a conspiracy.

But here, Your Honor, we actually have a lot more than that, as I think is clear from the size, detail, and specificity of the complaint.

Here we have put forward dozens of the defendants' communications before, during and after what happened in Charlottesville in which defendants or groups of defendants explicitly discuss their joint operation, discussed its white supremacist objectives, discussed how to use racialized violence and intimidation to achieve those goals.

Today, as I said, with the Internet and social media platforms, the modern-day conspiracy can be formed and take place largely online. And that is in substantial part what happened here. Many of the communications, as we've said, happened on Discord.

Discord is an online group messaging platform that

allows for simultaneous suite chats. As I said before and as Your Honor cogently asked, it is a privately platform. It's not open to the public.

If you turn to page 9, Your Honor, of the printed up outline, it shows you what a page on Discord looks like. And I think it is incredibly illustrative.

If you look in the right-hand column under "Event Coordinator" at the top, Your Honor, you'll see -- and just to be clear, the bottom quote that we highlight there is one alleged in our complaint. I took this from the complaint, and this is how the page actually appears on Discord.

You have event coordinator on the right. You have Mr. Mosley and MadDimension. I'm sorry, Your Honor. I'm losing my vision. We believe those two people are Mr. Mosley and Mr. Kessler. You have a number of moderators. Again, we don't necessarily know who those are. One is called Chef Goyardee. One is called Heinz. One is called Kurt. And of course with Discord we hope to identify those people.

You have a discussion at the bottom from Erika talking about how this is not a public server in response to some of those questions, that it is invite only through our trusted, pre-vetted alt-right servers. We haven't even opened it up to the proud boys or the alt-lite because the other mods, event coordinators, and myself are all aware that they act like kikes.

And then on top of that screen, Your Honor, you see the kinds of communications that happened. This is all the way back in June. I believe this is dated June 5. The kind of communications that were happening all the time from the early part of June until what happened on August 11 and 12, communications all of which we don't have, but of the ones that we have already clearly show a preconceived plan to commit racialized violence in Charlottesville on August 11 and 12th.

As for the defendants who we know to be on Discord, we know 11 of them were. Kessler, Mosley, Heimbach, Parrott Cantwell, Ray, Vanguard America, Identity Evropa, Traditionalist Workers Party, League of the South, and Daily Stormer. And as I said, we have very strong reason to believe that others, including Spencer, either were directly or through people working for them, and we intend fully to identify that during discovery.

In addition, certain of the groups actually had their own servers. So if you look at the left, Your Honor, this is the Charlottesville server, Charlottesville 2.0. If you look at the left, these are all the different discussion groups that they had. Shuttle Service, code of conduct, questions for coordinators, flags, promotion, gear and attire. You can see that on the left.

Then in addition to this, certain groups like

Identity of Evropa had their own Charlottesville server. So when it said Charlottesville 2.0, it was its own Vanguard America server for Charlottesville.

And as I said, we believe that what we have here is just the tip of the iceberg. We are pursuing discovery, as Your Honor can imagine, against Discord. These all came from stuff that was openly available on the Internet. And we believe there is much, much more.

Indeed, there was a leadership chat on Discord, one of these topics, and we don't have the communications in that chat. That has not been made publicly available. We intend to pursue it in discovery.

In addition, Your Honor, some chats have been made public since we amended our complaint. To the extent Your Honor is at all interested, we actually could amend to add them, but we are constantly getting new information in all the time through discovery and otherwise.

If that's -- I'm going to go now to the second element, Your Honor, if it's okay with you, which is the fact that defendants were motivated by a specific class-based invidiously discriminatory animus. Here I don't think there is much really to argue about. Defendants don't really argue that that didn't exist here.

As I said before, the Supreme Court precedent is very clear that it's not only discrimination against black people

or Jewish people but also people who advocate for their rights. And that shows up in the Carpenter case and the Waller case that we cite in our briefs.

The Fourth Circuit itself has explicitly held that animus against Jewish people is sufficient to satisfy the discriminatory animus element of Section 1985. We cite the *Ward v. Connor* case for that.

And it should even be noted as occurred in the Griffin case that the plaintiff doesn't even have to be right about it. Remember, in Griffin the defendants mistakenly thought a white guy in the car was a civil rights worker. It turned out he wasn't, but that still was sufficient to state a 1985(3) claim.

As for the third element, which is what Your Honor asked about, which is the basis of the objective that would be -- that is for which defendants could be liable under 1985(3), as we've explained we believe that this is a core racially motivated violence case which is a badge and incident of slavery under the Thirteenth Amendment.

I told you about those cases in which courts in the conduct of hate crimes have held that racially motivated violence is itself a badge and incident of slavery.

I can refer you to the *United States v. Roof* case out of 2016, and there are other cites that all stand for that proposition.

Although some of the defendants have seemed to argue that badges and incidents of slavery somehow was only actual in enslavement or actually having, you know, bonds around your wrists or things like that, we obviously know that's not true. That's not what the cases say. It's certainly not what the Supreme Court said in Griffin.

And indeed, in Griffin, as I suggested, the Supreme Court talked about claims of detention, threats and battery as also coming within the ambit.

So let me just again kind of repeat what I said. If you kind of think about what happened here, Your Honor, both the torch-lit rally on March -- I mean, August 11 -- excuse me -- the kind of temporary detention of worshipers at St. Paul's Church on August 11 because of the horrible violence going on outside and, of course, what happened at the synagogue we think are all classic racially motivated violence, badges and incidents of slavery acts. I can go into --

THE COURT: Was there any property damage or injury to anyone at the synagogue?

MS. KAPLAN: I don't -- Your Honor, we didn't allege -- we said that they had to do some stuff to, like, add security measures, etc. I don't there's -- there's not secure -- there's not property damage for which we are making a claim.

Our claim is under 1982, that the kind of marching and intimidation that happened outside the synagogue Saturday was a classic 1982 violation. The courts have held that you don't have to be an owner of the property. You can be a member of a synagogue.

In fact, Your Honor, sadly there seems to be a whole line of Section 1982 synagogue cases. It seems to be the most common feature in 1982 of cases which we cited in our brief where people do drive-by shootings or shouting or intimidation of a synagogue. It keeps Jewish people understandably fearful given the blood and soil references, the torch-lit rally here. I think any Jewish person would reasonably be fearful.

THE COURT: If you walk past the synagogue and make an anti-Semitic shout or something, that doesn't violate -- that is a First Amendment right.

MS. KAPLAN: No. And if an individual person in a peaceful circumstance walks by the synagogue and calls everyone in there kikes, that doesn't state a 1982 violation, but that's not what we allege.

What we allege is that essentially armed groups of men, mostly men wearing Nazi insignia, carrying weapons marched around the synagogue, not only shouting Nazi slogans but talking about burning it and bombing it and burning it down. And that kind of --

THE COURT: All of that happened right there?

MS. KAPLAN: Yes. Part of it was because it was so close to Emancipation Park. So all the people who were at Emancipation Park, it was a hop, skip and jump for them to go over to the synagogue. It's less than, as you know, a couple blocks away to do that.

And we allege how the members of the synagogue, including our plaintiff, were so incredibly fearful for themselves, for their sacred objects in the synagogue, the fact that they had to leave out the back door and since then have had to implement all kinds of security measures to continue to use the synagogue the way any American should be able to use their house of worship. So I think that covers the 1983 -- the 1982, your Honor, as well.

The next element is injury. Again, there doesn't seem to be much of a dispute here that our plaintiffs were injured. To give you probably the most dramatic examples, Plaintiff Magill had a stroke that the doctors attributed to the events and stress of what happened.

Plaintiff Marcus Martin was hit by the car. Plaintiff Wispelwey was, as you heard talked about earlier, was intimidated, threatened, and maced during the events that occurred.

Overt acts again, I think again we've talked about that. If there's a conspiracy, we obviously know there have to be overt acts, and we have alleged numerous overt acts

throughout the complaint.

Let me -- if Your Honor has -- I'm happy to answer any other 1985(3) questions, but I was going to go to the next argument, if that's okay with Your Honor.

THE COURT: Okay. I just wanted to understand. If you're a member of one of these associations, how far does the liability go? How does the association become liable for the members of its organization and have the members liable for anything the organization may be --

MS. KAPLAN: So you're talking about something like the Traditionalist Worker Party or Vanguard America, etc., etc. So those associations in and of themselves, themselves responded, encouraged, promoted, asked people to come to the event. As I said before, some of them even had their own Discord channels to do that kind of planning and communication.

And then as I said before, for the most part, with the exception of Defendant Fields who has not moved, we have sued the people who were the leaders of the organization. So we're not suing, you know, kind of the people at the bottom. We are not suing the spokes, again, for the most part. We are suing the leaders.

And it was very clear as you'll see in the communications that it wasn't just individuals. It wasn't just Matt Heimbach as an individual in the Traditionalist

Worker Party supporting, planning, and conspiring for the events on August 11 and 12th. It was the Traditionalist Worker Party itself.

And they talk about -- you heard, I think, a quote before about we acquitted ourselves as warriors. That was discussion of a group of an association. I don't recall which one, but they all use that similar kind of language.

Let me talk about defendants' argument about liability by association, Your Honor, because I understand your questions about that. And as I've said, we've tried to be very careful about who we chose and why we chose them. And we believe that each of the defendants we have chosen played a very prominent role and was an influential member or leader of the conspiracy.

If you turn to slide 12, Your Honor, that shows based on allegations in the complaints connections that the defendants had to each other prior to August 11 and 12th. So these were not a bunch of random people who all happened to show up in Charlottesville on August 11 and 12th and then kind of get involved in a riot. These were all people who knew each other, had multiple interconnections with each other well before August 11 and 12.

And to give you an example, Defendant Damigo is the founder of Identity Evropa. Mosely, another defendant, became the leader of Identity Evropa in 2016.

The Traditionalist Worker Party was created by Defendants Heimbach and Parrott. Heimbach, along with Schoep and Hill lead the Nationalist Front. Schoep is also the leader of the National Socialist Movement. And Hill is also the cofounder and president of League of the South. So these entities all have multiple interconnections not only by association but with membership affiliates that preexisted anything that happened August 11 and 12th.

I know there was an argument about the Nationalist Front and whether it's just a website or it's truly an organization. On that, Your Honor, I believe an affidavit was put in. We believe we have a right in discovery to contest that affidavit and there'll be an improper action for Your Honor to take on a motion to dismiss.

In addition, Your Honor, following these slides we have slides for each of the defendants who move to dismiss with particularized allegations in the complaints about each them.

And I'm not going to go through all of them, Your Honor. Your Honor can read them for yourself obviously. But just to start with Richard Spencer on the slide 13, there's numerous allegations in the complaint about Mr. Spencer's role, what he did and what he said. Same thing, Your Honor, for Mr. Kessler. Same thing for Mr. Mosley.

And let me go forward, Your Honor, because I want to

give some time for my colleague, Ms. Dunn, to speak to Vanguard America and James Fields, which is on Paragraph 22.

So there is a factual dispute here. Again, I don't think it's amenable for resolution on the motion to dismiss. We argue that James Alex Fields showed up wearing the uniform of Vanguard America on August 12. We allege that he was holding a shield with the insignia of Vanguard America on August 12.

We believe, as Your Honor I'm sure has surmised, that all of the discussions leading up to August 11 and 12th, the discussions them called edgy jokes about running over protesters were not truly edgy jokes, Your Honor. They were truly discussions and planning and encouragement of what they wanted people like Mr. Fields to do. And we believe that's exactly what he did.

We understand that they're saying he's not a member, but that is something that we will be able to explore in discovery. It is not an issue that we believe Your Honor should resolve on a motion to dismiss.

One more thing, Your Honor, and then I'm going to let my colleague take over. And I think we have resolved the other questions. The state law, I think we can rest on our brief unless you have any questions.

THE COURT: No.

MS. KAPLAN: But of course, Your Honor, a party is

liable for the reasonably foreseeable consequence of the conspiracy. And that doesn't mean that the conspiracy has to go exactly as planned. The drug conspiracies that you're talking about, often all kinds of horrible things happen during the course of a drug conspiracy. Sometimes people are killed, perhaps not --

THE COURT: Everyone in a conspiracy is liable for the reasonable -- what might reasonably be expected to happen whether it's what was planned or not.

MS. KAPLAN: Right. So our allegations here are not only that much of this stuff was planned, discussed, and encouraged, but as Your Honor just said, they are also liable for all the reasonably foreseeable consequences. And having weeks and weeks and weeks of discussions telling people, you know, if you beat up a nigger, it's not really beating someone, telling people which weapons to bring, telling people how to take a sock and put pennies in it to hit someone over the head, talking about running over protesters, and even worse, Your Honor, talking about the legality of running over protesters. That was all planned for what they actually did. And even if it wasn't planned, Your Honor, it was perfectly reasonably foreseeable given the planning of this conspiracy.

Your Honor, I'm going to turn the table to my esteemed colleague. And I'm obviously happy to answer any of your questions.

THE COURT: All right. Thank you.

MS. DUNN: Good afternoon, Your Honor. Karen Dunn from Boies Schiller Flexner for the plaintiffs.

Hopefully -- we took seriously Your Honor's invitation to assist the court. So hopefully you have the second slide deck which should be titled "Constitutional Defenses." And I'll use that to assist in the argument.

THE COURT: All right.

MS. DUNN: When we're talking about constitutional defenses, we're talking about the First Amendment and the Second Amendment in this case. Only 20 out of 25 defendants raised a First Amendment defense, although I've heard Mr. Kolenich raise it here on behalf of his 13 defendants, but as to them we would argue these arguments are waived in any event.

Out of the five who did, the briefing is very general, talking about the importance of the First Amendment, something that absolutely no one here would deny. And out of those five, only four of them raised the Second Amendment defense.

So at the outset, Your Honor, because there's been a lot of discussion already about speech in this case, I want to make something very clear, which is that the plaintiffs in this case believe in the importance of the First Amendment and its protections.

And, in fact, it's because they believe in all of our freedoms and protections in part why they decided to bring this case rather than privately nurse the injuries that they suffered.

If you look, Your Honor, on page 2 in the deck, it cites Justice Black and his decision in *Giboney v. Empire Storage & Ice Company,* a decision from 1949. And as Your Honor probably well knows, Justice Black was a big champion of the First Amendment. And he set us on the right track for decades after, followed in the Supreme Court and other courts, by telling us that the First Amendment does not protect violations of valid statutes even if speech is part of the course of conduct, because if it did, it would be practically impossible to enforce the law. So slide three is a road map of our explanation of why the First Amendment would not be a valid defense in this case.

The plaintiffs in this case allege that defendants participated, as Ms. Kaplan explained, in a common plan, a conspiracy to do violence and to intimidate and that the plaintiffs were injured as a result.

The First Amendment, as is axiomatic under the law, does not protect against violence. It does not protect against intimidation or legal conspiracies.

And so plaintiffs have alleged in the complaint words of the defendants. Of course, the defendants' words appear

and they appear for three reasons, none of which encroach on the First Amendment.

First, they appear to show that defendants were part of the conspiracy.

Second, the words are there to show that defendants had intent to do violence or to intimidate.

And, third, the defendants' words appear to show invidiously discriminatory animus, which is required under 1985(3). And we'll talk a little bit about each of those things.

Slide four talks about and lays out the case law here about violence and intimidation not being protected by the First Amendment. And the key cases there, I'm sure Your Honor is well familiar with, *Wisconsin v. Mitchell*, *American Life League v. Reno* in the Fourth Circuit -- that was Judge Michael's opinion -- and of course for true threats, *Virginia v. Black*.

So if I beat someone up because my view is I don't like their race, the First Amendment doesn't protect me. And that's true if I scream at them very loudly that I don't like their race and then beat them up. It's true if I get together with my friends and decide that together we're going to do that and scream at them together. And it's the same thing, Your Honor, if that happens on the Internet.

Intimidation, *Virginia v. Black*, as Your Honor has

previously applied in your decisions protects against a true threat. And importantly, as you've noted, the speaker does not have to intend to carry out the threat. They just have to intend to place a person in fear of bodily harm or death.

And so slides five and six are meant to assist the court by outlining the paragraphs of the complaint that allege violent conduct on August 11 and 12th and allege intimidation on August 11 and 12th. And I think Ms. Kaplan amply described some of the acts of violence, the assaults, the kicking, the beating, the tear gas, the mace. And so I think it's best if I focus on a few of the allegations of intimidation because those are arguable -- argued by the defendants.

THE COURT: I don't think anyone seriously would argue that the First Amendment protects violence or physical harm to somebody to express your opinion. Protects the words but not violence.

MS. DUNN: I think what they're -- the defendants' arguments appear closer to saying, well, we're just saying these horribly offensive words and that's protected speech.

And so just to point Your Honor to one example on page 7 which is --

THE COURT: The speech could be evidence -- if you did all the beating someone up, your words might be evidence of what your intention and the motivation is.

MS. DUNN: Exactly. So the words are, in our

complaint, evidence of intent, which is well accepted under the law. They are evidence of the formation of agreements and participation in the conspiracy. And they're evidence of invidiously discriminatory animus, which is required under 1985.

And so, Your Honor, I just want to point out because I heard defendants argue about how conclusory our complaint is, and they seem to be upset that there is not enough detail. And on the other hand in their briefs they argue that we are quoting their words too much and we are talking too much about the things that they said, but this specifically goes to the allegations of the complaint.

For example, when Defendant Ray says, "The heat here is nothing compared to what you're going to get in the ovens," maybe in some context that would be looked at as some sort of protected speech. In this context it was said during a torchlight rally where people were throwing lit torches and also throwing unidentified fluid on people.

So taken together, our complaint clearly does not do what the defendants in their briefs and to some extent here say, which is be unhappy about somehow offensive speech or things that were said that people might not like. I think the detail of the complaint specifically goes beyond that.

Another example, Plaintiff Romero in the days following August 12 when Defendant Fields drove a Dodge

Challenger into a crowd killing somebody received phone calls to her house offering to sell her a Dodge Challenger. So to some extent, in some context that could be speech. And here it is a threat and it's intimidating. And as Your Honor well understands, it goes to the evidence that we will present about the conspiracy to do violence and to intimidate.

So, Your Honor, most of our slide deck is really just to help you break down what parts of our complaint are used as evidence of a conspiracy and used as evidence of intent.

And it is a fairly unusual thing to have so much of defendants' language at this point at the motion to dismiss stage. Normally you wouldn't even get this until later on. And so we have alleged a lot of detail in this complaint. And that is a virtue of the fact that we have it, but we expect, as Ms. Kaplan said, to receive more if Your Honor allows discovery to proceed.

Your Honor, one thing that I do want to call Your Honor's attention to -- I won't go through all of these -- but is on slide 11. There was a lot of discussion about allegations with regard to Mr. Spencer. And just generally speaking, there is a conspiracy in this case where acts were talked about on the Internet. Acts exactly the same or similar to those acts happened. And then after members of the conspiracy took credit for those acts.

And so on page 11, there is a particular allegation

to Mr. Spencer where following the Friday night torch march where people are assaulted and there is violence and intimidation, Spencer says to the crowd, "We own these streets. We occupy this ground."

And so that -- in any conspiracy case, frankly if there were no other allegations specific to him other than that he was a leader of the conspiracy, that he knew these people, the fact that he was a participant and a leader at an event and then overtly claimed credit for it would be sufficient to keep him in the case at the motion to dismiss stage.

Having some familiarity with these drug cases, if you are the organizer of the drug conspiracy, you're not the person who swallows the drugs and takes it on the airplane. But if you are the person who helps set up the means to do that or helps organize the plan to do that, and then afterwards all that is alleged is you say to the person, you know, great job doing that and that is evidence of your agreement, of your conspiracy with others to do that and then your speech of saying to the person who actually performs the act, well done, good job for our team, you have basically adopted what they have done as part of the conspiracy. And that is not dissimilar to what happened here.

I think the leaders in this conspiracy didn't always have their specific fingertips on the acts of the conspiracy,

and but they did help organize, and in many circumstances we are seeing evidence that they took credit for it after the fact. I think it bears some discussion to talk about --

THE COURT: Well, to take credit for that, for the violence, in effect you are saying that they admitted that they participated in the violence.

MS. DUNN: Well, it's alleged that they did participate. They were there. They organized. But I think it's additional evidence of their participation and their leadership if you're the person who subsequent to that addresses the crowd and claims victory after the assaults and after the violence and intimidation have taken place.

THE COURT: Well, of course, if you prove that they planned it and at the end they took credit for it or said, you know, we did a good job, that's right. But just taking and saying I'm happy this happened at the end of something doesn't make you part of the conspiracy.

MS. DUNN: Well, that's true, Your Honor, but that's not all that we allege.

THE COURT: Okay.

MS. DUNN: I agree with you. You just can't be a separate person and say it's great that that happened, but we include Mr. Spencer's comments in the complaint to show as evidence of his participation in the conspiracy. And so when counsel to Mr. Spencer gets up and says there's no statements

from Mr. Spencer in the complaint, that's just not true.

In fact, there is a statement from Mr. Spencer after he participates in the Friday night torch march and witnesses all of the assaults to climb up and say to the crowd and address the crowd to say, "We own these streets." And so that at a motion to dismiss stage is certainly sufficient even alone without the rest of what's alleged in the complaint to keep him in the case.

THE COURT: "We own the streets"? I mean what --

MS. DUNN: "We own these streets. We occupy this ground."

THE COURT: All right. Why -- how does that make him conspiring to commit violence?

MS. DUNN: Well, it makes him part of the conspiracy to do violence. Actually, I shouldn't say that. It is evidence of his participation in the conspiracy to do violence. And this taken together with the other allegations in the complaint that just go to his relationships with the other members of the conspiracy taken together are allegations sufficient to keep him in this case.

But my point is that Mr. Spencer was not just some sort of passive participant in this as his counsel would like Your Honor to believe. He was an organizer. He was a leader. He was the person who when in the immediate aftermath of this happening addressed the crowd to say that the objective had

been achieved. And so that's the point.

I agree with Your Honor it is not the only thing, but all of these statements put together in the complaint are evidence of the defendants' intent and of their participation. So to look at these things in very discrete isolation is -- would be, I think, improper.

The reason conspiracies are pled in this way is as Your Honor says. At this point you wouldn't be able to connect every dot. Actually, here we are able to connect more dots than is usually the case at the complaint stage, but it's just not required. It's not just required.

So let me quickly address the requirement of alleging invidiously discriminatory animus under 1985(3). So most of the briefing on the First Amendment is a complaint about plaintiffs' reliance on defendants' speech and saying that we're just upset about offensive words.

And I think it is an important point to understand legally that 1985(3) requires these statements to be in the complaint. It requires us to rely on statements or other indicia that defendants had invidiously discriminatory animus.

And in Bray, which is a case that defendants rely on, Justice Scalia of the Court, he recognizes that this is a requirement. And he says that not only do you need to say and prove that there is invidiously discriminatory animus, you have to show that these acts were done for this reason.

So the defendants cannot be heard to complain that we have included allegations in this complaint that specifically go to this requirement. And so on page 13 we've listed some of those, but that is why they're there. They are not -- there is not a single allegation in this entire complaint that alleges that plaintiffs are disturbed simply by offensive speech.

I heard Mr. Kolenich raise the Skokie case. The Skokie case is not applicable here. It is a case where the Supreme Court only passed on an issue of prior restraint and decided a prior restraint was not appropriate in a circumstance where there was going to be a march. The march turned out to be a peaceful march. And then the Illinois Supreme Court issued what turned out to be a more or less merits opinion.

Virginia v. Black relies on that case basically to say you have to look at acts in context and that burning a cross is not always something that is without First Amendment protection, but in certain circumstances if it is accompanied by other indications that it is motivated by animus, that it is prohibited under a valid law, then it is punishable.

So in order to rely on this Illinois Supreme Court case, you would have to ignore all of the law in this area which talks about what conduct is actually prescribable under the First Amendment and in particular all the case law under

1985(3).

And so here I will just say that most generally construed, defendants' arguments about speech are essentially an argument that 1985(3) is not constitutional because you have to prove the purpose of the act, which is this invidiously discriminatory animus, but there is a series of cases, and I will just name them in case this is helpful to Your Honor: *Wisconsin v. Mitchell*; *Thomasson v. Perry*, which is a Judge Wilkinson opinion; *American Life League*, which is a Judge Michael opinion, that all discuss that if a law is content neutral, which 1985(3) is, then that is perfectly permissible and there is no First Amendment forcing that they draw analogy to the Title 7 context.

A number of the arguments that defendants make are not -- are really not proper at the motion to dismiss stage. Mr. Peinovich pointed to Paragraph 141 of the complaint. And he says, well, when I made the point I was making in Paragraph 141, I was really just issuing a warning that violence could happen. And so this is not a reason for a complaint to be dismissed or to find that Mr. Peinovich is protected under the First Amendment against enforcement or proceeding of the case under 1985(3).

What he has effectively done is he has teed up what is a fact dispute. And hopefully he has also now conceded, to some extent, knowledge of what happened. And so if Your Honor

allows this case to proceed, what is going to happen is there will be an argument between the parties about whether Mr. Peinovich was evidencing his intent, was evidencing knowledge that violence was going to happen because he was helping to plan violence, or was he just simply issuing a warning to people that violence can happen and he was looking out for their welfare.

And so the other citations in the briefs -- and this is mainly Mr. Peinovich's brief, Mr. Spencer's brief and Mr. Hill, Mr. Tubbs and League of the South brief. They characterize the things that they were saying as just edgy jokes. They say we have no sense of humor, which I assure them is not the case, and they say that their statements were just bravado. So these are fact disputes. They are allowed to say that. And I assume if this case goes forward, we'll have that conversation some more.

They rely heavily on Brandenburg. I assume Your Honor knows at this point we are not alleging incitement. That is not our basis for liability. There are a few allegations in the complaint that are alleged incitement.

Like, for example, when one of the defendants yells "charge" and then people charge into a group. So there are incidents of incitement, but we do not rely on meeting the Brandenburg standard for satisfying our burdens on the motion to dismiss.

Unless Your Honor has questions about the Second Amendment, I will skip discussion of that.

THE COURT: I don't think that's necessary.

MS. DUNN: And I think just on behalf of all us, Your Honor, we really appreciate the generosity of your time.

THE COURT: It's your time. It's not my time.

All right. Would you like to respond?

MR. KOLENICH: Thank you, Your Honor. It's remarkable after the way they drafted their complaint that they are standing up here saying we really just needed to prove racial animus for 100-and-whatever pages and however many hundreds of paragraphs. Your Honor doesn't need to spend one single second worrying about that. For purposes of the motion to dismiss, my clients had racial animus. Admitted. No problem.

The Skokie case is directly relevant. Nobody is saying you can immunize yourself from being sued over violence because it also has a political component to it.

What we're saying is if all you do is use speech, unless it's prescribed by Section 1982 with those particular requirements, it's protected under the First Amendment. It is not actionable. It is not actionable that they had swastikas. It is not actionable that they had anti-Semitic T-shirts. It is not actionable that they said anti-Semitic things. It is not actionable that they said racial things. It is only

actionable if it morphs into conduct. And they have a problem with their conspiracy allegation. They need to prove before the conduct occurred.

There's a lot of talk about what they said afterwards, great, awesome, we got our guys out, and worse. A woman died in a car accident and people are on the Internet laughing about it. And I promise you, Your Honor, right now while I'm standing here, somebody on the alt-right is publishing something on the Internet that is not helpful to their case. It's not civilized, not a good idea. And no matter how many times the lawyers tell them that, it doesn't help. Many of them, that's how they are, but post hoc statements don't help them prove a conspiracy. They cannot by their nature help them prove a conspiracy without the preparatory planning.

And again, as I said before, there's a lot of planning. Again, admitted. The court doesn't need to worry about that, but what is it planning for? In the universe of their complaint, what are they planning? They're planning to go to Charlottesville. They're planning to go Charlottesville and march around and insult racial minorities and religious minorities for a political purpose. At the end of the day, the political purpose is about a local statue.

Forgive me. I'm from Ohio. I don't even know what statue it is or what general it is, and it's about opposition

to multiculturalism in general, which are perfectly permissible First Amendment protected speech.

To the extent that any violence happened, if they have alleged any violence in their complaint -- limiting ourselves to their complaint as we must -- all they've got is in the spur of the moment somebody threw some torches. That's it, or Robert Ray shouted at the people in front of a synagogue, or somebody maced somebody back by the statue. There is no evidence of planning for that.

There's evidence of planning to bring torches. There's evidence of planning to bring mace and use sticks and whatever else as weapons if necessary. And that's in the Discord. And that's in their complaint, the little snippets that they put in the complaint, but there is no evidence of an overarching conspiracy that anybody could have joined to affirmatively commit these acts of violence.

And again, they want the Court to use the presence of a swastika and the presence of the phrase "blood and soil" and other such Nazi imagery because of the effect it has on Jewish people and people in a synagogue. The First Amendment doesn't allow for that. The Skokie case stands for that.

And I'm not sure counsel got that case exactly right. If I'm not mistaken, that march didn't actually happen. They decided not to hold it after they got the permission to hold it, or at least one of the scheduled marches didn't happen.

So the violence that was committed, James Fields, the car attack, where is there anything in the Discord planning that? Negligence is not enough. Recklessness also is not enough. It has to be intentional misconduct. They have to intentionally have planned to run people over in Charlottesville for this conspiracy to stick, for this to survive a motion to dismiss.

THE COURT: Aren't there sufficient allegations that Fields intentionally ran people over?

MR. KOLENICH: There is certainly sufficient allegations that Fields intentionally ran people over. What we're saying is that there were no sufficient allegations that that was part of the a priori conspiracy even in the moment.

When did he decide to intentionally run people over? When -- you know, they basically stood up here and said Vanguard America, which is one of my clients, told Fields to run people over. That's not in their complaint. They want you to deduce that again from the First Amendment protected speech. That's our whole point.

The Court may disagree with us when you review the pleadings, but that is the only point we're trying to make with the motion to dismiss. We are not saying -- I think there's some confusion on this -- that 1985 isn't applicable. We are not saying that the Thirteenth Amendment and Section 1982 don't support a 1985(3) conspiracy claim. There

are hundreds of reported cases on the subject. It absolutely does. Racial animus is an element of that, but again we are conceding that for purposes of this motion. So that's not our argument. If other people are going to make that argument, great.

We're not saying that each and every member of the conspiracy had to agree to each and every part of the violent acts. That's not my clients' argument. If other people want to make that, okay, but you don't have to worry about that for our motion.

What we're saying is there are no sufficient allegations that our people agreed to do anything except go to this rally carrying torches, carrying mace, on and on and on.

They did not plan to or agree to attack anybody. Now, and that's not -- that's not an obtuse legal concept. You know, if a Sears repairman goes to somebody's house to repair their dishwasher and then he goes over and commits a rape of someone living in the house, Sears gets off the hook. That's not what they sent him there to do.

Now, if Sears sends them in the house and they said, hey, grab the lady's wallet while you're there, they're still not liable for the rape even though they sent him in there to commit a crime because he went beyond what they told him to do.

So all of these criminal acts either happen -- or

these violent acts, I should say, either happen on a spur-of-the-moment conspiracy between a limited number of people who don't involve all of my clients, or in most cases any of them, or they exceeded what my clients did agree to go there to do and, therefore, my clients can't be held liable.

My clients at worst were reckless with the language in what they sent people in there to do. This was no actionable intent -- they haven't pled any -- to commit the violent acts they're complained of, most especially not the James Fields car attack.

Thank you, Your Honor.

THE COURT: Thank you. Sir?

MR. JONES: Your Honor, the difficulty for plaintiffs is that there are 25 separate defendants. And it's not enough to simply say all the defendants conspired to engage in violent acts. They have to show particular facts for each particular defendant, as Your Honor pointed out. Hopefully in their memorandum --

THE COURT: Well, you don't have to show that each committed a violent act but they conspired, each was a member of a conspiracy to commit a violent act.

MR. MALE SPEAKER: That's right. And what we have here, Your Honor, as was the case in Twombly, I think, is parallel conduct. We have my clients, Mr. Hill, Mr. Tubbs, League of the South attending the same planned rally as the

other defendants. There were hundreds if not thousands of people at that rally. The plaintiffs are trying to hold my clients responsible for everything, all the violence that happened on those two days. I don't think they have sufficiently pled facts to show there was a conspiracy to satisfy the Twombly standard.

Thank you, Your Honor.

THE COURT: Thank you, sir.

MR. DiNUCCI: Thank you, Your Honor. I'm not sure how much time I have. I'm sure you will tell me when to stop. Thank you, Your Honor.

Judge, one of the points that opposing counsel made is that the arguments of defendants are tantamount that 1985(3) is unconstitutional. I'm not arguing that.

My position, Judge, given the facts pleaded in this complaint and the cases I cited earlier, 1985(3) doesn't apply. They don't have any claim for violation of equal protection or freedom association, freedom of speech because there's no state action here.

To the extent they try to bootstrap themselves into 1985(3) through the Thirteenth Amendment with one exception, that of Ms. Pearce, they don't cite any implementing statute under Section 2 of the Thirteenth Amendment. So the Thirteenth Amendment doesn't apply.

With respect to Ms. Pearce's claim, as I recall the

allegations, her situation, if you will, is different from that of the plaintiffs in -- I think it was Brown and Greer. There was no act of violence at or within the synagogue. There was no physical damage to the synagogue. There was no personal injury to Ms. Pearce. Nobody laid a hand on her if I recall correctly the allegations of the complaint. So the simple fact is 1982 doesn't apply here. They haven't pleaded facts to make it applicable.

Now, there is talk about -- I believe this is the *Waller v. Butkovich* case that's been cited by the plaintiffs and talking about how supporters of black people and their equal rights, their civil rights have standing to sue. Assuming the argument under that is true -- and I don't agree with that. I haven't seen a Supreme Court case that says that.

In fact, to the extent there's a reference in Breckenridge to supporters, it's in discussing the legislative history of the civil rights acts or the Ku Klux Klan Act -- I always forget which title it is -- from the post Civil War era.

I haven't been able to find a U.S. Supreme Court case that says supporters have the standing that the plaintiffs claim they do. But assuming that they do, the plaintiffs' case, *Waller v. Butkovich,* which is 584 F. Supp. 909 -- it's from the Middle District of North Carolina -- says at

page 937, "The Court notes, however, that to succeed on this ground," meaning supporters have rights, "the plaintiffs must prove that they were identifiable in defendant's eyes as member of a class of advocates of equal rights for black people; otherwise, the defendants could not have singled them out as objects of conspiracy on this ground."

There's no pleading of facts along those lines. There's no pleading, for example, that any defendant knew any of these plaintiffs, saw any of these plaintiffs, could figure out who they were and what they were there for. We don't have any facts like that pleaded.

There was some discussion by counsel of the post Rotunda march statements by Mr. Spencer. It begs that he may have said what -- and I think it's Paragraph 175. "We own these streets. We occupy this ground." That begs to question was there a conspiracy? That doesn't prove there was a conspiracy.

Where are the allegations that show the communications that command the direction? Now, to the extent there is a statement that Mr. Spencer -- allegation that Mr. Spencer was a leader, it's conclusory. Prove -- excuse me. Plead facts, as I would submit they have to, that shows he was actually leading a conspiracy.

With respect to, again, the Thirteenth Amendment, it's adamantly our position there has got to be some

implementing legislation on which the claims are based.

The Thirteenth Amendment does not create a private cause of action. And to the extent it might be tantamount of saying there is a private cause of action, the case Breckenridge is distinguishable. The right to interstate travel was implicated. That's not implicated here.

With respect to Mr. Fields and acts of other people, there is a serious question of foreseeability here. And there's certainly no allegations that I can find that Mr. Spencer or any other individual defendant intended that a vehicle be used to cause great bodily harm or death of anybody. There is nothing in the complaint about that. There's certainly no communications amongst the defendants.

THE COURT: It wouldn't make it -- if hypothetically you plan to have, you know, to do violence, you have a conspiracy to commit violence at a particular gathering, it doesn't make any difference how the violence was committed. If somebody did something which was totally unusual, if you planned to commit violence and violence is committed, it doesn't make a lot of difference how it was committed.

MR. DiNUCCI: Assuming arguendo that's correct -- and I'm not challenging Your Honor --

THE COURT: Right.

MR. DiNUCCI: -- the fact remains they haven't pleaded that it was intended that such an act occurred. And

they haven't sufficiently pleaded any more broadly that is was intended that violence occurred. There's not any allegation by Mr. Spencer to that effect.

So if there is not an allegation that he intended that violence occur, how is he part of a conspiracy that leads to liability for what Mr. Fields did? It's not --

THE COURT: I'm saying hypothetically the fact that if there was a conspiracy to hurt, injure the protesters or counterprotesters, it wouldn't make any difference that you maybe thought they were going to use billies and clubs and guns and somebody used a car to run somebody down.

MR. DiNUCCI: Well, and I do think -- maybe it's not for today -- there's going to be arguments about foreseeability. What if somebody showed up with an M1 Abrams tank?

THE COURT: Well, but if you plan to kill them with a little handgun, a Saturday night special and they got killed, I don't think it would make any difference probably to the victim.

MR. DiNUCCI: I'm not going to disagree with that, Your Honor. Let me move on.

THE COURT: I don't mean to go on, but I think that generally if you are going to -- you are going to the bank to rob a bank and you don't anticipate, you don't know that somebody has got a gun but they pull a gun and use it, you

know, that's part of the conspiracy.

MR. DiNUCCI: I understand your point, Your Honor.

THE COURT: You could be liable except maybe in Virginia. I think there is an exception.

MR. DiNUCCI: Judge, there was some discussion by Ms. Kaplan about -- I think it's Paragraph 78 of the complaint to a reference to a man -- I think it's a man -- who is supposedly a bodyguard for Mr. Spencer. And that was in the context of the discussion about Discord. Again, there is no allegation in the complaint that Mr. Spencer had access to utilize Discord.

And the fact that the plaintiffs are referring to this alleged bodyguard of Mr. Spencer is tantamount to a concession they have no evidence whatsoever -- and they haven't pleaded any -- that Mr. Spencer actually used Discord.

THE COURT: You need to sum up.

MR. DiNUCCI: Lastly, Judge, just a procedural point. There was reference to some demonstrative exhibits, I will call them. I would object to the consideration of anything in those packets because they're outside the complaint.

Thank you, Your Honor. I appreciate it.

THE COURT: Well, we are looking at the pleadings.

MR. DiNUCCI: Understood, Your Honor.

THE COURT: Not anything --

MR. DiNUCCI: Just being careful. Thank you, Your

Honor.

THE COURT: Thank you, all. I appreciate your argument.

Oh, I'm sorry. I forgot all about you.

MR. PEINOVICH: That's okay. It happens. I had a quick --

THE COURT: A lot of defendants like that.

MR. PEINOVICH: I have one important point I'd like to make. Your Honor correctly asked Ms. Kaplan if it was possible for someone to attend the rally with no intention of being involved in this alleged conspiracy of which the plaintiffs have been begging the question that it even existed at all throughout their pleadings without having sufficient facts to support that, and she said it was.

So given that, one of the most important standards that they have to meet in order to survive our motions to dismiss is plausibility. They have to go -- their story has to be more plausible than an alternative explanation for the same facts. And the most obvious alternative explanation for the same facts is that this was a political rally, and political activists were attending the rally.

There was nothing that would -- nothing in the facts pled specifically as to me particularly that would indicate I had any intent or was involved any conspiracy. You know, when people plan together or even just talk about plans that other

people have made, you know, they're attempting to take that and nudge it up to this line of, you know, credibility. But the fact is that if it's an already planned legal event, which unfortunate events happen and they are sort of post hoc trying to fit this all together in some kind of conspiracy, it doesn't work. And she admitted that there's a possibility that people could attend this rally that had no intent of violence.

And given that there's no facts pled that would indicate that specifically me -- and I would argue really anybody -- had this intent, it doesn't survive the motion to dismiss.

That's all. Thank you very much, sir.

THE COURT: Thank you. All right.

Did you have something? Okay. Thank you.

Thank you, all. I appreciate your argument and your patience. And I will let you hear something reasonably soon. Thank you.

THE MARSHAL: All rise.

(Court recessed at 12:56 p.m.)

CERTIFICATE

I, Tracey Aurelio, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Tracey Aurelio Date: May 31, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

ELIZABETH SINES, *ET AL.*, *Plaintiffs,* v. JASON KESSLER, *ET AL.*, *Defendants.*	CASE NO. 3:17-CV-00072 MEMORANDUM OPINION JUDGE NORMAN K. MOON

In 1871, Congress passed a law "directed at the organized terrorism in the Reconstruction South[.]" *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 610 n.25 (1979); *see* 42 U.S.C. § 1985. Over a hundred and forty years later, on August 11th and 12th, 2017, the Defendants in this lawsuit, including the Ku Klux Klan, various neo-Nazi organizations, and associated white supremacists, held rallies in Charlottesville, Virginia. Violence erupted. Charlottesville residents who suffered injuries at the rallies, the Plaintiffs, allege that this violence was no accident. Instead, they allege the Defendants violated the 1871 Act and related state laws by conspiring to engage in violence against racial minorities and their supporters. The Defendants retort that they were simply engaged in lawful, if unpopular, political protest and so their conduct is protected by the First Amendment. While ultimate resolution of what happened at the rallies awaits another day, the Court holds the Plaintiffs have plausibly alleged the Defendants formed a conspiracy to commit the racial violence that led to the Plaintiffs' varied injuries. Accordingly, the Plaintiffs' claims largely survive, although one Defendant is dismissed and other claims are pared down.

I. LEGAL STANDARD

This opinion addresses one precise question: the legal sufficiency of the Plaintiffs' allegations that the Defendants conspired to engage in racial violence. This question comes

before the Court because some of the Defendants have moved the Court to dismiss the complaint.[1] A motion to dismiss a complaint tests the legal sufficiency of the allegations to determine whether the Plaintiffs have properly stated a claim; "it does not, however, resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016). And so the Court does not today choose between the parties' competing narratives of what "actually happened" at the August rallies.

Plaintiffs' complaint is required to "to provide the 'grounds' of [their] entitle[ment] to relief," but this "requires more than labels and conclusions[.]" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A court need not "accept the legal conclusions drawn from the facts" by Plaintiffs or "accept as true unwarranted inferences, unreasonable conclusions, or arguments." *Simmons v. United Mortg. & Loan Inv., LLC*, 634 F.3d 754, 768 (4th Cir. 2011) (quotation marks omitted). But the Court takes all factual allegations in the complaint as true and draws all reasonable inferences in the Plaintiffs' favor. *Rubenstein*, 825 F.3d at 212. In sum, a complaint will survive a motion to dismiss if it contains "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570.

II. SUMMARY OF ALLEGATIONS

Before addressing the complaint, three brief points are necessary. First, Plaintiffs' complaint is 112-pages long, pushing the limits of Rule 8(a)'s requirement of a "short, plain

[1] More specifically, Defendants Michael Hill, League of the South, and Michael Tubbs jointly filed a motion to dismiss (dkt. 201); Defendants Jason Kessler, Christopher Cantwell, Vanguard America, Robert "Azzmador" Ray, Nathan Damigo, Elliot Kline, Identity Evropa, Matthew Heimbach, Matthew Parrott, Traditionalist Worker Party, Jeff Schoep, and National Socialist Movement filed another motion to dismiss (dkt. 205); Defendant Nationalist Front filed a motion to dismiss (dkt. 207); Defendant Richard Spencer filed a *pro se* motion to dismiss (dkt. 209); and Defendant Michael Peinovich filed a *pro se* motion to dismiss (dkt. 212). Other Defendants either answered, (dkt. 196), filed a motion to dismiss that was stricken, (dkt. 202), or failed to appear. Judge Hoppe struck Defendant Fraternal Organization of the Alt-Knights' motion to dismiss because organizational defendants cannot proceed *pro se*. (Dkt. 210).

statement." Fed. R. Civ. P. 8(a). While the Court will not ask the Plaintiffs to trim their complaint, the following summary will necessarily leave out some details. To the extent those details are material to the Court's analysis, they are discussed later in the opinion. Second, the complaint frequently uses vague nouns, lumping all Defendants and all co-conspirators together. Because this style of pleading raises problems addressed below, the following summary focuses on allegations that are tied to specific Defendants. Third, it is important to remember that the following summary is a recounting of *allegations*. While the Court does not repeatedly state "Plaintiffs *allege* that Defendant *X* did *Y*," this summary should not be taken as the Court's endorsement of one version of the facts.

A. The Plaintiffs

The Plaintiffs are ten Charlottesville residents who each allegedly suffered some injury related to the rallies. Their relationships to the Defendants fall into three general groups. First, there are those that attended a counter-protest on the night of Friday, August 11th, 2017. As discussed more fully below, various Defendants led a torchlight march at the University of Virginia. At the end of that march, some Plaintiffs were assaulted. One of these Plaintiffs was Tyler Magill, who was surrounded and assaulted by various marchers around a Thomas Jefferson statue. (Dkt. 175 at ¶166). The marchers hurled torches at Magill and others, sprayed them with pepper spray, and threw other liquids on them. (*Id.* at ¶¶169, 173, 174). He later suffered a "trauma-induced stroke" and related injuries. (*Id.* at ¶11). Plaintiff John Doe, an African-American UVA student, attended the march where he also was harassed and assaulted. (*Id.* at ¶13). He suffered various emotional injuries. (*Id.* at ¶293). A third Plaintiff, a UVA student named Natalie Romero, was also surrounded and assaulted at the statue. (*Id.* at ¶18).

Second, another group of Plaintiffs was injured when one of the Defendants, James Fields, drove his car into a crowd of counter-protestors after the "Unite the Right" rally on Saturday, August 12th. Plaintiff Romero also falls into this second group, as she was hit by Fields's car and sustained subsequent injuries. (*Id.*). Plaintiff Marcus Martin, an African-American counter-protestor, was hit by Fields's car and sustained a broken leg and ankle. (*Id.* at ¶17). He pushed his fiancé, Plaintiff Marissa Blair, out of the way of the oncoming car, but she too suffered various physical injuries. (*Id.* at ¶16). Plaintiff Chelsea Alvarado was also hit by Defendant Fields's car, and she suffered physical and emotional injuries. (*Id.* at ¶19). Plaintiff Elizabeth Sines, a second year law student, witnessed the events and suffered severe emotional distress and shock. (*Id.* at ¶15). Plaintiff April Muñiz was close to being hit by the car, and she has been diagnosed with acute stress disorder and trauma since the event. (*Id.* at ¶12).

Third, there are two other Plaintiffs who are more difficult to classify. Plaintiff Seth Wispelwey is a minister who led an ecumenical organization called "Congregate" in non-violent protest. (*Id.* at ¶¶11, 134). He was part of a church service across from the torchlight march on the 11th, was confronted by one of the Defendants after the torchlight rally, and was assaulted while counter-protesting on Saturday. (*Id.* at ¶¶178, 182, 208). The last Plaintiff is Hannah Pearce. She is a member of Congregation Beth Israel, a synagogue close to the park where the Saturday rally took place. (*Id.* at ¶14). She peacefully protested throughout the weekend and was subjected to anti-Semitic harassment. (*Id.* at ¶¶219–21).

B. The Defendants

Two of the primary organizers of the Friday and Saturday events were Defendants Richard Spencer and Jason Kessler. Defendant Richard Spencer planned the Friday night march and encouraged his many followers to attend the Saturday rally. (Dkt. 175 at ¶21). Defendant

Jason Kessler is a Charlottesville resident who applied for, and eventually received, a permit to hold the Saturday rally. (*Id.* at ¶¶20, 55).

Two other promoters were Defendants Christopher Cantwell and Michael Peinovich. Defendant Cantwell attended the events and faced criminal charges for using pepper spray at the Friday night march. (*Id.* at ¶22). Defendant Michael Peinovich hosts a podcast called The Daily Shoah and was featured on a promotional poster for the event. (*Id.* at ¶42).

Many of the individual Defendants who helped plan the events are part of organizations that are themselves Defendants. Defendants Andrew Anglin and Robert "Azzmador" Ray run a website called The Daily Stormer. (*Id.* at ¶¶25, 27). They used this platform and associated "book clubs" to promote the events, which Ray attended. (*Id.*). The website is owned by an Ohio limited liability corporation, Defendant Moonbase Holdings, LLC. (*Id.* at ¶26).

Defendant Vanguard America is a white nationalist group with twelve chapters across the country. (*Id.* at ¶24). Many of its members attended the events. (*Id.* at ¶¶153, 197). Plaintiffs alleged one of its members, Defendant James Fields, intentionally drove his car into a crowd of counter-protesters, killing one individual and injuring many others. (*Id.* at ¶23).

Another organizer was Defendant Eli Mosley. (Dkt. 175 at ¶29). He is associated with the white supremacist organization Defendant Identity Evropa. (*Id.* at ¶¶29, 30). The founder of that organization is Defendant Damigo, who helped facilitate transportation for the events. (*Id.* at ¶28). Defendant Identity Evropa popularized the "You will not replace us!" chant that became the protesters' rally cry. (*Id.* at ¶30). Both Damigo and Mosley attended the events.

Defendant Traditionalist Worker Party is a white nationalist organization, with many members who attended the rallies. (*Id.* at ¶33). It is led by Defendant Matthew Heimbach and Defendant Matthew Parrott. (*Id.* at ¶¶31, 32). Parrott wrote an account of his experiences at the

Saturday rally, and he described how multiple Defendants used organized formations of "shield walls" in "the fight." (*Id.*).

Defendant League of the South and two of its leaders, Defendants Michael Hill and Michael Tubbs, were also involved in the fighting at the Saturday rally. (*Id.* at ¶¶34–36). Defendant Tubbs, in particular, led an organized charge of League of the South members against counter-protestors. (*Id.*).

Defendant Augustus Sol Invictus is a member of Defendant Fraternal Order of Alt-Knights, which is the "military wing" of the white nationalist group "Proud Boys." (*Id.* at ¶¶40–41). He attended both events. (*Id.*).

Two different Ku Klux Klan organizations also participated in some capacity. Defendant Loyal White Knights of the Ku Klux Klan organized a previous Charlottesville rally, and then made various statements celebrating Defendant Fields's decision to drive his car into counter-protesters. (*Id.* at ¶36). Defendant East Coast Knights of the Ku Klux Klan also attended the previous rally and then participated in the August 12 rally. (*Id.* at ¶44).

Defendant National Socialist Movement is a white supremacist organization that has a "paramilitary" structure. (*Id.* at ¶38). Defendant Jeff Schoep, its leader, attended the rallies and afterwards tweeted that is was an "honor" to stand with the other "warriors." (*Id.* at ¶37).

Finally, Defendants Schoep, Heimbach, and Hill lead Defendant Nationalist Front, an umbrella organization that includes many of the aforementioned organizations. (*Id.* at ¶39).

C. Months preceding August 11 and 12th

Charlottesville drew Defendants' attention because of its decision to change the name of Lee Park, a small park in Downtown Charlottesville that contains a statue of General Robert E. Lee, to Emancipation Park in February 2017. (Dkt. 175 at ¶¶47–48). In May 2017, various

white supremacist groups, including some Defendants, led a torchlight march around the Lee statue. (*Id.* at ¶50). "Capitalizing on the perceived success of the May event," Defendant Kessler submitted an application for a follow-up rally on August 12th. (*Id.* at ¶55). In the intervening months, various Defendants came to Charlottesville for marches and demonstrations. (*Id.* at ¶¶56–57). Plaintiff Romero protested one of these events, a Ku Klux Klan march, and received harassing phone calls afterwards from a member of the Klan. (*Id.* at ¶58).

D. Planning for the August 11th and 12th rallies

Key Defendants met together in person for planning purposes at least a few times. Defendant Spencer and Evan McLaren, a member of Defendant Identity Evropa, met at the Trump Hotel in D.C. to organize the rally on an unspecified date. (Dkt. 175 at ¶64). Closer to the rallies, Defendants Cantwell and Kessler then met on August 9th in Charlottesville to plan. (*Id.* at ¶65). Defendants Ray, Cantwell, Mosley, and purported co-conspirator David Duke had a similar meeting on August 11. (*Id.* at ¶66).

Much more significantly, the majority of the planning appears to have occurred online. Defendants Kessler and Mosley used an online program called "Discord" for planning. (*Id.* at ¶¶71–73). This "invite only" platform allowed Defendants and their chosen invitees to engage in private conversations during the lead up to the events. (*Id.* at ¶72). While Defendants Kessler and Mosley moderated and managed Discord, many other Defendants participated on the platform, including Defendants Heimbach, Parrott, Cantwell, Ray, Vanguard America, Identity Evropa, Traditionalist Worker Party, League of the South, and Moonbase Holdings. (*Id.* at ¶¶74, 77). Organizational Defendants were able to maintain private sub-forums for their own members. (*Id.* at ¶77).

Conversation on Discord included mundane planning details, racist "jokes," and concrete threats of violence. Defendant Mosley posted "General Orders" for "Operation Unite the Right Charlottesville 2.0." (*Id.* at ¶75). Organizers also posted information about shuttle service information, lodging, and carpools. (*Id.* at ¶76). Other corners of Discord were significantly darker. One user posted a fake advertisement for a pepper-spray-look-alike called "Nig-Away," described as a "a no-fuss, no muss 'nigger killer,'" promised to "kill[] on contact" in order to "rid the area of niggers." (*Id.* at ¶111). Another frequent Discord user asked whether it was "legal to run over protestors blocking roadways?" (*Id.* at ¶239). He clarified he was not joking, "I'm NOT just shitposting. I would like clarification. I know it's legal in [North Carolina] and a few other states. I'm legitimately curious for the answer." (*Id.*). Other Discord users made similar comments about running over counter-protestors. (*Id.* at ¶236–41). Elsewhere on Discord, users made it clear they planned to fight at the events, saying things like "I'm ready to crack skulls." (*Id.* at ¶97). Defendant Kessler told users: "I recommend you bring picket sign post, shields and other self-defense implements which can be turned from a free speech tool to a self-defense weapon should things turn ugly." (*Id.* at ¶ 112). Defendant Vanguard America instructed its members "to arrive at the rally in matching khaki pants and white polos," with one member noting that this was "a good fighting uniform." (*Id.* at ¶ 115). Defendant Hill wrote, in a Defendant League of the South Facebook group, that he wanted "no fewer than 150 League warriors, dressed and ready for action, in Charlottesville, Virginia, on 12 August." (*Id.* at ¶36). Similar comments from other Defendants abound.

E. Counter-protestors prepare

While this planning was ongoing, separate counter-protesters received permits to hold events in other parks during the Defendants' rally. (Dkt. 175 at ¶132). Plaintiff Wispelwey

started an organization, "Congregate," to join with interfaith clergy in protesting against racial inequality and the rally. (*Id.* at ¶134). Defendant Kessler advised other attendees about Congregate's work, allegedly in an attempt to threaten the organization. (*Id.* at ¶135). The names of other counter-protestors were shared over Discord. (*Id.* at ¶137).

Other individuals opposed to the "Unite the Right" rally also prepared. Plaintiff Pearce's temple, Congregation Beth Israel, moved its Torah scrolls off site in advance of the rally and changed the time of its normal Shabbat services. (*Id.* at ¶¶138–39). Stores around town put signs up supporting diversity and equality. (*Id.* at ¶140). Defendants Kessler, Mosley, Spencer, and Peinovich shared the names and addresses of these businesses, allegedly in an attempt to have attendees intimidate them. (*Id.* at ¶141). Some of these businesses received various threats. (*Id.* at ¶142).

F. The march on August 11th

Defendants Mosley, Spencer, Kessler, Ray, Anglin, Cantwell, and Invictus organized a secret torchlight march at UVA. (Dkt. 175 at ¶143–49). These torches were supposed to invoke the Ku Klux Klan's and Nazi's similar use of torches. (*Id.* at ¶150). The marchers marched two-by-two up the Lawn, around the Rotunda, and towards a Thomas Jefferson statue on the far side of the Rotunda. (*Id.* at ¶¶159, 164). As they marched, they chanted various racist slogans and performed Nazi salutes. (*Id.* at ¶¶161–62).

Although the march was supposed to be secret, approximately thirty counter-protesters, including Plaintiffs Doe, Magill, and Romero, reached the Jefferson statue before the marchers. (*Id.* at ¶¶164, 169). The counter-protesters linked arms and surrounded the statue, facing away from it. (*Id.* at ¶164). As the marchers rounded the Rotunda, they charged towards the statue and surrounded the counter-protestors. (*Id.* at ¶¶164, 166). Fighting broke out, and the marchers

kicked and punched the counter-protesters. (*Id.* at ¶168). People in the crowd threw an unidentified fluid at the counter-protesters, including on Plaintiffs Doe, Magill, and Romero. (*Id.* at ¶169). These Plaintiffs were afraid it was fuel and that they would be burned. (*Id.*). Defendant Ray shouted, "The heat here is nothing compared to what you're going to get in the ovens!" (*Id.*). A photo shows Defendant Cantwell spraying a counter-protestor with pepper spray. *Id.* at 56. (*Id.* at ¶172). Plaintiffs Doe and Romero felt trapped and did not believe they could escape safely. (*Id.* at ¶¶173–74).

During this time, Plaintiff Wispelwey and around 1,000 others were inside St. Paul's Church, which is located across the street from the Rotunda. (*Id.* at ¶154). The faith community at St. Paul's, including Plaintiff Wispelwey, witnessed the marchers. (*Id.* at ¶178). The church leaders asked everyone to remain at the church out of a fear of violence. (*Id.* at ¶180). Plaintiff Wispelwey eventually drove some attendees to their homes and hotels. (*Id.* at ¶181). At one hotel, Defendant Invictus confronted Wispelwey and aggressively asked him what he was doing at the hotel and what church he belonged to. (*Id.* at ¶182).

The night ended with Defendants Kessler and Spencer, and others, celebrating the evening's events and encouraging their followers to come to the following day's rally. (*Id.* at ¶184).

G. The rally on August 12th

Almost all of the Defendants attended Saturday's "Unite the Right" rally, including Defendants Kessler, Cantwell, Mosley, Heimbach, Hill, Invictus, Ray, Spencer, Damigo, Peinovich, Fields, Parrott, Tubbs, Nationalist Front, League of the South, National Socialist Movement, Traditionalist Worker Party, Vanguard America, East Coast Knights, Loyal White

Knights, Fraternal Order of Alt-Knights, and members of The Daily Stormer's "book clubs." (Dkt. 175 at ¶187).

Defendants arrived in passenger vans, gathered at pre-arranged meet up spots, and then marched towards the park. (*Id.* at ¶¶196, 207). They entered Emancipation Park "in military formations, armed like paramilitary forces." (*Id.* at ¶195). Organizations marched with matching uniforms, coordinated shields, and regimental flags. (*Id.* at ¶¶197–98). Defendant Fields, who would later drive his car into the crowd, wore Defendant Vanguard America's uniform and marched with other Vanguard America members. (*Id.* at ¶197).

As the military formations marched into the park, they assaulted and knocked over various counter-protestors, including Plaintiffs Wispelwey and Romero. (*Id.* at ¶208). Other counter-protesters were blockaded around the park, and rally attendees used "shields, flags, or fists" to break through these counter-protesters and enter the park. (*Id.* at ¶209). Once in the park, the violence escalated. According to an account of the day written by Defendant Parrott, members of Defendants Traditionalist Worker Party, League of the South, National Socialist Movement, and other Nationalist Front groups, jointly created "two shield walls" for "the fight." (*Id.* at ¶212). Defendant Identity Evropa "were occupied on other fronts," but "sent a detachment of fighters to assist us and to relay intelligence to Jason Kessler and other organizers." (*Id.*). Defendant Tubbs ordered Defendant League of the South members to "charge," and "[a]fter receiving this command, the group streamed past him to attack counter-protesters." (*Id.* at ¶35).

Some marchers also yelled anti-Semitic and Nazi slogans while passing Plaintiff Pearce's synagogue. (*Id.* at ¶202). Defendant Ray carried a banner that stated "Gas the kikes, race war now!" (*Id.*). An anonymous individual later threatened to "torch those Jewish monsters" in a

comment on a YouTube video, leading Charlottesville's mayor to ask for police protection for the synagogue. (*Id.* at ¶203). Plaintiff Pearce and her son counter-protested the rally outside the park. (*Id.* at ¶220). She wore a Star of David and carried a rainbow flag. (*Id.* at ¶219). She was harassed by a rally attendee, who shouted, "Oh good, they are marking themselves for us." (*Id.* at ¶220). Another rally attendee threw an open bottle with a "foul liquid" that hit Plaintiff Pearce. (*Id.* at ¶221).

Then, at 11:22 a.m., Charlottesville declared the gathering an unlawful assembly. (*Id.* at ¶223). Defendants Kessler, Cantwell, Ray, Schoep, and Vanguard America among others, moved to McIntire Park. (*Id.* at ¶226–28). Defendant Parrott did not leave, and was arrested for failure to disperse. (*Id.* at ¶228). Violence continued in McIntire Park and on Charlottesville's downtown mall. (*Id.* at ¶¶229, 234).

H. The car attack on August 12th

At 1:40 p.m., Plaintiffs allege Defendant Fields deliberately drove his car into a crowd of peaceful protesters that were congregated at the intersection of Fourth Street and the Downtown mall. (*Id.* at ¶242). Plaintiffs Martin, Blair, Sines, Muñiz, Alvarado, and Romero were all on Fourth Street when Fields drove his car into the crowd. (*Id.* at ¶243). Multiple of these Plaintiffs were struck by Defendant Fields' car and incurred serious injuries. (*Id.* at ¶¶244–56). A friend of some of the Plaintiffs, Heather Heyer, was killed. (*Id.* at ¶248).

I. Happenings after the event

After the event, Defendants Anglin, Vanguard America, Kessler, Heimbach, East Coast Knights, and Loyal White Knights posted messages approving of the Defendant Fields's car attack. (Dkt. 175 at ¶¶264, 266–69, 272). Defendant Schoep said it was an honor "to stand" with the other co-Defendants at the rally, and referred to them as "true warriors." (*Id.* at ¶271).

Defendant Spencer referred to the rally a "huge moral victory." (*Id.* at ¶273). Defendant Cantwell was glad nobody on the Defendants' "side" died. (*Id.*).

Many Defendants have stated they would like to return to Charlottesville for a similar event. (*Id.* at ¶296). Defendant Spencer and others engaged in another torchlight march in Charlottesville on October 7, 2017. (*Id.* at ¶306). Defendant Kessler filed an application for another rally on August 11 and 12, 2018. (*Id.* at ¶307).

III. COUNT ONE: 42 U.S.C. § 1985(3)

In Count One, Plaintiffs allege all Defendants violated 42 U.S.C. § 1985(3), which states:

> If two or more persons . . . conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . [and] if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

The specific Defendants identified in footnote one moved to dismiss. The majority of the Section 1985(3) claims survive, although Plaintiff Pearce's claims against these Defendants will be dismissed, and all claims against Defendant Peinovich will be dismissed.

Plaintiffs must plausibly allege the following elements to state a Section 1985(3) claim:

> (1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy.

A Soc'y Without A Name v. Virginia, 655 F.3d 342, 346 (4th Cir. 2011) (citing *Simmons v. Poe*, 47 F.3d 1370, 1376 (4th Cir. 1995)).[2] Importantly, and unlike Section 1983, Section 1985(3) reaches private conspiracies (*i.e.*, there is no state action requirement). *See Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971).

In order to frame a Defendant-by-Defendant analysis of the pleadings, the Court works through these elements slightly out of order. The Court first addresses the requisite racial animus and purpose of the conspiracy (the second and third elements). After laying this framework, the Court evaluates the complaint to see if it plausibly alleges that each Defendant joined such a conspiracy (the first element). The Court then asks whether that conspiracy caused Plaintiffs' alleged injuries (the fourth and fifth elements). Finally, while Plaintiffs' overarching First Amendment and other defenses are addressed separately at the end of this opinion, the Court does flag specific allegations that are not protected by that Amendment throughout the following discussion.

A. Racial animus

Plaintiffs must plead that the Defendants were "motivated by a specific class-based, invidiously discriminatory animus." *A Soc'y Without A Name*, 655 F.3d at 346; *Francis v. Giacomelli*, 588 F.3d 186, 196–97 (4th Cir. 2009) (same). No Defendant seriously disputes that Plaintiffs have adequately alleged Defendants possessed racial animus against black and Jewish individuals; the complaint is replete with racist statements made and affirmed by Defendants. However, some Defendants do argue that they only possessed racial animus against non-white

[2] This statute is "the surviving version of § 2 of the Civil Rights Act of 1871" which was passed to address the Ku Klux Klan's violence against minorities and is known as the Ku Klux Klan Act. *Great Am. Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366, 368, 394 (1979); Ken Gormley, *Private Conspiracies and the Constitution: A Modern Vision of 42 U.S.C. Section 1985(3)*, 64 Tex. L. Rev. 527, 530 (1985) (providing history of the Act's background).

individuals, and so they cannot be held liable by white Plaintiffs. But Section 1985(3) was enacted "to combat the prevalent animus against Negroes *and their supporters*." *United Bhd. of Carpenters & Joiners of Am., Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 836 (1983) (emphasis added). And the Supreme Court has said the statute reaches "class-based animus" directed "against Negroes *and those who championed their cause*[.]" *Id.* (emphasis added). Here, Plaintiffs have plausibly alleged that they were attacked because of their support of non-white racial minorities, and so this element is satisfied as to all Defendants.

B. Intent to deprive Plaintiffs of equal protection of rights secured by law

In addition to racial animus, the purpose of the alleged conspiracy must be to "deprive the plaintiff of the equal enjoyment of rights secured by the law to all." But importantly, "Section 1985(3) provides no substantive rights itself; it merely provides a remedy for violation of the rights it designates." *Great Am. Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366, 372 (1979). And so, "[t]he rights, privileges, and immunities that § 1985(3) vindicates must be found elsewhere." *Scott*, 463 U.S. at 833. The Fourth Circuit has further clarified that these underlying rights must be "rights guaranteed by federal law or the Constitution." *Doski v. M. Goldseker Co.*, 539 F.2d 1326, 1333 (4th Cir. 1976).

Additionally, the federal substantive right "found elsewhere" must be "guaranteed against private impairment." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 274 (1993). For example, a plot by solely private parties to deprive individuals of their First Amendment rights is not actionable because those rights are only protected against public impairment (*i.e.*, "Congress shall make no law . . ."). *See Scott*, 463 U.S. at 833 ("[H]ere the right claimed to have been infringed has its source in the First Amendment. Because that Amendment restrains only official

conduct, to make out their § 1985(3) case, it was necessary for respondents to prove that the state was somehow involved in or affected by the conspiracy.").

In light of these limitations, the Supreme Court has noted there are "few" rights that can support a Section 1985(3) claim. *Bray*, 506 U.S. at 278. The only rights to be so recognized by the Supreme Court are "the Thirteenth Amendment right to be free from involuntary servitude, *United States v. Kozminski*, 487 U.S. 931, 942 (1988), and, in the same Thirteenth Amendment context, the right of interstate travel, *see United States v. Guest*, 383 U.S. [745,] 759, n. 17 [(1966)]." *Id.*; *see also Tilton v. Richardson*, 6 F.3d 683, 686–87 (10th Cir. 1993) (same). So the big question under this element is which of Plaintiffs' underlying rights satisfy these requirements. Plaintiffs suggest two potentially viable sources.

First, Plaintiffs claim the Thirteenth Amendment provides them with a right to be free from racial violence. In *Griffin v. Breckenridge*, 403 U.S. 88 (1971), the Court held that Section 1985(3) reached a private conspiracy where white Mississippians allegedly stopped African-Americans on a public highway (mistaking them for civil rights workers), pulled them out of their car, and beat them. *Id.* at 89–92. The Supreme Court later summarized *Griffin* as holding that "the conspiracy at issue was actionable because it was aimed at depriving the plaintiffs of the rights protected by the Thirteenth Amendment and the right to travel guaranteed by the Federal Constitution. Section 1985(3) constitutionally can and does protect those rights from interference by purely private conspiracies." *Scott*, 463 U.S. at 832–33. But if Section 1985(3) protects Thirteenth Amendment rights that were implicated by the facts of *Griffin*, those rights must extend beyond the core "right to be free from involuntary servitude." In *Griffin*, after all, the alleged assaults were certainly motivated by racial animus, but they could not be fairly described as seeking to literally enslave the plaintiffs.

Plaintiffs respond by citing cases (including *Griffin*) that discuss Congress's authority to legislate under Section Two of the Thirteenth Amendment, which "extend[s] far beyond [legislation addressing] the actual imposition of slavery or involuntary servitude." *Griffin*, 403 U.S. at 105. Because, "[b]y the Thirteenth Amendment, we committed ourselves as a Nation to the proposition that the former slaves and their descendants should be forever free," these cases teach that "'Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation.'" *Griffin*, 403 U.S. at 105 (quoting *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 440 (1968)); *United States v. Cannon*, 750 F.3d 492, 501 (5th Cir. 2014) ("[T]he term 'badge of slavery' . . . refers to indicators, physical or otherwise, of African–Americans' slave or subordinate status." (internal citations omitted)). But this language is not entirely helpful here. No one disputes that Congress's power under the Thirteenth Amendment allows it to address "badges and incidents" of slavery; the question here is whether the Thirteenth Amendment provides rights independent of Congressional action that go beyond a more narrow reading of the "right to be free from involuntary servitude."

The Court concludes the Thirteenth Amendment provides Plaintiffs an underlying right to be free from racial violence analogous to that present in *Griffin*. In doing so, the Court relies most heavily on *Scott*'s statement that the *Griffin* conspiracy was "aimed at depriving the plaintiffs of *the rights protected by the Thirteenth Amendment*," rights which "Section 1985(3) constitutionally can and does protect . . . ." *Scott*, 463 U.S. at 832–33 (emphasis added). Likewise, the Fourth Circuit has characterized *Griffin* as holding that Section 1985(3) protects underlying rights granted by the Thirteenth Amendment. *See Harrison v. KVAT Food Mgmt., Inc.*, 766 F.2d 155, 158 (4th Cir. 1985) ("The Court held that the statute does create a cause of

action for certain kinds of private action interfering with the federally protected rights to travel and *Thirteenth Amendment rights . . . .*" (emphasis added)); *Bellamy v. Mason's Stores, Inc. (Richmond)*, 508 F.2d 504, 506 (4th Cir. 1974) ("The language of [Section 1985(3)] tracks the language of the fourteenth amendment, and we now know that included within it is a wholly private conspiracy to deny Negro citizens the right of travel and *rights based upon the thirteenth amendment*." (emphasis added)). District courts have also assumed Section 1985(3) reaches racial violence analogous to that alleged here, although most have not engaged in careful analysis of the Thirteenth Amendment's scope. *See, e.g., Frazier v. Cooke*, No. 4:17-CV-54, 2017 WL 5560864, at *2–*3 (E.D. Va. Nov. 17, 2017). The repeated Supreme Court and Fourth Circuit interpretations of *Griffin* provide very persuasive guidance, even if found in *dicta*, that the Thirteenth Amendment does provide an underlying right to be free from racial violence that can sustain a Section 1985(3) claim. *See Doe v. Chao*, 435 F.3d 492, 508 (4th Cir. 2006) ("We said long ago that 'certainly dicta of the United States Supreme Court should be very persuasive.'" (citation omitted)). Accordingly, Plaintiffs' claims can proceed on this theory.

Second, Plaintiffs alternatively suggest Section 1982 as a fountainhead of enforceable rights. That statute provides: "All citizens of the United States shall have the same right . . . as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." Plaintiffs claim that rally attendees interfered with the property rights of Congregation Beth Israel by marching past it and making anti-Semitic remarks outside of it. Plaintiff Pearce, a member of that synagogue, seeks to assert its alleged rights. Assuming Pearce can assert the synagogue's rights, Plaintiffs have still failed to adequately allege Defendants conspired to violate rights guaranteed to them by Section 1982.

The Supreme Court's seminal case on Section 1982 is *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968). There the Court held that Congress had authority to prevent private defendants from refusing to sell a home to black plaintiffs because of their race. *Id.* at 438–44. Those facts represent a paradigmatic Section 1982 violation. Some courts have extended the reach of that statute to something closer to Plaintiff's theory. For example, in *United States v. Greer*, 939 F.2d 1076 (5th Cir. 1991), *opinion reinstated in relevant part on reh'g*, 968 F.2d 433 (5th Cir. 1992), the Court affirmed a conviction for conspiracy to violate Section 1982 when a neo-Nazi group damaged the temple's gas lines, painted swastikas and anti-Semitic slogans on the temple, and shot out the windows with a pistol. 939 F.2d at 1083. The court agreed with the Government "that members and non-members of the temple and community center, such as guests, could claim that the acts of defendants violated their right to use this property." *Id.* at 1091. Similarly in *United States v. Brown*, 49 F.3d 1162 (6th Cir. 1995), the court upheld another conviction for conspiracy to violate Section 1982. In that case, a skinhead and member of the Klu Klux Klan shot into a synagogue late at night. Even though no one was present, the court found this conduct violated Section 1982. *Id.* at 1164.

Here, alternatively, there are no allegations that anyone touched or harmed the synagogue. The worst of the allegations concern unidentified individuals who marched past the synagogue and shouted anti-Semitic slogans. This alleged conduct is very different from the shots fired into synagogues in the above cases or the repeated harassment found in other cases. Furthermore, the only allegation concerning an actual Defendant states Defendant Ray carried a banner with anti-Semitic language. (Dkt. 175 at ¶202). It does not allege he carried this banner past the synagogue or otherwise interacted with it. (*Id.*). Likewise, the allegation that Defendants can be held liable for a statement made by an unknown individual on a YouTube

video is frivolous. (*Id.* at ¶203). These allegations do not adequately plead that one of the Defendants interfered with the property rights of the synagogue.

While Plaintiffs have identified an underlying federal right guaranteed against private impairment in the Thirteenth Amendment, they must plausibly allege that Defendants entered a conspiracy to deprive them of that right. Determining whether they have done so requires the Court to return to the first element, conspiracy.

C. Conspiracy

In order to adequately plead a Section 1985(3) conspiracy, "the plaintiff must show an agreement or a meeting of the minds by [the] defendants to violate the [plaintiff's] constitutional rights." *A Soc'y Without A Name*, 655 F.3d at 346. "[A]lthough an express agreement is not necessary, the participants in the conspiracy must share the general conspiratorial objective . . . . [I]t simply must be shown that there was a single plan, the essential nature and general scope of which was known to each person who is to be held responsible for its consequences." *Simmons*, 47 F.3d at 1378.

One effect of these pleadings requirements, and the overlapping First Amendment interests discussed below, is that Plaintiffs cannot plausibly plead that all rally attendees who disagreed with them were part of one overarching conspiracy. *See A Soc'y Without A Name*, 655 F.3d at 347 (holding Section 1985(3) allegations were insufficient when the plaintiff "fail[ed] to allege with any specificity the persons who agreed to the alleged conspiracy, the specific communications amongst the conspirators, or the manner in which any such communications were made"). Plaintiffs at various times call anonymous individuals who shouted anti-Semitic slogans "co-conspirators." (Dkt. 175 at ¶202). Stretching credulity even further, Plaintiffs allege various statements posted on Facebook and YouTube were made by "co-conspirators." (*See id.*

at ¶203 (attributing screen shot of youtube.com with comment "it's time to torch those jewish monsters" to a co-conspirator); *id.* at ¶271 ("A co-conspirator posted on Facebook . . . .")). Plaintiffs seemingly label everyone at the rally (and for that matter on the internet) who disagreed with them as co-conspirators. The Court does not credit such conclusory labeling. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("A pleading that offers 'labels and conclusions' . . . will not do.").[3]

Instead, Plaintiffs must allege each Defendant entered into an agreement with a specific co-conspirator to engage in racially motivated violence at the August 11th and 12th events. The plausibility of these factual allegations increase as Plaintiffs add specificity about the method of agreement, the time or place of the agreement, and the scope of the agreement. The Court works through Plaintiffs' allegations on a Defendant-by-Defendant basis below. While the Court does not credit the conclusory labels discussed above, the Court concludes Plaintiffs have adequately pled specific factual allegations that each moving Defendant, except for Defendant Peinovich, was part of a conspiracy to engage in racially motivated violence at the "Unite the Right" events.

i. Jason Kessler

Jason Kessler appears prominently throughout the complaint. (*See* dkt. 175 at ¶¶ 20, 49–52, 55, 56, 59, 61, 63, 65, 73, 78, 97, 112, 122, 130, 135, 137, 141, 143, 147, 157, 164, 179, 184, 187–89, 190, 212, 226, 241, 260, 267, 302, 307, 316, 321, 322, 324, 326–29). Kessler was perhaps *the* overarching organizer for the event. He applied for the permit for the August 12th

[3] The complaint also contains some other conclusory allegations that the Court does not credit. (*See, e.g.,* dkt. 175 at ¶63 ("[A list of all Defendants] all agreed and coordinated with and among each other to plan, organize, promote, and commit the unlawful acts that injured Plaintiffs and countless others in Charlottesville."); *id.* at ¶187 ("On August 12, Defendants, their co-conspirators, and others acting at their direction executed their plan to carry out racial, religious, and ethnic violence, intimidation, and harassment."). These more general allegations lack the requisite factual specificity and would not be able to sustain Plaintiffs' claims without the more specific allegations detailed below.

rally and then worked with Defendant Spencer to invite a plethora of white supremacist groups. (*Id.* at ¶¶49, 55, 61, 326). He hoped this rally would help to move white Americans across the South "beyond 'heritage not hate.'" (*Id.* at ¶122). He allegedly "moderated, reviewed, directed, and managed" Discord. (*Id.* at ¶¶ 73, 322, 324). Despite this moderation, he allowed statements like "I'm ready to crack skulls" and "Studies show 999/1000 niggers and feminists fuck right off when faced with pepper spray" to proliferate across the platform. (*Id.* at ¶97). Kessler himself told others on Discord to "bring picket sign post, shields and other self-defense implements which can be turned from a free speech tool to a self-defense weapon should things turn ugly." (*Id.* at ¶112). And, in the days leading up to the event, he met in person with Defendant Cantwell to plan "unlawful acts of violence [and] intimidation." (*Id.* at ¶¶65, 316).

At the Friday night torchlight march, Defendant Kessler once again functioned as an organizer, telling the marchers to get in formation. (*Id.* at ¶¶143, 147, 157, 328). Along with Defendants Cantwell, Mosley, Spencer, Ray, and Invictus, Defendant Kessler "directed and incited physical assaults and violence, the use of open flames, and the intimidation of minority residents and those who advocate for equal rights for minority citizens" at the rally. (*Id.* at ¶329). The complaint identifies Defendant Kessler as leading the charge towards Plaintiffs Magill, Doe, and Romero at the Thomas Jefferson statue. (*Id.* at ¶164). This charge culminated with the circling of the counter-protesters (*id.* at ¶166), Defendant Cantwell and others spraying pepper spray at the counter-protesters (*id.* at ¶172), and the marchers throwing their burning torches at the counter-protesters. (*Id.* at ¶169). Throughout this time, the marchers were performing Nazi salutes, chanting "Blood and Soil," "Jews will not replace us," and making monkey noises at black counter-protesters. (*Id.* at ¶162, 165). Plaintiffs have plausibly alleged

Kessler came to an agreement with these co-Defendants to engage in racially motivated violence against the counter-protesters at the torchlight march.

Then, the next day at the rally, various co-Defendant organizations fought against counter-protesters. (*Id.* at ¶212). While they did this, Defendant Identity Evropa "sent a detachment of fighters to assist [Defendant League of the South] and to relay intelligence to Jason Kessler and other organizers." (*Id.*). This paragraph plausibly alleges Defendant Kessler was overseeing the racial violence at the rally. Finally, after hearing about Defendant Fields's later attack, Kessler called Heather Heyer, the victim who died, a "communist" and said "Communists have killed 94 million. Looks like it was payback time." (*Id.* at ¶267). In light of his other conduct, this plausibly alleges ratification of Defendant Fields's conduct.

The complaint plausibly alleges that Defendant Kessler entered into agreements with these other Defendants for the purpose of assaulting and intimidating individuals who were counter-protesting Defendants' message of white supremacy. As discussed below, many of these actions are completely divorced from any First Amendment protection. (*See, e.g., id.* at ¶164 (the charge resulting in violence around the Jefferson statue); *id.* at ¶212 (overseeing the violence at the Saturday rally)).

ii. Richard Spencer

Defendant Spencer was also prominently involved in the organization of the events. (*See* dkt. 175 at ¶¶ 21, 28, 29, 40, 42, 49, 52, 63, 64, 70, 85, 87, 92, 108, 120, 141, 143, 153, 164, 166, 175, 184, 187, 229, 230, 260, 273, 297, 300, 305, 306, 311, 315, 327–29). Alongside Defendant Kessler, "Spencer invited white supremacist groups to visit and hold events around the statue with the intent of intimidating nonwhite and Jewish individuals and their allies." (*Id.* at ¶49). Spencer coordinated with Defendants Damigo and Identity Evropa, who "took the lead in

organizing white supremacist participation among people from outside Charlottesville . . . ." (*Id.* at ¶¶28, 70). In the lead up to the rally, Spencer met Evan McLaren, a purported Defendant Identity Evropa member, in person in Washington, D.C. for further organization and direction of the rally. (*Id.* at ¶64). During this time of planning, Spencer made statements that plausibly demonstrate an agreement to engage in violence. An article posted on his website told his followers that "it's time to dominate the streets." (*Id.* at ¶87). A Discord user relayed Spencer's desire that rally attendees "[b]ring as much gear and weaponry as you can within the confines of the law." (*Id.* at ¶108).

Spencer was also a planner of Friday's torchlight march. (*Id.* at ¶¶21, 143, 153, 328). Along with Defendants Cantwell, Mosley, Kessler, Ray, and Invictus, Defendant Spencer "directed and incited physical assaults and violence, the use of open flames, and the intimidation of minority residents and those who advocate for equal rights for minority citizens" at the rally. (*Id.* at ¶329). As with Defendant Kessler, Spencer is specifically alleged to have led the charge towards Plaintiffs Magill, Doe, and Romero at the Thomas Jefferson statue. (*Id.* at ¶164). Marchers climbed to the top of the statue, waved their torches, and yelled "Hail Spencer! Hail victory!" (*Id.* at ¶175). Afterwards, Defendant Spencer confirmed that Defendants had surrounded the counter-protestors at the statue. (*Id.* at ¶166). After the event, he addressed the crowd and thanked them for "risking their lives" for their future. (*Id.* at ¶175).

Defendant Spencer was also involved with and attended the Saturday rally. (*Id.* at ¶187). He continued to actively promote the rally through social media. (*Id.* at ¶¶21, 184). And then, in the aftermath of the rally, his website posted a statement that announced "The Alt-Right is finished debating, negotiating, surrendering. We're ready to close ranks and fight for what is ours. . . . [W]e stand poised to conquer the continent." (*Id.* at ¶305).

Allegations of this degree of planning, followed by these coordinated actions (specifically at the Friday night march), plausibly allege that Defendant Spencer joined a conspiracy to engage in the racially motivated violence that occurred on August 11th and 12th. As with Spencer, much of this conduct was not protected by the First Amendment. (*See, e.g., id.* at ¶164 (the charge resulting in violence around the Jefferson statue)). Other statements might be protected speech taken by themselves, but in light of Spencer's other conduct they can plausibly "be taken as evidence that [he] gave other specific instructions to carry out violent acts or threats." *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 927 (1982); *see, e.g.,* dkt. 175 at ¶175 (thanking marchers who charged the statue "for risking their lives"); *id.* at ¶305 ("The Alt-Right is finished debating, negotiating, surrendering. We're ready to close ranks and fight for what is ours.").

iii. Christopher Cantwell

While Defendant Cantwell may have been lower in the pecking order than either Kessler or Spencer, he is more closely tied to acts of overt violence in furtherance of the conspiracy than either of them. (*See* dkt. 175 at ¶¶ 22, 63, 65, 66, 74, 107, 127, 143, 151, 157, 159, 160, 172, 187, 226, 227, 273, 277, 303, 304, 309, 310, 316, 317, 322, 323, 326–330). He was an active participant on Discord in the months leading up to the event. (*Id.* at ¶¶74, 322). He used his various platforms to "advise[] rallygoers on bringing weapons." (*Id.* at ¶323). In the days before the rally, he met with Defendants Kessler, Ray, Mosley, and purported co-conspirator David Duke "to plan and direct the unlawful acts of violence . . . ." (*Id.* at ¶¶65, 66, 316, 317). On the morning of the 11th, he told a reporter that he was "trying to make [himself] more capable of violence." (*Id.* at ¶151).

Then, at the Friday night torchlight march, Cantwell joined Defendants Spencer, Mosley, Kessler, Ray, and Invictus, Defendant Spencer in "direct[ing] and incit[ing] physical assaults and violence, the use of open flames, and the intimidation of minority residents and those who advocate for equal rights for minority citizens." (*Id.* at ¶329). "Defendants Cantwell, Kessler, Ray, and other co-conspirators were issuing orders to the other white supremacists and neo-Nazis, telling them to get in specific formations and assigning people either to march with a torch or on the side as 'security.'" (*Id.* at ¶157). "Organizers, including Defendant Cantwell, wore earpieces, carried radios, and shouted specific orders at the marchers. They shouted to keep pace, avoid gaps, stay in line 'two-by-two,' and march alongside a 'security guard.'" (*Id.* at ¶159). Defendant Cantwell himself marched with guards "who were selected for their willingness to 'get physical' with counter-protestors." (*Id.* at ¶160).

As they approached counter-protesters, Defendant Cantwell personally "attacked the [counter-]protestors with mace." (*Id.* at ¶172). A photograph included in the complaint shows Cantwell in the act of spraying counter-protestors. (*Id.*). He was later charged "with two felony counts of illegal use of tear gas and one felony count of malicious body injury by means of a caustic substance. He was indicted on December 4 on a felony charge of illegal use of tear gas." (*Id.* at ¶22). This conduct, of course, is not protected by the First Amendment. Other co-Defendants shared this picture, congratulating Cantwell on his violence. (*Id.* at ¶172).

Defendant Cantwell came to the Saturday rally heavily armed, bringing three pistols, two semi-automatic machine guns, and a knife. (*Id.* at ¶303). Then as events spiraled out of control, the Daily Stormer informed its followers to assemble "behind" Defendants Cantwell and Ray. (*Id.* at ¶227). In the aftermath, he told a reporter that he thought "a lot more people are going to die before we're done here, frankly." (*Id.* at ¶303). Reflecting on co-Defendant Fields's attack,

he said "[N]one of our people killed anybody unjustly . . . . [O]ur rivals are just a bunch of stupid animals who don't pay attention that couldn't just get out of the way of the car." (*Id.* at ¶273). He continued, saying "[t]hese people want violence and the right is just meeting market demand." (*Id.*).

In light of the specific statements made by Cantwell, the picture of him assaulting counter-protesters with pepper spray, and his joint leadership of various portions of the events with other Defendants (*e.g.*, the Friday night march, the Daily Stormer's encouragement for its followers to get "behind" him), Plaintiffs have plausibly alleged that Defendant Cantwell joined the conspiracy to engage in the racially motivated violence at the "Unite the Right" events.

iv. Vanguard America

Plaintiffs have alleged that Defendant Vanguard America's fingerprints were all over last August's events. (Dkt. 175 at ¶¶ 24, 34, 50, 53, 63, 67, 77, 81, 91, 93, 96, 114–17, 121, 153, 167, 185, 187, 191, 196–98, 218, 228, 266, 270, 276, 319, 322, 332). Like other organizational Defendants, Vanguard America had a private channel on Discord called "Southern Front." (*Id.* at ¶77). They used this channel to coordinate attendance, with an organizer telling other members "This event is a **BIG DEAL** and offers a chance to link up Vanguard Guys from across the nation." (*Id.* at ¶¶81, 114). Specifically, members were instructed to wear "matching khaki pants and white polos," which members liked because "it's a good fighting uniform." (*Id.* at ¶115). Some chapters planned to bring shields with matching logos. (*Id.* at ¶121). Vanguard America made twenty extra shields for attendees who were unprepared. (*Id.* at ¶191).

Members made their violent plans explicit. "One member of Defendant Vanguard America explained on the Southern Front server after the event that Vanguard America had coordinated with Defendant National Socialist Movement because the Charlottesville event was

about violence." (*Id.* at ¶117). While Vanguard America did not normally associate with National Socialist Movement, they needed to in Charlottesville because "NSM fought so hard" and Vanguard America "need[ed] them in a fight." (*Id.*). Members also discussed whether to bring firearms, collapsible batons, and various types of knives. (*Id.* at ¶115). A Vanguard America member also posted "a violent drawing of Defendant Heimbach wearing a shirt bearing Nazi and Defendant TWP symbols and the words 'nigger killer' above a tally of 'communists killed,' smiling in front of decapitated black men wearing logos associated with anti-fascist movements." (*Id.* at ¶116). While this could potentially being taken as very dark hyperbole in some instances, in the light of the later events it plausibly alleges a plan for violence.

Defendant Vanguard America members were present at the Friday night event, marching in uniform. (*Id.* at ¶153). Once they had surrounded counter-protesters at the Thomas Jefferson statue, online members encouraged those members present "to physically remove [the counter-protestors]." (*Id.* at ¶167). The violence described above ensued.

Defendant Vanguard America also led the violent events at the Saturday rally. Its members met with Defendants Nationalist Front, League of the South, National Socialist Movement, and Traditionalist Worker's Party to coordinate the march into the park in formation. (*Id.* at ¶196). "Defendant Vanguard America marched to the Park first." (*Id.* at ¶197). They chanted "Blood and Soil!" and carried matching shields and flags. (*Id.*). Defendant Fields, wearing the pre-approved uniform, marched with Defendant Vanguard America. (*Id.*). Members also carried rods and other weapons. (*Id.* at ¶34). Other groups followed. (*Id.* at ¶198). Members on Discord had said they would "remove whoever is in [their] way" when they got to the park. (*Id.* at ¶191). Consistent with this plan, members used their shields to break through counter-protestors and move into the park. (*Id.* at ¶209). Once inside the park, online

members continued telling members physically there to "[j]ust incite a riot already." (*Id.* at ¶218).

At some point, Defendant Fields broke off from the rest of the group and allegedly committed his attack. He was "wearing the uniform white polo and khakis." (*Id.* at ¶332). After his attack, Defendant Vanguard America members congratulated him and celebrated the attack on Discord, stating, "We fucked up many commies . . . . We hospitalized dozens . . . . Now you make the next rally and fight for your people." (*Id.* at ¶¶266, 270).

In light of the coordinated marching and shield tactics, the various communications on Discord, and their members' continued admissions of violence, Plaintiffs have plausibly alleged that Defendant Vanguard America was part of the conspiracy to engage in racially motivated violence. Many of these allegations describe conduct that either does not implicate the First Amendment, (*id.* at ¶191 (alleging "Vanguard is fabricating 20 additional shields" for the fighting at the rally)), or plausibly serves as evidence of other specific violent acts. *Claiborne Hardware Co.*, 458 U.S. at 927; dkt. 175 at ¶270 ("We fucked up many commies . . . . We hospitalized dozens . . . .").

v. Robert "Azzmador" Ray

Defendant Ray is a writer at the Daily Stormer, where he published various anti-Semitic and white supremacist content in support of the rally. (Dkt. 175 at ¶¶ 25, 27). He has held himself out as a representative of the Daily Stormer. (*Id.* at ¶27). The complaint alleges he went beyond this role as a publisher of content to become an active conspirator and participant in the violence at the events. (*Id.* at ¶¶ 25, 27, 62, 63, 66, 74, 84, 88, 92, 93, 110, 116, 118, 143, 150, 157, 168, 169, 186, 187, 202, 217, 226, 227, 317, 318, 323, 325, 326, 328, 329).

Defendant Ray contributed to the planning through the use of Discord. (*Id.* at ¶74). Ray also used the Daily Stormer's website to coordinate other meetings for attendees. (*Id.* at ¶84). Some of these meetings were under the auspices of the Daily Stormer's "book clubs," which Defendant Ray clarified do not actually have anything to do with books and instead were used to organize the events. (*See id.* at ¶93 ("You don't think the [Daily Stormer book clubs] have anything to do with books do you? . . . Think boots, not books."). In the days leading up to the rally, Defendant Ray attended in-person meeting with Defendants Cantwell, Mosley, and purported co-conspirator David Duke. (*Id.* at ¶66).

Throughout this time, Defendant Ray used violent language and demonstrated signs of planning for violence. He told a reporter, "We are stepping off the Internet in a big way . . . . We have been organizing on the Internet. And so now they are coming out. We have greatly outnumbered the anti-white, anti-American filth. At some point we will have enough power that we will clear them from the streets forever . . . you ain't seen nothing yet." (*Id.* at ¶88). He wrote that "this rally will put the fear of god into the hearts and minds of our enemies." (*Id.* at ¶92). On Discord, he advised that his followers would "be ready with lots of nifty equipment." (*Id.* at ¶110). He directed his followers to bring tiki torches (for the Friday night march), pepper spray, flag poles, flags, and shields. (*Id.* at ¶118).

This planning came to life on Friday the 11th. Along with Defendants Cantwell and Kessler, Defendant Ray was "issuing orders to the other white supremacists and neo-Nazis, telling them to get in specific formations and assigning people either to march with a torch or on the side as 'security.'" (*Id.* at ¶157). Once they had surrounded the counter-protesters at the statue and torches were being thrown at counter-protesters, he shouted "The heat here is nothing compared to what you're going to get in the ovens!" (*Id.* at ¶169). Within this context, this was

a "true threat" not entitled to First Amendment protection. *See Virginia v. Black*, 538 U.S. 343, 359 (2003). The marchers "began to kick and punch the protesters around the statue, using their torches as weapons, and to beat individuals onto the ground." (Dkt. 175 at ¶168). Defendant Ray claimed the marchers "went through [the counter-protestors] like shit through a goose!" (*Id.*).

Defendant Ray also attended the rally on the 12th. He carried a banner that said "Gas the kikes, race war now!" (*Id.* at ¶202). He made various anti-Muslim statements as well, calling a woman a "sharia whore." (*Id.*). The Daily Stormer also maintained a livefeed of events on its website, where users exhorted further violence. (*Id.* at ¶217 ("We have an army! This is the beginning of a war!")).

Defendant Ray's alleged actions, and most specifically his leadership and statements at the Friday night rally, demonstrate that Plaintiffs have plausibly alleged that he was an active member of the conspiracy to commit racial violence.

vi. Nathan Damigo and Identity Evropa

Defendant Nathan Damigo attended the events with members of the white supremacist organization he founded, Defendant Identity Evropa. (Dkt. 175 at ¶¶ 28–30, 50, 52, 63, 64, 70, 77, 92, 187, 212, 276, 300–02, 308, 311, 320, 322). Defendant Spencer claims that Defendants Damigo and Identity Evropa coordinated attendance from outside Charlottesville. (*Id.* at ¶¶70, 320). A purported Identity Evropa member, Evan McClaren, met with Defendant Spencer to coordinate and organize the rally in Washington, D.C. (*Id.* at ¶64). Defendant Identity Evropa also had its own Discord channel, which it used to communicate with its members about the events. (*Id.* at ¶¶77, 322). Defendant Damigo also attended a previous rally held in Berkeley, California. (*Id.* at ¶28). Damigo referred to Berkeley as a "test run" for Charlottesville. (*Id.*).

At that rally, Damigo was arrested for assaulting a counter-protestor, demonstrating his violent intentions for the main event. (*Id.*).

Defendants Damigo and Identity Evropa were key participants in the violence on the 12th. In an account of the day called "Catcher in the Reich: My Account of My Experience in Charlottesville," co-Defendant Parrott claimed that "most of the Identity Evropa men were occupied on other fronts" during the fighting, but that Defendant Identity Evropa "sent a detachment of fighters to assist us and to relay intelligence to Jason Kessler and other organizers. They offered more fighters, but we had our positions amply covered." (*Id.* at ¶212). These allegations of organized paramilitary fighting plausibly allege that Defendants Damigo and Identity Evropa were part of the conspiracy to commit racial violence at these events. Defendant Damigo's prior violence at the "test run" for the Charlottesville events further bolsters the allegations of his personal involvement in a plan to commit racial violence at these events. The First Amendment does not shield Defendants from these allegations of violence. *See Claiborne Hardware Co.*, 458 U.S. at 916 ("The First Amendment does not protect violence.").

vii. Eli Mosley

Defendant Mosley is closely related to Defendants Damigo and Identity Evropa, taking over leadership of Identity Evropa in late August 2017. (Dkt. 175 at ¶¶29, 30). However, Defendant Mosley had a more central role in the organization of the events, and particularly in the organization of violence at them. (Dkt. 175 at ¶¶ 4, 20, 29, 30, 63, 66, 73, 75, 78, 89, 97, 100, 129, 137, 141, 143, 147, 148, 152, 172, 187, 189, 192, 231, 300, 311, 317, 321, 322, 324, 326, 328, 329). Defendant Mosley referred to himself as the "command soldier major of the 'alt-right'" and told attendees that he was running the rally "as a military operation." (*Id.* at ¶¶29, 192). He also declared that Defendants would not be replaced "without a fight." (*Id.* at ¶¶4, 89).

Defendant Mosley, along with Kessler, "moderated, reviewed, directed, and managed" Discord. (*Id.* at ¶¶ 73, 322). Mosley and other leaders "used Discord for regular 'leadership' meetings through which they shared information and plans." (*Id.* at ¶75). Defendant Mosley used this platform to issue "General Orders" for "Operation Unite the Right Charlottesville 2.0." (*Id.*). These orders described individuals opposed to Defendants' racist ideologies as "hostiles." (*Id.*). A "video for basic formation, roles, and commands" was also promised on Discord, and a "Shield Tactics Primer" and accompanying video was then posted. (*Id.* at ¶192). The video illustrated shield fighting techniques. (*Id.*). Distribution of these sorts of instruction manuals to commit crimes is not protected by the First Amendment. *See Rice v. Paladin Enterprises, Inc.*, 128 F.3d 233, 265 (4th Cir. 1997) (holding publisher of a "hit man" book was not immune from liability under the First Amendment).

In the build up to the events, Defendant Mosley attended the in-person meeting with Defendants Ray, Cantwell, and purported co-conspirator David Duke. (Dkt. 175 at ¶¶66, 317). Mosley then helped lead the Friday night march, previously having instructed attendees to buy torches. (*Id.* at ¶¶143, 147, 328). He ordered the marchers "to arrive at Nameless Field, a large area behind UVA's Memorial Gymnasium, at 9:30p.m., so that they could march once darkness fell at 9:47 p.m." (*Id.* at ¶148). He used Discord to tell marchers when "to start staging." (*Id.* at ¶152). He would later approvingly tweet the picture of Cantwell spraying pepper spray in a counter-protester's eyes, saying "He protect / He at[t]ack / But most importantly he got your back." (*Id.* at ¶172). This plausibly alleges Defendant Mosley ratified Cantwell's assault.

Defendant Mosley was also active in organizing events on the 12th. He exhorted attendees to arrive before the park opened and create a "a white bloc barrier or square around the entire statue." (*Id.* at ¶189). Once an unlawful assembly was declared and the attendees began

leaving the park, "Defendant Mosley sought people with guns." (*Id.* at ¶231). He said, "I need shooters" because "[w]e're gonna send 200 people with long rifles back to that statue." (*Id.*).

In light of the Defendant Mosley's self-proclaimed role as "command soldier major of the alt-right," his use of Discord to share fighting tactics, and his alleged organization of attendees at the Friday night march, Plaintiffs have adequately alleged that he was part of a conspiracy to commit racial violence.

viii. Matthew Heimbach, Matthew Parrott, and Traditionalist Worker Party

Defendants Matthew Heimbach and Matthew Parrott are leaders of Defendant Traditionalist Worker Party, an anti-Semitic organization with around 500 members. (Dkt. 175 at ¶¶31–33). These Defendants, alongside the Defendants associated with Defendant League of the South, allegedly engaged in many of the most specific acts of violence in furtherance of the conspiracy. (Dkt. 175 at ¶¶ 31–33, 37, 50, 63, 67, 74, 77, 90, 116, 187, 188, 196, 200, 212, 214, 228, 268, 271, 319, 322, 327). Like other organizational Defendants, Defendant Traditionalist Worker Party used a private Discord channel for planning with its members. (*Id.* at ¶77). Defendants Heimbach and Parrott participated on Discord. (*Id.* at ¶74). In addition to planning, and as mentioned above, a member of co-Defendant Vanguard America used Discord to distribute a drawing of Defendant Heimbach with "kill tallies" of communists, the words "nigger killer," and drawing of decapitated black men. (*Id.* at ¶116).

On the morning of the 12th, members of Defendant Traditionalist Worker Party met with members from Defendants Nationalist Front, League of the South, and National Socialist Movement "at a pre-set location in order to march to Emancipation Park in formation." (*Id.* at ¶196). Defendants Parrott, Heimbach, and other Traditionalist Worker Party members then marched behind Defendant League of the South. (*Id.* at ¶200). Defendants in these formations

"charged through the peaceful clergy when they arrived at the park . . . and Plaintiff Wispelwey was knocked into a bush." (*Id.* at ¶208). Then, in Parrott's words, members worked with other Defendants "to help create two shield walls" for "the fight." (*Id.* at ¶212). This apparently was part of an "original plan to define and secure the event perimeter." (*Id.* at ¶214). Defendants Parrott and Traditionalist Worker Party then coordinated the placement of "detachment[s] of fighters" with other Defendants to "amply cover" their positions. (*Id.* at ¶212). Defendant Parrott described how, "[w]ith a full-throated rebel yell," co-Defendant League of the South member Michael Tubbs "towered over and pushed through the antifa like a Tyrannosaurus among raptors as League fighters with shields put their training to work." (*Id.*). Once the gathering was declared an unlawful assembly, Defendant Parrott was arrested for failure to disperse. (*Id.* at ¶228). A co-Defendant later thanked Defendant Traditionalist Worker Party for their work, referring to them as "true warriors." (*Id.* at ¶271).

Plaintiff's recounting of Defendant Parrott's own account of the events, as well as the other allegations of violence, plausibly allege that these three Defendants joined the conspiracy to commit racial violence. As with other Defendants, the First Amendment does not prevent the imposition of liability for the acts of violence alleged here. (*See id.* at ¶212 (summarizing Defendant Parrott's account of the fighting)).

ix. Michael Hill, Michael Tubbs, and League of the South

As with the three just-discussed Defendants, Defendants Michael Hill, Michael Tubbs, and League of the South were allegedly in the heart of the violence that occurred on Saturday the 12th. (Dkt. 175 at ¶¶ 34–36, 39, 50, 63, 67, 77, 94, 99, 187, 188, 196, 198–200, 212–14, 260, 318, 319, 322, 327). Defendant Michael Hill is the co-founder and President of Defendant League of the South. (*Id.* at ¶34). The white supremacist organization includes "an armed,

paramilitary unit" called "the Indomitables" that has been "tasked with advancing southern secession by any means necessary." (*Id.*). Defendant Michael Tubbs is the "Chief of Staff" of Defendant League of the South. (*Id.* at ¶35).

Defendant League of the South used Discord and Facebook to communicate with its members. (*Id.* at ¶¶77, 322). In the lead up to the events, Defendant Hill posted in the Facebook group, saying he wanted "no fewer than 150 League warriors, dressed and ready for action, in Charlottesville, Virginia, on 12 August." (*Id.* at ¶36). One member explained that he planned to attend the rally because "I intend to stand for the South and die for it if need be." (*Id.*).

They coordinated with the other Defendants. Defendant Kessler "promised that there would be hundreds of members of [Traditionalist Worker Party] and League of the South at the park as early as 8:00 a.m." on the 12th. (*Id.* at ¶188). Before going to the park, members met with co-Defendants "at a pre-set location in order to march to Emancipation Park in formation." (*Id.* at ¶196). Members then followed Defendant Hill, marching "with coordinated shields and flags," and carrying "rods and other weapons." (*Id.* at ¶198). Either as they approached the park, or once they were already within it, Defendant Tubbs ordered League of the South members "to attack by yelling 'charge!'" (*Id.* at ¶35). "After receiving this command, the group streamed past him to attack counter-protestors." *Id.*; *compare with Noto v. United States*, 367 U.S. 290, 297–98 (1961) ("[M]ere abstract teaching . . . is not the same as preparing a group for violent action and steeling it to such action. There must be some substantial direct or circumstantial evidence of a call to violence now or in the future which is both sufficiently strong and sufficiently pervasive to lend color to the otherwise ambiguous theoretical material . . . .").

And as recounted above, Defendant Parrott's account of the fighting explained how Defendant League of the South used their shields in the fighting. (*Id.* at ¶212). Defendant Tubbs

was the individual pushing "through the antifa like a Tyrannosaurus among raptors." (*Id.*). Defendant Parrott's account also explained that "League fighters with shields put their training to work." (*Id.*). Elsewhere, Defendant Hill claimed that "Mr. Tubbs was everywhere the chaos was." (*Id.* at ¶213). As the day wound down, "Defendant Hill tweeted 'The League of the South had a good day in Charlottesville, Virginia. Our warriors acquitted themselves as men. God be praised!'" (*Id.* at ¶260).

These allegations, specifically the acknowledgment by co-Defendant Parrott that Defendant League members were "putting their training to work," state a claim that these three Defendants entered into a conspiracy to commit racial violence.

x. Jeff Schoep, National Socialist Movement, and Nationalist Front

Defendant Schoep is a leader of Defendant National Socialist Movement, "the largest neo-Nazi coalition in the United States." (Dkt. 175 at ¶37). Defendant National Socialist Movement "is paramilitary in structure; its members claim to be lieutenants, sergeants, or other military ranks." (*Id*. at ¶38). Schoep is the organization's "Commander." (*Id.*). Schoep also formed Defendant Nationalist Front, which is an umbrella organization for groups such as Defendant Traditionalist Worker Party, the Aryan Terror Brigade, and regional factions of the Ku Klux Klan. (*Id.* at ¶37). Co-Defendants Heimbach and Hill also serve as leaders of Defendant Nationalist Front. (*Id.* at ¶39). Defendants Schoep, National Socialist Movement, Nationalist Front, and the members of their umbrella structure are featured throughout the complaint. (Dkt. 175 at ¶¶ 37, 39, 44, 63, 67, 117, 187, 188, 196, 201, 212, 214, 228, 231, 271, 319).

Other Defendants viewed Defendant National Socialist Movement as being more "hard core" than some of the other groups. A Defendant Vanguard America member explained

National Socialist Movement was needed in Charlottesville because "NSM fought so hard regardless of their optics. Do we need them at normie events? No. We need them in a fight? Yes." (*Id.* at ¶117). Likewise, another Discord described National Socialist Movement as "nuts . . . in a good way." (*Id.* at ¶188). Members from Defendant National Socialist Movement met with other Defendants "at a pre-set location in order to march to Emancipation Park in formation." (*Id.* at ¶196). Defendant Schoep, alongside Defendants Hill, Heimbach, and Parrott, led these Defendants in a "charge[] through [counter-]protesters, pushing and shoving them with their shields and rods." (*Id.* at ¶214). This was part of "the original plan to define and secure the event perimeter." (*Id.*). Defendants National Socialist Movement and Nationalist Front were also engaged in the fighting summarized by Defendant Parrott's account. (*Id.* at ¶212).

After the rally was declared an unlawful assembly, "Defendant Schoep also marched to McIntire Park, attacking counter-protestors along the way." (*Id.* at ¶228). He explained how he and others following him "went right through [counter-protestors] like warriors." (*Id.*). Then, according to Defendant National Socialist Movement's twitter account, Defendant Schoep "led a group of 40 back the 1.3 miles from [McIntire] park back to Lee Park, through Antifa and police interference!" (*Id.* at ¶231). Members crooned their admiration: "So much respect for my Commander Jeff Schoep. I will go into battle with you anytime Sir . . . ." (*Id.*). After everything had settled down, Defendant Schoep tweeted that "It was an Honor to stand with U all in C'Ville this weekend. [National Socialist Movement], [Nationalist Front], [Traditionalist Worker Party], [League of the South], [Vanguard America], [East Coast Knights], and the rest, true warriors!" (*Id.* at ¶¶37, 271)

As with the other Defendants discussed above, the Plaintiffs have plausibly alleged that these three Defendants were engaged in the conspiracy to commit racial violence against

counter-protestors. In particular, the Court returns to Defendant Parrott's account of these Defendants' role in the violence, the meeting and then organized fighting to enter the park, and Defendant Schoep's embrace of the other Defendants in his tweet.

xi. Michael Peinovich

The only moving Defendant who Plaintiffs have failed to plausibly allege was part of the conspiracy is Defendant Michael Peinovich. Through their briefing and argument, Plaintiffs point to fourteen paragraphs that mention Peinovich. (Dkt. 175 at ¶¶ 42, 50, 52, 63, 96, 129, 141, 187, 207, 229, 230, 310, 326, 327). Two of those paragraphs contain merely conclusory language. (*See id.* at ¶63 ("[A list of all Defendants including Peinovich] all agreed and coordinated with and among each other to plan, organize, promote, and commit the unlawful acts that injured Plaintiffs and countless others in Charlottesville."); *id.* at ¶187(similar)). Other than these two conclusory paragraphs, there are no allegations that he participated in any violent acts.

The others do not plausibly allege that Defendant Peinovich joined the alleged conspiracy. Two paragraphs note he hosts a racist podcast, was featured on a poster for the rally, and spoke to followers after the events. (*Id.* at ¶¶42, 327). The podcast, without more, is protected speech. Another paragraph alleges that on his podcast, an unnamed individual asked "Now come on, beating up the wrong negro . . . is that even a possibility? Beat up the wrong nigger . . . ." (*Id.* at ¶96). Without more context about, for example, when and who said this and how Defendant Peinovich responded, this is insufficient to demonstrate Peinovich had entered an agreement to engage in racial violence at the events. The promotional poster at most demonstrates an agreement to promote the rally, an event which many people attended for divergent reasons. His promotion of the event is insufficient to plausibly allege an agreement to commit violence. Finally, the mere fact he addressed followers is innocuous. Although it is

ambiguous whether this was part of the same address, the complaint elsewhere alleges "Peinovich called the counter-protestors 'savages.'" (*Id.* at ¶230). This sort of name calling is far short of plausibly pleading an agreement to commit racial violence and, even within this context, is protected speech. *See, e.g., Bible Believers v. Wayne Cty., Mich.*, 805 F.3d 228, 246 (6th Cir. 2015) ("Offensive statements made generally to a crowd are not excluded from First Amendment protection; the insult or offense must be directed specifically at an individual.").

Turning to his actions at Emancipation Park, while Plaintiffs allege Defendant Peinovich arrived at the park in a passenger van, and was surrounded by a "security team," there are no allegations he was involved in violence. (*Id.* at ¶207). Likewise, the fact he reassembled with followers in McIntire Park, without an allegation of an agreement to commit violence, is insufficient. (*Id.* at ¶229).

Two other paragraphs concern only his appearances at a previous rally with some co-Defendants. (*Id.* at ¶¶50, 52). But there are no allegations these rallies were unlawful; Defendant Peinovich cannot be held liable simply for his associations. Three other paragraphs allege that Defendant Peinovich set up a legal fund before the rally and helped Defendant Cantwell fundraise from prison after the events. (*Id.* at ¶¶129, 310, 326). This sort of fundraising is too far removed from the other Defendants' violence to plausibly connect Defendant Peinovich to a conspiracy to commit violence.

Finally, Plaintiffs allege Defendant Peinovich tweeted, "Do these white business owners and shitlibs in CVille think that their virtue signaling mean they will be spared somehow? Lol." (*Id.* at ¶141). Peinovich was responding to signs put up by various organizations in Charlottesville that "voiced support for equality and diversity." (*Id.* at ¶140). Some of these businesses later received threatening mail. (*Id.* at ¶142). His tweet is still insufficient to

demonstrate a conspiracy to commit violence that injured these Plaintiffs. Even if these businesses were injured, a fact not alleged here, they are not parties to this lawsuit. This tweet does not plausibly allege an agreement to engage in racial violence *at these events*.

There are no allegations Defendant Peinovich engaged in violence. There are no allegations that he even used Discord. And in light of this discussion, there are no other plausible allegations that he joined the conspiracy to commit racial violence. Accordingly, the Court holds Plaintiffs' complaint fails to plausibly allege that Defendant Peinovich violated Section 1985(3), and so he will be dismissed without prejudice.

D. Whether Plaintiffs' injuries resulted from overt acts committed in furtherance of the conspiracy

Plaintiffs have plausibly alleged that Defendants, other than Peinovich, joined a conspiracy to engage in racially motivated violence at the "Unite the Right" events. However, in order to hold Defendants liable, Plaintiffs must also plausibly allege they suffered injuries caused by Defendants' overt acts taken in furtherance of the conspiracy (the fourth and fifth elements). *A Soc'y Without A Name*, 655 F.3d at 346. For almost all Plaintiffs, this is not a problem.

Each Plaintiff need not be able to point to an injury incurred from each Defendant. Instead, because Plaintiffs have adequately pled that all Defendants (other than Peinovich) were part of the conspiracy, Plaintiffs may hold each Defendant liable for the reasonably foreseeable acts of their co-conspirators. *See, e.g., Pinkerton v. United States*, 328 U.S. 640, 647–48 (1946) ("A different case would arise if the substantive offense committed by one of the conspirators was not in fact done in furtherance of the conspiracy, did not fall within the scope of the unlawful project, or was merely a part of the ramifications of the plan which could not be reasonably foreseen as a necessary or natural consequence of the unlawful agreement."); *United States v. Newsome*, 322 F.3d 328, 338 (4th Cir. 2003) ("[U]nder conspiracy law, he is liable for

the conduct of all co-conspirators that was in furtherance of the conspiracy and reasonably foreseeable to him."); *Willis v. Blevins*, 957 F. Supp. 2d 690, 700 (E.D. Va. 2013) (applying the reasonably foreseeable standard in a Section 1985(3) case).

i. Injuries incurred at the torchlight march

Plaintiffs Magill, Doe, and Romero allege they were pepper sprayed and otherwise assaulted at the base of the Thomas Jefferson statue on the night of August 11th. (Dkt. 175 at ¶¶11, 13, 18, 166, 169, 173, 174, 293). Injuries associated with these assaults were reasonably foreseeable consequences of the Defendants' conspiracy: Defendant Cantwell sprayed pepper spray at counter-protestors at the foot of the statue (*id.* at ¶22), Defendants Spencer and Cantwell led the charge of marchers towards the statue (*id.* at ¶¶164, 166), and Defendant Ray yelled "The heat here is nothing compared to what you're going to get in the ovens!" while torches were being thrown at them. (*Id.* at ¶169). These Plaintiffs have adequately pled their Section 1985(3) claims.

ii. Injuries incurred from Defendant Fields's attack

Plaintiffs Romero, Martin, Blair, Alvarado, Sines, and Muñiz were all injured by Defendant Fields's car attack. (*Id.* at ¶¶12, 15–19). Other Defendants may be held liable for these injuries if it was "reasonably foreseeable" to them that a co-conspirator would intentionally drive his car into a crowd of counter-protestors. The Court holds that Plaintiffs have adequately pled that Defendant Fields's attack was reasonably foreseeable for three reasons.

First, the exact possibility of running over counter-protestors was explicitly mentioned on the invite-only Discord platform before the events. The complaint alleges that a "run them over" catchphrase was popularized on the Fox Nation website, the Daily Caller website, and by Defendants. (Dkt. 175 at ¶236). For example, Defendant Heimbach had previously encouraged

a police car to run over protesters, saying "Don't stop, officer" and "Fucking step on the gas!" (*Id.*). A Discord user posted an image of a bus retrofitted with chainsaws and running over pedestrians. (*Id.* at ¶237). Another frequent Discord user responded, saying "I know NC law is on the books that driving over protesters blocking roadway isn't an offense . . . Sure would be nice." (*Id.* at ¶238). The user later asked whether it was "legal to run over protestors blocking roadways?" (*Id.* at ¶239). He clarified that this was not some sort of sick joke: "I'm NOT just shitposting. I would like clarification. I know it's legal in [North Carolina] and a few other states. I'm legitimately curious for the answer." (*Id.*). Kessler was part of a conversation where a different Discord user talked about how counter-protestors had previously flooded streets, and regretted that it was "[t]oo bad the civilians didn't just make new speed bumps for some of these scum." (*Id.* at ¶241). These posts were all on the private, invite-only, moderated platform that Defendants used.

Second, the Defendants planned to bring deadly weaponry to the event. (*See, e.g.,* dkt. 175 at ¶303 ("After the Unite the Right 'rally,' Defendant Cantwell explained, 'I came pretty well prepared for this thing today,' while pulling out three pistols, two semi-automatic machine guns, and a knife.")). Allegations concerning this level of weaponry demonstrate that it was eminently foreseeable to the Defendants that the rally could turn deadly. The fact that a counter-protestor was killed by a vehicle, instead of by the "semi-automatic machine guns" Defendants brought, provides a distinction that makes no difference to this analysis.

Third, multiple Defendants ratified Defendant Fields's attack after the fact. (Dkt. 175 at ¶¶263–67, 272–73). For example, Defendant Loyal White Knights said: "Nothing makes us more proud at the KKK than we see white patriots such as James Fields, Jr, age 20, taking his car and running over nine communist anti-fascist, killing one nigger-lover named Heather Heyer.

James Fields hail victory." (Dkt. 175 at ¶272). Defendant Kessler tweeted "Communists have killed 94 million. Looks like it was payback time." (Dkt. 175 at ¶267). Others made similar comments. These ratifications plausibly demonstrate that Defendant Fields's actions were consistent with the conspiracy's avowed goals.

In light of the discussion of these sorts of attacks, the potentially deadly nature of the planned violence, and the various ratifications of Defendant Fields's attack, the Court finds Plaintiffs Romero, Martin, Blair, Alvarado, Sines, and Muñiz have adequately pled Defendant Fields's attack was reasonably foreseeable to his co-conspirator Defendants. Accordingly, Plaintiffs have plausibly alleged that these co-conspirator Defendants may be held liable for the overt act Fields's took in furtherance of the conspiracy. *See United States v. Newsome*, 322 F.3d 328, 338 (4th Cir. 2003). Of course, factual development may undermine this conclusion.

iii. Plaintiffs Wispelwey and Pearce

That leaves only two remaining Plaintiffs. Plaintiff Wispelwey was "knocked into a bush" when rally attendees charged through peaceful clergy, "[c]onsistent with their elaborate planning and lessons in battlefield tactics." (*Id.* at ¶208). While Plaintiff Wispelwey does not allege which specific Defendant knocked him into a bush, the preceding paragraphs of the complaint extensively allege that specific Defendants, including Vanguard America and League of the South, organized in military formations outside Emancipation Park. (*Id.* at ¶¶195–98). Defendant Parrott specifically alleges that Defendant League of the South entered the park by breaking "through the wall of degenerates and [an otherwise unidentified individual named "TradWorker"] managed to enter the [Emancipation] Park venue itself while they were largely still reeling." (*Id.* at ¶212). Plaintiffs also allege Defendants "use[d] shields, flags, or fists to break through the blockade of counter-protestors" in order to enter the park. (*Id.* at ¶209). In

light of the specificity of these allegations of how Defendants entered the park, and Plaintiff Wispelwey's allegation that he was knocked over by someone who was acting consistently with these "battlefield tactics," he has plausibly alleged his injuries were caused by overt actions of the Defendants.

On the other hand, while the Court in no way minimizes the injuries Plaintiff Pearce suffered, she has not sufficiently alleged her injuries were caused by overt acts committed in connection with Defendants' conspiracy. Pearce is mentioned in nine paragraphs. (*Id.* at ¶¶14, 138, 202, 219–22, 258, 295). Some of these paragraphs only allege injury in a conclusory fashion. (*See, e.g., id.* at ¶14 ("On the basis of her religion, Pearce was threatened, harassed, intimidated, and physically assaulted."). Others mention fear of injury that was not associated with a specific overt act of any Defendant. (*See, e.g., id.* at ¶¶138, 219, 295). There is no allegation she was exposed to certain anti-Semitic banners allegedly carried by a Defendant. (*See id.* at ¶202). And the most targeted injuries and insults were made by anonymous "co-conspirators," who Plaintiffs have failed to plausibly allege were part of Defendants' conspiracy. (*See id.* at ¶¶220, 221). While the Court finds Plaintiff Pearce has insufficiently alleged her injuries were caused by overt acts made in connection with the conspiracy, she may seek leave to amend with more specific factual allegations if she is able to provide them.

Accordingly, each of the Plaintiffs except Pearce has alleged they suffered injuries that were caused by an overt act in furtherance of the moving Defendants' conspiracy.

E. Count I conclusion

The Court concludes Plaintiffs have, for the most part, adequately alleged that Defendants formed a conspiracy to hurt black and Jewish individuals, and their supporters, because of their race at the August 11th and 12th events. The alleged violence is greater than

that alleged in *Griffin*, and likewise "lies so close to the core of the coverage intended by Congress [in enacting Section 1985(3)] that it is hard to conceive of wholly private conduct that would come within the statute if this does not." 403 U.S. at 103. There are two caveats to that general conclusion. First, Plaintiff Pearce's Section 1985(3) claims against the moving Defendants will be dismissed because she has not adequately connected her injuries to these Defendants. Second, the Section 1985(3) claims against Defendant Peinovich will be dismissed because Plaintiffs have not adequately alleged he joined the conspiracy. Finally, while the Court has pointed out conduct and statements that were not protected by Defendants' First Amendment defense along the way, that defense is addressed more fulsomely at the end of this opinion.

IV. COUNT II: 42 U.S.C. § 1986

In Count Two, Plaintiffs allege all Defendants violated 42 U.S.C. § 1986, which provides:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured . . . for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented . . . .

"A cause of action based upon § 1986 is dependent upon the existence of a claim under § 1985." *Trerice v. Summons*, 755 F.2d 1081, 1085 (4th Cir. 1985); *id.* ("Having affirmed the dismissal of plaintiff's § 1985 claim, we also affirm the dismissal of his § 1986 claim."). The Defendants merely argue that the Section 1986 claim must fail because the Section 1985(3) claim must fail. But as just discussed, those claims survive, and so this argument must be discarded for the majority of the Defendants. With respect to Defendant Peinovich, just as Plaintiffs have failed to plausibly allege that he was part of the underlying conspiracy, they have also failed to allege that he (1) was aware of a conspiracy to commit violence or (2) had "power to prevent or aid in preventing the commission of the same." 42 U.S.C. § 1986. Accordingly, as with the Section

1985(3) claim, the Section 1986 claim against him will be dismissed. Finally, because Plaintiff Pearce has insufficiently pled that she was injured by these Defendants, her Section 1986 claim fails for the same reasons discussed in the Section 1985(3) context.

V. COUNT III: CIVIL CONSPIRACY

In Count III, Plaintiffs allege a common law conspiracy under Virginia law. The complaint alleges all Defendants conspired together to commit various state law torts and crimes against all the Plaintiffs.[4] Although a different claim, the above Defendant-by-Defendant Section 1985(3) analysis also governs the analysis here. This is because Plaintiffs have alleged Defendants committed various assaults, batteries, and violations of Virginia's hate crime statute in furtherance of the above conspiracy to commit racial violence.

"A common law conspiracy consists of two or more persons combined to accomplish, by some concerted action, some criminal or unlawful purpose or some lawful purpose by a criminal or unlawful means." *Commercial Bus. Sys., Inc. v. Bellsouth Servs.*, Inc., 249 Va. 39, 48 (1995); *see also Shirvinski v. U.S. Coast Guard*, 673 F.3d 308, 320 (4th Cir. 2012) (quoting *Commercial Bus. Sys.*).[5] "[T]he plaintiff must first allege that the defendants combined together to effect a preconceived plan and unity of design and purpose, for the common design is the essence of the conspiracy." *Bay Tobacco, LLC v. Bell Quality Tobacco Products, LLC*, 261 F.Supp.2d 483, 499 (E.D.Va. 2003) (internal citations and quotation marks omitted). Here, the just-described

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[4] While Plaintiffs maintain there were some eighteen different laws violated in furtherance of the conspiracy, only four are discussed in Plaintiffs' opposition to the motion to dismiss. (Dkt. 231 at ECF44–48). The Court expects this list to be winnowed as the parties develop the facts.

[5] Defendants argue that under *Vansant & Gusler, Inc. v. Washington*, 245 Va. 356 (1993), there is no general civil cause of action for criminal violations. While that is true as general matter, it neither undermines nor addresses the above case law describing counts of common law conspiracy based on criminal violations. The Court also notes tort liability would exist for the same alleged assaults and battery.

conspiracy to commit racial violence at the "Unite the Right" events provides such a conspiracy. As demonstrated in the Defendant-by-Defendant analysis, Plaintiffs have plausibly alleged that Defendants (other than Defendant Peinovich) conspired to assault counter-protesters out of racial animus.

A claim of civil conspiracy also "requires proof that the underlying tort was committed" by a co-conspirator in furtherance of that conspiracy. *Almy v. Grisham*, 273 Va. 68, 80 (2007); *Terry v. SunTrust Banks, Inc.*, 493 F. App'x 345, 357 (4th Cir. 2012) ("The 'unlawful act' element requires that a member of the alleged conspiracy have 'committed' an 'underlying tort.'"). Additionally, the plaintiff must suffer an injury from the tort: "The gist of the civil action of conspiracy is the damage caused by the acts committed in pursuance of the formed conspiracy and not the mere combination of two or more persons to accomplish an unlawful purpose or use unlawful means." *CaterCorp, Inc. v. Catering Concepts, Inc.*, 246 Va. 22, 28 (1993).

As discussed above when addressing the fourth and fifth elements of the Section 1985(3) claim, Plaintiffs (other than Pearce) have adequately pled specific alleged violations of state tort and statutory law. More specifically, the alleged injuries to Plaintiffs' persons at the Friday night march, Saturday rally, and car attack would all violate Virginia's hate crime statute (discussed more robustly under the following count) and constitute assaults and batteries. *See* Va. Code Ann. § 8.01-42.1(A) ("An action for . . . civil damages, or both, shall lie for any person who is subjected to acts of (i) intimidation or harassment or (ii) violence directed against his person . . . where such acts are motivated by racial, religious, or ethnic animosity."); *Koffman v. Garnett*, 265 Va. 12, 16 (2003) ("The tort of battery is an unwanted touching which is neither consented to, excused, nor justified."); *id.* ("The tort of assault consists of an act intended to cause either

harmful or offensive contact with another person or apprehension of such contact, and that creates in that other person's mind a reasonable apprehension of an imminent battery."). Plaintiffs (other than Pearce) have also pled that their injuries were caused by these unlawful acts of Defendants.

As with Count I, the Court concludes Plaintiffs have, for the most part, adequately alleged that Defendants formed a conspiracy to attack black and Jewish counter-protesters, and their supporters, because of racial animus. Those allegations, reviewed in detail above, can support the civil conspiracy claims. The two caveats to that general conclusion remain. First, Plaintiff Pearce's common law conspiracy claims against the moving Defendants will be dismissed. Second, the common law claims against Defendant Peinovich will also be dismissed.

VI. COUNT V: VIOLATION OF VIRGINIA CODE § 8.01-42.1

In Count Five, Plaintiffs Wispelwey, Magill, Muñiz, Doe, Sines, Blair, Martin, Alvarado, and Romero allege Defendants Fields, Mosley, Spencer, Kessler, Ray, Cantwell, and Invictus violated Virginia's hate crime statute.

Plaintiffs state a claim against any Defendant who engaged in "intimidation or harassment or . . . violence directed against his person . . . where such acts are motivated by racial, religious, or ethnic animosity." Va. Code Ann. § 8.01-42.1(A). Very few courts have provided elaboration of the statute. Cases have found the statute satisfied when defendants "used racial slurs and physically attacked [the plaintiffs] because of their race," *Frazier v. Cooke*, No. 4:17-CV-54, 2017 WL 5560864, at *7 (E.D. Va. Nov. 17, 2017); when a defendant's employee "harassed plaintiff based on racial animus because he apprehended her, used a racial slur, and later implied that African–Americans came into [the store] to steal," *Berry v. Target Corp.*, 214 F. Supp. 3d 530, 535 (E.D. Va. 2016); and when a skating rink, which was under a consent

decree for denying equal access to public accommodations, singled the plaintiff out for discriminatory treatment and called the police on him, *Johnson v. Hugo's Skateway*, 949 F.2d 1338 (4th Cir. 1991), *on reh'g*, 974 F.2d 1408 (4th Cir. 1992).

Each of the Plaintiffs bringing this claim (Wispelwey, Magill, Muñiz, Doe, Sines, Blair, Martin, Alvarado, and Romero) must demonstrate each of the moving Defendants (Mosley, Spencer, Kessler, Ray, and Cantwell) violated the statute. To start, Plaintiffs Muñiz, Blair, Martin, and Alvarado do not allege they ever interacted with these Defendants; they allegedly incurred injuries from Defendant Fields's attack. In response to the motions to dismiss, these Plaintiffs do not attempt to identify any allegations that the moving Defendants violated this statute. These Plaintiffs' claims against the moving Defendants will be dismissed.

That leaves Plaintiffs Wispelwey, Magill, Doe, Sines, and Romero. Plaintiff Sines claims against the moving Defendants will also be dismissed. In response to the motion to dismiss, she points to two paragraphs. In the first of these, she alleges that she "heard the marchers chanting slogans chosen for their intimidating and racially harassing effect." (Dkt. 175 at ¶161). But this allegation neither alleges the chants were "directed against [her] person," Va. Code Ann. § 8.01-42.1(A), nor alleges that one of these specific Defendants was chanting. In the second, she alleges she "witnessed co-conspirators throwing fuel and tiki torches at the peaceful protestors around the statue." (Dkt. 175 at ¶170). The same problems apply. Plaintiff neither alleges that these specific Defendants were the ones throwing fuel and torches, nor does she allege that this conduct was directed at her. Her claims under this statute against the moving Defendants will be dismissed.

Likewise, Plaintiff Wispelwey's claims against the moving Defendants cannot survive. In response to the motion to dismiss, he identifies five relevant paragraphs. (*Id.* at ¶¶178–82).

These paragraphs describe the church service that occurred across from the Rotunda, where Wispelwey and others could see the mob and their torches. (*Id.*). But the only Defendant mentioned by name in these paragraphs is Defendant Invictus, who is not moving to dismiss. As to the other Defendants, these paragraphs fail to plausibly allege that this conduct was directed against Plaintiff Wispelwey or that these Defendants were specifically involved.

Plaintiffs Magill, Doe, and Romero were each surrounded by the marchers at the base of the Thomas Jefferson statue. (*Id.* at ¶¶164–69). They have plausibly alleged violations of the hate crime statute by Mosley, Spencer, Kessler, Ray, and Cantwell, and so the motion to dismiss these claims against these Defendants will be denied. Plaintiffs allege the torchlight march was designed to intimidate racial minorities by replicating the Ku Klux Klan's and Nazi's use of torches. (*Id.* at ¶150). Plaintiffs allege that the torch-wielding mob, including each of these Defendants, "charged toward a small group . . . including Plaintiffs John Doe and Romero, who had locked arms around the statue of Thomas Jefferson." (*Id.* at ¶¶143, 164, 169, 172). Magill later joined Doe and Romero at the statue. (*Id.* at ¶169). These Plaintiffs were surrounded by Defendants and other marchers. (*Id.* at ¶166). Marchers then "began to kick and punch the protesters around the statue, using their torches as weapons, and to beat the individuals onto the ground." (*Id.* at ¶168). Marchers also threw fluid, which Plaintiffs feared was fuel, onto them. (*Id.* at ¶169). Marchers then threw their torches in the air at Plaintiffs and other counter-protesters. (*Id.*). Defendant Ray said, "The heat here is nothing compared to what you're going to get in the ovens!" (*Id.*).

Even if some of the torchlight march could be characterized as expressive conduct, the combination of the torches and this violence was not protected by the First Amendment, and these moving Defendants can be held liable under Virginia's hate crime statute. "[T]he First

Amendment . . . permits a State to ban a 'true threat.'" *Virginia v. Black*, 538 U.S. 343, 359 (2003). "Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." *Id.* at 360. Just as the Supreme Court has recognized that cross burnings are often intimidating, the torchlight march and the violence directed at Plaintiffs and other counter-protesters at the foot of the Thomas Jefferson statue, was likewise intimidating "in the constitutionally proscribable sense of the word." *Id.* Plaintiffs Magill, Doe, and Romero have plausibly alleged that Defendants Mosley, Spencer, Kessler, Ray, and Cantwell engaged in "intimidation or harassment or . . . violence directed against [their] person[s] . . . where such acts are motivated by racial, religious, or ethnic animosity." Va. Code Ann. § 8.01-42.1(A). Accordingly, their claims will survive.

VII. REMAINING DEFENSES AND ISSUES

While Defendants' specific arguments have been addressed throughout, the Court now turns to two remaining defenses that were framed at a higher level of abstraction concerning the First and Second Amendments. The Court finds that neither requires dismissal at this stage, although concerns about the possibility of chilling First Amendment speech do inform the entirety of this opinion. Finally, the Court also addresses two other general issues: judicial notice and Virginia law governing unincorporated associations.

A. The First Amendment

Defendants argue their conduct was generally protected by the First Amendment. Of course, *peaceful* picketing, *see Thornhill v. State of Alabama*, 310 U.S. 88 (1940), and *peaceful* marching, *see Edwards v. South Carolina*, 372 U.S. 229 (1963), are the sorts of expressive activities that are protected by the First Amendment. And some of the Defendants' behavior

certainly was protected by the First Amendment. After all, the genesis of the Defendants' interest in Charlottesville was the renaming of the park. Picketing and marching protesting that decision, even if motivated by racist ideology, *see Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969), would be protected speech. *See generally Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley, Cal.*, 454 U.S. 290, 295 (1981) ("The Court has long viewed the First Amendment as protecting a marketplace for the clash of different views and conflicting ideas."). These are the First Amendment values that led Judge Conrad to grant a preliminary injunction enjoining Charlottesville from revoking Defendant Kessler's permit last August. *See Kessler v. City of Charlottesville, Virginia*, No. 3:17CV00056, 2017 WL 3474071, at *3 (W.D. Va. Aug. 11, 2017).[6]

But "[t]he First Amendment does not protect violence." *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982). And so "if [the Defendants] have formed or are engaged in a conspiracy against the public peace and order" and thereby "transcend the bounds of the freedom of speech which the Constitution protects," any law holding them liable for such conspiracy does not violate the First Amendment. *De Jonge v. State of Oregon*, 299 U.S. 353, 365 (1937); *Brown v. Hartlage*, 456 U.S. 45, 55 (1982) ("Although agreements to engage in illegal conduct undoubtedly possess some element of association, the State may ban such illegal agreements without trenching on any right of association protected by the First Amendment.");

[6] Defendant Kessler applied for and was originally granted a permit for the Saturday rally. *See Kessler v. City of Charlottesville, Virginia*, 2017 WL 3474071, at *1 (providing further background). However, "[o]n August 7, 2017, less than a week before the long-planned demonstration at the Park, the defendants notified Kessler by letter that they were 'revok[ing]' the permit." *Id.* Defendant Kessler filed a motion for a preliminary injunction, which Judge Conrad granted. Judge Conrad granted the motion, finding Kessler was likely to succeed on the merits, because "the evidence cited by Kessler supports the conclusion that the City's decision constitutes a content-based restriction of speech" and the City did not come forward with evidence that supported its proffered reason for the revocation. *Id.* at *2.

United States v. Amawi, 695 F.3d 457, 482 (6th Cir. 2012) ("Forming an agreement to engage in criminal activities—in contrast with simply talking about religious or political beliefs—is not protected speech."). Just as those conspiracies can violate the criminal law, the First Amendment does not prohibit "tort liability for . . . losses that are caused by violence and by threats of violence." *Claiborne Hardware Co.*, 458 U.S. at 916. As described above, Plaintiffs plausibly allege that the Defendants formed just such a conspiracy to commit violence, and so the First Amendment does not protect Defendants.

To be clear, if Plaintiffs alleged Defendants only engaged in "abstract" advocacy of violence, those statements would be protected. *See Rice v. Paladin Enterprises, Inc.*, 128 F.3d 233, 243 (4th Cir. 1997) ("[A]bstract advocacy of lawlessness is protected speech under the First Amendment."); *Claiborne Hardware Co.*, 458 U.S. at 927 ("[M]ere advocacy of the use of force or violence does not remove speech from the protection of the First Amendment."); *Brandenburg*, 395 U.S. at 447 ("[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."). The complaint, though, is replete with specific allegations that extend beyond mere "abstract" advocacy. The allegations of physical assault are "not by any stretch of the imagination expressive conduct protected by the First Amendment." *Wisconsin v. Mitchell*, 508 U.S. 476, 484 (1993). And even many of those allegations that do concern expressive conduct, which the Court included in its above analysis, fall into three main categories of speech that extend beyond the First Amendment's protections for advocacy.

First, as the Supreme Court recognized in *Claiborne Hardware*, "a finding that [a Defendant] authorized, directed, or ratified specific tortious activity would justify holding him

responsible for the consequences of that activity." 458 U.S. at 927. The allegations that Defendants directed a charge towards Plaintiffs while they were around the Jefferson statue (dkt. 175 at ¶164), sprayed them with pepper spray (*id.* at ¶172), ratified the other assaults (*id.* at ¶¶166, 169, 172), organized and oversaw violence in the park (*id.* at ¶212), and ratified Defendant Fields's attack all fall within this category. (*Id.* at ¶267).

"Second, a finding that [a Defendant's public statements] were likely to incite lawless action could justify holding him liable for unlawful conduct that in fact followed within a reasonable period." *Claiborne Hardware*, 458 U.S. at 927. Falling within this category are the allegations that Defendants encouraged the throwing of torches at counter-protesters (dkt. 175 at ¶169), and ordered others to "charge!" (*id.* at ¶35). *See also Bible Believers v. Wayne Cty., Mich.*, 805 F.3d 228, 246 (6th Cir. 2015) ("The *Brandenburg* test precludes speech from being sanctioned as incitement to riot unless (1) the speech explicitly or implicitly encouraged the use of violence or lawless action, (2) the speaker intends that his speech will result in the use of violence or lawless action, and (3) the imminent use of violence or lawless action is the likely result of his speech.").

"Third, [otherwise protected speech] might be taken as evidence that [a Defendant] gave other specific instructions to carry out violent acts or threats." *Claiborne Hardware*, 458 U.S. at 927. Multiple allegations fall into this category, including allegations Defendants distributed shield fighting tactics (dkt. 175 at ¶192), instructed members to wear "good fighting uniforms" (*id.* at ¶ 115), and recommended attendees "bring picket sign posts, shields, and other self-defense implements which can be turned from a free speech tool to a self-defense weapon should things turn ugly." (*Id.* at ¶112). Taken by themselves, these statements may be protected. But

taken in light of the other allegations, they can serve as evidence of an agreement to commit violence.

While Defendants are incorrect in suggesting that the First Amendment immunizes them entirely, it does require a careful parsing of the allegations. When conspiracy or other unprotected speech "occurs in the context of constitutionally protected activity, . . . 'precision of regulation' is demanded." *Claiborne Hardware Co.*, 458 U.S. at 916 (quoting *N. A. A. C. P. v. Button*, 371 U.S. 415, 438 (1963)); *id.* at 908 ("The right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected."). "Specifically, the presence of activity protected by the First Amendment imposes restraints on the grounds that may give rise to damages liability and on the persons who may be held accountable for those damages." *Id.* at 916–17.

One of the primary effects of these restraints is that Plaintiffs may recover "[o]nly those losses proximately caused by unlawful conduct[.]" *Claiborne Hardware Co.*, 458 U.S. at 918. This requires tracing the "specific parties [who] agreed to use unlawful means" and "identify[ing] the impact of such unlawful conduct." *Id.* at 933–34. These requirements substantially overlap with the pleading requirements framed above. *See A Soc'y Without A Name*, 655 F.3d at 347 (holding Section 1985(3) allegations were insufficient when the plaintiff "fail[ed] to allege with any specificity the persons who agreed to the alleged conspiracy, the specific communications amongst the conspirators, or the manner in which any such communications were made"). And so, as described there, the Court has required Plaintiffs to plausibly allege that their various injuries resulted from agreements made by specific Defendants; they cannot allege that all the rally attendees who disagree with them were part of

one overarching conspiracy. The Court has imposed this heightened standard to the pleadings in order to satisfy the "precision of regulation" demanded by the First Amendment. *Claiborne Hardware Co.*, 458 U.S. at 916. However, Defendants' more general argument that it is immunized from liability by the First Amendment fails.[7]

B. The Second Amendment

Many of the above allegations note that Defendants brought weapons (*e.g.*, assault rifles, shields, poles, and pepper spray) to the Friday and Saturday events. Defendants briefly argue that the Second Amendment protected their rights to bring these weapons to the rally. But Plaintiffs' theory here is not that Defendants incurred liability by *bringing* these weapons, but by *using* them. (Dkt. 231 at ECF 52). As Plaintiffs correctly point out, the Second Amendment "right of the people to keep and bear Arms" no more insulates Defendants from civil liability for the use of their weapons in an assault than it insulates a criminal defendant from liability because he committed his crime with a weapon. "Like most rights, the right secured by the Second Amendment is not unlimited." *D.C. v. Heller*, 554 U.S. 570, 626 (2008).

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[7] Two remaining First Amendment arguments can be dismissed quickly. First, a few Defendants argue that this Court's August 2017 order enjoining Charlottesville from revoking the attendee's permit establishes the legality of the rally as a matter of *res judicata*. But that *ex ante* determination, that included none of these Plaintiffs, about whether Charlottesville violated the First Amendment is completely different than this *ex post* consideration of whether Defendants violated specific laws. As just discussed, Defendants and other rally attendees did have legitimate First Amendment rights at the rally, but the problem is that Plaintiffs allege Defendants exceeded the bounds of those rights by conspiring to commit violence.

Second, the same Defendants argue that the torchlight march was an expressive activity that is no different than flag burning. *See, e.g., Texas v. Johnson*, 491 U.S. 397 (1989). While this may or may not be correct, *see, e.g., Virginia v. Black*, 538 U.S. 343 (2003) (cross burning is not necessarily protected by the First Amendment because true threats are not protected speech), Plaintiffs' allegations are based not just on the torches themselves, but on the associated violence that occurred during the march. As just discussed, that violence is not protected by the First Amendment.

Likewise, Defendants point to no authority preventing the Court from considering Defendants' decisions to bring substantial amounts of weapons to the rally as evidence of a plan to engage in violence. (*See, e.g.,* dkt. 175 at ¶303 ("After the Unite the Right 'rally,' Defendant Cantwell explained, 'I came pretty well prepared for this thing today,' while pulling out three pistols, two semi-automatic machine guns, and a knife. Of the next 'alt-right protest,' he said, 'it's going to be tough to top but we're up to the challenge . . . I think a lot more people are going to die before we're done here, frankly.'")). While the reasonableness of this inference may vary based on specific allegations (*e.g.*, an individual lawfully carrying a licensed gun does not reasonably give rise to this inference), some of Plaintiffs' allegations concerning weapons do support an inference that Defendants planned to engage in racially motivated violence at the rally. (*See, e.g., id.* at ¶191 ("Vanguard is fabricating 20 additional shields. We should have a good amount between organizations."); *id.* at ¶192 (describing a "Shield Tactics Primer" and "a video illustrating shield fighting techniques" posted on Discord); *id.* at ¶212 (describing how Defendants used shields in "the fight")). Defendants cite no cases to the contrary, choosing instead to invoke *Heller* and *McDonald* as talismans. Defendants' Second Amendment arguments fall flat.

C. Judicial notice

Defendants also ask the Court to take judicial notice of various documents and videos, ranging from the Heaphy Report (a report Charlottesville commissioned in the wake of the rally) to YouTube videos of speeches Defendants' made at the rally. *See generally* Fed. R. Evid. 201. First, Defendants wish to demonstrate that the City of Charlottesville and various counter-protesters were also responsible for the violence. While the Court has reviewed the Heaphy Report, other potential causes of violence mentioned by it do not undermine Plaintiffs'

allegations about these Defendants' conspiracy to commit violence. Even assuming it is proper to take judicial notice of the whole report, *see* Fed. R. Evid. 201(b) ("The court may judicially notice a *fact* . . . ."), its only relevance here is to provide general background to the allegations.

Second, Defendants also wish to provide context for various quotes and statements that they made through videos and transcripts of their speeches and statements. Here, the Court declines to take judicial notice of these documents because doing so would lead the Court into some of the fundamental factual disputes of the case, disputes that are appropriate for discussion later in the litigation. *See Goldfarb v. Mayor & City Council of Baltimore*, 791 F.3d 500, 511 (4th Cir. 2015) ("We are mindful that judicial notice must not 'be used as an expedient for courts to consider 'matters beyond the pleadings' and thereby upset the procedural rights of litigants to present evidence on disputed matters.'"). More specifically, because "[t]he parties clearly and reasonably disagree about the meaning to be ascribed to these [statements]," it is appropriate for the Court to "decline to judicially notice them." *Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 F.3d 177, 216 (4th Cir. 2009).

D. Unincorporated associations under Va. Code § 8.01-15

Multiple Defendants are sued as "unincorporated associations" under Virginia law. Virginia Code § 8.01-15 "provides that unincorporated associations may sue or be sued in their own name, but does not otherwise alter the legal definitions of such groups." *Bedford Genealogical Soc., Inc. v. Bedford Museum & Genealogical Library*, No. CIV.A. 6:09-CV-00060, 2010 WL 2038843, at *3 n.4 (W.D. Va. May 21, 2010). And so, looking to the common law governing unincorporated associations, "[a]n unincorporated association is a collection of individuals gathered for a common purpose and 'is not a legal entity separate from the persons who compose it.'" *Id.* (quoting Black's Law Dictionary, association (8th ed. 2004)). "Such an

association suggests an organized group made up of persons who become members of the association voluntarily, but subject to certain rules or by-laws; the members are customarily subject to discipline for violations or non-compliance with the rules of the association." *Yonce v. Miners Mem'l Hosp. Ass'n*, 161 F. Supp. 178, 186 (W.D. Va. 1958). The word has been used to refer to "associations such as trade unions, fraternal organizations, business organizations, and the like." *Id.* Another court has listed the following unincorporated associations: "a hospital association, real estate investment trust, racing commission, landowner association, and a labor organization." *Muniz v. Fairfax Cty. Police Dep't*, No. 1:05CV466 (JCC), 2005 WL 1838326, at *2 n.2 (E.D. Va. Aug. 2, 2005). Generally, associations have the abilities "to prescribe the conditions or qualifications of their membership or their duties, to enlarge or reduce their membership, to enlarge or decrease the scope of their activities, [and] to dissolve the association . . . ." *Yonce*, 161 F. Supp. at 186.

Only one organizational Defendant addresses whether it qualifies as an "unincorporated associations," and it does so by introducing an affidavit that is not properly before the Court at this stage.[8] However, the Court will eventually need to consider the question in order to

[8] Defendant Nationalist Front briefly raised this issue in a motion to dismiss filed in response to the original complaint. (Dkt. 105 at 1–2; dkt. 207). Defendant Schoep, the founder of Defendant Nationalist Front, filed an affidavit in support of the motion to dismiss. (Dkt. 105-1). The affidavit states that Nationalist Front "has no existence other than [its] website." (*Id.* at ¶9). This is directly contradicted by Plaintiffs' allegations that Defendants Schoep and Heimbach "co-chair" the organization (dkt. 175 at ¶31), that Defendant Hill also assists in its leadership (*id.* at ¶39), that it was designed to be "the thread that would unite white supremacist and white nationalist circles" (*id.* at ¶39), and that its members were present and acted as "warriors" at the Saturday rally (*id.* at ¶¶37, 196, 212). Considering this affidavit and resolving whether Defendant Nationalist was merely a website or instead a platform for Defendants to coordinate their conduct at the rally would require the Court to treat this as a motion for summary judgment. Fed. R. Civ. P. 12(d). Furthermore, Defendant Nationalist Front does not respond to Plaintiffs' argument that consideration of the affidavit would be inappropriate without allowing Plaintiffs time for discovery. The Court holds consideration of the affidavit would be inappropriate at this stage, and so the affidavit will be excluded. *See Occupy Columbia v. Haley*,

determine what alleged actions and statements of individuals are attributable to the purported unincorporated associations. *See* 7 *Corpus Juris Secundum* Associations § 75 (2018 Westlaw) ("An unincorporated association, formed to accomplish a common purpose, is bound to use the same care to avoid injury to others as natural persons, and it may be liable in tort for the wrongful acts of its members *when acting collectively in the prosecution of the business for which it is organized*. . . . An association may not be held liable for torts of a member when it has no control over his or her acts." (emphasis added)).[9] But because this issue is not properly before the Court at this stage and requires further factual development, the Court does not consider these issues at this stage of the litigation.

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738 F.3d 107, 117 (4th Cir. 2013) (affirming district court's refusal to consider affidavits at the motion to dismiss stage). The parties may seek leave to brief this issue on an expedited basis.

[9] Difficult questions are also raised by the alleged ratification of certain actions (*e.g.*, Defendant Fields's car attack) by various organizational Defendants. *See N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 931 (1982) ("To impose liability without a finding that the NAACP authorized—either actually or apparently—or ratified unlawful conduct would impermissibly burden the rights of political association that are protected by the First Amendment."); *see also* 7 *Corpus Juris Secundum* Associations § 75 (2018 Westlaw) ("In the absence of authorization or ratification by all of its members, an association can only be held liable for the unintentional act of an agent or employee, and cannot be held to account for the intentional act of an agent which results in a trespass."); *id.* at § 71 ("An unincorporated association can ratify the conduct of one of its members and an unincorporated association's ratification of an unauthorized act of one of its members has retroactive effect.").

Another thorny issue is whether actions of these organizations can create liability for their individual members. *See Feldman v. N. British & Mercantile Ins. Co.*, 137 F.2d 266, 268 (4th Cir. 1943) ("It is generally held that an unincorporated voluntary association, formed to accomplish a common purpose, is bound to use the same care to avoid injury to others as natural persons, but mere membership in the body or contribution of dues or money to effectuate the common purpose does not make all the members liable for unlawful acts of the association done without their participation and without their knowledge or approval.") (applying South Carolina law); *see also Bedford Genealogical Soc., Inc. v. Bedford Museum & Genealogical Library*, No. CIV.A. 6:09-CV-00060, 2010 WL 2038843, at *3 (W.D. Va. May 21, 2010) ("The unilateral acts of certain Society members—without notice to or the knowledge or consent of the entire membership—in forming a corporation of the same name did not transfer the assets or members of the unincorporated association to the corporation.").

VIII. CONCLUSION

> In litigation of this kind the stakes are high. Concerted action is a powerful weapon. History teaches that special dangers are associated with conspiratorial activity. And yet one of the foundations of our society is the right of individuals to combine with other persons in pursuit of a common goal by lawful means.

Claiborne Hardware Co., 458 U.S. at 932–33. While the Court acknowledges the weighty First Amendment interests implicated by the "Unite the Right" events, Plaintiffs here have plausibly alleged conduct that lies "close to the core of the coverage intended by Congress" when it passed the Ku Klux Klan Act to address violence against racial minorities. *Griffin*, 403 U.S. at 103; *Great Am. Fed. Sav. & Loan Ass'n*, 442 U.S. at 368, 394. Accordingly, the Court will largely deny the motion to dismiss. Defendant Peinovich will be dismissed from the case. Plaintiff Pearce's claims against the moving Defendants will be dismissed, although the Court does not address her claims against the non-moving Defendants. And the claims under the Virginia hate crime statute survive only for those Plaintiffs who were injured at the torchlight march.[10]

An appropriate order will issue. The Clerk of Court is requested to send a copy of this Opinion and the accompanying Order to the parties.

Entered this 9th day of July, 2018.

NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE

[10] Counts Four, Five, and Six are only alleged against Defendant Fields, and are tied to his car attack. He has not moved to dismiss, and so these claims are not addressed here.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES et al., Plaintiffs,	)	Civil Action No. 3:17-cv-00072
v.	)	ORDER
JASON KESSLER et al., Defendants.	)	By: Joel C. Hoppe United States Magistrate Judge

This matter is before the Court on Plaintiffs' Motion to Compel Defendants to Permit Inspection and Imaging of Electronic Devices, ECF No. 354, and other discovery matters. On November 9, 2018, the Court held a telephonic hearing at which the parties appeared by counsel and had an opportunity to address these matters. ECF No. 377. The parties largely resolved their differences over Plaintiffs' motion, as well as Plaintiffs' request that certain Defendants sign a consent form allowing Discord to respond to Plaintiffs' subpoena duces tecum. For the reasons stated on the record during the hearing, it is hereby ORDERED that:

1. Plaintiffs' motion to compel, ECF No. 354, is GRANTED. The Court finds that ordering the parties to submit their electronic devices to a third-party vendor for imaging, *see* ECF No. 354-1, is necessary and appropriate to manage discovery in this action. *See Procaps S.A. v. Patheon Inc.*, No. 12-24356-CIV, 2014 WL 800468, at *2–3 (S.D. Fla. Feb. 28, 2014).
2. The parties agreed that certain modifications should be made to the proposed Stipulation and Order for the Imaging, Preservation, and Production of Documents attached to Plaintiffs' motion. ECF No. 354-1. The parties shall promptly submit a new proposed Stipulation and Order that reflects the substance of these agreed-upon terms:

a. Plaintiffs agree to pay all fees or costs incurred by the third-party vendor in imaging the identified electronic devices. This agreement is made without prejudice to Plaintiffs' ability to seek to recover these expenses at a later date. Defendants are not obligated to pay any fees or costs incurred by the third-party vendor at this time, and they reserve their rights to oppose any request made by Plaintiffs seeking to recover those expenses.

b. The Stipulation and Order's terms are reciprocal – they apply equally to Plaintiffs and to Defendants.

c. Defendants preserve any properly made objections to Plaintiffs' requests for production.

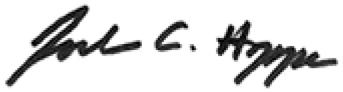
3. Within seven (7) days from the date of this Order, all Defendants who appeared at the hearing, except Defendant Richard Spencer, shall sign the consent form allowing Discord to produce any discoverable documents or electronically stored information in response to Plaintiffs' subpoena duces tecum.

    a. Within seven (7) days from the date of this Order, Spencer's counsel shall notify the Court whether or not he objects to the Court entering an Order directing Spencer to sign the Discord consent form.

4. The Court previously allowed counsel to withdraw from representing Defendant Elliot Kline. ECF No. 347. Kline's former counsel shall provide to the Court and Plaintiffs' counsel Kline's contact information, including any address, telephone number, and email address that counsel may possess.

It is so ORDERED.

ENTER: November 13, 2018



Joel C. Hoppe
U.S. Magistrate Judge

COOLEY LLP
ROBERT L. EISENBACH III (124896)
(reisenbach@cooley.com)
101 California Street, 5th Floor
San Francisco, CA 94111-5800
Telephone: (415) 693-2000
Facsimile: (415) 693-2222

Attorneys for Plaintiffs

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

[MODESTO DIVISION]

In re:

NATHAN BENJAMIN DAMIGO,

Debtor.

Chapter Number: 7

ELIZABETH SINES, SETH WISPELWEY, MARISSA BLAIR, TYLER MAGILL, APRIL MUNIZ, HANNAH PEARCE, MARCUS MARTIN, NATALIE ROMERO, JOHN DOE, AND CHELSEA ALVARADO,

Plaintiffs,

v.

NATHAN BENJAMIN DAMIGO,

Defendant.

Case No. 19-90003-E-7

COMPLAINT SEEKING DETERMINATION THAT DEBTS ARE NON-DISCHARGEABLE PURSUANT TO 11 U.S.C. § 523(A)(6)

Adv. Pro. No. 19-[____]

COMPLAINT SEEKING DETERMINATION THAT DEBTS ARE NON-DISCHARGEABLE PURSUANT TO 11 U.S.C. § 523(a)(6)

Elizabeth Sines, Seth Wispelwey, Marissa Blair, Tyler Magill, April Muniz, Hannah Pearce, Marcus Martin, Natalie Romero, John Doe, and Chelsea Alvarado (the "***Plaintiffs***") file this *Complaint Seeking Determination that Debts are Non-Dischargeable Pursuant to 11 U.S.C. § 523(a)(6)* (the "***Adversary Proceeding***") against defendant Nathan Benjamin Damigo ("***Defendant***" or "***Damigo***"). The Plaintiffs, by and through their undersigned counsel, allege, upon knowledge and/or information and belief, the following:

I. NATURE OF THE ACTION

1. By this Adversary Proceeding, Plaintiffs seek a determination that the amount(s) of the damages arising from numerous claims asserted in Plaintiffs' lawsuit against Damigo in the United States District Court for the Western District of Virginia (the "***Virginia District Court***"), Case No. 3:17-cv-00072-NKM (the "***Charlottesville Action***") are non-dischargeable pursuant to section 523(a)(6) of Title 11 of the United States Code (the "***Bankruptcy Code***").

2. The operative facts of this action arise out of the August 11 and 12, 2017 "Unite the Right" rallies in Charlottesville, Virginia organized by neo-Nazis and white supremacists. The Plaintiffs in this action are University of Virginia undergraduates, law students, and staff, persons of faith, ministers, parents, doctors, and businesspersons. Each Plaintiff was injured as a result of the events in Charlottesville on August 11 and 12, 2017. One Plaintiff suffered a stroke. Three Plaintiffs were injured in a car attack. Others suffered and continue to suffer deep and debilitating psychological and emotional distress.

3. Plaintiffs filed the Charlottesville Action against Damigo and other defendants to challenge their actions under the laws of the United States of America and the Commonwealth of Virginia.

4. Damigo is a white nationalist and founder of a white supremacist organization called Identity Evropa. Damigo and his group took the lead in organizing white supremacist participation among people from outside Charlottesville in connection with the events on August 11 and 12, 2017, in Charlottesville. Damigo's illegal actions were motivated by racial, religious, and ethnicity-based

animus and therefore qualify as "willful and malicious" injuries that are non-dischargeable under section 523(a)(6) of the Bankruptcy Code.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157(b) and 1334(b). This is an adversary proceeding pursuant to Fed. R. Bankr. P. 7001(6) and a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(I) and (O).

6. Venue is proper within this district pursuant to 28 U.S.C. §§ 1408 and 1409.

7. Pursuant to Fed. R. Bankr. P. 7008, this Adversary Proceeding relates to the Chapter 7 bankruptcy case filed by the Defendant, on or around January 2, 2019, in the United States Bankruptcy Court for the Eastern District of California (the "***Bankruptcy Court***"), which is currently pending under Case No. 19−90003−E−7 (the "***Bankruptcy Case***").

8. To the extent consent is required, Plaintiffs consent to entry of final orders by the Bankruptcy Court in the Adversary Proceeding.

III. PARTIES

9. Plaintiffs are all residents of the Commonwealth of Virginia who were injured as a result of the events in Charlottesville on August 11 and 12, 2017. Additional facts regarding the Plaintiffs can be found in paragraphs 10 to 19 of the Plaintiffs' First Amended Complaint (the "***Amended Complaint***") in the Charlottesville Action [ECF No. 175], which is attached hereto as **Exhibit A** and incorporated herein by this reference.

10. Defendant Damigo is the individual debtor in the Bankruptcy Case and a defendant in the Charlottesville Action. Damigo is a resident of the State of California.

IV. FACTUAL BACKGROUND

11. Plaintiffs hereby incorporate by reference the allegations in the Amended Complaint.

12. In connection with the now infamous events of August 11 and 12, 2017, Damigo and his co-defendants conspired to plan, promote, and carry out the violent events in Charlottesville. Damigo is a white nationalist and the founder of a white supremacist organization, Identity Evropa, which is also named as a defendant in the Charlottesville Action. Identity Evropa adopted and popularized the white supremacist slogan, "You will not replace us," which was chanted at the Unite

the Right events. Damigo was previously arrested on April 15, 2017, for assaulting a woman at the "Battle for Berkeley" rally, which Damigo described as a test run for "rallies" in Charlottesville. Damigo and Identity Evropa took the lead in organizing white supremacist participation among people from outside Charlottesville to engage in unlawful acts of violence, intimidation, and denial of equal protection in connection with the Unite the Right events.

13. As a result of the illegal acts of Damigo and his co-defendants, Plaintiffs have suffered damages, including without limitation, serious physical injuries and harm, extreme emotional distress, and the inability to return to work or school, as set forth in more detail in paragraphs 283 to 295 of the Amended Complaint. *See* Ex. A, ¶¶ 283–295.

14. To obtain redress for Damigo's unlawful actions, Plaintiffs filed their original complaint on October 11, 2017, against Damigo and other defendants and the Amended Complaint on January 5, 2018. The Amended Complaint asserts claims against Damigo for, among other things, violations of 42 U.S.C. §§ 1985(3) and 1986, and civil conspiracy to violate those laws. Damigo's illegal actions were undertaken pursuant to an unlawful conspiracy, the purpose of which was and is to discriminatorily deprive black, Jewish, and nonwhite individuals, and their white supporters, of their rights to equal protection of the laws and to equal enjoyment of the privileges and immunities of citizens of the United States guaranteed by the Constitution and laws because of their race, religion, and open and obvious advocacy for the rights of nonwhite individuals.

15. In his Schedule F filed in the Bankruptcy Case, Damigo listed the liability(ies) asserted in the Charlottesville Action as unliquidated and disputed claims in varying amounts. *See* Bankruptcy Case, Dkt. No. 1.

COUNT I

11 U.S.C. § 523(a)(6) – Willful and Malicious Injury Caused by Damigo

(as asserted in the Amended Complaint)

16. Plaintiffs repeat and re-allege their allegations in the above paragraphs.

17. Based upon the facts and supporting evidence alleged herein, the amounts recoverable and/or the damages arising under the Amended Complaint, Counts I-III (collectively, the "***Claims***") against Damigo are non-dischargeable under section 523(a)(6) of the Bankruptcy Code as having

created a debt or debts owed to Plaintiffs for willful and malicious injury inflicted by Damigo.

18. The Claims seek amounts and/or damages under various causes of action arising from violations of 42 U.S.C. §§ 1985(3) and 1986, and civil conspiracy to violate those laws.

19. Damigo intentionally participated in and perpetuated illegal acts, and willfully aided and abetted and conspired with others, including the other party defendants to the Charlottesville Action, in effectuating those illegal acts.

20. As a result of Damigo's illegal conduct, Plaintiffs suffered damages as alleged in the Amended Complaint.

21. Damigo intended for his actions to injure Plaintiffs for the purpose of (i) discriminatorily depriving black, Jewish, and nonwhite individuals, and their white supporters, of their rights to equal protection of the laws and their rights to equal enjoyment of the privileges and immunities of citizens of the United States guaranteed by the Constitution and laws because of their race, religion, and open and obvious advocacy for the rights of nonwhite individuals; and (ii) furthering his cause of recruiting new followers to engage in racial, religious, and ethnically-motivated violence both at the Unite the Right rally and in the future.

22. Furthermore, the injuries inflicted on Plaintiffs were substantially certain to result from Damigo's illegal acts and the damages represented by the Claims were the inevitable result of Damigo's illegal acts.

23. Damigo's conduct was wrongful, without just cause, and excessive. Examples of the malicious nature, either actual, implied or constructive, of Damigo's activities include, but are not limited to: (i) using online and media platforms to encourage attendance at the Unite the Right rally to discuss and promote violence, causing harm to Jewish people and people of color; (ii) taking a lead role in organizing, with Identity Evropa, white supremacist participation among people from outside of Charlottesville to engage in unlawful acts of violence, intimidation, and denial of equal protection at the Unite the Right events; (iii) attending and participating in the Unite the Right event on August 12, 2017, during which he threatened, intimidated, and harassed protestors and minority residents and incited and engaged in violence; and (iv) directing and inciting acts of violence and intimidation at the Unite the Right rally on August 12, 2017.

24. Based upon the foregoing, the Claims arise from Damigo's willful and malicious injury to Plaintiffs, and, as such, are non-dischargeable under Bankruptcy Code § 523(a)(6).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order and Judgment:

A. On Count I, finding that the amounts recoverable and/or the damages arising from the Claims are non-dischargeable under Bankruptcy Code § 523(a)(6); and

B. Granting Plaintiffs such other and further relief as this Court may find just and proper.

Respectfully submitted,

Dated: January 30, 2019

COOLEY LLP

By: /s/ Robert L. Eisenbach III
Robert L. Eisenbach III

Attorneys for Plaintiffs

197376864

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re Nathan Benjamin Damigo, Debtor.	) Case No. 19-90003 - E - 7) Docket Control No. RLE-1) Document No. 12) Date: 02/14/2019) Time: 10:00 AM) DEPT: E

Order

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

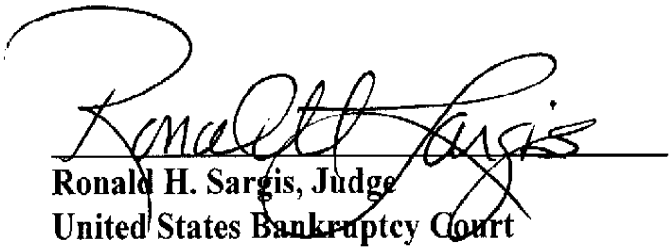
The Motion for Relief from the Automatic Stay filed by Elizabeth Sines, Seth Wispelwey, Marissa Blair, Tyler Magill, April Muniz, Hannah Pearce, Marcus Martin, Natalie Romero, John Doe and Chelsea Alvarado ("Movants") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Nathan Benjamin Damigo ("Debtor") to allow Elizabeth Sines, Seth Wispelwey, Marissa Blair, Tyler Magill, April Muniz, Hannah Pearce, Marcus Martin, Natalie Romero, John Doe and Chelsea Alvarado , and their respective agents and successors to proceed with litigation in *Elizabeth Sines, et al. v. Jason Kessler, et al.*, Case No. 3:17-CV-00072 to final judgment, including all appeals therefrom.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, Gary Farrar ("the Chapter 7 Trustee"), the Debtor, or property of the bankruptcy estate. Any judgment obtained by Movants shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

Dated: February 15, 2019

By the Court



Ronald H. Sargis, Judge
United States Bankruptcy Court

[12] - Motion for Relief from Automatic Stay [RLE-1] Filed by Creditors Natalie Romero, Chelsea Alvarado, Marcus Martin, Hannah Pearce, April Muniz, Tyler Magill, Marissa Blair, Seth Wispelwey, Elizabeth Sines, John Doe (Fee Paid $181) (eFilingID: 6437904) (tjof) Modified on 1/31/2019 (tjof). [12] - Motion/Application to Hold Non-Dischargeability Action In Abeyance [RLE-1] Filed by Creditors Chelsea Alvarado, Marissa Blair, John Doe, Tyler Magill, Marcus Martin, April Muniz, Hannah Pearce, Natalie Romero, Elizabeth Sines, Seth Wispelwey (tjof)

Instructions to Clerk of Court
Service List – Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC.

Nathan Benjamin Damigo
14773 Orange Blossom Rd
Oakdale CA 95361

Gary Farrar
PO Box 576097
Modesto CA 95357

Office of the U.S. Trustee
Robert T Matsui United States Courthouse
501 I Street , Room 7-500
Sacramento CA 95814

Robert L. Eisenbach III
101 California St., 5th Floor
San Francisco CA 94111-5800

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES, SETH WISPELWEY, MARISSA BLAIR, TYLER MAGILL, APRIL MUNIZ, HANNAH PEARCE, MARCUS MARTIN, NATALIE ROMERO, CHELSEA ALVARADO, and JOHN DOE, Plaintiffs, v. JASON KESSLER, RICHARD SPENCER, CHRISTOPHER CANTWELL, JAMES ALEX FIELDS, JR., VANGUARD AMERICA, ANDREW ANGLIN, MOONBASE HOLDINGS, LLC, ROBERT "AZZMADOR" RAY, NATHAN DAMIGO, ELLIOT KLINE a/k/a/ ELI MOSLEY, IDENTITY EVROPA, MATTHEW HEIMBACH, MATTHEW PARROTT a/k/a DAVID MATTHEW PARROTT, TRADITIONALIST WORKER PARTY, MICHAEL HILL, MICHAEL TUBBS, LEAGUE OF THE SOUTH, JEFF SCHOEP, NATIONAL SOCIALIST MOVEMENT, NATIONALIST FRONT, AUGUSTUS SOL INVICTUS, FRATERNAL ORDER OF THE ALT-KNIGHTS, MICHAEL "ENOCH" PEINOVICH, LOYAL WHITE KNIGHTS OF THE KU KLUX KLAN, and EAST COAST KNIGHTS OF THE KU KLUX KLAN a/k/a EAST COAST KNIGHTS OF THE TRUE INVISIBLE EMPIRE, Defendants.	**Civil Action No. 3:17-cv-00072-NKM**

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR SANCTIONS AGAINST DEFENDANTS ELLIOT KLINE A/K/A ELI MOSLEY AND MATTHEW HEIMBACH

TABLE OF CONTENTS

Plaintiffs respectfully submit this memorandum of law in support of their motion pursuant to Rule 37 of the Federal Rules of Civil Procedure and the Court's inherent authority for sanctions against Defendants Elliot Kline and Matthew Heimbach.

PRELIMINARY STATEMENT

Defendants Elliott Kline and Matthew Heimbach are leaders in the white supremacy movement and were two of the architects of the violent, racially-motivated conspiracy that led to the injuries and fatalities in Charlottesville. They were engaged in all aspects of planning the events in Charlottesville, down to the nitty-gritty details such as ordering the helmets and riot shields. During the event on August 12, Defendants Kline and Heimbach were out front, leading others into battle on the streets of Charlottesville. Kline emerged with the blood of counter-protesters on his clothes. Then Defendants Kline and Heimbach were sued. While both Defendants initially dabbled in the litigation, they each opted out when faced with discovery requests that would reveal the evidence of their misconduct. Content to play by their own rules, Defendants Kline and Heimbach simply refused to participate any longer.

Defendant Kline vanished the instant Plaintiffs requested his deposition. The phone number he made available to his followers on the social networking website Discord while enthusiastically planning the Charlottesville events suddenly went unanswered. Defendant Heimbach chose to make a more conspicuous exit, firing his attorney after this Court ordered him to produce documents and thereafter ignoring all communication. Further demonstrating his utter contempt for the Court and his legal obligations, Defendant Heimbach continues to comment publicly on social media regarding issues in the case, while simultaneously disregarding all Court orders and efforts to reengage him in this case. Meanwhile, neither Defendant has produced a single document in this case. This willful failure to produce any documents has prejudiced

Plaintiffs significantly. Worse, the Defendants' unpunished defiance has become contagious, as one-by-one, other Defendants have begun to employ similar tactics to delay or withhold the production of documents. In fact, as discussed *infra*, Defendant Vanguard America's own counsel concedes that his client's similar refusal to participate in discovery "is a problem." In that sense, Defendants Kline and Heimbach continue to lead.

Defendants Kline and Heimbach must be sanctioned to remedy the prejudice they have inflicted on Plaintiffs, to restore order to this judicial process, and to deter other Defendants from disobeying this Court's rules and orders. Plaintiffs seek the following sanctions under Rule 37 and this Court's inherent authority:

1. That the Court deem the facts listed in the attached Exhibit 1 established for purposes of this action;

2. That the Court deem "authentic" for purposes of satisfying Rule 901 of the Federal Rules of Evidence any document Plaintiffs have a good faith basis to believe were in fact created by Defendants Kline or Heimbach, including, but not limited to, all documents from the social media accounts listed in Exhibit 1;[1]

3. That the Court instruct the jury that Defendants Kline and Heimbach chose to intentionally withhold their documents and that the jury may draw adverse inferences from that fact, including that Kline and Heimbach chose to withhold such documents because they were aware that such documents contained evidence that Defendants Kline and Heimbach conspired to plan racially-motivated violence at the Unite the Right event; and

4. Reasonable expenses, including attorney's fees.

[1] Plaintiffs reserve the right to request that additional facts or documents be deemed established or authentic as additional facts or documents are revealed in discovery.

FACTUAL BACKGROUND

I. Defendant Kline

A. Defendant Kline's Pivotal Role in the Conspiracy

Kline was central to the planning and execution of the conspiracy to commit racially motivated violence in Charlottesville. (Ex. 2 at 158 (Deposition of Erica Alduino) ("Eli was one of the main people. . . .")); *id.* at 189 ("But Jason Kessler and Eli Kline were the only ones that I can confirm were planners of [Unite the Right].").) He, along with Jason Kessler, was one of two key decisionmakers in almost every aspect of planning the weekend of events in Charlottesville, including logistics, public relations, messaging, transportation, weaponry, lodging, speakers, and recruiting. (*See* Ex. 3 at 237 (Deposition of Jason Kessler) ("Q. Mr. Kessler… you and Eli Mosley were the principal coordinators for the Unite the Right rally on August 11 and 12, 2017, correct? A. Yes."); Ex. 4 (Operation Unite the Right Charlottesville 2.0).) Kline was responsible for approving details as specific as the words co-conspirators chanted that weekend, chants like "Jews will not replace us" and "Into the ovens." (Ex. 2 at 239-40.) He was engaged in the planning at a granular level on a daily basis throughout the summer of 2017, working on every aspect of the Unite the Right weekend, including the torchlight march on Friday, August 11, instructing Defendants and others where to go, when to be there and what to bring. (First Amended Complaint ("FAC"), ECF No. 175, ¶¶ 147-148, 152.) He was also a member of Defendant Identity Evropa, which took the lead in organizing white supremacist participation among people from outside Charlottesville in connection with the events on August 11 and 12. (*Id.* at ¶¶ 28-29.) It is no exaggeration to say that without Kline, Unite the Right may not have occurred. At the August 12 event, Kline rushed in with both fists, personally ensuring that his violent plans would play out at that weekend. Photographs taken that day show Kline smiling gleefully with the blood of counter-protestors on his clothes. (*See* Ex. 5.)

Kline set the goals and tone for the weekend. Early in the planning stages, Kline apparently drafted and circulated to "group leaders" a working document titled, "Operation Unite the Right Charlottesville 2.0." (*See* Ex. 4.) Part battle cry, part playbook, that seven-page document laid out rules, guidelines, and roles for co-conspirators. The seeds for the racially-motivated violence Charlottesville ultimately endured were planted in that foundational document, which explicitly attempted to unify white supremacist groups around the concept of aggression toward so-called "anti-white" protestors: "[w]e will send the message that we will not be divided, we will not allow them to erase history without a fight. . . ." (*Id.* at 1.)

Kline also influenced and monitored the daily communication about the Charlottesville events on the primary communication platform used to plan the weekend events, an invite-only Discord server entitled "Charlottesville 2.0." (Ex. 2 at 122.) In addition to posting thousands of messages himself, Kline was the moderator of the "Charlottesville 2.0" Discord server, and had the ability to invite others to participate, to delete messages from the platform, and to kick people off the server at his discretion. (*Id.* at 126.) He was able to control the content of communication surrounding the planning of the weekend events, and who had access to those communications. He made a concerted effort to keep any evidence of his plans intensely secret, telling Discord users involved in planning that "Sharing information publically [*sic*] from this discord or about this event or who is attending outside of closed circles or this Discord, will get you immediately banned from all future alt right events." (*Id.* at 205.) He communicated with co-conspirators through various social media platforms, including multiple accounts on Twitter and Discord, as well as a phone number and email account, which he disseminated on the Charlottesville 2.0 server. (*See* Ex. 4; Ex. 6 (excerpted post from Elliot Kline's public Twitter profile (Aug. 7, 2017)).) He urged his followers to "Feel free to msg/call whenever," posting the same phone number he later used to

communicate with his attorney in this litigation. (Ex. 4; Ex. 7 (email from J. Kolenich to G. Tenzer (Nov. 9, 2018)).) In stark contrast to his present radio silence in proceedings before this Court, Kline was prolific and easily reachable while planning the Unite the Right.

In addition to spearheading the planning, Kline was a key participant in each of the events leading up to the weekend in Charlottesville, as well each of the violent events that took place the weekend of August 11 and 12. He was present in Charlottesville on May 13, 2017, a precursor event for the ones in August, marching and chanting along with other co-Defendants. (Ex. 2 at 109-10.) He attended both the Friday night torch march and the event on Saturday and found himself in the midst of the violence at both. Although Kline has failed to produce a single document in this litigation, there is little doubt the documents he authored in relation to planning the weekend events in Charlottesville, such as the operational document, are critical to Plaintiffs' ability to establish a conspiracy to commit racially-motivated violence.

B. Defendant Kline's Failure to Participate in Discovery While Continuing to Comment on Social Media

Kline was served with this lawsuit at his home on October 27, 2017. (ECF No. 62.) Like many other Defendants, he retained James Kolenich, who entered an appearance on his behalf on December 1, 2017. (ECF No. 131.) He was initially vocal and passionate about the case on social media, inviting his Twitter followers to listen to the podcasts where he would be "chatting about this stuff since it is crucial that we continue to win in court for the future of our people." (*See* Ex. 6 (Nov. 9, 2017).) On the same day Mr. Kolenich entered his appearance, Kline tweeted publicly and critically about the investigative findings in the report about Charlottesville issued by Hunton and Williams LLP, a report referenced in certain Defendants' discovery filings. (*Id.* (Dec. 1, 2017).) On January 25, 2018, Plaintiffs served a request for documents on all Defendants, including Kline, seeking documents related to the events described in the Amended Complaint

including, for example, e-mails, text messages, and content posted on social media, and also instructed Kline to preserve all documents and communications relevant to this lawsuit. (*See* Ex. 8 (Pls.' [Corrected] First Set of Reqs. for Produc. of Docs. to All Defs. (Jan. 25, 2018)).) On the same date, Plaintiffs served all Defendants, including Kline, with a set of interrogatories, asking him to identify, among other things, all means of communication used to discuss the events at issue here, as well as the electronic devices used for such communications. (*See* Ex. 9 at 8 (Pls.' First Set of Interrogs. to All Defs. (Jan. 25, 2018)).) Kline simply ignored those discovery requests. However, another Defendant, Identity Evropa, responded and identified "Mr. Mosley's[2] communication devices[]" as the electronic devices it used to communicate concerning the events. (Ex. 10 (Def. Identity Evropa's Resp. to Pls.' First Interrogs. and Req. for Prod. of Docs. (Apr. 6 2018)). On April 19, 2018, Plaintiffs raised Kline's total non-compliance with the Court. (ECF No. 308, at 3.) Mr. Kolenich responded that, while he would at times communicate with Kline through Defendant Identity Evropa, Mr. Kolenich had become unable to communicate with Kline. (*Id.* at 4-5.) While ignoring Plaintiffs, his discovery obligations and his own attorneys, Kline nonetheless continued to comment on social media about the Charlottesville events, even betraying an awareness that his communications were relevant to ongoing litigation, noting that he "can't say much more for obvious reasons" while specifically refuting certain facts about the what took place that weekend. (Ex. 6 (May 27, 2018).) His problem was not his ability to use his phone or communicate about the case. His problem was an unwillingness to do so on anyone's terms but his own.

C. Defendant Kline's Flagrant Disregard of this Court

[2] Kline has held himself out as "Eli Mosley"—a tribute to the pro-Nazi British fascist leader Oswald Mosley—and he is referred to by that name by certain co-conspirators.

Shortly after Defendants' motions to dismiss the Amended Complaint were denied (ECF Nos. 335, 336), on July 23, 2018, James Kolenich and Elmer Woodard moved to withdraw as Kline's attorneys. (ECF No. 344.) Mr. Kolenich reported that he had been in contact with Kline and told Kline that he would need to stay in touch with his attorneys. (ECF No. 345, at ¶¶ 3-4.) Kline apparently agreed to do so. (*Id.*) Thereafter, Defendant Kline's attorneys advised him that Plaintiffs had requested to take his deposition. (*Id.* at ¶ 5.) At that point, Kline stopped participating in the litigation altogether. (*Id.* at ¶ 6.) On July 25, 2018, the Court granted his attorneys' motion to withdraw, (ECF No. 347), and Kline has since subsequently ignored all communications by Plaintiffs and the Court.[3]

On November 13, 2018, the Court granted Plaintiffs' motion to compel Defendants to produce to Plaintiffs their electronic devices and social media accounts used to communicate about the events in Charlottesville. (ECF No. 379 ("Imaging Order").) Pursuant to the Court's Order, Kolenich provided Plaintiffs with a purportedly working e-mail address for Kline (*see* Ex. 7), which Plaintiffs used to attempt to communicate with Kline on multiple occasions, including to provide him with a copy of the Stipulation and Order for the Imaging, Preservation, and Production of Documents on November 16, 2019. (*See* Ex. 11 (email from C. Greene to E. Kline (Nov. 16, 2018)).) Pursuant to this Court's Order, Kline—like all Defendants—was required to sign that stipulation in order to provide Plaintiffs' access to Defendants' social media accounts and electronic devices. Kline ignored that communication and never signed the stipulation. On November 27, 2018, Plaintiffs emailed Kline a copy of the Stored Communications Act ("SCA")

[3] Kline's and Heimbach's status as *pro se* litigants should not afford them any leniency from this Court. To the contrary, Kline and Heimbach are "proceeding *pro se* so [they] [are] entirely responsible for [their] actions," *Silvious v. RR Donnelley & Sons*, No. 5:10-CV-116, 2011 WL 3846775, at *3 (W.D. Va. Aug. 29, 2011), "are still subject to sanctions[,] and cannot be allowed to make a mockery of the Court's authority," *McDonald v. Robinson*, No. 1:18-CV-697, 2018 WL 7001680, at *5 (E.D. Va. Dec. 26, 2018), *report and recommendation adopted*, No. 1:18-CV-697, 2019 WL 166548 (E.D. Va. Jan. 10, 2019).

consent form each Defendant was ordered to sign to provide Plaintiffs access to Defendants' Discord accounts. (Ex. 12 (email from C. Greene to E. Kline (Nov. 27, 2018)).) Kline ignored that communication as well and never signed an SCA consent form.

In addition to ignoring communications from Plaintiffs, Kline has failed to appear at seven court conferences on discovery, including a conference scheduled specifically to address Kline's own lack of participation in discovery. (*See* ECF No. 377 (Minute Entry, Nov. 9, 2018); ECF No. 396 (Minute Entry, Jan. 4, 2019); ECF No. 409 (Minute Entry, Feb. 8, 2019); ECF No. 411 (Minute Entry, Feb. 12, 2019); ECF No. 425 (Minute Entry, Feb. 21, 2019); ECF No. 437 (Minute Entry, Mar. 1, 2019); ECF No. 450 (Minute Entry, Mar. 18, 2019).) The Court has attempted to contact Kline more than *ten* times, including via email, physical mail, and voicemail, to no avail. (*See* ECF No. 401 (Feb. 4, 2019); ECF No. 402 ("call[ing] and email[ing] Elliot Kline . . . three times regarding setting a telephonic hearing" and "[a]fter no response[,] . . . [c]lerk called and left voicemails, mailed and emailed notice of [February 8] hearing" (Feb. 5, 2019)); ECF No. 407 ("email[ing] and mail[ing] dial in information" for February 12 hearing (Feb. 8, 2019)); ECF No. 414 (emailing notice of February 21 hearing to Kline (Feb. 15, 2019)); ECF No. 445 (emailing notice of March 18 hearing to Kline (Mar. 13, 2019)).) As far as Plaintiffs are aware, Kline has not once responded to these efforts by the Court.

II. Defendant Heimbach

A. Defendant Heimbach's Pivotal Role in the Conspiracy

Heimbach was an actively engaged leader of major white supremacist organizations that had a robust presence in Charlottesville. At the time of the "Unite the Right" events, Heimbach was one of the leaders of two different white supremacist groups that participated that weekend in August: Defendant Traditionalist Worker Party ("TWP"), a group founded to promote anti-Semitism; and Defendant Nationalist Front, an umbrella organization of approximately twenty

white supremacist organizations, including racist skinhead crews, Klan groups, and neo-Nazi groups. (FAC ¶¶ 31, 33.)

In the weeks leading up to Unite the Right, Heimbach posted over 4,000 messages on Discord, including some in the "Charlottesville 2.0" server, and led in-person meetings to help other Defendant groups plan for the weekend events. (*See* Ex. 13 (excerpted posts from Matthew Heimbach's Discord profile (July 8, 2017; July 23, 2017; July 30, 2017)) ("We will be holding a Nationalist Front meeting, TWP and allies, in Ocoee TN this weekend on Saturday at 1pm . . . . The purpose of the meeting is to plan for the upcoming Charlottesville event carpool, plan for future events, network, and do a flash demo.").) He instructed TWP members on details such as what to wear on August 12, and provided his followers with "official TWP riot shields" and "a dozen helmets thatll be painted black with Party insignia's on them" so that "alongside our [Defendant] league of the south and [Defendant] vanguard america allies, we'll have an unbreakable line." (*Id.*)

During the August 12 event itself, Heimbach, dressed in combat gear, led Defendant TWP to commit racially-motivated violence. (FAC ¶¶ 200, 214-15; *see* Ex. 14.) Heimbach reported using five different social media platforms—along with his cell phone—to communicate in aid and furtherance of the conspiracy. (ECF No. 354-13, at 1-2 (Def. Matthew Heimbach's Resp. to Pls.' First Interrogs. and Req. for Prod. Of Docs. (Apr. 6, 2018)).) The cell phone number he used was the same as the one he used to communicate with his attorney in this litigation, during the period in which he chose to participate. (Ex. 7.)

B. Defendant Heimbach's Failure to Respond to Discovery

Since the tragic weekend in Charlottesville, the one thing Heimbach has done fairly consistently is communicate about the events on social media. By contrast, he only participated

in this litigation when it suited his interests, abandoning it entirely as soon as he was under an express Court order to produce documents.

In the early stages of the litigation, while he was still represented by counsel, Heimbach expressed his solidarity with his Charlottesville co-conspirators on social media, posting, for example, a photograph with co-conspirator and fellow TWP leader Tony Hovater outside of Charlottesville Regional Jail, stating that he "went to the jail in Cville to visit our POW's today. Never forget the men behind the wire!" (*See* Ex. 15 (excerpted posts from Matthew Heimbach's Gab profile (Dec. 4, 2017)).) At the same time, he was active in the case, hiring Mr. Kolenich, who entered his appearance on December 1, 2017. Heimbach was served with interrogatories and document requests on January 25, 2018, which sought all documents containing communication about the events at issue in this case.

After those requests were served, but before any of the Defendants responded, tumult ran through the TWP that raised red flags about the potential destruction of documents. On February 27, 2018, another fellow TWP leader and co-Defendant Matthew Parrott encouraged anyone "involved in any altercation in Cville" to disable their social media, because "[e]verybody's getting a ride." (Ex. 16 (excerpted post from Matthew Parrott's Facebook profile (Feb. 27, 2018)).) Fourteen days later, on March 13, 2018, Heimbach was arrested for assaulting Defendant Parrott, who had confronted Heimbach about an alleged affair with Defendant Parrott's wife. (*See* Ex. 17.) Later that day, Defendant Parrot indicated on social media his intention to delete and destroy all TWP membership information. In the early morning hours of March 14, 2018, Defendant Parrott posted on another social media account that "the information was scrubbed on account of widespread concern about the data's security. It was a practical security step, and not a political act." (Ex. 18 (excerpted post from Matthew Parrott's Gab profile (Mar. 14, 2018)).) That alarming

series of posts caused Plaintiffs to seek emergency relief from the Court. (ECF No. 272.) Thereafter, in his April 6, 2018 response to the interrogatories, Heimbach stated, contrary to the evidence of his rampant use of social media to discuss the Charlottesville events, that he had no responsive documents in his possession. (*Compare* ECF No. 354-13 *with* FAC ¶¶ 74, 327.) In the same document, Mr. Heimbach disclosed that he used a cell phone and five different social media accounts to communicate concerning the events of August 11 and 12. (ECF No. 354-13, at 2-4.) Even more concerning, when asked for documents regarding the steps he had taken to preserve documents relevant to the lawsuit, Heimbach simply responded, "N/A." (*Id.*)

On April 24, 2018, Plaintiffs wrote to Heimbach (among others) through his attorney, Mr. Kolenich, regarding his troubling and deficient responses. (*See* Ex. 19 (letter from G. Tenzer to J. Kolenich and E. Woodward (Apr. 24, 2018)).) Having received nothing from Heimbach, Plaintiffs were ultimately forced to move to compel. On October 2, 2018, Plaintiffs moved to compel Defendants to permit inspection and imaging of their electronic devices. (ECF No. 354.) Two weeks later, Mr. Kolenich indicated to the Court, through a motion to withdraw as counsel, that Mr. Heimbach was in breach of his obligation to pay attorneys' fees. (ECF Nos. 357, 358, 372.)[4] On November 13, 2018, this Court granted Plaintiffs' motion to compel, ordering that all parties must submit their electronic devices and social media accounts that contained potentially relevant information to a neutral, third-party vendor for imaging and preservation. (ECF No. 379; *see also* ECF No. 354.) The Court found that the Imaging Order was "necessary and appropriate to manage discovery in this action" and ordered the parties to "promptly" sign a third-party vendor contract to effectuate production. (ECF No. 379, at 1.) Additionally, the Court ordered Defendants to sign

[4] Plaintiffs opposed this motion, having already experienced the difficulties of obtaining compliance from Kline once he was permitted to proceed *pro se*, and fearing similar results in Heimbach's case: "[e]nforcing compliance with the Court's orders and conducting orderly discovery in this case would be rendered impossible without Defense counsel." (ECF No. 384.) Those concerns have been emphatically confirmed.

a consent form under the Stored Communications Act ("SCA") allowing Discord to produce any discoverable documents to Plaintiffs. (*Id.* at 2.) Heimbach never signed the third-party vendor contract to provide Plaintiffs access to his electronic devices and social media accounts, and he submitted a facially defective SCA consent form that was inoperable to provide access to his Discord content. (Ex. 20 (SCA Consent from M. Heimbach (Nov. 20, 2018)).)

On December 4, 2018, Plaintiffs wrote to Mr. Kolenich seeking a functional SCA consent. (Ex. 21 (email from C. Greene to J. Kolenich (Dec. 4, 2018)).) Heimbach never provided any such consent.[5] He did, however, shortly thereafter, comment on social media about a separate lawsuit involving a different white nationalist that had recently settled, belittling the settlement, stating that "[l]awsuits are just money[]" and exhorting other nationalists not to "betray their principles" due to "fear of losing money." (Ex. 22 (excerpted posts from Matthew Heimbach's public VK Profile (Dec. 25, 2018; Jan. 30, 2019; Feb. 2, 2019; Feb. 3, 2019; Feb. 4, 2019; Feb. 6, 2019; Feb. 14, 2019; Feb. 16, 2019), *available at* https://vk.com/matthewheimbach)).) He then did something that has since become a familiar tactic in this litigation: he fired his attorney, explicitly forbidding them from "tak[ing] any actions on his behalf." (Ex. 23, at 14 (Jan. 4, 2019 Tr.).)

Since he has been *pro se*, Mr. Heimbach has failed to appear at six court conferences, (ECF Nos. 396, 409, 411, 425, 437, 450), and like Kline, more than ten email, physical mail, and voicemail communications from the Court and Plaintiffs have gone unanswered. (*See, e.g.*, ECF Nos. 401, 402, 407, 414, 445; Ex. 24 (email from G. Tenzer to K. Dotson and Counsel (Feb. 8, 2019)).) He has been contacted to no avail at the same phone number he used to

[5] Plaintiffs subsequently managed to obtain documents from Discord that appear to be authored by Kline and Heimbach, although without these Defendants' participation in discovery, it will be difficult for Plaintiffs to authenticate those documents.

communicate both with his attorneys when he was represented and with his co-conspirators while planning the events in Charlottesville. (*See* Ex. 7.)

At the same time, Heimbach has continued to advocate on social media for white supremacy, noting recently that he "look[s] up to men like Adolf Hitler." (Ex. 22; Ex. 25 (excerpted posts from Matthew Heimbach's public Twitter profile (Feb. 28, 2019; Mar. 7, 2019; Mar. 8, 2019; Mar. 10, 2019; Mar. 12, 2019; Mar. 13, 2019; Mar. 14, 2019; Mar. 15, 2019)).) Indeed, Heimbach continues to discuss the case on social media with impunity, even though he cannot be bothered to participate himself, in what can only be described as flagrant disrespect and disdain for the judicial process. (*See* Ex. 25 ("Reports are coming in that the NSM has filed to ask for a summary judgment against itself, without notifying members."); Ex. 22 ("What's the proper etiquette when the people suing you make sweet quote graphics of things you said?").) In willful defiance of multiple Court orders, Heimbach has yet to produce a single document in this case.

ARGUMENT

A court has wide discretion to impose sanctions when a party fails to serve its answers, objections, or written response to discovery requests or to comply with discovery ordered by the court. *See* Fed. R. Civ. P. 37(b)(2) & (d)(3); *Mut. Fed. Sav. & Loan v. Richards & Ass'n*, 872 F.2d 88, 94 (4th Cir. 1989). It is generally recognized that sanctions are intended to: (1) penalize culpable parties; (2) deter others from engaging in similar conduct; (3) compensate the court and other parties for expense caused; and (4) compel discovery. Gregory P. Joseph, *Sanctions: The Federal Law of Litigation Abuse,* § 49 (2013) (citing *Carlucci v. Piper Aircraft Corp*., 775 F.2d 1440, 1453 (11th Cir. 1985)). Thus, the range of available sanctions "serve both normative—designed to punish culpable conduct and deter it in others—and compensatory—designed to put the party adversely affected by the spoliation in a position that is as close to what it would have

been in had the spoliation not occurred—functions." *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 534 (D. Md. 2010). "Rule 37 is flexible," and courts are permitted to "use as many and as varied sanctions as are necessary to hold the scales of justice even." *Victor Stanley, Inc. v. Creative Pipe, Inc.*, No. 06-CV-2662, 2016 WL 1597119, at *4 (D. Md. Apr. 20, 2016) (citation omitted).

Rule 37 specifies a nonexclusive list of substantive, case-related sanctions for failure to obey a discovery order, ranging from an order establishing certain facts to the entry of a default judgment. *See* Fed. R. Civ. P. 37(b)(2)(A); *Camper v. Home Quality Mgmt. Inc.*, 200 F.R.D. 516, 517–18 (D. Md. 2000). Rule 37 also provides that the Court *must* order the payment of expenses by the disobedient party, including "the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(b)(2)(C); *see also* Fed. R. Civ. P. 37(d)(3). A court may also award sanctions for discovery violations pursuant to its inherent authority. *See, e.g.*, *Projects Mgmt. Co. v. Dyncorp Int'l LLC*, 734 F.3d 366, 375 (4th Cir. 2013) ("[A] court acting under its inherent authority may impose sanctions for any conduct utterly inconsistent with the orderly administration of justice." (citation and internal quotation marks omitted)); *Sampson v. City of Cambridge*, 251 F.R.D. 172, 178–79 (D. Md. 2008).

The Fourth Circuit has developed a four-part test for determining what sanctions to impose under Rule 37: "(1) whether the noncomplying party acted in bad faith;[6] (2) the amount of

[6] While bad faith is relevant to the analysis and evident in the case of Kline and Heimbach, the Fourth Circuit does not require that a court find bad faith in order to impose the type of sanctions being sought here. *See Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 593 (4th Cir. 2001) (holding that dismissal for spoliation is "usually justified only in circumstances of bad faith or other like action. But even when conduct is less culpable, dismissal may be necessary if the prejudice to the defendant is extraordinary, denying it the ability to adequately defend its case."); *Sampson*, 251 F.R.D. at 179 ("Although, some courts require a showing of bad faith before imposing sanctions, the Fourth Circuit requires only a showing of fault, with the degree of fault impacting the severity of sanctions.").

prejudice that noncompliance caused the adversary; (3) the need for deterrence of the particular sort of noncompliance; and (4) whether less drastic sanctions would be effective." *Anderson v. Found. for Advancement, Educ. & Emp't of Am. Indians*, 155 F.3d 500, 504 (4th Cir. 1998). The presence or absence of any one of these factors is not dispositive. *See, e.g.*, *Victor Stanley,* 269 F.R.D. at 533.

Additionally, the Court has the power to sanction parties under its inherent authority. The factors courts consider largely mirror those courts apply under Rule 37:

> (1) the degree of the wrongdoer's culpability; (2) the extent of the client's blameworthiness if the wrongful conduct is committed by its attorney, recognizing that [the court] seldom dismiss[es] claims against blameless clients; (3) the prejudice to the judicial process and the administration of justice; (4) the prejudice to the victim; (5) the availability of other sanctions to rectify the wrong by punishing culpable persons, compensating harmed persons, and deterring similar conduct in the future; and (6) the public interest.

Projects Mgmt., 734 F.3d at 374 (quoting *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 462–63 (4th Cir. 1993)).

Each of the four prongs of the Rule 37 test—as well as the factors courts consider under their inherent authority—are easily satisfied here. Kline's and Heimbach's bad faith disappearances have significantly hindered Plaintiffs' ability to establish vital facts and authenticate critical documents they otherwise would have been able to, had Kline and Heimbach simply complied with their discovery obligations to turn over responsive documents and answer questions in depositions. Moreover, their willful disobedience has led to somewhat predictable copycat behavior from other Defendants—like Defendants Jeff Schoep, Vanguard America, and potentially others—who so far apparently see little downside in similarly disobeying the Court's discovery orders. Sanctions are tailor-made for precisely this scenario. Specifically, Plaintiffs seek the following sanctions:

1. That the Court deem the facts listed in the attached Exhibit 1 established for purposes of this action;

2. That the Court deem "authentic" for purposes of satisfying Rule 901 of the Federal Rules of Evidence any document Plaintiffs have a good faith basis to believe were in fact created by Defendants Kline or Heimbach, including, but not limited to, all documents from the social media accounts listed in Exhibit 1;[7]

3. That the Court instruct the jury that Defendants Kline and Heimbach chose to intentionally withhold their documents and that the jury may draw adverse inferences from that fact, including that Kline and Heimbach chose to withhold such documents because they were aware that such documents contained evidence that Defendants Kline and Heimbach conspired to plan racially-motivated violence at the Unite the Right event;

4. Reasonable expenses, including attorney's fees.

The requested sanctions are necessary to put Plaintiffs in the position they would have been in had Kline and Heimbach complied with their discovery obligations in this case and are designed to deter other Defendants from continuing to defy this Court's orders.

I. Defendants Kline and Heimbach Have Acted in Bad Faith

As an initial matter, it is abundantly clear that Kline and Heimbach have been acting in bad faith. Courts have considered a number of non-exclusive factors in determining whether to presume bad faith, including, as discussed *infra*, whether a decision not to participate appears to be a conscious one, whether there is a legitimate explanation for the failure to participate, and the length of time a party has failed to participate, among others.

There is little question that the failure to participate and produce a single document by both Kline and Heimbach constitute willful decisions by each Defendant. At the beginning of this case, Kline was in sporadic communication with his attorney, communicating via the same phone

[7] Plaintiffs reserve the right to request that additional facts or documents be deemed established or authentic as additional facts or documents are revealed in discovery.

number he used to plan the Unite the Right events. It was after Plaintiffs requested to set a date for Kline's deposition that he finally disappeared entirely. His phone worked; he simply stopped responding because he felt like it. Indeed, at the same time Kline used his electronic devices to comment about the events in this case on social media, he failed to respond to the most basic discovery requests, such as Plaintiffs' interrogatories.

Similarly, Heimbach was reachable for a time on the same device he used to plan the weekend events in Charlottesville, but his participation ended in this case when it came time for him to comply with the Court's Order to provide a working SCA consent and access to his electronic devices and social media accounts. Even after dropping out of the case, Heimbach continues to stick his thumb in the Court's eye by commenting on the litigation from the sidelines. More than twenty communications from the Court have gone unheeded, not to mention Plaintiffs' attempts to get Defendants to respond to Plaintiffs' discovery requests.

Kline and Heimbach have "proceeded in a manner so dilatory and mulish, the court cannot find it to be other than deliberate." *Gardendance, Inc. v. Woodstock Copperworks, Ltd.*, 230 F.R.D. 438, 452 (M.D.N.C. 2005). Moreover, Defendants have "made no effort to explain or justify [their] failure to engage in meaningful discovery, and given [their] persistent failure to cooperate, [their] silence leaves the court with no choice but to presume bad faith." *Sawyers v. Big Lots Stores, Inc.*, No. 7:08-CV-258, 2009 WL 55004, at *3 (W.D. Va. Jan. 8, 2009); *see also Dusé v. Barnes & Noble, Inc.*, No. 1:11-CV-875, 2011 WL 13192908, at *2 (E.D. Va. Dec. 22, 2011) (finding that where a party "made a conscious decision not to participate" in the case, "[s]uch a refusal amounts to bad faith"), *report and recommendation adopted*, No. 1:11-CV-875, 2012 WL 12973545 (E.D. Va. Jan. 6, 2012), *aff'd*, 473 F. App'x 189 (4th Cir. 2012).

It has been ***fourteen months***—and counting— since Plaintiffs requested documents from Kline and Heimbach and four months since the Court ordered Defendants to turn over their devices and social media accounts. That amount of time alone suggests bad faith. *See, e.g.*, *Green* v. *John Chatillon & Sons*, 188 F.R.D. 422, 424 (M.D.N.C. 1998) (noting that "[n]oncompliance with discovery orders can serve as a basis for a finding of bad faith," and dismissing plaintiff's claims with prejudice where plaintiff's "complete failure to provide discovery over ***eight months*** after the original requests and over two months after being ordered by Magistrate Judge Eliason to do so satisfies the four-part test required by *Mutual Federal*" (emphasis added)); *Daye* v. *Gen. Motors Corp.*, 172 F.R.D. 173, 177 (M.D.N.C 1997) ("The failure of Plaintiffs and [their counsel] to honor the Orders of this Court and [Plaintiff's counsel's] failure to initiate any contact with Defendant's counsel for ***over six months*** constitutes both unjustifiable negligence as well as bad faith." (emphasis added)). The evidence unequivocally establishes that Kline and Heimbach have been acting in bad faith.

II. Plaintiffs Have Been Severely Prejudiced by Defendants Kline's and Heimbach's Failure to Respond to Discovery

The prejudice caused by Heimbach's and Kline's wholesale failure to produce documents cannot be understated, particularly in a case where Plaintiffs need to prove a conspiracy. Courts have consistently found prejudice where parties are hampered in their ability to prove material components of their case due to the opposing party's failure to produce documents. "The purpose of pre-trial discovery is for a litigating attorney to obtain information from the opposing party, information which in many cases is not otherwise available" and "an absolute lack of discovery results in clear prejudice." *Pruitt v. Bank of Am., N.A.*, No. 8:15-CV-1310, 2016 WL 7033972, at *3 (D. Md. Dec. 2, 2016) (citation omitted); *see also id.* at *2 ("Interrogatories[, document requests,] and depositions are important elements of discovery; [a party] would be hard-pressed to

conduct its case without them. When a [party] refuses to respond to such requests, it can have a debilitating effect on the rest of the litigation."). Due to Defendants' repeated and ongoing discovery misconduct, "this case has taken up an inordinate amount of judicial resources, and resulted in significant procedural and substantive prejudice to Plaintiff[s]" who have "been stymied at every turn . . . to get the evidence [they] need[] to prosecute [their] claims." *First Mariner Bank v. Resolution Law Grp., P.C.*, No. 12-CV-1133, 2014 WL 1652550, at *19 (D. Md. Apr. 22, 2014); *see also Diamond v. Mohawk Indus., Inc.*, No. 6:12-CV-00057, 2014 WL 1404563, at *5 (W.D. Va. Apr. 10, 2014) (finding defendant was "greatly prejudiced by the inability to . . . communicate with [plaintiff] in any regular fashion about the case, or receive responsive documents from him"). "Significant prejudice" is also present where, as here, "the evidence sought by [Plaintiffs'] discovery requests 'goes to the heart' of [their] claim." *Hendricks*, 2017 WL 2711131, at *4; *see also Knight v. Boehringer Ingelheim Pharm., Inc.*, 323 F. Supp. 3d 837, 845 (S.D.W. Va. 2018) ("[P]rejudice arises when a party cannot present evidence essential to its underlying claim." (citation and internal quotation marks omitted)).

Discovery is especially critical in a conspiracy case. There is already an "inherent difficulty in proving conspiracy," *Precision Piping & Instruments, Inc. v. E.I. duPont De Nemours & Co.*, 707 F. Supp. 225, 228 (S.D.W. Va. 1989), and the Fourth Circuit has held that "[a]cknowledging the difficulty of proving the existence of a conspiracy by direct evidence, . . . 'a conspiracy may be proved wholly by circumstantial evidence . . . of a defendant's relationship with other members of the conspiracy, the length of this association, the defendant's attitude and conduct, and the nature of the conspiracy,'" *United States v. Masi*, 135 F.3d 771, at *6 (4th Cir. 1998) (table decision) (quoting *United States v. Burgos*, 94 F.3d 849, 858 (4th Cir. 1996)). The absence of documents that Plaintiffs can authenticate as having been generated by Kline and

Heimbach impedes Plaintiffs' ability to prove the manner in which they communicated and conspired with other Defendants, thus jeopardizing Plaintiffs' ability to prove their case against other Defendants as well.

Defendants' failure to participate in discovery has resulted in textbook prejudice here. Although Plaintiffs are aware of damning evidence Kline and Heimbach have in their possession, Plaintiffs are denied access to a huge volume of that evidence, and even those documents Plaintiffs have obtained through other means become difficult to authenticate without the Defendants' participation in the discovery process. For example, Kline and Heimbach were lead organizers of the Unite the Right event and are central members of the conspiracy. Kline published "General Orders" for the event, instructing co-conspirators and attendees that they may have to "take the ground by force," and he moderated, reviewed, and managed the Discord server used to direct and plan the event. (FAC ¶¶ 100-01, 322.) Plaintiffs have worked diligently to mitigate the prejudice from Kline's and Heimbach's wholesale failure to produce by attempting to obtain their documents from third parties, like Discord. While that process has yielded a substantial number of Discord posts that purport to be authored by Kline and Heimbach, Plaintiffs are unable to authenticate these documents or gain any understanding of the volume of documents Kline and Heimbach continue to withhold without being able to get discovery from their electronic devices or take their depositions. Yet, without Court intervention, that is exactly where Plaintiffs find themselves.

III. Deterrence Is Required Where, as Here, Multiple Defendants Have Resisted Compliance with Discovery

Kline's and Heimbach's overt defiance has already had a cascading effect on other Defendants. Since these two stopped participating, other Defendants have similarly fired their attorneys, failed to surrender electronic devices and social media accounts, disbanded their organizations, and shut down servers leading to another pending sanctions motions, one pending

order to show cause, and potentially more such filings on the way. And the discovery process is far from over. Deterrence is badly needed in this case.

As the Fourth Circuit has held, "not only does the noncomplying party jeopardize his or her adversary's case by such indifference, but to ignore such bold challenges to the district court's power would encourage other litigants to flirt with similar misconduct." *Mut. Fed. Sav. & Loan*, 872 F.2d at 92; *see also Nat'l Hockey League* v. *Metro. Hockey Club, Inc.*, 427 U.S. 639, 643 (1976) (holding that sanctions "must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent"). And in fact, they already have. By way of example, and as their own counsel concedes, Defendant Vanguard America "is a problem." (Ex. 26 (Mar. 18, 2019 Tr. at 14).) In the words of its own attorney, Vanguard America "has not turned over the devices they were supposed to turn over and is not listening to counsel on the necessity of hurrying up and providing this stuff, so I really don't have anything to say in regard to them other than in might be useful for the Court to give them sort of a warning shot. . . ." (*Id.*)

Multiple Defendants still have not complied with the Court's latest deadline— March 8— to produce their electronic devices and social media credentials to the third-party vendor. The extent of non-compliance or late compliance among Defendants underscores the need for stiff sanctions against noncomplying parties. *Silvestri*, 271 F.3d at 590 ("The courts must protect the integrity of the judicial process because, as soon as the process falters . . . the people are then justified in abandoning support for the system." (alteration, citation, and internal quotation marks omitted)). The need to deter this type of conduct "is manifest. Civil cases simply cannot proceed without participation by all parties in discovery." *Pruitt*, 2016 WL 7033972, at *2. "Continued

contumacious behavior and abuse through non-compliance with [a Court's] orders cannot be tolerated. And with discovery's important role in modern litigation, deterrence is greatly needed." *Flame S.A. v. Industrial Carriers, Inc.*, 39 F. Supp. 3d 752, 765 (E.D. Va. 2014).

IV. Lesser Sanctions Would Not Be Effective

Pursuant to Rule 37 and the Court's inherent authority, severe sanctions are warranted for Kline's and Heimbach's misconduct.[8] *Butler v. DirectSat USA, LLC*, No. 10-CV-2747, 2013 WL 6629240, at *1 (D. Md. Dec. 16, 2013) ("A party's total failure to comply with the mandates of discovery, with no explanation for that failure, can certainly justify this harshest of sanctions."); *Nucor Corp. v. Bell*, 251 F.R.D. 191, 194 (D.S.C. 2008) (finding "harsher sanctions" permitted where "the spoliation was so prejudicial that it prevents the non-spoliating party from maintaining [their] case"). Rule 37(b)(2)(ii) expressly provides for sanctions that both remedy the substantial prejudice Plaintiffs have suffered and constitute the most appropriate disincentive to other Defendants contemplating similar transgressions.

Regarding the first and second requested sanctions, Plaintiffs are simply asking that the Court deem certain facts established that Plaintiffs have a good faith basis to believe they would in fact establish if Kline and Heimbach had produced their documents and continued to participate in this case. Rule 37(b)(2)(A)(i) expressly contemplates this particular sanction for exactly this purpose, allowing a court to "direct[] that . . . designated facts be taken as established for purposes of the action, as the prevailing party claims." *See*, *e.g.*, *Wachtel v. Health Net, Inc.*, 239 F.R.D. 81, 104 (D.N.J. 2006) (holding that certain facts would "be deemed admitted for all purposes" in

[8] Plaintiffs believe that Kline's and Heimbach's complete failure to comply with discovery could warrant the granting of a default judgment, arguably a more severe sanction than what is sought here. Such a sanction would frankly leave Plaintiffs worse off, however, given the amount of damning evidence Kline and Heimbach possess that may never see the light of day. In a conspiracy case, such a result would hinder Plaintiffs' ability to prove their case against other Defendants and perversely would therefore constitute somewhat of a windfall for these two Defendants.

light of "the significance of the documents withheld from Plaintiffs, the deliberate and willful nature of the non-disclosure, and the prejudice suffered by Plaintiffs"). If these Defendants turned over their documents and participated in the rest of discovery, Plaintiffs would be able to confront them with their documents and establish the authenticity of documents they authored in furtherance of this conspiracy. Any lesser sanction would fail to alleviate the substantial prejudice Plaintiffs have suffered from the inability to obtain and authenticate many of these Defendants' documents and place them before a jury. Moreover, any sanction that does not impose a case-related consequence would allow Defendants to avoid accountability entirely simply by opting out of the process. Defendants should not be rewarded for their disobedience.

As to the third requested sanction—adverse inferences—a wholesale failure to preserve and produce documents is, in effect, no different from intentional spoliation. "Under the spoliation of evidence rule, an adverse inference may be drawn against a party who destroys relevant evidence." *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 155 (4th Cir. 1995); *see also Beaven v. U.S. Dep't of Justice*, 622 F.3d 540, 554–55 (6th Cir. 2010) (affirming district court "imposing a non-rebuttable adverse inference after finding that the Defendants' destruction of [evidence] severely compromised the Plaintiffs' case by depriving the Plaintiffs of the most relevant piece of evidence to prove their claims" (internal quotation marks omitted)). "Such an instruction can be critical to assisting the innocent party in establishing the nature of the evidence that has gone missing" and "ameliorate any prejudice to the innocent party by filling the evidentiary gap created by the party that destroyed evidence." *Ottoson v. SMBC Leasing & Fin., Inc.*, 268 F. Supp. 3d 570, 584 (S.D.N.Y. 2017) (citation and internal quotation marks omitted).

These remedies are the only way to properly "level[] the evidentiary playing field and . . . sanction[] the improper conduct." *Vodusek*, 71 F.3d at 156. Moreover, given that this Court's

"direct, unequivocal order[s] ha[ve] been met with . . . silence" Messrs. Kline and Heimbach, "there is nothing to indicate that a less drastic sanction would lead to different results." *Pruitt*, 2016 WL 7033972, at *3.

Because Defendants Kline and Heimbach have willfully withheld documents and ceased participating in discovery in this case, the above-requested sanctions are the minimum necessary and appropriate to remedy the prejudice Plaintiffs have suffered from Defendants' defiance, and to deter other Defendants from following suit.

CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court grant their motion for sanctions against Defendants Kline and Heimbach in its entirety, order the requested relief, and order such other relief as the Court deems just and proper.

Dated: April 3, 2019

Respectfully submitted,

/s/

Robert T. Cahill (VSB 38562)
COOLEY LLP
11951 Freedom Drive, 14th Floor
Reston, VA 20190-5656
Telephone: (703) 456-8000
Fax: (703) 456-8100
rcahill@cooley.com

Roberta A. Kaplan (*pro hac vice*)
Julie E. Fink (*pro hac vice*)
Gabrielle E. Tenzer (*pro hac vice*)
Michael L. Bloch (*pro hac vice*)
Christopher B. Greene (*pro hac vice*)
KAPLAN HECKER & FINK, LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
Telephone: (212) 763-0883
rkaplan@kaplanhecker.com
jfink@kaplanhecker.com
gtenzer@kaplanhecker.com
mbloch@kaplanhecker.com
cgreene@kaplanhecker.com

Yotam Barkai (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
55 Hudson Yards
New York, NY 10001
Telephone: (212) 446-2300
Fax: (212) 446-2350
ybarkai@bsfllp.com

Karen L. Dunn (*pro hac vice*)
William A. Isaacson (*pro hac vice*)
Jessica Phillips (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
1401 New York Ave, NW
Washington, DC 20005
Telephone: (202) 237-2727
Fax: (202) 237-6131
kdunn@bsfllp.com
wisaacson@bsfllp.com
jphillips@bsfllp.com

Alan Levine (*pro hac vice*)
COOLEY LLP
1114 Avenue of the Americas, 46th Floor
New York, NY 10036
Telephone: (212) 479-6260
Fax: (212) 479-6275
alevine@cooley.com

David E. Mills (*pro hac vice*)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Telephone: (202) 842-7800
Fax: (202) 842-7899
dmills@cooley.com

Counsel for Plaintiffs

RULE 37 CERTIFICATION

Plaintiffs hereby certify pursuant to Rule 37(a)(1) that they have attempted to meet and confer with Kline and Heimbach. Additionally, Plaintiffs hereby certify pursuant to Rule 37(d)(1)(B) that they have attempted to meet and confer with Kline. As detailed on pages four through fourteen, all communications with Kline and Heimbach have gone unheeded. Therefore, Plaintiffs certify that they are unable to obtain an answer or response to Plaintiffs' discovery without court action.

Dated: April 3, 2019

Respectfully submitted,

*/s/*_____
Robert T. Cahill (VSB 38562)
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2019, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

Justin Saunders Gravatt
David L. Hauck
David L. Campbell
Duane, Hauck, Davis & Gravatt, P.C.
100 West Franklin Street, Suite 100
Richmond, VA 23220
jgravatt@dhdglaw.com
dhauck@dhdglaw.com
dcampbell@dhdglaw.com

Counsel for Defendant James A. Fields, Jr.

Lisa M. Lorish
Federal Public Defenders Office
Western District of Virginia - Charlottesville
401 E Market Street, Suite 106
Charlottesville, VA 22902
lisa_lorish@fd.org

Fifth Amendment Counsel for Defendant James A. Fields, Jr.

Bryan Jones
106 W. South St., Suite 211
Charlottesville, VA 22902
bryan@bjoneslegal.com

Counsel for Defendants Michael Hill, Michael Tubbs, and League of the South

Elmer Woodard
5661 US Hwy 29
Blairs, VA 24527
isuecrooks@comcast.net

James E. Kolenich
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
jek318@gmail.com

Counsel for Defendants Matthew Parrott, Robert Ray, Traditionalist Worker Party, Jason Kessler, Vanguard America, Nathan Damigo, Identity Europa, Inc. (Identity Evropa), and Christopher Cantwell

John A. DiNucci
Law Office of John A. DiNucci
8180 Greensboro Drive, Suite 1150
McLean, VA 22102
dinuccilaw@outlook.com

Counsel for Defendant Richard Spencer

William E. Rebrook, IV
The ReBrook Law Office
6013 Clerkenwell Court
Burke, Virginia 22015
edward@ReBrookLaw.com

Counsel for Jeff Schoep, Nationalist Front, and National Socialist Movement

I further hereby certify that on April 3, 2019, I also served the following non-ECF participants, via U.S. mail, First Class and postage prepaid, addressed as follows:

Loyal White Knights of the Ku Klux Klan
a/k/a : Loyal White Knights Church of
the Invisible Empire, Inc.
c/o Chris and Amanda Barker
2634 U.S. HWY 158 E
Yanceyville, NC 27379

Moonbase Holdings, LLC
c/o Andrew Anglin
P.O. Box 208
Worthington, OH 43085

Andrew Anglin
P.O. Box 208
Worthington, OH 43085

East Coast Knights of the Ku Klux Klan
a/k/a East Coast Knights of the
True Invisible Empire
26 South Pine St.
Red Lion, PA 17356

Fraternal Order of the Alt-Knights
c/o Kyle Chapman
52 Lycett Circle
Daly City, CA 94015

Augustus Sol Invictus
9823 4th Avenue
Orlando, FL 32824

I further hereby certify that on April 3, 2019, I also served the following non-ECF participants, via electronic mail, as follows:

Elliot Kline
eli.f.mosley@gmail.com

Matthew Heimbach
matthew.w.heimbach@gmail.com

/s/
Robert T. Cahill (VSB 38562)
COOLEY LLP

Counsel for Plaintiffs

EXHIBIT 1

I. Plaintiffs respectfully request that the following facts be established for purposes of this action:

A. Defendant Kline

1. Defendant Kline was a member of Identity Evropa from April 2017 through at least August 2017.

2. Defendant Kline was one of the leaders of Identity Evropa from April 2017 through at least August 2017.

3. Defendant Kline entered into an agreement with one or more co-conspirators to plan the Unite the Right event that took place in Charlottesville, Virginia on August 11 and 12, 2017.

4. Defendant Kline entered into an agreement with one or more co-conspirators to engage in racially motivated violence in Charlottesville, Virginia on August 11, 2017.

5. Defendant Kline entered into an agreement with one or more co-conspirators to engage in racially motivated violence at the Unite the Right event in Charlottesville, Virginia on August 12, 2017.

6. Defendant Kline was motivated by animus against racial minorities, Jewish people, and their supporters when conspiring to engage in acts of intimidation and violence on August 11 and 12, 2017 in Charlottesville, Virginia.

7. It was reasonably foreseeable to Defendant Kline and intended by him that co-conspirators would commit acts of racially-motivated violence and intimidation at the torch light event in Charlottesville, Virginia on August 11, 2017.

8. It was reasonably foreseeable to Defendant Kline and intended by him that co-conspirators would commit acts of racially-motivated violence and intimidation at the Unite the Right event in Charlottesville, Virginia on August 12, 2017.

9. It was reasonably foreseeable to Defendant Kline and intended by him that a co-conspirator would engage in racially-motivated violence by intentionally driving a car into a crowd of counter-protestors on August 12, 2017.

10. Defendant Kline committed multiple overt acts in furtherance of the conspiracy he entered into to commit racially-motivated violence at the Unite the Right event in Charlottesville.

11. Defendant Kline attended the torch light march on August 11, 2017 and committed acts of intimidation and violence in furtherance of the conspiracy.

12. Defendant Kline attended the Unite the Right event on August 12, 2017 and committed acts of intimidation and violence in furtherance of the conspiracy.

13. After the Unite the Right event in Charlottesville, Virginia on August 11 and 12, 2017, Defendant Kline ratified the racially-motivated violence that occurred at the event.

B. Defendant Heimbach

14. Defendant Heimbach was a member of Traditionalist Worker Party from April 2017 through at least August 2017.

15. Defendant Heimbach was the leader of Traditionalist Worker Party from April 2017 through at least August 2017.

16. Defendant Heimbach entered into an agreement with one or more co-conspirators to plan the Unite the Right event that took place in Charlottesville, Virginia on

August 11 and 12, 2017.

17. Defendant Heimbach entered into an agreement with one or more co-conspirators to engage in racially motivated violence in Charlottesville, Virginia on August 11, 2017.

18. Defendant Heimbach entered into an agreement with one or more co-conspirators to engage in racially motivated violence at the Unite the Right event in Charlottesville, Virginia on August 12, 2017.

19. Defendant Heimbach was motivated by animus against racial minorities, Jewish people, and their supporters when conspiring to engage in acts of intimidation and violence on August 11 and 12, 2017 in Charlottesville, Virginia.

20. It was reasonably foreseeable to Defendant Heimbach and intended by him that co-conspirators would commit acts of racially-motivated violence and intimidation at the torch light event in Charlottesville, Virginia on August 11, 2017.

21. It was reasonably foreseeable to Defendant Heimbach and intended by him that co-conspirators would commit acts of racially-motivated violence and intimidation at the Unite the Right event in Charlottesville, Virginia on August 12, 2017.

22. It was reasonably foreseeable to Defendant Heimbach and intended by him that a co-conspirator would engage in racially-motivated violence by intentionally driving a car into a crowd of counter-protestors on August 12, 2017.

23. Defendant Heimbach committed multiple overt acts in furtherance of the conspiracy he entered into to commit racially-motivated violence at the Unite the

Right event in Charlottesville.

24. Defendant Heimbach attended the Unite the Right event on August 12, 2017 and committed acts of intimidation and violence in furtherance of the conspiracy.

25. After the Unite the Right event in Charlottesville, Virginia on August 11 and 12, 2017, Defendant Heimbach ratified the racially-motivated violence that occurred at the event.

II. Plaintiffs respectfully request that all documents Plaintiffs have a good faith basis to believe were in fact created by Defendants Kline or Heimbach be deemed "authentic" for purposes of satisfying Rule 901 of the Federal Rules of Evidence. In particular, Plaintiffs have a good faith basis to believe that the following social media accounts, identified by the platform name, followed by the handle (or username), belong to Defendants Kline and Heimbach, respectively. Plaintiffs respectfully request that all documents from the following social media accounts be deemed "authentic" for purposes of satisfying Rule 901 of the Federal Rule of Evidence:

A. Defendant Kline

1. Discord - Eli Mosley#5269
2. Discord - Sayer
3. Discord - Sayer#5269
4. YouTube - Eli Mosley
5. Facebook - Eli Mosley
6. Twitter - @EliMosleyIE
7. Twitter - @ThatEliMosley
8. Twitter - @EliMosleyOH

9. Twitter - @EliMosleyIsBack

10. Twitter - @Sheli_Shmosley

11. Twitter - @Eli_Mosley_

12. Gab - @EliMosley

B. Defendant Heimbach

1. Discord - MatthewHeimbach

2. Discord - MatthewHeimbach#4345

3. Twitter - @HeimbachMatthew

4. Twitter - @MatthewHeimbach

5. VK - MatthewHeimbach

6. Facebook - Matthew Heimbach

7. Facebook - Matthew Warren

8. Gab - @MatthewWHeimbach

9. Gab - @ActualMatthewHeimbach

EXHIBIT 2

- - -

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF VIRGINIA

- - -

Elizabeth Sines, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No.
	)	3:17-cv-00072-NKM
Jason Kessler, et al.,	)	
	)	
Defendants.	)	

- - -

Monday, December 3, 2018

- - -

CONFIDENTIAL

Deposition of ERICA ALDUINO, taken pursuant to Notice, was held at the Porter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio, 45202, commencing at *** a.m., on the above date, before Deborah C. Furey, Registered Professional Reporter and Notary Public in and for the State of Ohio.

MAGNA LEGAL SERVICES

866-624-6221

www.MagnaLS.com

A. This is just for Charlottesville 1.0, right?
Q. 1.0?
A. Yes.
Q. Richard Spencer?
A. Yes.
Q. Christopher Cantwell?
A. Christopher Cantwell I don't believe was there.
Q. James Alex Fields?
A. Yeah, I don't believe that he was there.
Q. Andrew Anglin?
A. I don't believe that he was there either.
Q. Robert Azzmador Ray?
A. I don't believe that he was there.
Q. Nathan Damigo?
A. I think Nathan was there, so he would have chanted it also.
Q. Eli Mosley?
A. Yes.
Q. He was there?
A. I believe so, yes.
Q. And he would have been chanting, as well?

A. Yeah.
Q. Did you hear him chant?
A. I didn't hear him chant, personally, no.
Q. Did you see him at Charlottesville 1.0?
A. Yes.
Q. Matthew Heimbach, was he present for Charlottesville 2 point -- excuse me -- Charlottesville 1.0?
A. I'm not sure if he was at the rally or not, but I know that he was at the luncheon.
Q. Okay. Did he speak at the luncheon?
A. I don't remember. I don't think that he did. I don't remember though.
Q. But you recall seeing him at the luncheon?
A. Yes, ma'am.
Q. And Matthew Parrott, was he there?
A. I don't know.
Q. Going to Matthew Heimbach, did you hear him chanting?
A. I didn't hear him chanting.
Q. Michael Tubbs, was he there, at Charlottesville 1.0?
A. I don't know. I don't think that he was.

But, if they are just coming in the server as a new person, generally -- like, whoever is a moderator or whoever in the server. And then they have to give, like, permission, a certain permission, to whenever comes in the server to deal with, to actually create invite codes.

Q. Were you a moderator in the Charlottesville 2.0 server?

A. Yes, ma'am.

Q. Who else was a moderator in --

A. There were a decent amount of moderators in there.

Obviously, we had Jason Kessler, he was a moderator. I think Eli Mosley was also. I was. There were like -- you know, we had, like, individual groups of, you know, Identity Europa or -- what was it -- League of the South, Vanguard America. Each of those people had, like, certain, like, leaders within the server who had the ability to create invite codes and be able to send them off.

Q. Okay. And that was all they could do, that they could create invite codes all to joining --

A. Yeah, they all had, like, moderating

people, so there were a decent amount of moderators.

Q. Okay. And what else, in addition to invite codes and adding channels? What else can a moderator do that a regular user can't do?

A. They can, like, delete messages from, like, other members, like, if members, like, you know, say, like, certain things or, like, whatever then, you know, just messages, like, chat, certain chats can be deleted in there, so.

Q. Anything else other than the ability to delete messages?

A. I think they can, like, kick people from the server. Yeah, they can delete messages and delete people off the server, off the top of my head. I haven't been in it for so long, I can't remember.

Q. And again, the way somebody becomes a moderator --

A. Yeah.

Q. -- is that another moderator taps them to become a moderator?

A. Exactly.

Q. Are moderators the only ones who have authority to delete posts?

A. No.
Q. No?
A. I don't think that McCarthy name had anything to do with what his real name was. But, yeah, you know, a lot of the people on there, they go by aliases, so.
MS. PHILLIPS: How are we doing on the --
THE VIDEOGRAPHER: One hour, 11 minutes.
Q. How are you, I'll ask you, can you press on for a little bit longer and then we'll take a lunch break?
A. Yes, ma'am.
Q. So who in your view were the primary individuals involved in planning the Unite the Right?
A. In my view it was obviously Jason Kessler.
Q. Uh-huh.
A. I think Eli was one of the main people, Eli Mosley.
Q. Uh-huh. Who else?
A. I don't know. There were like other people who were involved in specific, like, safety planning and stuff like that, but I don't

again, this is dated June 11th.

A. Yes.

Q. Do you know whether these individuals had already signed up to be speakers at this event?

A. I'm really not sure, to be completely honest. I know that there were talks -- the people listed, there were talks of these people being there and speaking, but I don't know if they were actually confirmed.

Q. Okay. And of these individuals, were these individuals some of the planners for or organizers of Unite the Right?

A. Jason Kessler was for sure, that's about the only one on there, and Eli Mosley. But Jason Kessler and Eli Mosley were the only ones that I can confirm were planners of it.

Q. To you're knowledge?

A. To my knowledge, yes.

Q. You see "Groups/Sponsors."

A. Yes.

Q. And it says under there, again, among others "Identity Europa, League of the South, Vanguard America, Traditionalist Workers Party, Fraternal Order of Alt Knights."

Q. Do you know if such meetings were held regularly in the lead up to Charlottesville 2.0?

A. I know that they got more frequent at the lead up to Charlottesville 2.0, but once I was, like, removed from any sort of moderating role, I really wasn't around very often. So I can't really say about, like, three weeks to a month before the event, I can't really say too much of what happened in between that timeframe.

Q. Okay. Got it.

The next message down from Mr. Mosley, the very bottom of that post, he's talking -- well, let me start at the top.

A. Okay.

Q. And this is July 11th, 2017 post at 2:14:40 a.m.

It says, "@everyone Sharing information publically from this discord or about this event or who is attending outside of closed circles or this Discord, will get you immediately banned from all future alt right events."

What was the concern about keeping everything secret?

A. I think it was more so -- so we could avoid -- at least in my eyes, it was so we could

Q. We talked a little bit about chants and signs that happened at Charlottesville 1.0.

I want to talk about the chants and the signs that were planned for Charlottesville 2.0.

Were the chants to be -- the chants that were to be spoken, shouted, whatever at Charlottesville 2.0, were those discussed in the Discord server?

A. I believe so, yes.

Q. And do you remember what the chants were?

A. I don't remember all of them. I think "You will not replace us" was one of them.

That's about -- I think just "You will not replace us."

And I think Dixie was talked about being sung but I don't remember any chats.

Q. Chants?

A. Chants, yeah, I don't remember any other chants other than, "You will not replace us."

Q. Was "White lives matter" a chant that was discussed?

A. I don't remember.

Q. "Into the ovens"?

A. It may have been. I disagree with that.

Q. But it may have been?
A. I mean, it may have been. I don't remember.
Q. "Jews will not replace us"?
A. That may have been discussed in there, too. I don't remember, though.
Q. Did anyone have to approve these chants?
A. All approval was supposed to go through Jason Kessler, Eli Mosley.
Q. Well, did you approve of these chants?
A. I mean, it wasn't really up to me. I didn't have the authority to approve any chants. Personally I didn't approve several of the chants that were being spoken of in the thing.
Q. Okay. In the Discord?
A. In the Discord, yeah, that's what I meant.
Q. There's a reference in this Discord to vetting individuals who came into the server.
A. Uh-huh.
Q. How was vetting accomplished?
A. Honestly, like, it wasn't, because individuals who were brought into the server were supposed to be vetted on an organizational basis. So from what I assumed, is that other

EXHIBIT 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

* * * * * * * * * * * * * * * * *

ELIZABETH SINES, et al., * CASE NO.
3:17-cv-00072-NKM
Plaintiffs, *
v. *
JASON KESSLER, et al., *
Defendants. *
* * * * * * * * * * * * * * * * *

Pursuant to the Order for the Production of Documents and Exchange of Confidential Information in this case, all testimony shall presumptively be treated as Confidential Information and subject to the order during the testimony and for a period of thirty (30) days after a transcript of said testimony is received by counsel for each of the parties. At or before the end of such thirty day period, the testimony shall be classified appropriately.

DEPONENT: JASON KESSLER, VOLUME II OF II
DATE: MAY 16, 2018
TIME: 9:15 A.M.
LOCATION: U.S. DISTRICT COURT
WESTERN DIVISION
255 WEST MAIN STREET
CHARLOTTESVILLE, VIRGINIA

REPORTED BY: KIMBERLY L. RIBARIC, RPR, CCR

Veritext Legal Solutions
Mid-Atlantic Region
1250 Eye Street NW - Suite 350
Washington, D.C. 20005

MS. KAPLAN: I just -- I'm just going to say something at the beginning. We understand the courthouse is going to be much busier today than it was yesterday, and this is easy for me, because I'm not saying anything, but they have requested that we all try to keep the volume a little bit lower today or maybe significantly lower today than yesterday because of the activity in the courthouse. And I said we would do that.

- - -

CONTINUED DIRECT EXAMINATION

BY MR. LEVINE:

Q. Mr. Kessler, you -- you and Eli Mosley were the principal coordinators for the Unite the Right rally on August 11 and 12, 2017; correct?

A. Yes.

Q. And Mr. Mosley set up the Discord channel, correct?

A. No. A woman named Erica did.

Q. Working within -- from Identity Evropa?

A. She started it up and then later transferred the -- like, the ownership of the thing to him.

Q. And you were designated event coordinator?

A. Yes.

Q. And you used Discord principally to

EXHIBIT 4

Operation Unite the Right Charlottesville 2.0

IMPORTANT: This version of the document is to only be shared by and with group leaders. DO NOT SHARE with other attendees. Another version will be released for them.

Report Version:

6/11/2017 Initial OPORD

Next version release 6/18/2017

ATTENTION: Please read this full document to avoid miscommunication or organizational issues.

Operation Summary:

The town of Charlottesville, Virginia has recently become a flashpoint in the culture war against the anti-white and anti-free speech left with the town trying to take down or alter civil war monuments. Earlier this year, the Alt Right held a secretive rally in the town to protest again these policies which gained international coverage and showed a serious maturity with various groups working together. Since this event the left and the city has not gotten the message, and continue to harass local journalist Jason Kessler and his friends for their point of view on the issue. On August 12th we plan on going back to Charlottesville to show them that they are not unopposed with a rally that brings together the Alt Right with the Alt Light/New Right to show solidarity on issues we overlap with as well as show support for locals afraid to speak up. This rally, like the Battle of Berkley, will be a chance to show the left in one of their central power hubs that they will no longer go unopposed like they are used to with older generations of right wingers. Both the Alt Right and "Alt Light/New Right" will be setting aside our differences and focus on our areas of common ground against our mutual enemies who see no difference between us. We will send the message that we will not be divided, we will not allow them to erase history without a fight, and that they are on the out while the right wing continues to grow.

The right wing must stand united to defend free speech, and the main attack on free speech is the left's intolerance to have pro-White or anti-SJW points of view. Coming together to support each other at this event will be an important show of strength and unity regardless of our disagreements.

Operation Unite the Right Charlottesville 2.0

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Friendlies:

More groups and speakers are still being added. Contact Eli Mosley or Jason Kessler if you can get additional groups/speakers to attend.

Speakers/Attendees:

Jason Kessler	Baked Alaska
Chris Cantwell	Based Stickman
Mike Enoch	Augustus Invictus
Matt Heimbach	Eli Mosley
Pax Dickinson	Johnny Monoxide
Sacco Vandal	Sam Hyde (Secret/Maybe)
Richard Spencer (Secret)	Gavin McGinnes (Maybe)
Lauren Southern (Secret/Maybe)	

Groups/Sponsors:

Identity Europa	Identity Dixie
TheRightStuff.biz and their Pool Party Groups	Radical Agenda
League of the South	Traditionalist Workers Party
Vanguard America	The Revolutionary Conservative
Proud Boys Regional Groups	Fraternal Order of Alt Knights

Operation Unite the Right Charlottesville 2.0

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Enemies/Counter Protestors:

We are still waiting to figure out the local groups and ones that could be coming in for the event that are antifa or antifa-adjacent. We currently expect around 100-200 counter protesters, but it could easily end up double that.

Discord:

The purpose of the Discord will be to coordinate between groups/individuals, plan travel/lodging accommodations, and disseminate need to know information. This Discord will **NOT** be used to debate topics of disagreement, to recruit for groups, or shitposting. The Alt Light/New Right will be given access to the server at some point and all bullying/harassment/red pills should be kept out of the organizational chats. If an invite is needed, channel must be made or there are issues use the #ModHelp channel. Ask a moderator or above for a server invite.

Roles:

The following roles need to be filled within the next few weeks and more will be needed as time goes on. If you'd like to volunteer for any of the roles below please contact Eli Mosley via Discord expressing which role and what qualifications you have for the role.

Propaganda Coordinator – This role will coordinate between the groups and various artists to create and distribute propaganda for the event. We will have a channel setup for the role of people sharing ideas and creations. Will work closely with the PR teams.

Medical Team Leader – This role will lead the medical team/staff on the ground the day of the event and make sure all members of the team are supplied and qualified to keep attendees safe.

Lodging Coordinator – Help to research and spread information for lodging to all attendees. Moderate the lodging_needed and lodging_wanted channels. Most groups will be able to handle this piece themselves, but having someone to help out would be great.

Operation Unite the Right Charlottesville 2.0

IMPORTANT: This version of the document is to only be shared by and with group leaders. DO NOT SHARE with other attendees. Another version will be released for them.

Sponsor Coordinator – This role will manage the sponsor channels to link sponsors up with people who need help getting to the event. They should have knowledge and access to paypal to middleman if needed. We may gain access to another service as well.

Intelligence Section Coordinator – This role will manage the various intelligence teams that will need to gather intel leading up to the event, during the event and manage the intel/doxing after the event. This person should not be in attendance to the event and have some experience with doing this like previous events.

More roles will be needed in reports moving forward as well. Stay tuned and if you'd like to volunteer to take on roles not listed please message Eli Mosley.

Information Sharing:

There will be two different reports like this every week leading up to the event where it will switch to every day. The first version will be for leadership and Alt Right groups. The second version will be for the general attendees and Alt Light/New Right groups. The reason is that the Alt Light/New Right groups and general attendees may have compromised communication networks so we'd like to keep the info leaks to a minimum on certain things. This means do not discuss the specifics of this event outside of official discussion channels.

During the first few weeks of organizing we will keep most of the big name individuals going a secret. If you are unsure if it is public knowledge that someone is going assume it is not. If you have an individual who would like to speak let Eli Mosley or Jason Kessler know.

Keep all of these intel reports in vetted discords, private Facebook groups, and other non-compromised groups. DO NOT share them in the Proud Boys main Facebook groups or non-vetted regional groups which have been confirmed compromised in the past. If you have any questions on this please contact Eli Mosley.

Operation Unite the Right Charlottesville 2.0

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Alt-Right and Alt-Light/New Right Truce:

For the time being all groups attending should do their very best to keep their people from being antagonistic towards each other. If there are issues between groups please try to fix it behind the scenes in the interest of this event. Don't forget that everyone on either side will not be on the same page here as well.

Contact Information:

This event is currently being organized by Eli Mosley and Jason Kessler with a few others with the Event Coordinator role in the Discord. If you'd like to step up to help out more please contact one of us. Please ask if you need to share contact info outside Discord.

Eli Mosley – Discord, Eli Mosley#5269 – Phone Number, 610-406-2229 – Email, DeplorableTruth@gmail.com. Feel free to msg/call whenever.

Jason Kessler – Discord, MadDimension#8652 – Phone Number, 434-996-5567 – Twitter, @TheMadDimension

Timeline:

6/11-7/2: Initial Planning and Recruiting drive. During this time we will be spreading the general propaganda to try to recruit as many people as we can to the event with the general details of where/when. The leadership and team leaders will be planning out everything for the event behind the scenes during this time. It will be important to keep whatever detailed information about the event we have secret and on need to know basis during this time.

7/2-7/16: Detailed Planning Releases. During this time we will be sending out exactly how we intend to execute that day and take in any feedback or changes needed to be made. We will also step up the PR teams and media reach out during this time so that they are aware of what is going on. During this time we may announce the specific details on all individuals giving speeches and groups attending as well. Intel groups will begin gather information on local antifa possibly attending.

Operation Unite the Right Charlottesville 2.0

IMPORTANT: This version of the document is to only be shared by and with group leaders. DO NOT SHARE with other attendees. Another version will be released for them.

7/16-7/30: Final Planning and Propaganda Blitz. Here we will be spreading the information on the event using social media, podcasts and other alternative media sources while we confirm that everyone knows their role for the day of the event.

7/30-8/10: Daily Operational Reports and Intel Sharing. During the week and a half leading up to the event there will be daily documents with updates being released including any plan changes needed. It will be incredibly important to keep this information secret.

8/11: Scouting/Local team and dry runs. Arrivals of non-local groups and speakers.

8/12: Day of Event.

8/13: Intel crowd sourcing, social media and media blitz day.

Public Relations Team:

Each group attending will need to volunteer one representative for the PR team to attend meetings and make sure everyone is on the same page in terms of message and dealing with the media. They will be in touch with the PR Coordinator. Please message Eli Mosley or Jason Kessler with the representative per group for the PR team.

Propaganda Team:

The Propaganda Team will be lead by a single person who will be asking for general help to spread the message of the event before, during and after. Each group can do this themselves individually as well and can ask for help in spreading this from the Propaganda Coordinator.

Operation Unite the Right Charlottesville 2.0

IMPORTANT: This version of the document is to only be shared by and with group leaders. DO NOT SHARE with other attendees. Another version will be released for them.

Lodging:

The lodging coordinator will help do research on local lodging. It is important to get this booked ASAP before antifa or our people buy everything up in the area. Also, be aware that if you are a doxed individual you may be removed from AirBnB or other services.

KKK Rally:

There will be a KKK rally on July 8th in Charlottesville in the same areas that we will have our rally. The organizer of this rally is a suspected federal agent. The Alt Right groups do not need to counter signal this rally but should expect the Alt Light/New Right groups to do so. We are in no way affiliated with this rally even though the media will try to paint them as the same thing. Our best bet would be to ignore this rally and focus on our own whenever asked about it.

After-Party for Event:

Currently we have no detailed plans for an event after the rally. However, we will have something planned for that day which will have more details out as we get closer to the date.

Patrons/Sponsors:

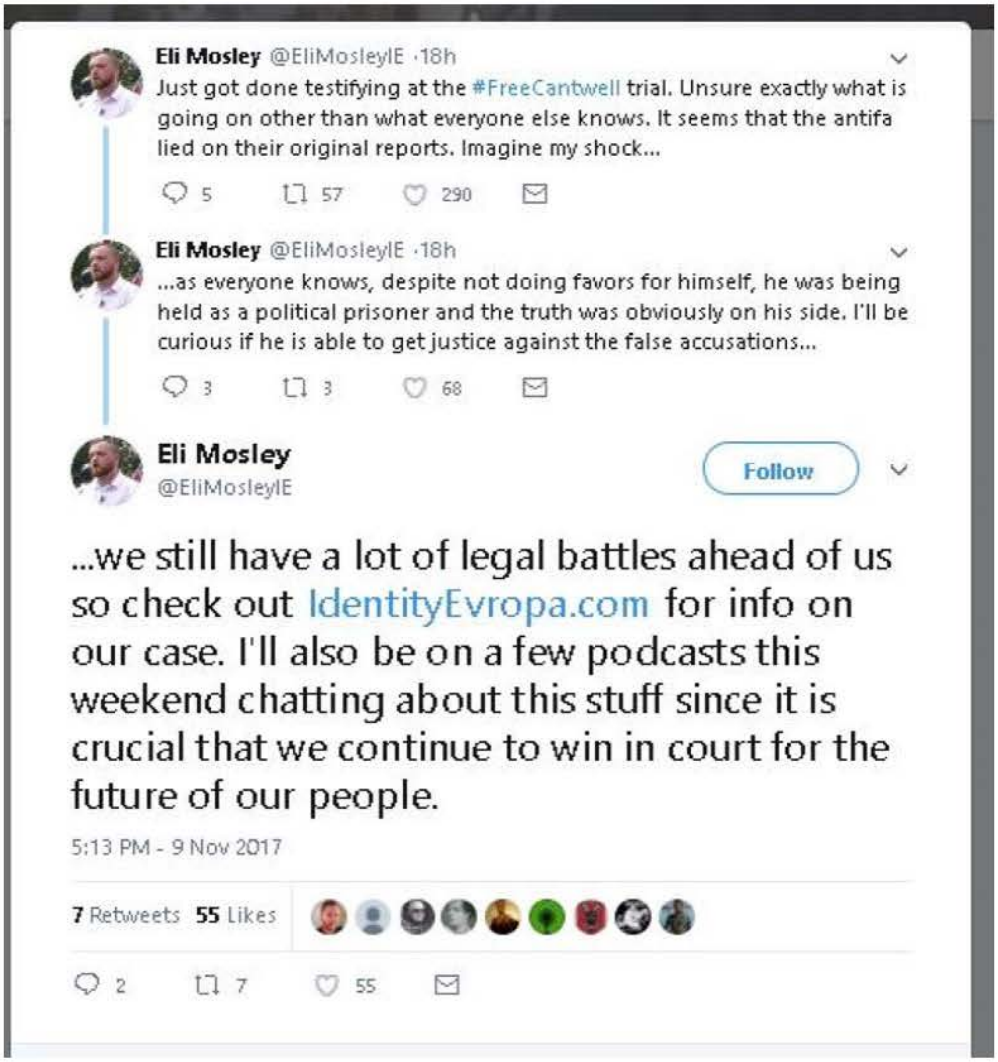
If you or someone you know is unable to attend the event but would still like to support it please get in touch with the Sponsor Coordinator or use the Discord channels. We may have an official service up for this soon to help make this easier.

If you have any questions or issues please direct them to the #QuestionsForCoodinators channel in Discord.

EXHIBIT 5

EXHIBIT 6


Eli Mosley @ThatEliMosley · Aug 7
Replying to @ThatEliMosley
...Our birthright will be ashes & they'll have to pry it from our cold dead hands if they want it. They will not replace us without a fight.
1
6
23
Eli Mosley @ThatEliMosley · Aug 7
We are still going to Charlottesville. This is our country and it is our right that me and thousands fought for already...
2
8
26
Eli Mosley @ThatEliMosley · Aug 7


Eli Mosley @EliMosleyIE ·18h
Just got done testifying at the #FreeCantwell trial. Unsure exactly what is going on other than what everyone else knows. It seems that the antifa lied on their original reports. Imagine my shock...
5
57
290
Eli Mosley @EliMosleyIE ·18h
...as everyone knows, despite not doing favors for himself, he was being held as a political prisoner and the truth was obviously on his side. I'll be curious if he is able to get justice against the false accusations...
3
3
68
Eli Mosley
@EliMosleyIE
Follow
...we still have a lot of legal battles ahead of us so check out IdentityEvropa.com for info on our case. I'll also be on a few podcasts this weekend chatting about this stuff since it is crucial that we continue to win in court for the future of our people.
5:13 PM - 9 Nov 2017
7 Retweets 55 Likes
2
7
55

Eli Mosley @Eli_Mosley_ · 5h
From the CVille report:

"Lieutenant Hatter described the dispersal of Emancipation Park on August 12 as the "most
messed up thing I ever saw." Hatter noted that the Alt-Right demonstrators were screaming
at the VSP and CPD officers as the mobile field force pushed...

6 47 151

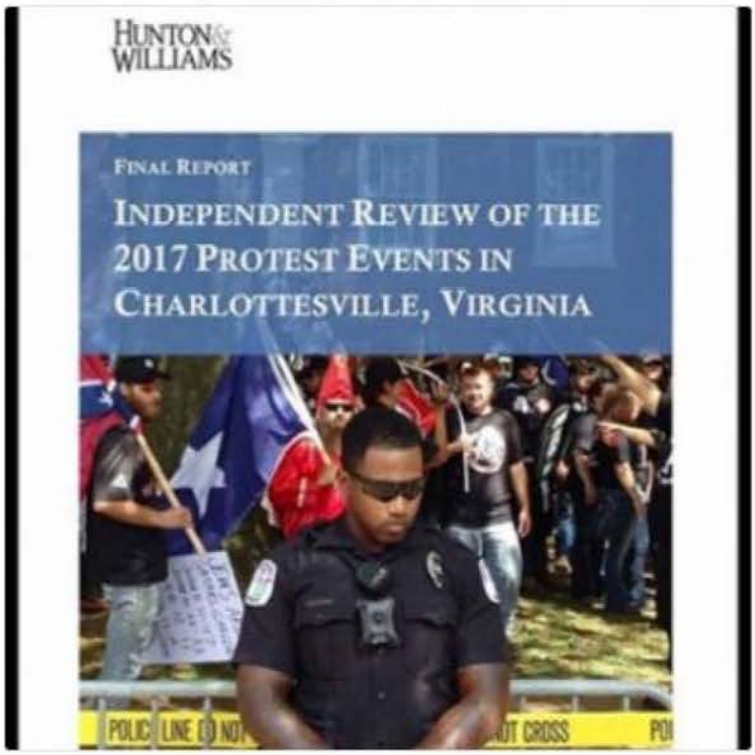
Eli Mosley @Eli_Mosley_ · 5h
...from the rear of Emancipation
Park, commenting that "you are pushing us right into the crowd." Hatter agreed with this
assessment, noting that the effort was "causing confrontations and pushing [the Alt-Right]
right into their enemies." Lieutenant Mooney similarly told us that

1 22 107

Eli Mosley
@Eli_Mosley_

Follow

It is amazing to me that this "independent investigation" would use a picture of a different rally entirely.



11:55 AM - 1 Dec 2017

15 Retweets 75 Likes

4 15 75

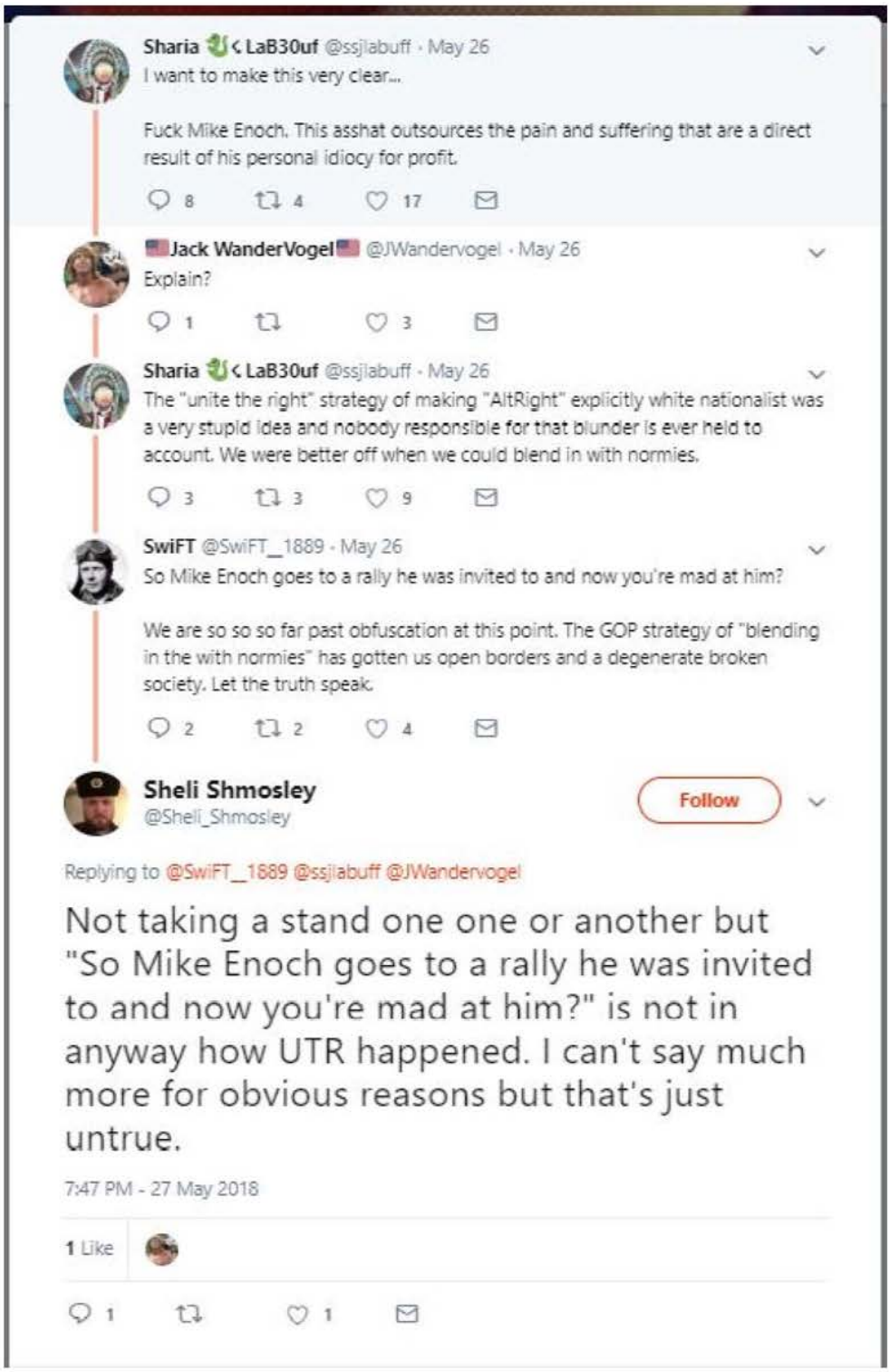

Sharia ☭ < LaB30uf @ssjlabuff · May 26
I want to make this very clear...
Fuck Mike Enoch. This asshat outsources the pain and suffering that are a direct result of his personal idiocy for profit.
8 4 17
Jack WanderVogel @JWandervogel · May 26
Explain?
1 3
Sharia ☭ < LaB30uf @ssjlabuff · May 26
The "unite the right" strategy of making "AltRight" explicitly white nationalist was a very stupid idea and nobody responsible for that blunder is ever held to account. We were better off when we could blend in with normies.
3 3 9
SwiFT @SwiFT_1889 · May 26
So Mike Enoch goes to a rally he was invited to and now you're mad at him?
We are so so so far past obfuscation at this point. The GOP strategy of "blending in the with normies" has gotten us open borders and a degenerate broken society. Let the truth speak.
2 2 4
Sheli Shmosley
@Sheli_Shmosley
Follow
Replying to @SwiFT_1889 @ssjlabuff @JWandervogel
Not taking a stand one one or another but "So Mike Enoch goes to a rally he was invited to and now you're mad at him?" is not in anyway how UTR happened. I can't say much more for obvious reasons but that's just untrue.
7:47 PM - 27 May 2018
1 Like
1 1

EXHIBIT 7

From:	James Kolenich
To:	Gabrielle E. Tenzer
Cc:	Roberta Kaplan; Karen Dunn; jphillips@bsfllp.com; Levine, Alan; Mills, David; pbowman@cooley.com
Subject:	Client contact info
Date:	Friday, November 9, 2018 4:05:32 PM

Ms. Tenzer:

Pursuant to Judge Hoppe's instruction, please find below contact information for clients I have withdrawn or are seeking to withdraw from representing:

1) Eli Mosely aka Elliott Kline
Eli.F.Mosley@gmail.com
(610) 406-2229

2) Matthew Heimbach
matthew.w.heimbach@gmail.com
(301) 525-1474

3) Robert Ray aka Azzmador
azzmador@gmail.com
903-245-9134 (please advise him by phone/text when sending an email as he receives a large amount of email every day and ignores most of it.)

I do not have physical mailing addresses for any of them.

Respectfully,

Jim Kolenich

--
James E. Kolenich
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
513-444-2150
513-297-6065(fax)
513-324-0905 (cell)

EXHIBIT 8

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES, SETH WISPELWEY, MARISSA BLAIR, TYLER MAGILL, APRIL MUNIZ, HANNAH PEARCE, MARCUS MARTIN, NATALIE ROMERO, CHELSEA ALVARADO, and JOHN DOE,

Plaintiffs,

V.

JASON KESSLER, RICHARD SPENCER, CHRISTOPHER CANTWELL, JAMES ALEX FIELDS, JR., VANGUARD AMERICA, ANDREW ANGLIN, MOONBASE HOLDINGS, LLC, ROBERT "AZZMADOR" RAY, NATHAN DAMIGO, ELLIOT KLINE a/k/a/ ELI MOSLEY, IDENTITY EVROPA, MATTHEW HEIMBACH, MATTHEW PARROTT a/k/a DAVID MATTHEW PARROTT, TRADITIONALIST WORKER PARTY, MICHAEL HILL, MICHAEL TUBBS, LEAGUE OF THE SOUTH, JEFF SCHOEP, NATIONAL SOCIALIST MOVEMENT, NATIONALIST FRONT, AUGUSTUS SOL INVICTUS, FRATERNAL ORDER OF THE ALT-KNIGHTS, MICHAEL "ENOCH" PEINOVICH, LOYAL WHITE KNIGHTS OF THE KU KLUX KLAN, and EAST COAST KNIGHTS OF THE KU KLUX KLAN a/k/a EAST COAST KNIGHTS OF THE TRUE INVISIBLE EMPIRE,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

PLAINTIFFS' [CORRECTED] FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure ("FRCP"), Plaintiffs hereby request that Defendants produce the following documents and tangible things at the offices of Boies Schiller Flexner LLP, 575 Lexington Avenue, New York, NY 10022, no later than thirty (30) days from service of this First Set of Requests for Production of Documents (the "Requests"), unless otherwise agreed by the parties or required by any scheduling order entered by the Court in this action.

The Definitions and Instructions that appear below form an integral part of the Requests that follow and must be read in conjunction with them and followed when responding to the Requests.

DEFINITIONS

In each Definition, the singular shall include the plural and the plural shall include the singular. Terms used herein shall have the following meanings:

1. "Amended Complaint" means the amended complaint filed in the above-captioned litigation as ECF docket entry number 175.

2. "Communication" means, in addition to its customary and usual meaning, every contact of any nature, whether documentary, electronic, written or oral, formal or informal, at any time or place and under any circumstances whatsoever whereby information of any nature is transmitted or transferred by any means, including, but not limited to letters, memoranda, reports, emails, text messages, instant messages, social media postings, telegrams, invoices, telephone conversations, voicemail messages, audio recordings, face-to-face meetings and conversations, or any other form of correspondence, and any Document relating to such contact, including but not limited to correspondence, memoranda, notes or logs of telephone conversations, e-mail, electronic chats, text messages, instant messages, direct or private messages, correspondence in "meet ups" or chat rooms, and all other correspondence on Social Media. Without limiting the foregoing in any manner, commenting as well as any act of expression that is not directed at a specific person, or otherwise may not be intended to provoke a response (such as a social media posting, "likes," "shares," or any other form of reacting to another's use of Social Media), are forms of communication.

3. "Concerning" means, in addition to its customary and usual meaning, relating to, pertaining to, referring to, alluding to, confirming, constituting, comprising, containing, commenting upon, responding to, discussing, describing, embodying, evaluating, evidencing, identifying, in connection with, involving, mentioning, noting, pertaining to, probative of, related to, relating to, reflecting, referring to,

regarding, setting forth, supporting, stating, showing, touching upon, dealing with, assessing, recording, bearing upon, connected with, in respect of, about, indicating, memorializing, proving, suggesting, having anything to do with, contradicting, and summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Request.

4. "Document" or "Documents" means documents broadly defined in FRCP Rule 34, and includes (i) papers of all kinds, including but not limited to, originals and copies, however made, of letters, memoranda, hand-written notes, notebooks, work-pads, messages, agreements, rough drafts, drawings, sketches, pictures, posters, pamphlets, publications, news articles, advertisements, sales literature, brochures, announcements, bills, receipts, credit card statements, and (ii) non-paper information of all kinds, including but not limited to, any computer generated or electronic data such as digital videos, digital photographs, audio recordings, podcasts, Internet files (including "bookmarks" and browser history), online articles and publications, website content, electronic mail (e-mail), electronic chats, instant messages, text messages, uploads, posts, status updates, comments, "likes", "shares", direct messages, or any other use of Social Media, and (iii) any other writings, records, or tangible objects produced or reproduced mechanically, electrically, electronically, photographically, or chemically. Without limiting the foregoing in any way, every Communication is also a Document.

5. "Events" means the occurrences and activities described in Paragraphs 45 to 335 of the Amended Complaint.

6. "Person" means a natural person or individual, and any corporation, partnership, limited liability company, unincorporated association, governmental body or agency, or any other form of organization, group, or entity.

7. "Social Media" means any forum, website, application, or other platform on which persons can create, transmit, share, communicate concerning, or comment upon any information, ideas, or opinions, or otherwise engage in social networking. Without limiting the foregoing in any manner, and by way of

example only, the following are social media platforms: comment sections of websites, Facebook, Discord, Reddit, Imgur, SnapChat, Instagram, Google+, 4chan, 8chan, Twitter, Tumblr, Youtube, and instant messaging services such as Signal, WhatsApp, Messenger, Hangouts, or Skype. Without limiting the foregoing in any manner, and by way of example only, the following are methods of using social media platforms: uploading, posting, commenting, reacting (e.g., "liking" a post), and sharing.

8. "You," "Your," or "Yours" refers to the Defendants to whom the Interrogatories are addressed and includes any persons or entities acting for them or on their behalf, including but not limited to all representatives, servants, agents, employees, officers, affiliates, subsidiaries, parent companies, third parties, attorneys, as well as any entities over which any of the Defendants have control.

INSTRUCTIONS

A. These Requests are issued to each Defendant, and each individual Defendant must fully respond, search for and produce all Documents and Communication responsive to these Requests.

B. Your responses to the following Requests shall be based on all knowledge and information (whether or not hearsay or admissible) in your possession, custody, or control.

C. These Requests are continuing in nature. If, after making initial responses, Defendants obtain or become aware of any further Documents responsive to the Requests, Defendants are required to supplement their responses and provide such Documents pursuant to FRCP Rule 26(e).

D. If, in responding to any of the following Requests, you encounter any ambiguity or confusion in construing either a Request or a Definition or Instruction relevant to a Request, set forth the matter deemed ambiguous, select a reasonable interpretation that you believe resolves the ambiguity, respond to the Request using that interpretation, and explain with particularity the construction or interpretation selected by you in responding to the Interrogatory.

E. In the event any document or information is withheld on the basis of the attorney-client privilege, work product doctrine, or any other right to non-disclosure on any other basis, furnish a list

identifying the documents, communications, or information for which the protection is claimed together with the following (if applicable): the type of document or communication; the date or dates of the document or communication; the name, position and address of each person who participated in the document or communication, to whom the document or communication was addressed, or to whom the document or communication or the contents thereof have been communicated by any means; the general subject matter of the document, communication, or information; the specific basis for nonproduction or non-disclosure; and a description that you contend is adequate to support your contention that the document, communication, or information may be withheld from production and/or disclosure. If a document or communication is withheld on the ground of attorney work product, also specify whether the document or communication was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based.

F. If You object to production in response to a specific request, You shall state with particularity the basis for all objections with respect to such request. You should respond to all portions of that request that do not fall within the scope of Your objection. If You object to a Request on the ground that it is overly broad, provide such documents that are within the scope of production that You believe is appropriate. If You object to a Request on the ground that to provide responsive documents would constitute an undue burden, provide such responsive documents as You believe can be supplied without undertaking an undue burden.

G. Whether or not You object, You must preserve all Documents and Communications relevant to the lawsuit, including all Documents and Communications responsive to these Requests. You must also preserve all hardware, software and log files related to databases; servers; archives; backup or recovery disks, files and servers; networks or computer systems including legacy systems; magnetic, optical or other storage media, including hard drives and other storage media; laptops; personal computers; personal digital assistants; handheld wireless devices; mobile telephones; paging

devices; and audio systems, including iPods. You must take every reasonable step to preserve this information until the final resolution of this matter. This includes, but is not limited to, discontinuing all data destruction and backup recycling policies; preserving and not disposing relevant hardware unless an exact replica of the file is made; preserving and not destroying passwords; encryption and accompanying decryption keys; network access codes, including login names; decompression or reconstruction software; maintaining all other pertinent information and tools needed to access, review, and reconstruct all requested or potentially relevant electronically stored information and data. Where any alterations or deletions of any of the documents and data requested by the subpoena have been made since August 11, 2017, You should provide a log detailing any changes and deletions, the individual who made those changes and deletions, and the purpose for which the changes and deletions were made.

H. Produce all responsive documents in Your possession, custody, or control, regardless of whether such documents are possessed directly by You or persons under Your control, including Your agents, employees, representatives, or attorneys, or their agents, employees, or representatives. To the extent that you do not have copies of communications made or received by you that are responsive to these requests, you must provide the consent necessary under the Stored Communications Act, *see* 18 U.S.C. § 2702(b)(3), to permit the providers of electronic communication services and remote computing services, *see* 18 U.S.C. § 2702(a)(1)-(2), to produce the documents.

I. Produce each responsive document in its entirety including with all attachments or other matters affixed thereto.

J. Each Document produced in response to these Requests shall be produced in accordance with the specifications described in Exhibit A attached hereto, or as agreed by the parties or ordered by the Court.

K. References to any natural person shall be deemed to include that natural person's agents, servants, representatives, current and former employees, and successors.

L. References to any non-natural person (e.g., corporation, partnership, entity, membership organizations, etc.) shall be deemed to include that non-natural person's predecessors, successors, divisions, subsidiaries, parents, assigns, partners, members, and affiliates, foreign or domestic, each other person directly or indirectly, wholly or in part, owned by, controlled by, or associated with them, and any others acting or purporting to act on their behalf for any reason, and the present and former officers, directors, partners, consultants, representatives, servants, employees, assigns, attorneys, and agents of any of them.

M. The use of the singular form of any word includes the plural and vice versa.

N. The use of the past tense includes the present tense and vice versa, as necessary to bring within the scope of each request all responses that might otherwise be considered outside its scope. Whenever a term is used herein in the present, past, future, subjunctive, or other tense, voice, or mood, it shall also be construed to include all other tenses, voices, or moods.

O. The terms "and" and "or" should be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

P. The word "all" means "any and all"; the word "any" means "any and all."

Q. The term "including" means "including, without limitation."

R. The masculine includes the feminine and neutral genders.

S. Unless otherwise specified, the time period to which these Requests refer is from January 1, 2015 to the present. If any document is undated and the date of its preparation cannot be determined, the document shall be produced if otherwise responsive to any of the Requests.

DOCUMENT REQUESTS

REQUEST FOR PRODUCTION NO. 1:

All Documents and Communications concerning the Events, including without limitation all documents and communications:

i. concerning any preparation, planning, transportation to, or coordination for, the Events, including receipts, bills and credit card statements reflecting costs for transportation, lodging, apparel, gear, or any other material purchased for the Events;

ii. concerning any instructions or coordination relating to the Events, including security details, what to wear, what to bring, when to meet, where to meet, what to say, and any other logistical information or arrangements;

iii. that are Social Media documents concerning the Events;

iv. you created during the Events, including Social Media, text messages, video, and photographs;

v. concerning African Americans, Jewish individuals, or other religious, racial, or ethnic minorities that relate in any way to the Events;

vi. concerning any statement or action attributed to You in the Amended Complaint; or

vii. concerning any allegation of an altercation, violent act, injury, or instance of intimidation or harassment that occurred during the Rally, including but not limited to James Fields' vehicular incident; or

viii. concerning any funding of the Events, including for transportation, housing, food, weapons, uniforms, signage, tiki torches, or other materials or services used in connection with the Events (or the planning thereof)..

REQUEST FOR PRODUCTION NO. 2:

All Documents and Communications concerning events, meetings, rallies, conferences, or conversations held prior to the Events that relate to the Events in any way.

REQUEST FOR PRODUCTION NO. 3:

All Documents concerning and all Communications concerning or with East Coast Knights of the Ku Klux Klan (or East Coast Knights of the True Invisible Empire), Fraternal Order of the Alt-Knights, Identity Europa (or Identity Evropa), League of the South, Loyal White Knights of the Ku Klux Klan (or Loyal White Knights Church of the Invisible Empire Inc.), Moonbase Holdings, LLC, Nationalist Socialist Movement, Nationalist Front (or Aryan National Alliance), Traditionalist Worker Party, Vanguard America, or any such other social group or organization that has as part of its agenda a racial, religious, or ethnic objective.

REQUEST FOR PRODUCTION NO. 4:

All Documents and Communications concerning violence, intimidation, or harassment of Persons on the basis of race, religion, or ethnicity, including but not limited to, ethnic cleansing, white genocide, a white ethno-state, or any other form of large or small scale violence.

REQUEST FOR PRODUCTION NO. 5:

For any Social Media account You had from January 1, 2015, to the present:

i. Documents and Communication sufficient to show the account home page, and all uses of Social Media for that account that reference or concern the Events or Defendants in any way.

ii. Documents and Communication sufficient to show all Your "friends" and/or "social connections" maintained on Your account, including their names, addresses, and social network usernames or handles.

REQUEST FOR PRODUCTION NO. 6:

All Documents concerning and all Communications concerning or with any Plaintiff or Defendant (other than You) named in the Amended Complaint, and any other Person who attended, planned or was involved in the Events.

REQUEST FOR PRODUCTION NO. 7:

All Documents and Communications concerning any lawsuits, claims of violence, or arrests relating to or arising out of racially, ethnically, or religiously motivated conduct by You or any Defendant named in the Amended Complaint.

REQUEST FOR PRODUCTION NO. 8:

All Documents and Communications concerning the steps you have taken to preserve Documents and Communications relevant to the lawsuit, including the Documents and Communications responsive to these Requests.

Dated: January 25, 2018
New York, NY

/s/ Philip M. Bowman
Philip M. Bowman (*pro hac vice*)
Yotam Barkai (pro hac vice)
Joshua J. Libling (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
575 Lexington Ave.
New York, NY 10022
Telephone: (212) 446-2300
Fax: (212) 446-2350
pbowman@bsfllp.com
ybarkai@bsfllp.com
jlibling@bsfllp.com

Robert T. Cahill (VSB 38562)
COOLEY LLP
11951 Freedom Drive, 14th Floor
Reston, VA 20190-5656

Telephone: (703) 456-8000
Fax: (703) 456-8100
rcahill@cooley.com

Roberta A. Kaplan (*pro hac vice*)
Julie E. Fink (*pro hac vice*)
Christopher B. Greene (*pro hac vice*)
Seguin L. Strohmeier (*pro hac vice*)
KAPLAN & COMPANY, LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
Telephone: (212) 763-0883
rkaplan@kaplanandcompany.com
jfink@kaplanandcompany.com
cgreene@kaplanandcompany.com
sstrohmeier@kaplanandcompany.com

Karen L. Dunn (*pro hac vice*)
William A. Isaacson (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
1401 New York Ave, NW
Washington, DC 20005
Telephone: (202) 237-2727
Fax: (202) 237-6131
kdunn@bsfllp.com
wisaacson@bsfllp.com

Alan Levine (*pro hac vice*)
COOLEY LLP
1114 Avenue of the Americas, 46th Floor
New York, NY 10036
Telephone: (212) 479-6260
Fax: (212) 479-6275
alevine@cooley.com

David E. Mills (*pro hac vice*)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Telephone: (202) 842-7800
Fax: (202) 842-7899
dmills@cooley.com

Counsel for Plaintiffs

EXHIBIT A

1. PRODUCTION FORMAT

a) To avoid the production of more than one copy of a unique item, use industry standard MD5 or SHA-1 hash values to de-duplicate all files identified for production. Loose e-files will not be compared to email attachments for de-duplication purposes. Hard copy documents containing handwritten notes will not be considered as duplicative of any other document.

b) Where documents with attachments are produced, they will be attached in the same manner as included in the original file. Where documents are produced and all attachments thereto are not included, identify the missing attachments by means of a "place holder" file, and explain the reason for their non-production. Documents that are segregated or separated from other documents, whether by inclusion of binders, files, dividers, tabs, clips or any other method, will be produced in a manner that reflects these divisions. If any portion of a document is responsive, the entire document should be submitted. Do not redact any non-privileged content from any document absent a separate agreement.

c) Productions should be delivered on an external hard drive, CD, DVD, or via FTP (or other secure online transfer). If a delivery is too large to fit on a single DVD, the production should be delivered on an external hard drive or via FTP upon agreement with Defendants.

d) Documents shall be produced as Bates-stamped tagged image file format ("TIFF") images accompanied by an image load file, a data load file with fielded metadata, document-level extracted text for ESI, and optical character recognition ("OCR") text for scanned hard copy documents and ESI that does not contain extractable text. Detailed requirements, including files to be delivered in native format, are below.

e) TIFF Image Requirements

a. TIFF images will be produced in black and white, 300x300 dpi Group IV single-page format and should be consecutively Bates-stamped.

b. Images will include the following content where present:

i. For word processing files (*e.g.*, Microsoft Word): Comments, "tracked changes," and any similar in-line editing or hidden content.

ii. For presentation files (*e.g.*, Microsoft PowerPoint): Speaker notes, comments, and all other hidden content.

iii. For spreadsheet files (*e.g.*, Microsoft Excel): Hidden columns, rows, and sheets, comments, "tracked changes," and any similar in-line editing or hidden content.

f) Native Production Requirements

a. Spreadsheet files (*e.g.*, Microsoft Excel and .Csv files) and presentation files (e.g. Microsoft PowerPoint) should be provided in native format.

i. In lieu of a full TIFF image version of each native file, a single placeholder image bearing the relevant bates number and confidentiality designation should be produced.

ii. When redaction is necessary, a redacted full TIFF version may be produced provided that the document is manually formatted for optimal printing. If the file requiring redaction is not reasonably useable in TIFF format, the parties will meet-and-confer to determine a suitable production format.

iii. If redactions within a native file are necessary, the parties will meet-and-confer prior to productions and provide a means to identify such documents in the production.

b. Media files (*e.g.*, .mp3, .wmv, etc.) will be produced in native format.

c. The parties will meet-and-confer to discuss a suitable production format for any proprietary or non-standard file types that require special software or technical knowledge for review.

d. The parties will meet-and-confer to discuss a suitable production format for any databases or database reports.

e. Any files that cannot be accurately rendered in a reviewable TIFF format should be produced in native format.

f. Defendants reserve the right to request native or color copies of any documents that cannot be accurately reviewed in black and white TIFF format. Reasonable requests for native or color documents should not be refused.

g) Load File Requirements

a. A Concordance compatible data load file should be provided with each production volume and contain a header row listing all of the metadata fields included in the production volume.

b. Image load files should be produced in Concordance/Opticon compatible format.

h) Extracted Text/OCR Requirements

a. Electronically extracted text should be provided for documents collected from electronic sources. Text generated via OCR should be provided for all documents that do not contain electronically extractable text (*e.g.*, non-searchable PDF files and JPG images) and for redacted and hard copy documents. Do not to degrade the searchability of document text as part of the document production process.

b. Document text should be provided as separate, document-level text files and not be embedded in the metadata load file.

c. Text files should be named according to the beginning bates number of the document to which they correspond.

d. If a document is provided in native format, the text file should contain the extracted text of the native file.

e. A path to each extracted text file on the delivery media should be included in a load file field, or in a separate cross-reference file.

i) Produce all metadata fields listed in Appendix 1 if available.

APPENDIX 1

Field	Comments
BegBates	Beginning Bates number
EndBates	Ending Bates number
BegAttach	Bates number of the first page of a family range
EndAttach	Bates number of the last page of a family range
PageCount	Number of pages in a Document.
FileExtension	Original file extension as the document was maintained in the ordinary course
FileSize	File size in bytes
DocTitle	Document title as stored in file metadata
Custodian	Custodian full name
Author	Document author information for non-email
From	Email FROM
To	Email TO
Cc	Email CC
BCC	Email BCC
Subject	Email Subject
Attachments	Name of attached file(s) as maintained in the ordinary course of business
DateCreated	File date created MM/DD/YYYY
DateModified	File date modified MM/DD/YYYY
DateSent	Email date sent MM/DD/YYYY
TimeSent	Email time sent HH:MM:SS AM/PM
DateReceived	Email date received MM/DD/YYYY
TimeReceived	Email time received HH:MM:SS AM/PM
FileName	Name of the file as maintained in the ordinary course of business with extension .
MD5Hash	The computer-generated MD5 Hash value for each document
NativePath	The path to the native-format file corresponding to each record on the delivery media, including the file name (if a native-format file is provided)
TextPath	The path to the corresponding text file for each record on the delivery media, including filename

EXHIBIT 9

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES, SETH WISPELWEY, MARISSA BLAIR, TYLER MAGILL, APRIL MUNIZ, HANNAH PEARCE, MARCUS MARTIN, NATALIE ROMERO, CHELSEA ALVARADO, and JOHN DOE,

Plaintiffs,

v.

JASON KESSLER, RICHARD SPENCER, CHRISTOPHER CANTWELL, JAMES ALEX FIELDS, JR., VANGUARD AMERICA, ANDREW ANGLIN, MOONBASE HOLDINGS, LLC, ROBERT "AZZMADOR" RAY, NATHAN DAMIGO, ELLIOT KLINE a/k/a/ ELI MOSLEY, IDENTITY EVROPA, MATTHEW HEIMBACH, MATTHEW PARROTT a/k/a DAVID MATTHEW PARROTT, TRADITIONALIST WORKER PARTY, MICHAEL HILL, MICHAEL TUBBS, LEAGUE OF THE SOUTH, JEFF SCHOEP, NATIONAL SOCIALIST MOVEMENT, NATIONALIST FRONT, AUGUSTUS SOL INVICTUS, FRATERNAL ORDER OF THE ALT-KNIGHTS, MICHAEL "ENOCH" PEINOVICH, LOYAL WHITE KNIGHTS OF THE KU KLUX KLAN, and EAST COAST KNIGHTS OF THE KU KLUX KLAN a/k/a EAST COAST KNIGHTS OF THE TRUE INVISIBLE EMPIRE,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

PLAINTIFFS' FIRST SET OF INTERROGATORIES TO ALL DEFENDANTS

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure ("FRCP"), Plaintiffs hereby request that Defendants answer under oath the First Set of Interrogatories

("Interrogatories") set forth below within the time specified in Rule 33, unless otherwise agreed by the parties or required by any scheduling order entered by the Court in this action.

The Definitions and Instructions that appear below form an integral part of the Interrogatories that follow and must be read in conjunction with them and followed when responding to the Interrogatories.

DEFINITIONS

In each Definition, the singular shall include the plural and the plural shall include the singular. Terms used herein shall have the following meanings:

1. "Amended Complaint" means the amended complaint filed in the above-captioned litigation as ECF docket entry number 175.

2. "Communication" means, in addition to its customary and usual meaning, every contact of any nature, whether documentary, electronic, written, or oral, formal or informal, at any time or place and under any circumstances whatsoever whereby information of any nature is transmitted or transferred by any means, including, but not limited to letters, memoranda, reports, emails, text messages, instant messages, social media postings, telegrams, invoices, telephone conversations, voicemail messages, audio recordings, face-to-face meetings and conversations, and any other form of communication or correspondence. Without limiting the foregoing in any manner, commenting as well as any act of expression that is not directed at a specific person, or otherwise may not be intended to provoke a response (such as a social media posting, "likes," "shares," or any other form of reacting to another's use of Social Media), are forms of communication.

3. "Concerning" means, in addition to its customary and usual meaning, relating to, pertaining to, referring to, alluding to, confirming, constituting, comprising, containing,

commenting upon, responding to, discussing, describing, embodying, evaluating, evidencing, identifying, in connection with, involving, mentioning, noting, pertaining to, probative of, related to, relating to, reflecting, referring to, regarding, setting forth, supporting, stating, showing, touching upon, dealing with, assessing, recording, bearing upon, connected with, in respect of, about, indicating, memorializing, proving, suggesting, having anything to do with, contradicting, and summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Interrogatory.

4. "Electronic Device" means any device that stores, compiles, displays, generates, receives, transmits, or manipulates electronic information. Without limiting the foregoing in any manner, and by way of example only, the following are Electronic Devices: laptop and desktop computers, smartphones, tablets, smartwatches, cameras, smart devices (such as Google Home and Amazon Alexa), external storage devices (such as hard drives or USB sticks) or fitness activity trackers.

5. "Events" means the occurrences and activities described in Paragraphs 45 to 335 of the Amended Complaint.

6. "Social Media" means any forum, website, application, or other platform on which persons can create, transmit, share, communicate concerning, or comment upon any information, ideas, or opinions, or otherwise engage in social networking. Without limiting the foregoing in any manner, and by way of example only, the following are social media platforms: comment sections of websites, Facebook, Discord, Reddit, Imgur, SnapChat, Instagram, Google+, 4chan, 8chan, Twitter, Tumblr, Youtube, and instant messaging services such as Signal, WhatsApp, Messenger, Hangouts, or Skype. Without limiting the foregoing in any

manner, and by way of example only, the following are methods of using social media platforms: uploading, posting, commenting, reacting (e.g., "liking" a post), and sharing.

7. "Social Media Handle" means the unique identifier (whether a name, nickname, user name, avatar, image, or otherwise) associated with a user of Social Media. A Social Media Handle includes, for example, your unique Discord user handle including a four-digit number at the end of that handle.

8. "You," "Your," or "Yours" refers to the Defendants to whom the Interrogatories are addressed and includes any persons or entities acting for them or on their behalf, including but not limited to all representatives, servants, agents, employees, officers, affiliates, subsidiaries, parent companies, third parties, attorneys, as well as any entities over which any of the Defendants have control.

INSTRUCTIONS

A. These Interrogatories are issued to each Defendant, and each individual Defendant must fully respond to these Interrogatories.

B. Your responses to the following Interrogatories shall be based on all knowledge and information (whether or not hearsay or admissible) in your possession, custody, or control.

C. These Interrogatories are continuing in nature. If, after making initial responses, Defendants obtain or become aware of any further Documents responsive to the Requests, Defendants are required to supplement their responses and provide such Documents pursuant to FRCP Rule 26(e).

D. When the term "identify" is used in these Interrogatories, please supply the following information as context requires:

i. when used in reference to a natural person, state the person's full name, present or last known business and residential addresses, present or last known telephone

numbers or other contact information, and present or last known employment position or business affiliation;

ii. when used in reference to any person who is not a natural person, state the full name, present or last known address, and present or last known telephone number or other contact information;

iii. when used in reference to an object, state the nature, type, and location of the object and identify the person (natural or non-natural) who has custody or control over the object.

E. If, in responding to any of the following Interrogatories, you encounter any ambiguity or confusion in construing either an Interrogatory or a Definition or Instruction relevant to an Interrogatory, set forth the matter deemed ambiguous, select a reasonable interpretation that you believe resolves the ambiguity, respond to the Interrogatory using that interpretation, and explain with particularity the construction or interpretation selected by you in responding to the Interrogatory.

F. If you believe that an Interrogatory calls for production of a document or communication, or requires disclosure of information, over which you claim attorney-client privilege, work product doctrine, or any other right to non-disclosure on any other basis, furnish a list identifying the documents, communications, or information for which the protection is claimed together with the following (if applicable): the type of document or communication; the date or dates of the document or communication; the name, position and address of each person who participated in the document or communication, to whom the document or communication was addressed, or to whom the document or communication or the contents thereof have been communicated by any means; the general subject matter of the document, communication, or

information; the specific basis for nonproduction or non-disclosure; and a description that you contend is adequate to support your contention that the document, communication, or information may be withheld from production and/or disclosure. If a document or communication is withheld on the ground of attorney work product, also specify whether the document or communication was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based.

G. References to any natural person shall be deemed to include that natural person's agents, servants, representatives, current and former employees, and successors.

H. If You object to answering a specific interrogatory, You shall state with particularity the basis for all objections with respect to such interrogatory. You should respond to all portions of that interrogatory that do not fall within the scope of Your objection. If You object to an interrogatory on the ground that it is overly broad, provide such documents that are within the scope of production that You believe is appropriate. If You object to an interrogatory on the ground that to provide responsive documents would constitute an undue burden, provide such responsive documents as You believe can be supplied without undertaking an undue burden.

I. If the answer to all or part of an Interrogatory is that you lack knowledge of the requested information, set forth such remaining information as is known to you and describe all efforts made by you or by your attorneys, accountants, agents, representatives, or experts, or by any professional employed or retained by you, to obtain the information necessary to answer the interrogatory. If any approximation can reasonably be made in place of unknown information, also set forth your best estimate or approximation, clearly designated as such, in place of unknown information, and describe the basis upon which the estimate or approximation is made.

J. In answering each Interrogatory, you shall identify each document relied upon that forms the basis for your answer or in any way corroborates your answer or the substance of your answer.

K. A response identifying documents falling within the scope of these Interrogatories shall state that the documents have or will be produced, unless the Interrogatory is objected to, in which event the reasons for objection shall be specifically stated.

L. References to any non-natural person (e.g., corporation, partnership, entity, membership organizations, etc.) shall be deemed to include that non-natural person's predecessors, successors, divisions, subsidiaries, parents, assigns, partners, members, and affiliates, foreign or domestic, each other person directly or indirectly, wholly or in part, owned by, controlled by, or associated with them, and any others acting or purporting to act on their behalf for any reason, and the present and former officers, directors, partners, consultants, representatives, servants, employees, assigns, attorneys, and agents of any of them.

M. The use of the singular form of any word includes the plural and vice versa.

N. The use of the past tense includes the present tense and vice versa, as necessary to bring within the scope of each request all responses that might otherwise be considered outside its scope. Whenever a term is used herein in the present, past, future, subjunctive, or other tense, voice, or mood, it shall also be construed to include all other tenses, voices, or moods.

O. The terms "and" and "or" should be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

P. The word "all" means "any and all"; the word "any" means "any and all."

Q. The term "including" means "including, without limitation."

R. The masculine includes the feminine and neutral genders.

S. Unless otherwise specified, the time period to which these Interrogatories refer is from January 1, 2015 to the present.

INTERROGATORIES

1. Identify all means of communication used by you to communicate concerning the Events, whether before, during, or after the Events, and for each means of communication, identify all names, aliases, e-mail addresses, phone numbers, and Social Media Handles you used in connection with such communications, including the 18-digit account identifier associated with any Discord account used by You. Means of communications include, but are not limited to, telephone calls, in-person meetings, and all means of electronic communication including, for example, Social Media, email, SMS messages, podcasts, and online video.

2. Identify any "channel" or "server" on Discord to which you had access.

3. Identify all persons (natural or non-natural) with whom you communicated concerning the Events, whether before, during, or after the Events.

4. Identify all Electronic Devices used by you to communicate concerning the Events, whether before, during, or after the Events.

Dated: January 25, 2018
New York, NY

/s/ Philip M. Bowman
Philip M. Bowman (*pro hac vice*)
Joshua J. Libling (*pro hac vice*)
Yotam Barkai (pro hac vice)
BOIES SCHILLER FLEXNER LLP
575 Lexington Ave.
New York, NY 10022
Telephone: (212) 446-2300
Fax: (212) 446-2350
pbowman@bsfllp.com
jlibling@bsfllp.com
ybarkai@bsfllp.com

Robert T. Cahill (VSB 38562)
COOLEY LLP
11951 Freedom Drive, 14th Floor
Reston, VA 20190-5656
Telephone: (703) 456-8000
Fax: (703) 456-8100
rcahill@cooley.com

Roberta A. Kaplan (*pro hac vice*)
Julie E. Fink (*pro hac vice*)
Christopher B. Greene (*pro hac vice*)
Seguin L. Strohmeier (*pro hac vice*)
KAPLAN & COMPANY, LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
Telephone: (212) 763-0883
rkaplan@kaplanandcompany.com
jfink@kaplanandcompany.com
cgreene@kaplanandcompany.com
sstrohmeier@kaplanandcompany.com

Karen L. Dunn (*pro hac vice*)
William A. Isaacson (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
1401 New York Ave, NW
Washington, DC 20005
Telephone: (202) 237-2727
Fax: (202) 237-6131
kdunn@bsfllp.com
wisaacson@bsfllp.com

Alan Levine (*pro hac vice*)
COOLEY LLP
1114 Avenue of the Americas, 46th Floor
New York, NY 10036
Telephone: (212) 479-6260
Fax: (212) 479-6275
alevine@cooley.com

David E. Mills (*pro hac vice*)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Telephone: (202) 842-7800
Fax: (202) 842-7899
dmills@cooley.com

Counsel for Plaintiffs

EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

ELIZABETH SINES et al.,	:	**CASE NO: 3:17cv00072**
	:	**(J. Moon, Magistrate J. Hoppe)**
Plaintiff	:	
	:	
vs.	:	
	:	
JASON KESSLER et al.,	:	
	:	
Defendant	:	

DEFENDANT IDENTITY EVROPA'S RESPONSES TO DEFENDANT'S FIRST INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

Now comes defendant Identity Evropa ("IE") and responds to defendants first set of Interrogatories and Request for Documents as follows:

I. DISCOVERY REQUESTS

1. Identify all means of communication used by you to communicate concerning the Events, whether before, during, or after the Events, and for each means of communication, identify all names, aliases, e-mail addresses, phone numbers, and Social Media Handles you used in connection with such communications, including the 18-digit account identifier associated with any Discord account used by You. Means of communications include, but are not limited to, telephone calls, in-person meetings, and all means of electronic communication including, for example, Social Media, email, SMS messages, podcasts, and online video.

ANSWER: identityevropa.com,

youtube: https://www.youtube.com/channel/UC8ZmnNg0kKjX2C0NeXsukXg,

twitter: Handle: @IdentityEvropa
URL: https://twitter.com/IdentityEvropa

Facebook
Page: Identity Evropa

No longer exists. Was deleted by Facebook after Charlottesville.

Discord
Server: Identity Evropa

Slack

guardianie.slack.com

2. Identify any “channel” or “server” on Discord to which you had access.

ANSWER: Identity Evropa server. Lost access on or about 8/14/17.

3. Identify all persons (natural or non-natural) with whom you communicated concerning the Events, whether before, during, or after the Events.

ANSWER: Eli Mosely aka Elliott Kline handled IE’s limited presence in Charlottesville.

4. Identify all Electronic Devices used by you to communicate concerning the Events, whether before, during, or after the Events.

ANSWER: Mr. Mosely’s communication devices. Specific information is unknown to IE at this time.

II. DOCUMENT REQUESTS

General Response: IE objects to all below document requests on the grounds that to comply without third party permission or a court order violates the Stored Communications Act 18 USC §2701 et seq.

1. All Documents and Communications concerning the Events, including without limitation all
documents and communications:
i. concerning any preparation, planning, transportation to, or coordination for, the Events, including receipts, bills and credit card statements reflecting costs for transportation, lodging, apparel, gear, or any other material purchased for the Events;
ii. concerning any instructions or coordination relating to the Events, including security details, what to wear, what to bring, when to meet, where to meet, what to say, and any other logistical information or arrangements;
iii. that are Social Media documents concerning the Events;
iv. you created during the Events, including Social Media, text messages, video, and photographs;
v. concerning African Americans, Jewish individuals, or other religious, racial, or ethnic minorities that relate in any way to the Events;

vi. concerning any statement or action attributed to You in the Amended Complaint; or
vii. concerning any allegation of an altercation, violent act, injury, or instance of intimidation or harassment that occurred during the Rally, including but not limited to James Fields' vehicular incident; or
viii. concerning any funding of the Events, including for transportation, housing, food, weapons, uniforms, signage, tiki torches, or other materials or services used in connection with the Events (or the planning thereof)..

ANSWER: See above objection.

2. All Documents and Communications concerning events, meetings, rallies, conferences, or conversations held prior to the Events that relate to the Events in any way.

ANSWER: See above objection.

3. All Documents concerning and all Communications concerning or with East Coast Knights of the Ku Klux Klan (or East Coast Knights of the True Invisible Empire), Fraternal Order of the AltKnights, Identity Europa (or Identity Evropa), League of the South, Loyal White Knights of the Ku Klux Klan (or Loyal White Knights Church of the Invisible Empire Inc.), Moonbase Holdings, LLC, Nationalist Socialist Movement, Nationalist Front (or Aryan National Alliance), Traditionalist Worker Party, Vanguard America, or any such other social group or organization that has as part of its agenda a racial, religious, or ethnic objective.

ANSWER: See above objection.

4. All Documents and Communications concerning violence, intimidation, or harassment of Persons on the basis of race, religion, or ethnicity, including but not limited to, ethnic cleansing, white genocide, a white ethno-state, or any other form of large or small scale violence.

ANSWER: See above objection.

5. For any Social Media account You had from January 1, 2015, to the present: i. Documents and Communication sufficient to show the account home page, and all uses of Social Media for that account that reference or concern the Events or Defendants in any way. ii. Documents and Communication sufficient to show all Your "friends" and/or "social connections" maintained on Your account, including their names, addresses, and social network usernames or handles.

ANSWER: See above objection.

6. All Documents concerning and all Communications concerning or with any Plaintiff or Defendant (other than You) named in the Amended Complaint, and any other Person who attended, planned or was involved in the Events.

ANSWER: See above objection.

7. All Documents and Communications concerning any lawsuits, claims of violence, or arrests relating to or arising out of racially, ethnically, or religiously motivated conduct by You or any Defendant named in the Amended Complaint.

ANSWER: See above objection.

8. All Documents and Communications concerning the steps you have taken to preserve Documents and Communications relevant to the lawsuit, including the Documents and Communications responsive to these Requests.

ANSWER: No special steps were taken.

Respectfully Submitted and as to Objections:

s/ James E. Kolenich PHV
James E. Kolenich
Ohio Bar Number: 0077084
Attorney for Jason Kessler
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
(513) 444-2150
(513) 297-6065 (fax)
Email: Jek318@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on **April 6, 2018** ***via email*** upon: Mr. Yotam Barkai, Esq., Ms. Sequin Strohmeier Esq. ***Attorneys for Plaintiffs*** as follows: email: YBarkai@bsfllp.com; sstrohmeier@kaplanandcompany.com

s/ James E. Kolenich PHV
James E. Kolenich

Nathan Damigo Signature

Date 4-6-2018

Acknowledgment by Authorized Person

STATE OF New York

Personally appeared before me Nathan Damigo, authorized officer of Identity Evropa on April 6, 2018 (date) and did swear that the above responses to interrogatories and requests for production of documents are true and correct to the best of his knowledge on the date listed in this acknowledgement.

Lisa M Jarosz

Notary Public

Printed Name: Lisa M Jarosz

My Commission Expires: 08/18/2018

Lisa M. Jarosz
Notary Public, State of New York
Reg. #01JA6309821
Qualified in Erie County
Commission Expires 08/18/2018

EXHIBIT 11

From:	Christopher Greene
To:	eli.f.mosley@gmail.com
Cc:	Roberta Kaplan; Julie Fink; Gabrielle E. Tenzer; Karen Dunn; Jessica Phillips; Levine, Alan; Mills, David; Bowman, Philip M.
Subject:	Sines v. Kessler
Date:	Friday, November 16, 2018 7:10:59 PM
Attachments:	Modified Proposed Imaging Stipulation Order - AS FILED.pdf 2018.11.16 Notice of Filing - AS FILED.pdf

Mr. Kline,

Please see the attached Notice and Modified Proposed Imaging Stipulation and Order, which were filed with the Court this evening.

Regards,

Christopher B. Greene | Kaplan Hecker & Fink LLP
350 Fifth Avenue | Suite 7110
New York, New York 10118
(W) 929.294.2528 | (M) 646.856.6861
cgreene@kaplanhecker.com

EXHIBIT 12

From:	Christopher Greene
To:	eli.f.mosley@gmail.com
Cc:	Roberta Kaplan; Julie Fink; Gabrielle E. Tenzer; Karen Dunn; Jessica Phillips; Levine, Alan; Mills, David; Bowman, Philip M.
Subject:	Sines v. Kessler
Date:	Tuesday, November 27, 2018 6:56:46 PM
Attachments:	2018.11.13 379 Order re Pltfs Motion to Compel to Permit Inspection.pdf

Mr. Kline,

Plaintiffs have subpoenaed Discord for communications related to Plaintiffs' claims against Defendants in this action. Accordingly, we request that you send the below consent by e-mail to SCA@bsfllp.com for each Discord account that you used to communicate concerning the Events, as that term is defined in Plaintiffs' First Requests for Production of Documents, dated January 25, 2018. This includes, but is not limited to, any Discord account you identified in response to Plaintiffs' Interrogatory No. 1 to Defendants. As you know, Judge Hoppe has already ordered all Defendants who appeared at the November 9, 2018 conference to provide such consent. (ECF No. 379; Order attached.) Other Defendants have complied with the Court's order and provided the consent. Plaintiffs therefore request that you provide the consent without the necessity of Court intervention.

The consent e-mail must be sent from the e-mail address that you used to initially set up their Discord user account. For the avoidance of doubt, it is does not matter if your Discord user account has been deleted.

Plaintiffs request that you send the below consent email to SCA@bsfllp.com no later than Friday, November 30.

Regards,

Christopher B. Greene | Kaplan Hecker & Fink LLP
350 Fifth Avenue | Suite 7110
New York, New York 10118
(W) 929.294.2528 | (M) 646.856.6861
cgreene@kaplanhecker.com

* * * * * * *

I, [type your name here], am the sole accountholder for the Discord account associated with the username [insert] and the email address [fill in your email address here], from which I am sending this email.
Pursuant to the Stored Communications Act, 18 U.S.C. § 2702(b)(3), I expressly consent to Discord producing all records and contents of communications associated with the account referenced above, including without limitation all messages and posts regardless of their privacy settings and all communications and messages that are presently active and that may be restored in the future.

I understand and consent that Discord will disclose the records and contents to the legal team for Plaintiffs in the lawsuit Sines, et al. v. Kessler, et al., Case No. 3:17cv-00072, which is currently ongoing in the United States District Court for the Western District of Virginia. I understand and

agree that Discord will not search, filter, or limit the records or content in any way before producing them. I understand that after disclosing the information, Discord cannot control how the records and content are used and whether the records and content are further disclosed, which may include being filed in the public record.

I indemnify Discord, Inc., and its parents, subsidiaries, affiliates, officers, contractors, and employees against all claims for damages, compensation, and/or costs brought by any party with respect to damage or loss caused by, or arising out of, or being incidental to the above-referenced disclosure of records or contents of communications. I release any claims I may have against Discord, Inc., or its parents, subsidiaries, affiliates, officers, and employees for damages, compensation, and/or costs with respect to damage or loss caused by, or arising out of, or being incidental to the above-referenced disclosure of records or contents of communications.

EXHIBIT 13

MatthewHeimbach 2017-07-08 04:52:35

Reminder to all comrades in the area. We will be holding a Nationalist Front meeting, TWP and allies, in Ocoee TN this weekend on Saturday at 1pm at the famous Whitewater Grill.
The address is 1224 US-64, Ocoee, TN 37361
The purpose of the meeting is to plan for the upcoming Charlottesville event carpool, plan for future events, network, and do a flash demo.
Come meet great comrades and let's make some history!

 MatthewHeimbach 2017-07-23 04:13:02

our official TWP riot shields arrived

MatthewHeimbach 2017-07-23 04:14:08

also a dozen helmets thatll be painted black with Party insignia's on them

MatthewHeimbach 2017-07-30 00:49:20

Itll be solid, alongside our league of the south and vanguard america allies, we'll have an unbreakable line

EXHIBIT 14

EXHIBIT 15

Matthew Heimbach @MatthewWHeimbach
21 hours

@TonyHovater and I went to the jail in Cville to visit our POW's today. Never forget the men behind the wire!

142 Reply Repost Quote

EXHIBIT 16

Boonie Hat
@don_chump

Follow

@kaplanrobbie @IntegrityforUSA Whatever you do, don't look at this.

David M Parrott
1 hr ·

General Note:

If you were involved in any altercation in Cville, and you haven't disabled your social media, you should do so.

I know it's a bit late for some folks, obviously. But just in case there's anybody out there reading this who's out there who hasn't taken that step, do so.

It doesn't matter if you actually did anything. Everybody's getting a ride even if it's totally obvious that they're not convictable.

Like Comment Share

13

Alex McNabb Heh heh heh.
Like · Reply · 1 hr

Justin Murphy II They pick up someone else?
Like · Reply · 1 hr

David M Parrott No one specifically. But that's a direction they're going with it.
Like · Reply · 1 · 1 hr

Justin Murphy II Lovely. Stay safe fam
Like · Reply · 1 hr

11:35 AM - 27 Feb 2018

EXHIBIT 17

The Washington Post

Post Nation

How a white nationalist's family came to blows over a trailer tryst

By Marwa Eltagouri and Avi Selk
March 14, 2018

Matthew Heimbach, who came to national attention in 2016 for shoving a black woman at a campaign rally for Donald Trump, was arrested Tuesday and accused of attacking his wife and choking his white nationalist group's co-founder unconscious after the pair caught Heimbach having an affair in a trailer, authorities said.

Heimbach helped launch the Traditionalist Worker Party years ago and has been involved in organizing white separatist, supremacist and nationalist events around the country. Heimbach, who is in his mid-20s, is "the affable, youthful face of hate in America," an editor for the Southern Poverty Law Center's Hatewatch blog told The Washington Post.

His desire for a United States split into separate racial states has lost Heimbach many friends, The Washington Post's Joe Heim wrote after the Trump rally incident. He's been excommunicated from his church and clashed with his parents — and last week was seen brawling with protesters at a white nationalist event at Michigan State University.

On the other hand, Heimbach has been close to his wife, her stepfather and the stepfather's wife — all of whom are listed as "white nationalists" in a police report obtained by the SPLC.

In fact, Heimbach's stepfather-in-law, 35-year-old Matt Parrott, co-founded the Traditionalist Worker Party with him.

But recently, police wrote, Parrott and his stepdaughter (Heimbach's wife) became suspicious that Heimbach was having an affair with Parrott's wife, Jessica Parrott, 31.

On Monday night, police wrote, Heimbach's wife and stepfather-in-law "made a plan to 'set up' Matthew Heimbach to see if Matthew would in fact attempt to sleep with Jessica."

The plan apparently worked — to a point. Matt Parrott and his stepdaughter watched from a window outside a trailer on his property in rural Paoli, Ind., that night, while Heimbach and Jessica Parrott rendezvoused inside, the police report said.

Heimbach's wife recorded evidence of the tryst, according to the report, then got scared and ran away. Matt Parrott "stayed behind watching the encounter on a box through the window."

"While doing this the box broke," the reported continued.

Matt Parrott then ran around the trailer to confront his wife and stepson-in-law. He told Heimbach to get off his property.

When Heimbach wouldn't leave, Parrott poked his chest, the report states.

Heimbach then grabbed and twisted Parrott's hand, got behind him and "choked him out" with his arm, according to the report.

Parrott said he briefly lost consciousness, woke up and fled the trailer to a nearby house.

He told police that Heimbach followed and that he threw a chair at Heimbach to ward him off.

But the younger man once again got behind Parrott and choked him until he passed out, the report states.

Upon waking a second time, Parrott told police, he heard his wife tell Heimbach to track down his own wife to obtain the recording of their affair.

At that point, Matt Parrott and a child from the home fled to a nearby Walmart, where Paoli police met him around 1 a.m. Tuesday.

Police could see marks on Parrott's neck, and left to find Heimbach arguing with his wife at another property, the report states.

Heimbach's wife — who is not named in the report — told police that her husband "demanded that I tell the cops to leave," kicked a wall, grabbed her face and threw her face-first into a bed, according to the report

Heimbach was arrested and charged with assaulting his wife and Parrott.

The arrest puts him at risk of serving jail time — not just for this week's incident but also because he received a suspended sentence after shoving a protester at the Trump rally in Louisville in the spring of 2016.

In video footage of that confrontation that went viral, he wore a "Make America Great Again" hat, yelled at a 21-year-old university student and shoved her twice through the crowd — until the crowd began to shove her, as well.

Heimbach acknowledged that he pushed her and later wrote online: "White Americans are getting fed up and they're learning that they must either push back or be pushed down."

He pleaded guilty in July 2017 to disorderly conduct at the rally, according to the SPLC — with jail time suspended on the condition that he not be charged with another crime for two years.

The woman he pushed, Kashiya Nwanguma, joined other protesters at the rally and sued Trump, alleging he incited a riot. Heimbach was named in the suit.

In turn, he argued to the court that Trump essentially ordered violence against protesters by repeatedly urging the crowd to "get them out." The case has not been resolved.

Heimbach posted $1,000 bond Tuesday and was released.

Parrott told the SPLC that he had resigned from the Traditionalist Worker Party.

"I'm done. I'm out," Parrott said. "SPLC has won. Matt Parrott is out of the game."

This post has been updated.

Read more:

Asian American doctor: White nationalist patients refused my care over race

Austin police search for bombing motive, say explosives made with 'skill and sophistication'

The unique terror of Austin's deadly package bombs

Marwa Eltagouri
Marwa Eltagouri was a general assignment reporter for The Washington Post. She left The Post in 2018. She previously worked as a reporter for the Chicago Tribune, where she covered crime, immigration and neighborhood change.

Avi Selk

EXHIBIT 18

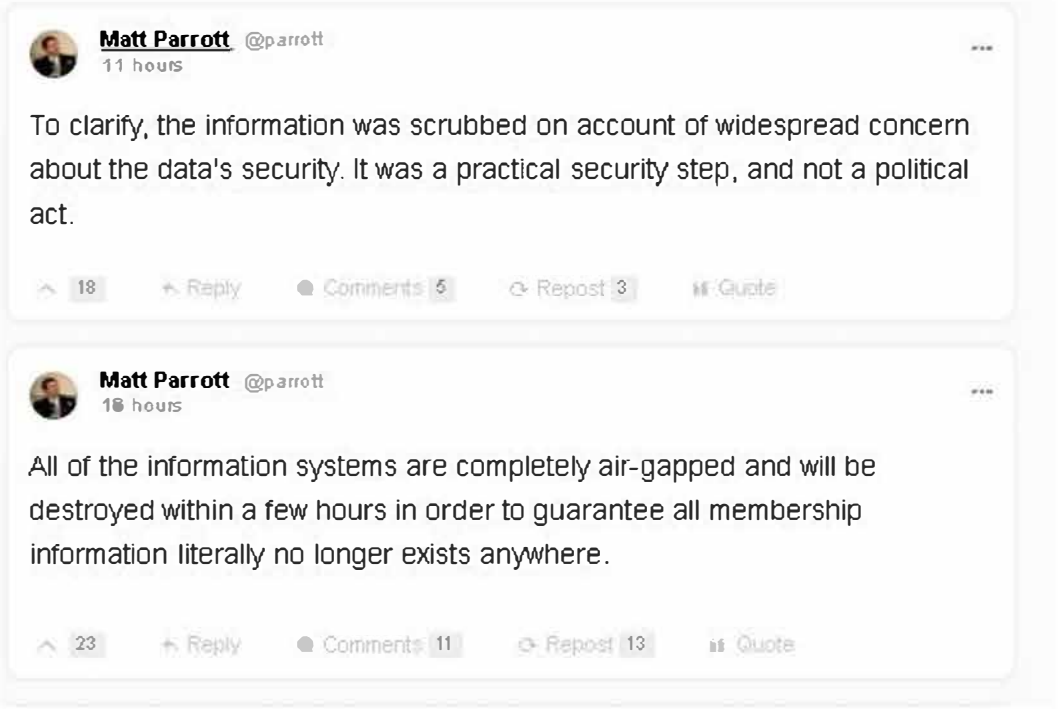

Matt Parrott @parrott
11 hours
To clarify, the information was scrubbed on account of widespread concern about the data's security. It was a practical security step, and not a political act.
18 Reply Comments 5 Repost 3 Quote
Matt Parrott @parrott
16 hours
All of the information systems are completely air-gapped and will be destroyed within a few hours in order to guarantee all membership information literally no longer exists anywhere.
23 Reply Comments 11 Repost 13 Quote

EXHIBIT 19

Kaplan & Company, LLP

350 Fifth Avenue
Suite 7110
New York, NY 10118
(212) 763-0883
www.kaplanandcompany.com

April 24, 2018

Via Email

James E. Kolenich, Esq.
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
jek318@gmail.com

Elmer Woodard, Esq.
5661 US Hwy 29
Blairs, VA 24527
isuecrooks@comcast.net

Re: *Sines* v. *Kessler*, 17 Civ. 0072 (NKM) (W.D. Va.)

Dear Mssrs. Kolenich and Woodard:

I write on behalf of Plaintiffs in the above-captioned action regarding the responses and objections ("Responses") of Defendants Cantwell, Damigo, Heimbach, Identity Evropa, Kessler, National Socialist Movement ("NSM"), Nationalist Front, Parrott, Ray, Schoep, Traditionalist Worker Party ("TWP"), and Vanguard America (collectively, "Defendants") to Plaintiffs' [Corrected] First Set of Requests for Production of Documents, served on January 25, 2018 ("RFPs").[1] While reserving all rights as to any deficiencies in Defendants' Responses, Plaintiffs write pursuant to the Court's direction during the April 19, 2018 telephonic conference that the parties meet and confer concerning the issues set forth in Plaintiffs' April 19, 2018 email to the Court. Plaintiffs look forward to receiving Defendants' response to this letter by no later than May 1, 2018, and are available to meet and confer regarding Defendants' Responses at your soonest possible convenience over the next week.

Defendants Have Waived Any Objections to the RFPs

With the exception of Defendants Identity Evropa and TWP, Defendants have not objected to any of the RFPs and therefore have waived any objections. *See, e.g.*, *Southampton Pointe Prop. Owners Ass'n, Inc.* v. *OneBeacon Ins. Co.*, No. 2:12-cv-03035-RMG, 2013 WL 12241830, at *2 (D.S.C. Aug. 27, 2013) (finding plaintiff waived objection by failing to raise in response to RFP); *see also Hall* v. *Sullivan*, 231 F.R.D. 468, 474 (D. Md. 2005) ("[I]mplicit within Rule 34 is the requirement that objections to document production requests must be stated with particularity in a timely answer . . . ."). Defendants TWP and Identity Evropa object to Plaintiffs' RFPs solely on the ground that "to comply without third party permission or a court order violates the Stored Communications Act 18 USC §2701 et seq." This is not a legitimate objection (see below), and Defendants TWP and Identity Evropa have waived all other objections.

[1] Capitalized terms used in this letter have the same meaning as in the RFPs.

Defendants' Responses Are Inadequate

Plaintiffs Request that Defendants Confirm They Have No Responsive Documents: Several Defendants, including Defendants Heimbach, Nationalist Front, Ray, and Vanguard America, responded that there were no documents responsive to any of Plaintiffs' RFPs, or "none in [their] possession." Plaintiffs request that by no later than May 1, 2018, any Defendant who answered "none" or some variant thereof to any RFP confirm that for each RFP, there are no responsive Documents or Communications in that Defendant's possession, custody, or control. *See* Fed. R. Civ. P. 34(a)(1); RFP Instr. H. Defendants are reminded that "possession, custody, or control" is not limited to Documents or Communications in the physical possession of a Defendant, but rather extends to materials over which each Defendant has custody or control. *See, e.g.*, *Terry* v. *Modern Inv. Co.*, No. 3:04-CV-00085, 2006 WL 2434264, at *6 n.15 (W.D. Va. Aug. 21, 2006) ("'Control' is defined as the legal right to obtain the document on demand."); *United States* v. *2012 GMC Savannah Van VIN: 1GDS7DC40C1145561*, No. 2:13 cv 18, 2014 WL 2215933, at *2 (W.D.N.C. May 29, 2014) ("A party is obligated to produce her account records when she has the legal right to those records even though the party does not have a copy of the records.").

Similarly, for those Defendants who responded to any of the RFPs with the response "See Attached," "None except as listed above," or some variant thereof, Plaintiffs request that by no later than May 1, 2018, each Defendant clarify their Responses so that Plaintiffs can discern whether each Defendant is producing Documents and Communications in response to each RFP or, alternatively, claiming that they are not in possession, custody, or control of any Documents or Communications responsive to the RFP. *See, e.g.*, *Porreca* v. *Mitchell L. Morgan Mgmt., Inc.*, Civ. No. JFM 08—1924, 2009 WL 400626, at *6–7 (D. Md. Feb. 13, 2009) (ordering plaintiffs to provide "full and complete responses" to RFPs when plaintiffs "merely respond[ed] 'see attached documents' for every request").

In addition, Defendants Identity Evropa and TWP have objected to Plaintiffs' RFPs solely on the ground that "to comply without third party permission or a court order violates the Stored Communications Act 18 USC §2701 et seq."; neither Identity Evropa nor TWP provides any further basis for its refusal to produce *any* documents in response to Plaintiffs' RFPs. Accordingly, Plaintiffs request that by no later than May 1, 2018, Defendants Identity Evropa and TWP confirm that they do not have in their possession, custody, or control any responsive documents such as emails, text messages, receipts, hard copy documents, pictures, videos, audio recordings, phone records, or any other kind of Document or Communication, the production of which would not be affected by the Stored Communications Act ("SCA"). For example, the contract between Defendants Identity Evropa and Eli Mosley, to which Mr. Kolenich referred during the April 19 telephonic conference with the Court and described as governing the relationship between those parties, would be responsive—based on Mr. Kolenich's description alone—to at least RFP Nos. 3 and 6 and would not be affected by the SCA.

Plaintiffs Request that Defendants Confirm They Will Provide SCA Consents: Certain Defendants, including Damigo, Heimbach, and Ray, suggest in their Responses that they would have had responsive documents but for their deletion by sites such as Twitter, Facebook, and the Daily Stormer. Deactivation or deletion of Social Media accounts or posts does not, however, shield otherwise relevant material from discovery. *See, e.g.*, *Romano* v. *Steelcase Inc.*, 30 Misc.

3d 426, 435 (N.Y. Sup. Ct. 2010) (ordering plaintiff to deliver to defendant a consent and authorization as required by social media website operators to gain access to plaintiff's social media records "including any records previously deleted or archived by said operators"). Moreover, the SCA provides no basis for Identity Evropa, TWP, or any other Defendant to refuse to produce Documents and Communications. While the SCA may limit the ability of electronic communications and remote computing services to produce certain communications without the consent of the relevant user, *see* 18 U.S.C. § 2702(b)(3) (2012), the SCA does not prevent any Defendant from satisfying its discovery obligations, s*ee, e.g.*, *Flagg* v. *City of Detroit*, 252 F.R.D. 346, 363 (E.D. Mich. 2008) (ordering defendants to give consent for retrieval of information subject to the SCA from an internet service provider); s*ee also Al Noaimi* v. *Zaid,* No. 11—1156—EFM, 2012 WL 4758048, at *3 (D. Kan. Oct. 5, 2012) (finding the court need not resolve motion to quash where it could order the plaintiff to execute a consent to third party that satisfies the SCA); *supra* regarding "control" of documents.

Plaintiffs request that by no later than May 1, 2018, each Defendant confirm that they will provide by no later than May 4, 2018, the necessary SCA consents to permit the providers of electronic communication services and remote computer services to provide documents responsive to the RFPs. *See* RFP Instr. H.

Defendants Have Taken No Steps to Preserve Responsive Information

RFP No. 8 requests that Defendants produce "[a]ll Documents and Communications concerning the steps you have taken to preserve Documents and Communications relevant to the lawsuit, including the Documents and Communications responsive to these Requests." In response to this Request, Defendants interpose a variety of answers suggesting that no steps were taken to preserve relevant information. For example, Defendants Identity Evropa, TWP, and Vanguard America all respond that they had taken "no special steps" to preserve relevant Documents and Communications. TWP's response is particularly troubling given the issues raised in Plaintiffs' Emergency Motion for an Order to Show Cause Why Defendants Matthew Parrott and Traditionalist Worker Party Should Not Be Sanctioned for Spoliation and Ordered to Permit Plaintiffs to Conduct a Forensic Examination of Information Systems. (ECF No. 272.) The other Defendants all responded "none" or a variation of "[n]one other than items responsive to above requests," but none of the documents produced to date have provided information about the steps taken to preserve Documents and Communications relevant to the lawsuit.

Plaintiffs request that by no later than May 1, 2018, each Defendant confirm whether or not they: (1) have taken steps to preserve Documents and Communications relevant to this litigation; and (2) are in possession, custody, or control of any Documents or Communications concerning steps taken to preserve Documents and Communications relevant to this litigation.[2]

[2] To reiterate, Plaintiffs reserve all rights with respect to other aspects of Defendants' Responses. By way of example only, certain Defendants, including Schoep and NSM, improperly direct Plaintiffs to websites that purportedly contain, among other material, information responsive to Plaintiffs' RFPs. Defendants are required to collect responsive material and produce it to Plaintiffs; Defendants cannot simply point Plaintiffs to entire websites and expect Plaintiffs to know which information Defendants are

*****

Defendants are presumed to be in possession, custody, or control of relevant and responsive Documents, despite the inadequacies in Defendants' Responses set forth above. Accordingly, in addition to taking the steps requested above, and consistent with the Court's direction at the March 16, 2018 telephonic conference, Plaintiffs propose that the parties enter into the attached Proposed Order and Stipulation for the Production of Electronically Stored Information and Proposed Evidence Preservation Stipulation and Order. Please let us know by May 1, 2018, if Defendants are prepared to enter into the attached stipulations or if you have any comments on the attached.

Plaintiffs look forward to receiving Defendants' response to this letter by no later than May 1, 2018. Plaintiffs continue to reserve all rights with respect to their RFPs and Defendants' Responses.

Sincerely,

Gabrielle E. Tenzer

cc: Plaintiffs' Counsel of Record

(Attachments)

---

referring to as responsive to the RFPs. Plaintiffs will address this and other deficiencies in Defendants' Responses in future correspondence.

EXHIBIT 20

From: Matthew Heimbach
To: SCA
Subject: Fwd: Please tend to immediately
Date: Tuesday, November 20, 2018 7:53:02 PM
Attachments: Scan M. Heimbach.pdf

---------- Forwarded message ---------
From: **James Kolenich** <jek318@gmail.com>
Date: Tue, Nov 20, 2018, 5:56 PM
Subject: Please tend to immediately
To: Matthew Heimbach <matthew.w.heimbach@gmail.com>

Please send the attached to SCA@bsflip.com right away.

Jim

--
James E. Kolenich
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
513-444-2150
513-297-6065(fax)
513-324-0905 (cell)

EXHIBIT 21

From:	Christopher Greene
To:	James Kolenich
Cc:	Bowman, Philip M.; Gabrielle E. Tenzer; Yotam Barkai
Subject:	Sines v. Kessler - SCA Consent
Date:	Tuesday, December 4, 2018 2:56:41 PM
Attachments:	Scan M. Heimbach (002).pdf

Jim,

We'd like to bring to your attention two issues pertaining the SCA consents that your clients provided.

- We understand that Tony Hovater sent an SCA consent to Discord, but that he did so with respect only to his personal account, and not for the Traditionalist Worker Party account for which he had previously provided a hand-signed consent. Please have Mr. Hovater send an appropriate consent to the SCA@bsfllp.com address for the @tradworker Discord user account.

- Defendant Heimbach provided the attached SCA consent that does not identify the e-mail address with which he signed up for his Discord account, as is required. Please have Defendant Heimbach resend his SCA consent with the e-mail address identified.

Regards,

Christopher B. Greene | Kaplan Hecker & Fink LLP
350 Fifth Avenue | Suite 7110
New York, New York 10118
(W) 929.294.2528 | (M) 646.856.6861
cgreene@kaplanhecker.com

EXHIBIT 22

Matthew Heimbach
57 minutes ago

So looks like Byron de la Vandal, who's music I did enjoy, agreed to renounce all of us, take anti hate training, and give a video confession and renunciation to be used in anti nationalist propaganda, all because of a lawsuit.

Lawsuits are just money, and as the Bible tells us "No man can serve two masters: for either he. will hate the one, and love the other; or else. he will hold to the one, and despise the other, Ye cannot serve God and mammon."

Too many self described "nationalists" will turn in their comrades, betray their principles, and renounce their views; not under torture, not under threat of death, but due to a fear of losing money.

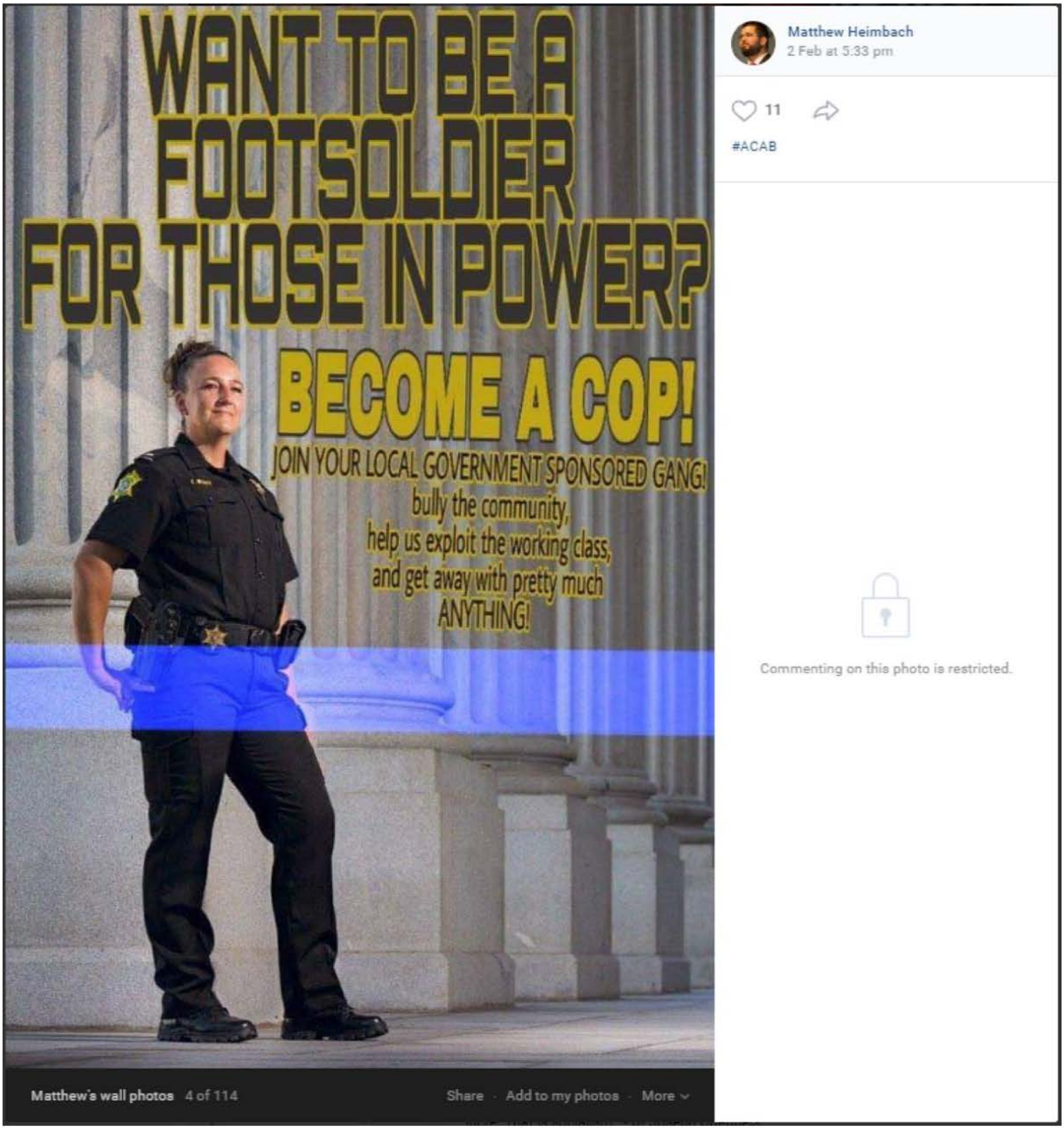
Millions of men have died for nationalism throughout history, and we blink in America at the slightest pain or discomfort

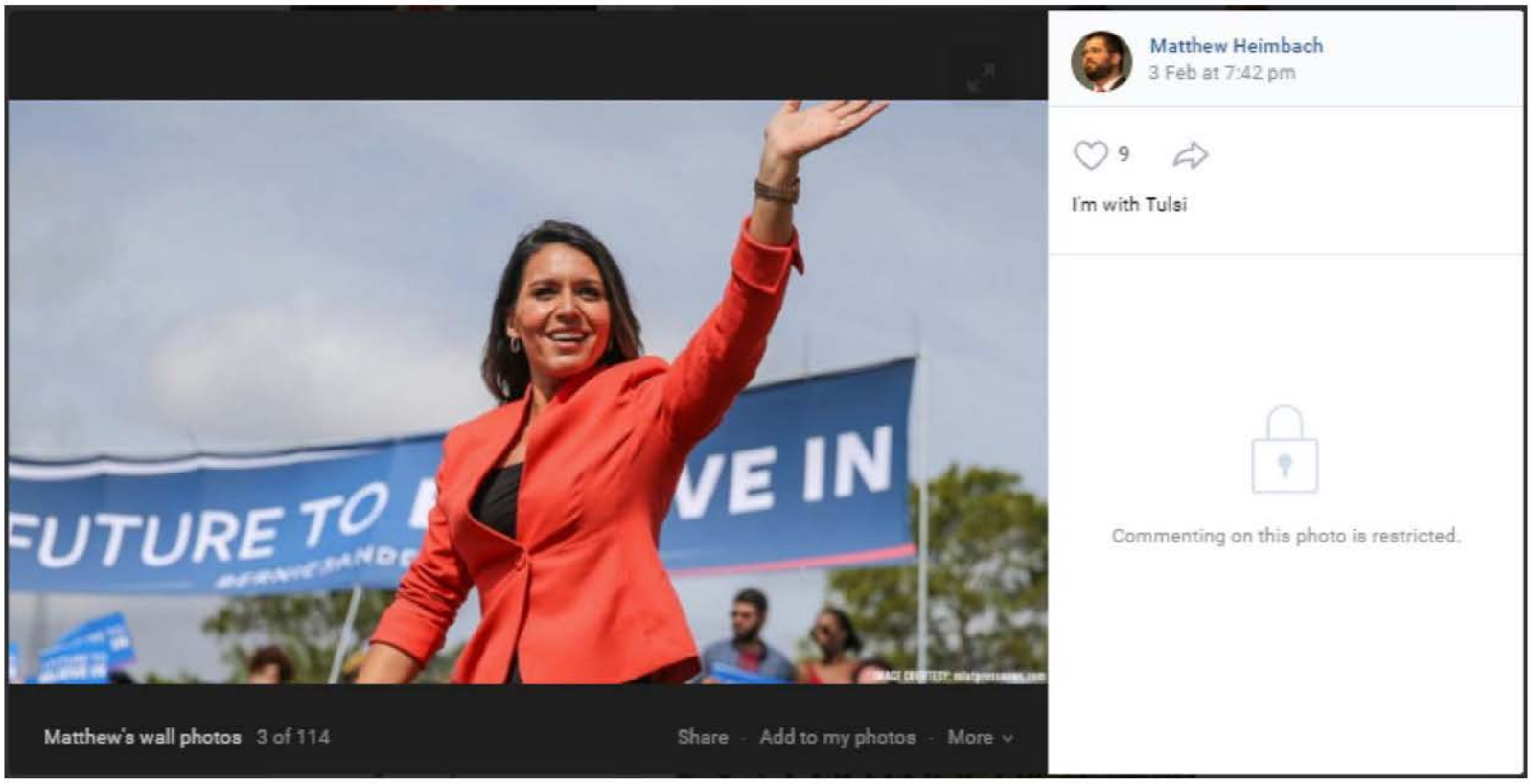
Settlement requires 'anti-hate training' for internet troll
kutv.com

1

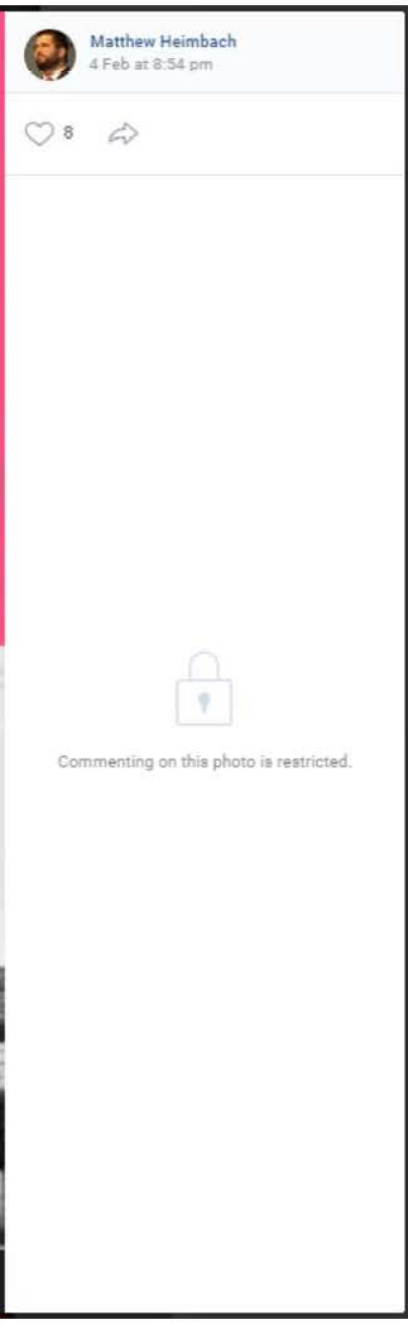
15


WHO CREATES INFRASTRUCTURE AND INDUSTRY?
THE WORKERS DO
BUT WHO MAINTAINS THAT INFRASTRUCTURE AND INDUSTRY?
THE WORKERS DO
BUT WHO THEN BECOMES WEALTHY FROM THE WORKERS LABOR?
THE RULING CLASS
ONLY EXISTS BY EXPLOITING WORKERS LABOR FOR PROFIT
TALK TO YOUR UNION REPRESENTATIVES!
GET ARMED AND ORGANIZED TODAY!
Matthew's wall photos 5 of 114
Share
Add to my photos
More
Matthew Heimbach
30 Jan at 10:54 pm
10
"The bourgeoisie has to yield to the working class ... Whatever is about to fall should be pushed. We are all soldiers of the revolution. We want the workers' victory over filthy lucre. That is socialism." - Dr Joseph Goebbels
Commenting on this photo is restricted.


WANT TO BE A FOOTSOLDIER FOR THOSE IN POWER?
BECOME A COP!
JOIN YOUR LOCAL GOVERNMENT SPONSORED GANG!
bully the community,
help us exploit the working class,
and get away with pretty much ANYTHING!
Matthew's wall photos 4 of 114
Share · Add to my photos · More
Matthew Heimbach
2 Feb at 5:33 pm
11
#ACAB
Commenting on this photo is restricted.


FUTURE TO
VE IN
Matthew's wall photos 3 of 114
Share · Add to my photos · More
Matthew Heimbach
3 Feb at 7:42 pm
9
I'm with Tulsi
Commenting on this photo is restricted.


ARE
GENITAL
PREFERENCES
TRANSPHOBIC?
Riley
Then one day for no reason at all
ARBEIT MACHT FREI
They started putting people in camps
Matthew's wall photos 2 of 114
Share
Add to my photos
More

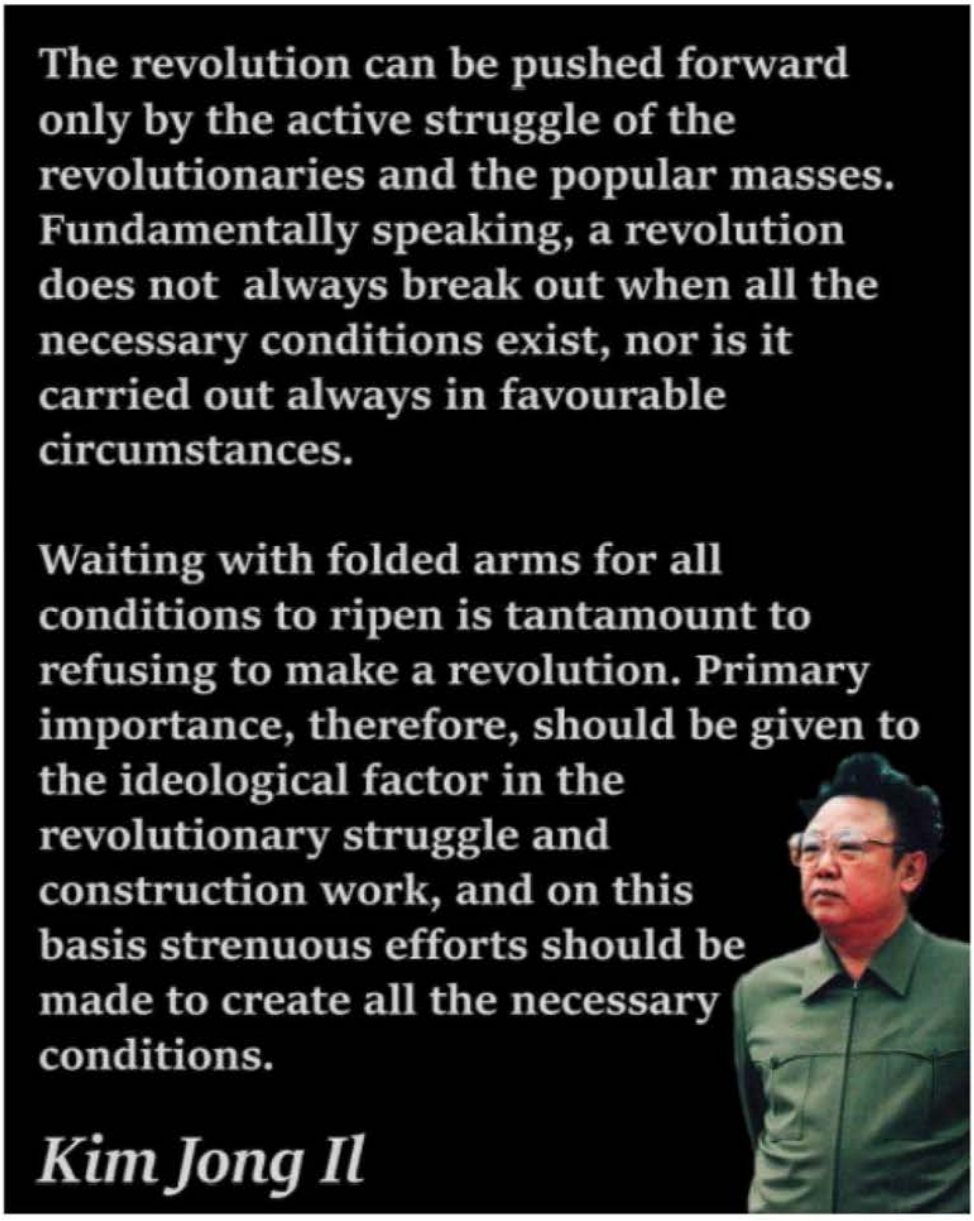

Matthew Heimbach
4 Feb at 8:54 pm
8
Commenting on this photo is restricted.

Matthew Heimbach
Feb 6, 2019 at 9:35 am

+ Follow

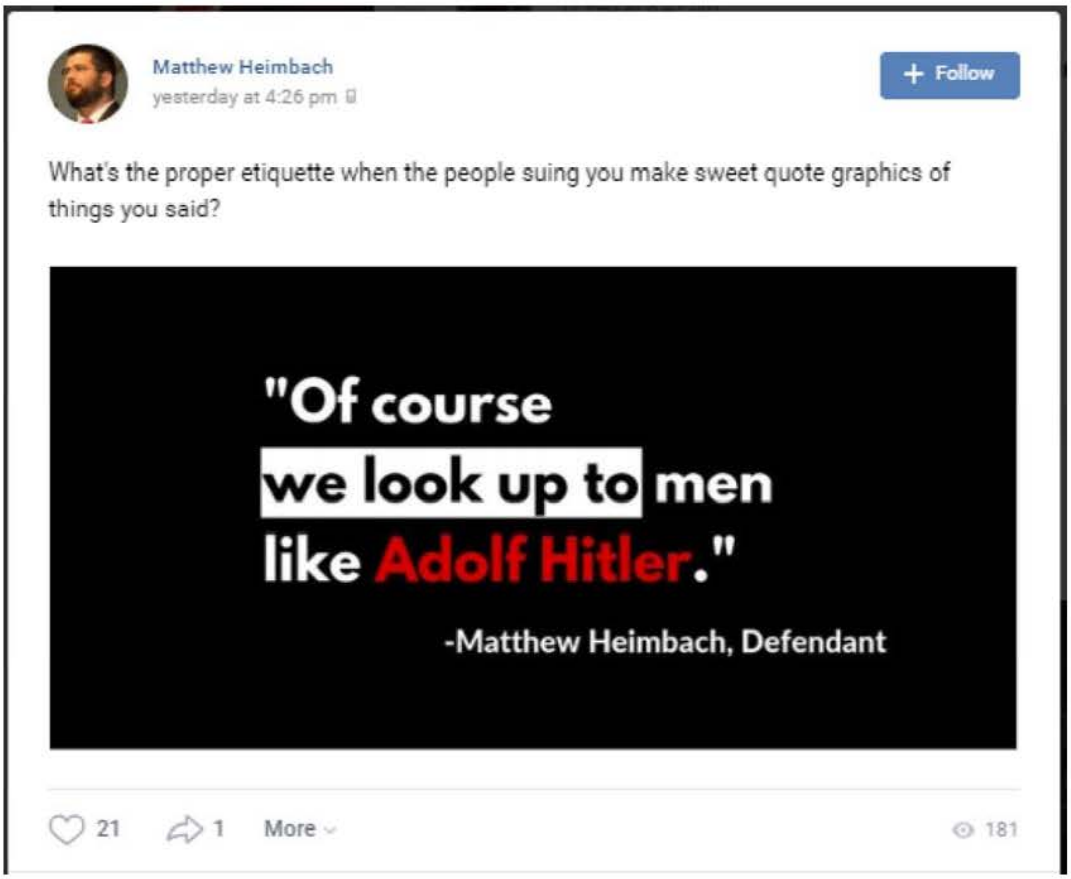
We must be active to make the Revolution happen!

Sitting online or in endless debating clubs will never result in our victory, only action will pave the way for our bright future.



3 More 63

The author has opted to limit comments for this post


Matthew Heimbach
yesterday at 4:26 pm
+ Follow
What's the proper etiquette when the people suing you make sweet quote graphics of things you said?
"Of course we look up to men like Adolf Hitler."
-Matthew Heimbach, Defendant
21
1
More
181

Matthew Heimbach
Feb 16, 2019 at 11:13 am

+ Follow

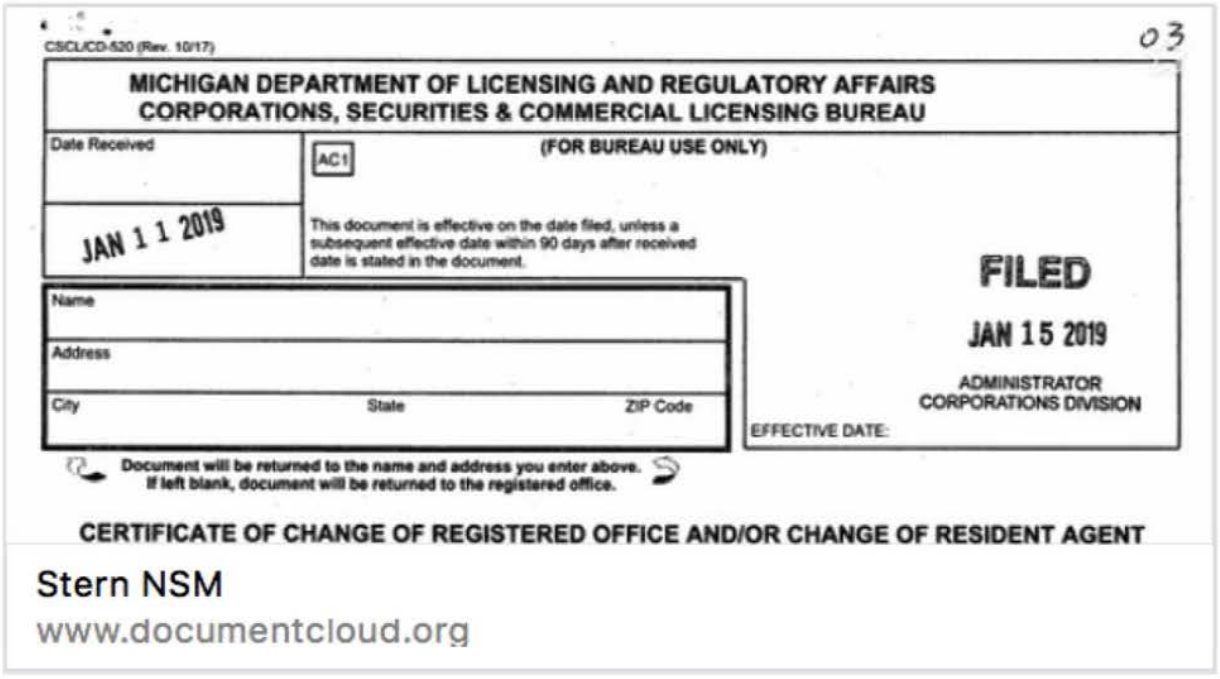
The NSM, I guess formerly under Jeff Schoep is now under the legal control of a Black Civil Rights advocate who has previously dissolved White nationalist organizations who got into legal trouble.

Reverend James Hart Stern is now the President/Director of the National Socialist Movement, according to legal filings.

I honestly don't even know what to say about this, but I look forward to a public statement from the NSM to explain and clarify exactly what is going on.

https://www.documentcloud.org/documents/5740627-Stern..

https://www.documentcloud.org/documents/5740625-Stern..



CSCL/CD-520 (Rev. 10/17) 03

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

Date Received: JAN 11 2019

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This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

FILED
JAN 15 2019
ADMINISTRATOR
CORPORATIONS DIVISION

Name
Address
City State ZIP Code

EFFECTIVE DATE:

Document will be returned to the name and address you enter above. If left blank, document will be returned to the registered office.

CERTIFICATE OF CHANGE OF REGISTERED OFFICE AND/OR CHANGE OF RESIDENT AGENT

Stern NSM
www.documentcloud.org

7 4 More 194

The author has opted to limit comments for this post

EXHIBIT 23

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

ELIZABETH SINES, et al.,
Plaintiffs,

vs.

JASON KESSLER, et al.,
Defendants.

No. 3:17-cv-72
Charlottesville, Virginia
January 4, 2019
2:04 p.m.

TRANSCRIPT OF TELEPHONIC MOTION HEARING
BEFORE THE HONORABLE JOEL C. HOPPE
UNITED STATES MAGISTRATE JUDGE.

APPEARANCES:

For the Plaintiffs:

ROBERTA ANN KAPLAN
GABRIELLE E. TENZER
Kaplan & Company, LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
212-763-0883

ALAN LEVINE
Cooley LLP
1114 Avenue of the Americas
New York, NY 10036
212-479-6260

DAVID E. MILLS
Cooley LLP
1299 Pennsylvania Ave., NW
Washington, DC 20004
202-842-7800

JESSICA E. PHILLIPS
Boies Schiller Flexner, LLP
1401 New York Ave., NW
Washington, DC 20005
202-237-2727

For the Defendants:

JAMES EDWARD KOLENICH
Kolenich Law Office
9435 Waterstone Blvd., Suite 140
Cincinnati, OH 45249
513-444-2150

JOHN A. DiNUCCI
Law Office of John A. DiNucci
8180 Greensboro Drive, Suite 1150
McLean, VA 22102
703-821-4232

Also Present: ROBERT AZZMADOR RAY

Transcribed by: Carol Jacobs White
Registered Diplomate Reporter
PO Box 182
Goode, VA 24556
Carol.jacobs.white@gmail.com

Proceedings recorded by FTR; computer-assisted transcription.

with the order, I guess in particular for Mr. Ray and Mr. Heimbach on the certifications?

MS. TENZER: I don't know if we're going to address that in the motion to withdraw. Those are still outstanding --

THE COURT: All right.

MS. TENZER: -- those certifications.

THE COURT: Mr. Kolenich, what is the status of those?

MR. KOLENICH: Judge, as I think I emailed to chambers, Mr. Heimbach's response to the last court order was to terminate my representation. So he has fired myself and Mr. Woodard and forbid us to take any actions on his behalf. The Court will also note that he hasn't called in today, even though I did transmit the time and call-in information. So that's the status on Heimbach.

Mosely's status is well-known to the Court.

Mr. Ray's information, that is on me. I haven't completed getting that information from Mr. Ray yet. He is fully cooperating with the process. And we'll get that just as soon as possible. And, of course, the contract issue, the statement of work, is a separate issue. And we'll take that up with Ms. Tenzer.

THE COURT: Where -- Mr. Kolenich, it is news to me that Heimbach has terminated your representation. I don't recall seeing that.

MR. KOLENICH: Sorry, Your Honor. I emailed it -- I thought I did -- to chambers. Maybe I sent it to the wrong one; I don't know. I deal with many federal courts. But Mr. Heimbach did

EXHIBIT 24

From:	Gabrielle E. Tenzer
To:	John DiNucci; KarenD@vawd.uscourts.gov
Cc:	jek318@gmail.com; alevine@cooley.com; brottenborn@woodsrogers.com; bryan@bjoneslegal.com; Christopher Greene; dcampbell@dhdglaw.com; dmills@cooley.com; isuecrooks@comcast.net; Julie Fink; jgravatt@dhdglaw.com; jlibling@bsfllp.com; Joshua Matz; jphillips@bsfllp.com; kdunn@bsfllp.com; lisa_lorish@fd.org; Michael Bloch; pbowman@bsfllp.com; rcahill@cooley.com; Roberta Kaplan; Seguin L. Strohmeier; wisaacson@bsfllp.com; Yotam Barkai; Eli.F.Mosley@gmail.com; matthew.w.heimbach@gmail.com
Subject:	RE: CC Monday or Tuesday - Sines v. Kessler 3:17cv72
Date:	Friday, February 8, 2019 9:32:51 AM

Ms. Dotson:

With the exception of Mr. Mosley and Mr. Heimbach, who we have not yet heard from, Plaintiffs' counsel and the other counsel for Defendants are available on Tuesday between 12:30 and 2:00 p.m.

Respectfully submitted,
Gabrielle Tenzer

Gabrielle Tenzer | Kaplan Hecker & Fink LLP
350 Fifth Avenue | Suite 7110
New York, New York 10118
(W) 929.294.2536 | (M) 646.856.7275
gtenzer@kaplanhecker.com

From: John DiNucci <dinuccilaw@outlook.com>
Sent: Friday, February 8, 2019 9:27 AM
To: KarenD@vawd.uscourts.gov
Cc: jek318@gmail.com; alevine@cooley.com; brottenborn@woodsrogers.com; bryan@bjoneslegal.com; Christopher Greene <cgreene@kaplanhecker.com>; dcampbell@dhdglaw.com; dmills@cooley.com; Gabrielle Tenzer <gtenzer@kaplanhecker.com>; isuecrooks@comcast.net; Julie Fink <jfink@kaplanhecker.com>; jgravatt@dhdglaw.com; jlibling@bsfllp.com; Joshua Matz <jmatz@kaplanhecker.com>; jphillips@bsfllp.com; kdunn@bsfllp.com; lisa_lorish@fd.org; Michael Bloch <mbloch@kaplanhecker.com>; pbowman@bsfllp.com; rcahill@cooley.com; Roberta Kaplan <rkaplan@kaplanhecker.com>; Seguin L. Strohmeier <sstrohmeier@kaplanhecker.com>; wisaacson@bsfllp.com; Yotam Barkai <ybarkai@bsfllp.com>; Eli.F.Mosley@gmail.com; matthew.w.heimbach@gmail.com
Subject: Re: CC Monday or Tuesday - Sines v. Kessler 3:17cv72

Ms. Dotson:

I am available on Tuesday after 11 a.m.

John A. DiNucci

Sent from my iPhone

On Feb 7, 2019, at 2:56 PM, "KarenD@vawd.uscourts.gov" <KarenD@vawd.uscourts.gov> wrote:

Counsel,

Judge Hoppe would like to have a conference call next Monday or Tuesday regarding the below email.

Please confer with each other and decide on a date and time THEN let me know what time you have agreed on and I'll set up the conference call. Thank you.

Feb. 11 - anytime between 9:00, 9:30, 10:00, 10:30, 11:00, 11:30, 2:00 or later
Feb. 12 - 11:00 or later

Respectfully,

Karen

_____

Karen L. Dotson
Courtroom Deputy for
Hon. Joel C. Hoppe
U.S. Magistrate Judge
(540) 434-3181 ext. 2

From: Gabrielle Tenzer <gtenzer@kaplanhecker.com>
To: "hoppe.ecf@vawd.uscourts.gov" <hoppe.ecf@vawd.uscourts.gov>, "KarenD@vawd.uscourts.gov" <KarenD@vawd.uscourts.gov>
Cc: David Campbell <dcampbell@dhdgclaw.com>, "isuecrooks@comcast.net" <isuecrooks@comcast.net>, James Kolenich <jek318@gmail.com>, Bryan Jones <bryan@bjoneslegal.com>, John DiNucci <dinuccilaw@outlook.com>, "lisa_lorish@fd.org" <lisa_lorish@fd.org>, Roberta Kaplan <rkaplan@kaplanhecker.com>, Julie Fink <jfink@kaplanhecker.com>, "Levine, Alan" <alevine@cooley.com>, "Mills, David" <dmills@cooley.com>, "Bowman, Philip M." <pbowman@cooley.com>, "Rottenborn, Ben" <brottenborn@woodsrogers.com>, Karen Dunn <kdunn@bsfllp.com>, Jessica Phillips <jphillips@bsfllp.com>, William Isaacson <Wisaacson@BSFLLP.com>
Date: 02/06/2019 07:04 PM
Subject: Sines v. Kessler, Case No. 17 Civ. 72

Dear Judge Hoppe:

As Your Honor encouraged us to do during the January 4, 2019 telephonic conference, we are once again writing to provide a status update and to seek the Court's assistance with outstanding discovery items.

Although we have received and are still receiving information from Discord thanks in large part to the Court's intervention with respect to obtaining Defendants' SCA consents, we still have received precious few documents from the Defendants themselves. We have yet to receive a single page from 9 of the 18 Defendants who remain in the case (not including Defendant Fields, who is incarcerated). Other than Defendant Kessler, the productions we have received thus far from the Defendants who have produced documents have been meager, to say the least. And it is not for lack of trying on Plaintiffs' part. Plaintiffs' document requests were originally served over a year ago, on January 25, 2018. On November 13, 2018, nearly three months ago, the Court granted Plaintiffs' Motion to Compel Defendants to Permit Inspection and Imaging of Electronic Devices. Plaintiffs

raised the issue of the Third Party Discovery Vendor Contract on the call with the Court on January 4, 2019, as well as in a January 16, 2019 email to the Court. Yet to date, Defendants have not agreed to the Third Party Discovery Vendor Contract that Plaintiffs sent to them over a month ago, on December 28, 2018. The parties have made progress in coming to an agreement on the contract, but Plaintiffs and the vendor are still waiting to hear back from Defendants on one outstanding issue concerning indemnification.

While Plaintiffs have been trying to avoid involving the Court again, it appears that a call is needed to ensure that this process moves forward more expeditiously. Accordingly, we request a conference with the Court to seek an order that a Third Party Discovery Vendor Contract be executed by a date certain and that, upon execution of the contract, Defendants be required to immediately tender their devices to the vendor for imaging and to complete all other aspects of the document production process also by a date certain. For obvious reasons, and consistent with due process, Plaintiffs do not want to notice Defendants' depositions before receiving their documents. Given the current fact discovery cutoff of April 17, 2019, it is not clear how this can all happen without further intervention from the Court, including the possible imposition of sanctions for any further non-compliance.

Plaintiffs can be available for a conference with the Court on Monday or Tuesday of next week, February 11 or 12. We appreciate Your Honor's consideration of this request.

Respectfully submitted,
Gabrielle E. Tenzer

Gabrielle E. Tenzer | Kaplan Hecker & Fink LLP

350 Fifth Avenue | Suite 7110

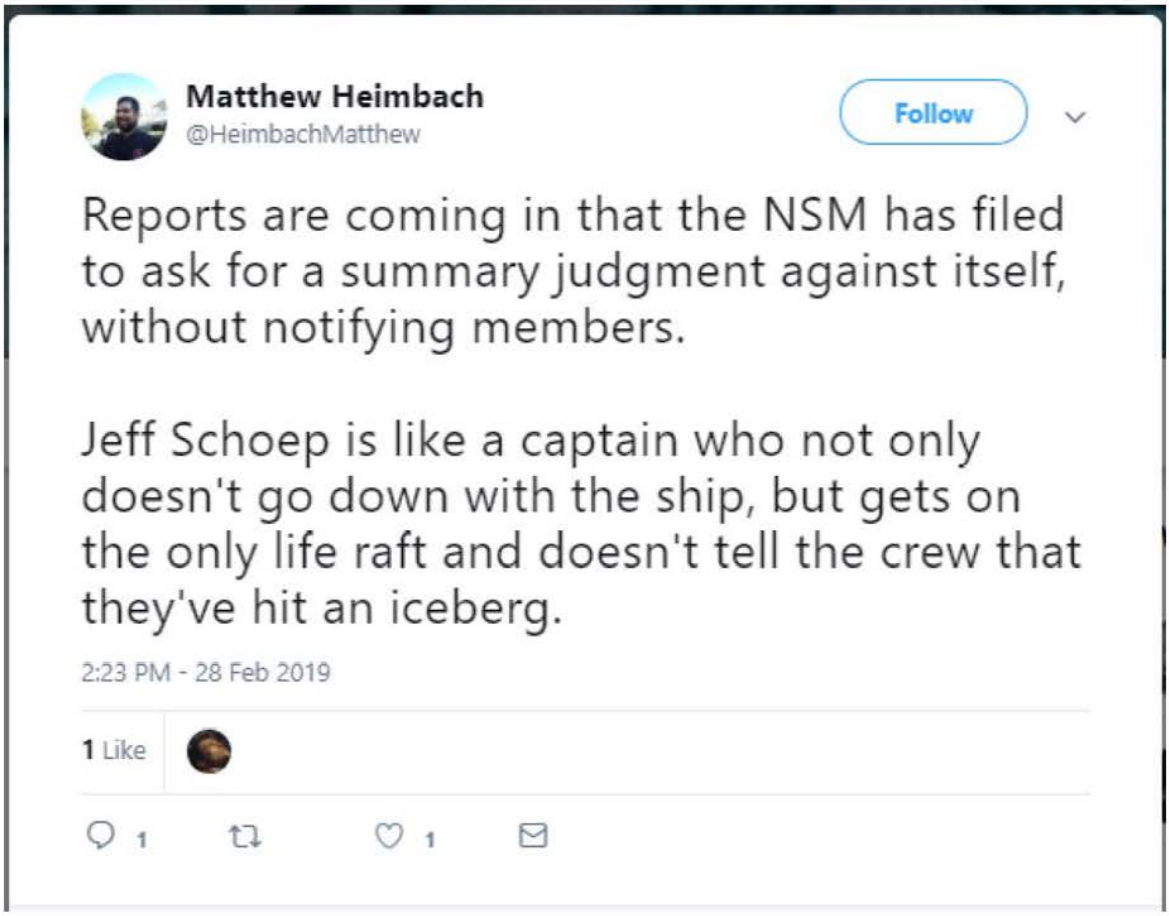
New York, New York 10118

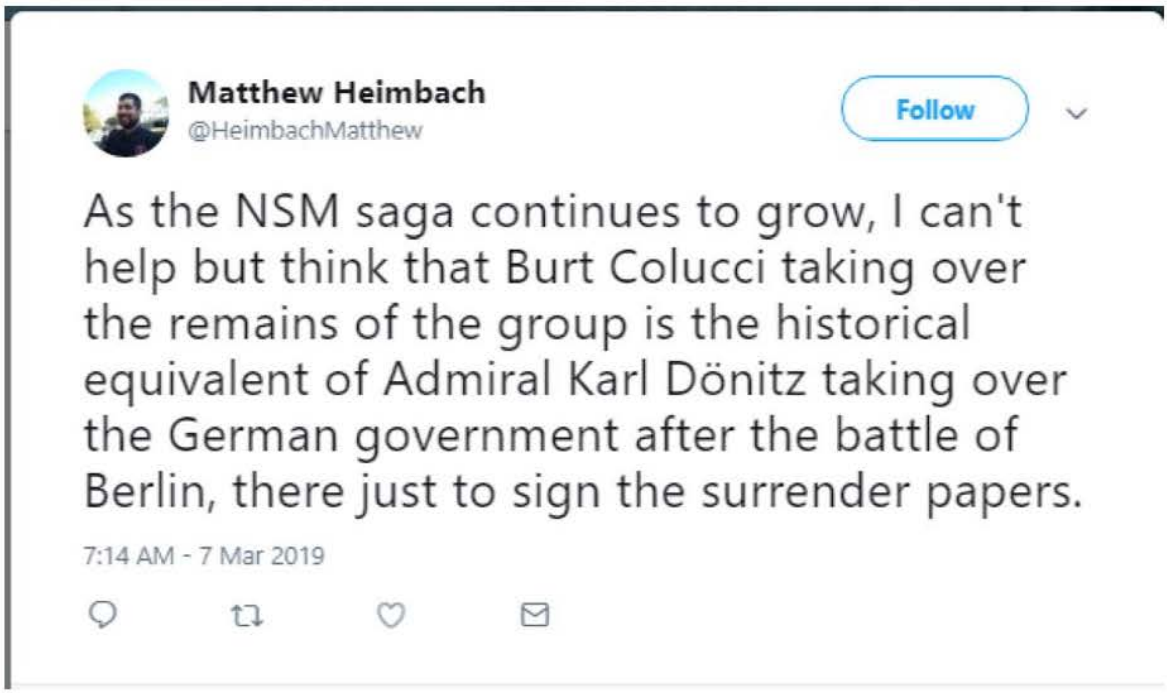
(W) 929.294.2536

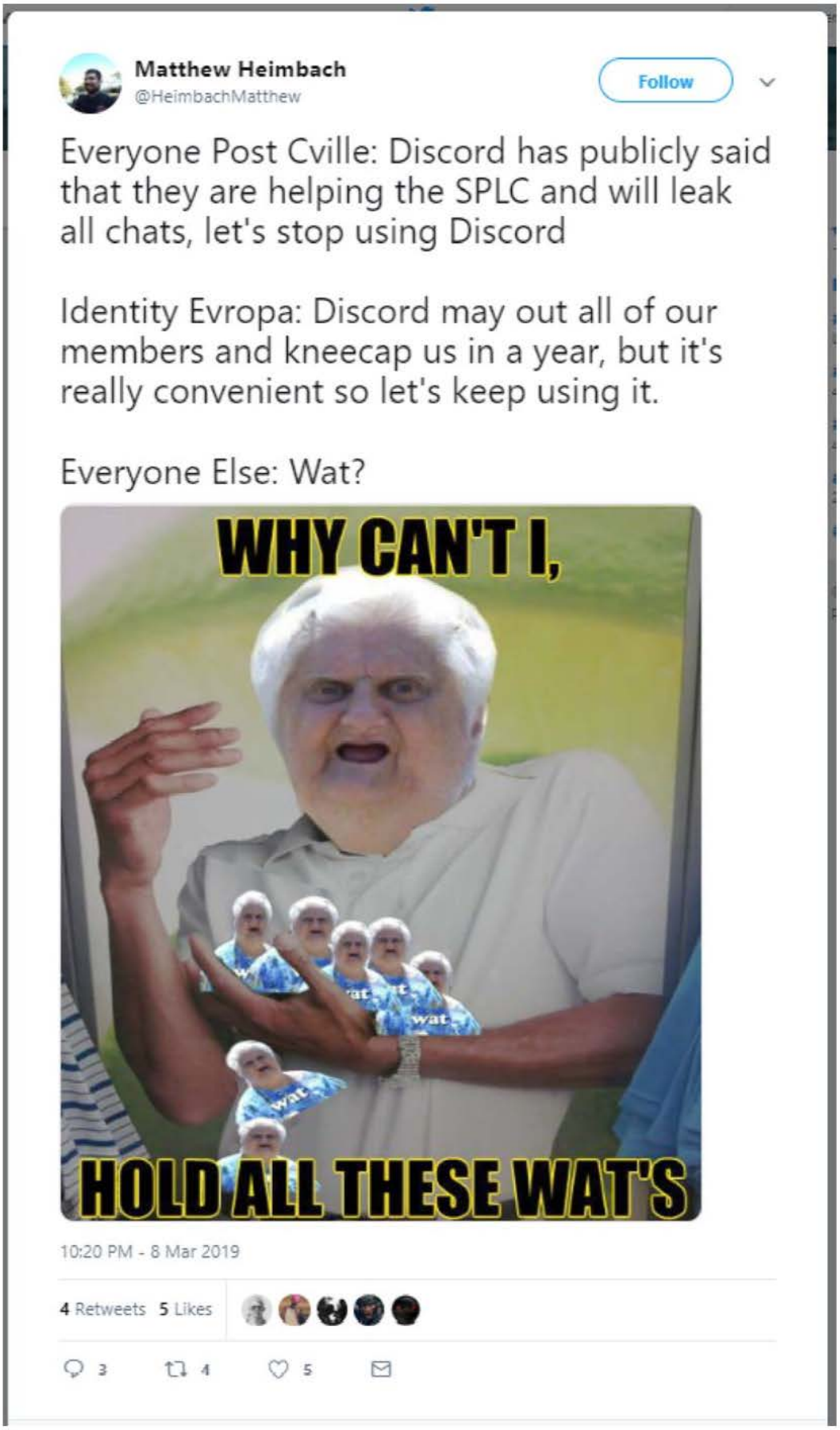
| (M) 646.856.7275

gtenzer@kaplanhecker.com

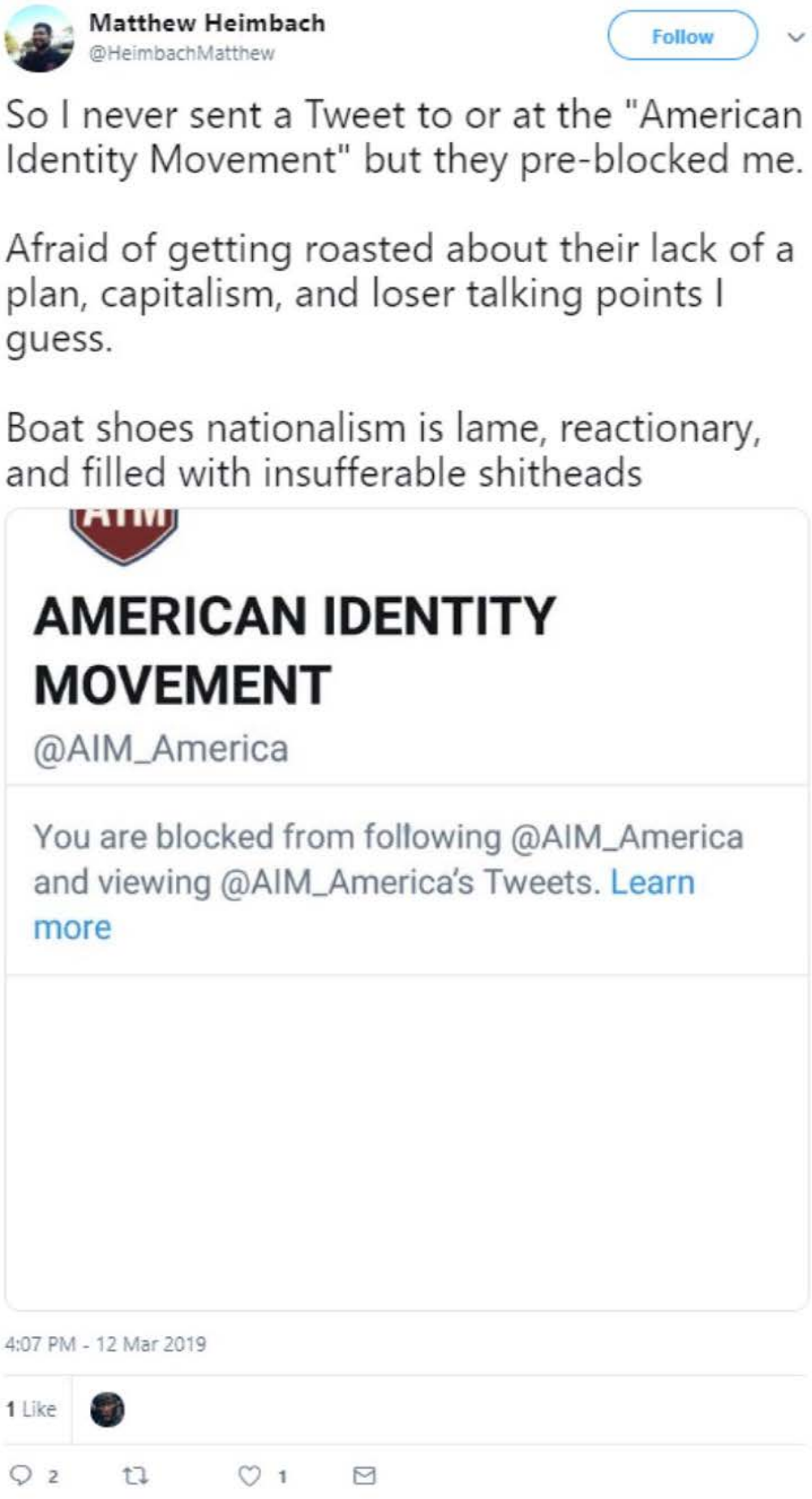
EXHIBIT 25


Matthew Heimbach
@HeimbachMatthew
Follow
Reports are coming in that the NSM has filed to ask for a summary judgment against itself, without notifying members.
Jeff Schoep is like a captain who not only doesn't go down with the ship, but gets on the only life raft and doesn't tell the crew that they've hit an iceberg.
2:23 PM - 28 Feb 2019
1 Like
1
1

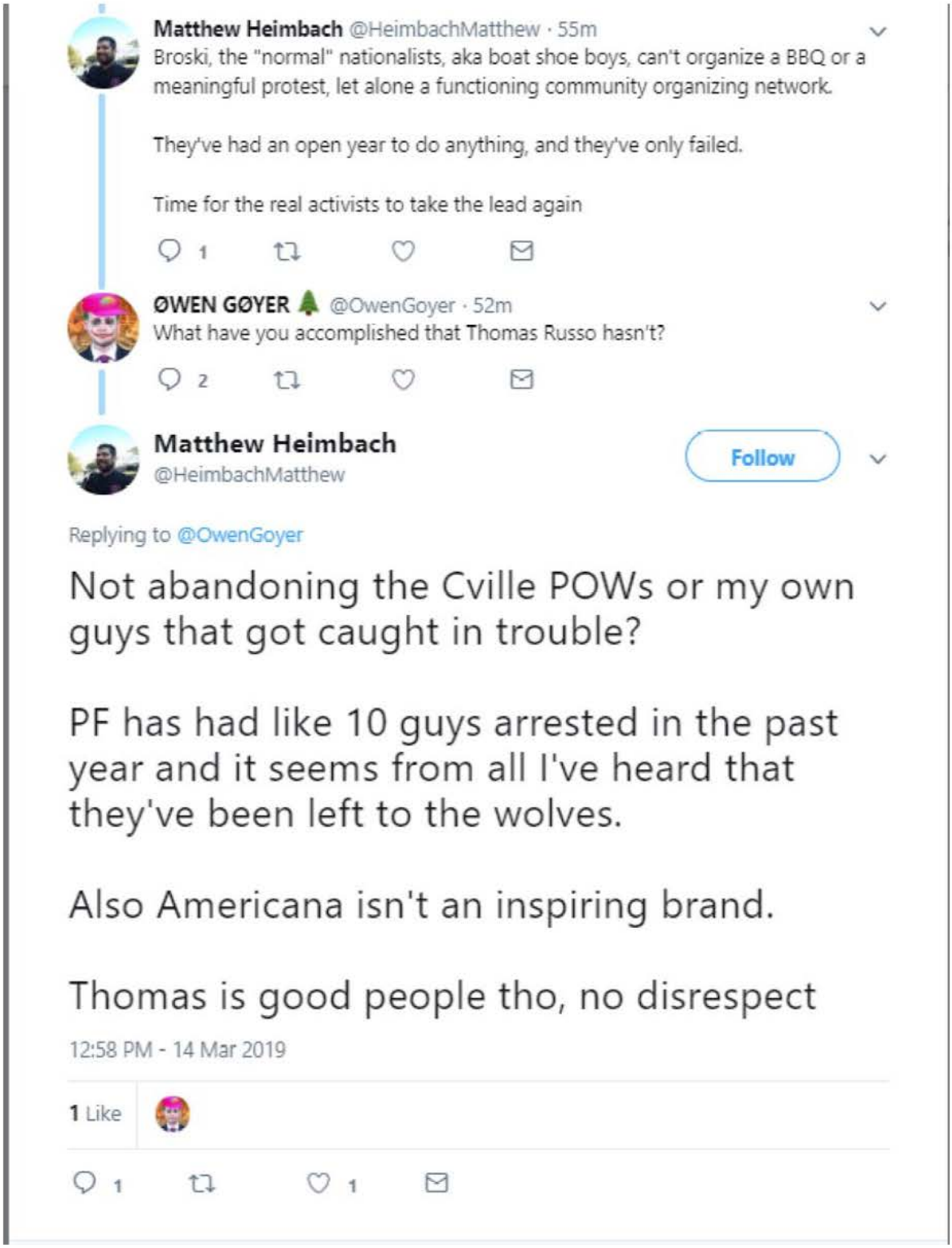

Matthew Heimbach
@HeimbachMatthew
Follow
As the NSM saga continues to grow, I can't help but think that Burt Colucci taking over the remains of the group is the historical equivalent of Admiral Karl Dönitz taking over the German government after the battle of Berlin, there just to sign the surrender papers.
7:14 AM - 7 Mar 2019


Matthew Heimbach
@HeimbachMatthew
Follow
Everyone Post Cville: Discord has publicly said that they are helping the SPLC and will leak all chats, let's stop using Discord
Identity Evropa: Discord may out all of our members and kneecap us in a year, but it's really convenient so let's keep using it.
Everyone Else: Wat?
WHY CAN'T I,
HOLD ALL THESE WAT'S
10:20 PM - 8 Mar 2019
4 Retweets 5 Likes
3
4
5


Matthew Heimbach
@HeimbachMatthew
Follow
What a week.
IE has largest data breach in American nationalist history, has "secret" conference revealed
IE disbands/rips off Patriot Front
They steal the acronym of the indigenous AIM, shitty to do
Stop trying to make boat shoes nationalism happen, it's not going to happen
5:01 PM - 10 Mar 2019
1 Retweet 6 Likes
1
1
6


Matthew Heimbach
@HeimbachMatthew
Follow
So I never sent a Tweet to or at the "American Identity Movement" but they pre-blocked me.
Afraid of getting roasted about their lack of a plan, capitalism, and loser talking points I guess.
Boat shoes nationalism is lame, reactionary, and filled with insufferable shitheads
AMERICAN IDENTITY MOVEMENT
@AIM_America
You are blocked from following @AIM_America and viewing @AIM_America's Tweets. Learn more
4:07 PM - 12 Mar 2019
1 Like
2
1


Constantinus330 @Constantinus331 · 17h
Awesome. Hope to see you back in the public space soon enough.
1
1
Matthew Heimbach
@HeimbachMatthew
Follow
Replying to @Constantinus331
Sooner rather than later comrade, it's time for us all to get back to work
10:39 AM - 13 Mar 2019


Matthew Heimbach @HeimbachMatthew · 55m
Broski, the "normal" nationalists, aka boat shoe boys, can't organize a BBQ or a meaningful protest, let alone a functioning community organizing network.
They've had an open year to do anything, and they've only failed.
Time for the real activists to take the lead again
1
ØWEN GØYER @OwenGoyer · 52m
What have you accomplished that Thomas Russo hasn't?
2
Matthew Heimbach
@HeimbachMatthew
Follow
Replying to @OwenGoyer
Not abandoning the Cville POWs or my own guys that got caught in trouble?
PF has had like 10 guys arrested in the past year and it seems from all I've heard that they've been left to the wolves.
Also Americana isn't an inspiring brand.
Thomas is good people tho, no disrespect
12:58 PM - 14 Mar 2019
1 Like
1
1


Matthew Heimbach
@HeimbachMatthew
Follow
Shooting folks in their place of worship is a shitty thing to do
The people responsible for the situation in the West are not Muslims but the political and capitalist elites who bomb Muslim nations then bring refugees as cheap labor
The real enemy wears a suit and looks like us
9:31 AM - 15 Mar 2019
17 Retweets 49 Likes
12
17
49

EXHIBIT 26

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF VIRGINIA

CHARLOTTESVILLE DIVISION

ELIZABETH SINES, et al.,	)	
	)	
Plaintiffs,	)	Civil Case No. 3:17-CV-00072
	)	
vs.	)	
	)	
JASON KESSLER, et al.,	)	
	)	
Defendants.	)	

TRANSCRIPT OF TELEPHONIC HEARING
HONORABLE MAGISTRATE JUDGE JOEL C. HOPPE PRESIDING
MONDAY, MARCH 18, 2019, 4:08 P.M.

Court Reporter: Judy K. Webb, RPR
210 Franklin Road, S.W., Room 540
Roanoke, Virginia 24011
(540)857-5100 Ext. 5333

Proceedings recorded FTR and transcribed using Computer-Aided Transcription

MR. KOLENICH: Vanguard is a problem. Vanguard has not turned over the devices they were supposed to turn over and is not listening to counsel on the necessity of hurrying up and providing this stuff, so I really don't have anything to say in regard to them other than it might be useful for the Court to give them sort of a warning shot that, you know, you're not kidding, sanctions possible in this circumstance, and give them one last chance to comply.

The situation with Vanguard is they really don't exist anymore in any kind of a real sense. Obviously, they're in litigation and their officers are hanging on, trying to do their job in defending, but they don't want to be involved. And if their officers decide to just hang it up and leave the organization, I don't know who takes over at that point. There is a likely suspect.

But the current guy who I've been dealing with is kind of frustrated with it all and doesn't want to deal with it. So I think if the Court could send, you know, some sort of -- some sort of warning before actually imposing sanctions or making us go through motion practice, with Vanguard that might be useful to at least bring this to a conclusion that either he is or is not going to cooperate.

THE COURT: All right. All right. Well, you know, I have -- I have issued an order directing that the devices and account information be provided, and if it's -- and if you all