

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

Holding a Criminal Term

Grand Jury Sworn in on March 16, 2023

UNITED STATES OF AMERICA	:	CRIMINAL NO. 21-CR-392 (RCL)
	:	
v.	:	GRAND JURY ORIGINAL
	:	
	:	VIOLATIONS:
ERIK SCOTT WARNER,	:	18 U.S.C. §§ 1512(k)
FELIPE ANTONIO “TONY”	:	(Conspiracy to Obstruct an Official
MARTINEZ,	:	Proceeding)
DEREK KINNISON, and	:	18 U.S.C. §§ 1512(c)(2), 2
RONALD MELE,	:	(Obstruction of an Official Proceeding and
	:	Aiding and Abetting)
Defendants.	:	
	:	18 U.S.C. § 1752(a)(1)
	:	(Entering or Remaining in a Restricted
	:	Building and Grounds)
	:	18 U.S.C. § 1752(a)(2)
	:	(Disorderly or Disruptive Conduct in a
	:	Restricted Building and Grounds)
	:	18 U.S.C. § 1512(c)(1)
	:	(Tampering with Documents or
	:	Proceedings)

RETYPE SECOND SUPERSEDING INDICTMENT

The Grand Jury charges that, at all times material to this Second Superseding Indictment,
on or about the dates stated below:

Introduction

The 2020 United States Presidential Election and the Official Proceeding on January 6, 2021

1. The 2020 United States Presidential Election occurred on November 3, 2020.
2. The United States Electoral College (“Electoral College”) is a group required by the Constitution to form every four years for the sole purpose of electing the president and vice president, with each state appointing its own electors in a number equal to the size of that state’s Congressional delegation.
3. On December 14, 2020, the presidential electors of the Electoral College met in the state capital of each state and in the District of Columbia and formalized the result of the 2020 U.S. Presidential Election: Joseph R. Biden Jr. and Kamala D. Harris were declared to have won sufficient votes to be elected the next president and vice president of the United States.
4. On January 6, 2021, a Joint Session of the United States House of Representatives and the United States Senate (“the Joint Session”) convened in the United States Capitol (“the Capitol”) building. The purpose of the Joint Session was to open, count, and resolve any objections to the Electoral College vote of the 2020 U.S. Presidential Election, and to certify the results of the Electoral College vote (“Certification of the Electoral College vote”) as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18.

The Attack at the U.S. Capitol on January 6, 2021

5. The Capitol is secured 24 hours a day by United States Capitol Police (“Capitol Police”). The Capitol Police maintain permanent and temporary barriers to restrict access to the Capitol exterior, and only authorized individuals with appropriate identification are allowed inside the Capitol building.
6. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public.

7. On January 6, 2021, at approximately 1:00 p.m., the Joint Session convened in the Capitol building for the Certification of the Electoral College vote. Vice President Michael R. Pence presided, first in the Joint Session and then in the Senate chamber.

8. A large crowd began to gather outside the Capitol perimeter as the Joint Session got underway. Crowd members eventually forced their way through, up, and over Capitol Police barricades onto the Capitol grounds and advanced to the building's exterior facade. Capitol Police officers attempted to maintain order and stop the crowd from entering the Capitol building, to which the doors and windows were locked or otherwise secured. Nonetheless, shortly after 2:00 p.m., crowd members forced entry into the Capitol building by breaking windows, ramming open doors, and assaulting Capitol Police officers. Other crowd members encouraged and otherwise assisted the forced entry. The crowd was not lawfully authorized to enter or remain inside the Capitol building or grounds, and no crowd member submitted to security screenings or weapons checks by Capitol Police or other security officials.

9. Shortly thereafter, at approximately 2:20 p.m., members of the House and Senate (including Vice President Pence) were evacuated from their respective chambers. The Joint Session was halted while Capitol Police and other law-enforcement officers worked to restore order and clear the Capitol building and grounds of the unlawful occupants.

10. Later that night, law enforcement regained control of the Capitol building and grounds. At approximately 8:00 p.m., the Joint Session reconvened, presided over by Vice President Pence, who had remained hidden within the Capitol building throughout these events.

11. In the course of these events, over 100 law enforcement officers were injured. The Capitol suffered over one million dollars in damage-including broken windows and doors, graffiti, and residue from pepper spray, tear gas, and fire extinguishers deployed both by crowd

members who stormed the Capitol and by Capitol Police officers trying to restore order. Additionally, many media members were assaulted and had cameras and other news-gathering equipment destroyed.

“Three Percenters”

12. A group of individuals, some of whom associate with militias, identify as “Three Percenters” (also called “111%” or “3%” or “Threepers”), based on their view that only three percent of American colonists took up arms against the British during the American Revolution. Some Three Percenters liken the present-day U.S. Government to British authorities that infringed on civil liberties in the period leading up to and during the American Revolution. Many independent or multi-state militia groups incorporate “III%” in their unit names.

Conspirators

13. ALAN HOSTETTER is a 56-year-old resident of San Clemente, California.

14. Russell Taylor is a 40-year-old resident of Ladera Ranch, California.

15. ERIK SCOTT WARNER is a 45-year-old resident of Menifee, California.

16. FELIPE ANTONIO “TONY” MARTINEZ is a 47-year-old resident of Lake Elsinore, California.

17. DEREK KINNISON is a 39-year-old resident of Lake Elsinore, California.

18. RONALD MELE is a 51-year-old resident of Temecula, California.

19. As described herein, HOSTETTER, Taylor, WARNER, MARTINEZ, KINNISON, and MELE conspired with each other, and with others known and unknown, to corruptly obstruct, influence, and impede the Congressional proceeding at the U.S. Capitol on January 6, 2021.

The American Phoenix Project

20. In Spring 2020, HOSTETTER founded the American Phoenix Project to oppose government-mandated restrictions arising from the COVID-19 pandemic. After the 2020 U.S. Presidential election, HOSTETTER, Taylor, and PERSON ONE used the American Phoenix Project to support former President Donald J. Trump and protest what they asserted was a stolen or fraudulent election result. Taylor and PERSON ONE became directors of the American Phoenix Project in the Fall of 2020.

21. From at least in or around November 2020, HOSTETTER used the American Phoenix Project as a platform to advocate violence against certain groups and individuals that supported the 2020 presidential election results. For example:

a. On November 27, 2020, HOSTETTER posted a video of himself on his American Phoenix Project YouTube channel that he had taken previously, while driving from California to Washington D.C. to attend the “Million MAGA March” in support of former President Trump, which took place on November 14, 2020 in Washington, D.C. In the video, HOSTETTER asserted his belief that votes for Trump were “switched” to Biden and otherwise “stolen” and that:

...some people at the highest levels need to be made an example of with an execution or two or three. Because when you commit treason against this country and you disenfranchise the voters of this country and you take away their ability to make decisions for themselves, you strip them of their Constitution rights. That's not hyperbole when we call it tyranny, that's fucking tyranny. And tyrants and traitors need to be executed as an example.... I'm going to D.C. I'm going to be there on Saturday for this march. I hope there are a million Patriots there. Between that, that's going to be a shot across the bow of the deep state when they see a million Patriots surrounding that shit hole of a city-- the swamp. Because it's gonna make all those swamp creatures know that at any time we want we'll come back with a million Patriots and we'll surround that city There's gonna be a million of us showing up to make this statement here in Washington, D.C.,

and I'm telling the swamp right now, that we will be back if this doesn't get resolved peacefully and soon....

b. On December 12, 2020, the American Phoenix Project hosted a "Stop the Steal" rally at Huntington Beach. At the rally, HOSTETTER gave a speech in which he stated:

[w]e're gonna fix this before this is all over. There must, absolutely must, be a reckoning. There must be justice. President Trump must be inaugurated on January 20th. And he must be allowed to finish this historic job of cleaning out the corruption in the cesspool known as Washington, D.C. The enemies and traitors of America both foreign and domestic must be held accountable. And they will. There must be long prison terms, while execution is the just punishment for the ringleaders of this coup.

Taylor also attended this event, and HOSTETTER later posted the video of his speech to his American Phoenix Project YouTube channel.

22. HOSTETTER, Taylor and others used Telegram, an encrypted messaging app that can send messages, photos, videos, and files, to share information regarding the election, to coordinate travel and to promote American Phoenix Project events. For example, HOSTETTER owned a private Telegram chat established on November 10, 2020 where participants discussed plans to travel to Washington D.C. both in November 2020, for the Million Maga March, and in January 2021, among other things. Taylor, KINNISON, and MARTINEZ, among others, participated in this Telegram chat, which ran from November 10 to December 30, 2020.

COUNT ONE

(Conspiracy to Obstruct Official Proceeding—18 U.S.C. § 1512(k))

23. The allegations in paragraphs 1 through 22 are realleged and incorporated as if fully set forth in this paragraph.

24. Between December 19, 2020 and January 6, 2021, within the District of Columbia and elsewhere, the defendants:

**ERIK SCOTT WARNER,
FELIPE ANTONIO “TONY” MARTINEZ,
DEREK KINNISON and
RONALD MELE**

together and with others, did conspire to corruptly obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, specifically, Congress’s certification of the Electoral College vote as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18.

Acts in Furtherance of the Conspiracy

***December 19, 2020: Intent, Organization, and Initial Planning
To Travel to Washington, D.C.***

25. On December 19, 2020, Taylor posted to HOSTETTER’s Telegram chat a link to a Tweet that President Trump posted on Twitter earlier that day, which stated, “Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6th. Be there, will be wild!” Alongside the link, Taylor posted the message, “Who is going?”

26. On December 19, 2020, HOSTETTER posted from his “americanphoenixproject” Instagram account explaining the reasons to travel to D.C. for January 6, 2021:

Late last night President Trump tweeted that all patriots should descend on Washington DC on Wednesday 1/6/2021. This is the date of the Joint Session of Congress in which they will either accept or reject the fake/phony/stolen electoral

college votes. I will be there, bullhorns on fire, to let the swamp dwellers know we will not let them steal our country from us. I hope you can join me!! #fightfortrump #stopthesteal #savetherepublic

27. On December 19, 2020, HOSTETTER and Taylor reserved rooms at the Kimpton George Hotel in Washington, D.C. (the “Kimpton”) for January 6, 2021 and several days before and after.

28. On December 20, 2020, Taylor renamed HOSTETTER’s November 10, 2020 Telegram chat as “The California Patriots-Answer the Call Jan 6” (the “Answer the Call” chat).

29. On December 24, 2020, MELE posted to Facebook a message stating that he and three friends were thinking of renting a car to drive cross-country, “arriving January 5 to support our President on the 6th and days to follow just in case.” The following day, MELE explained in another Facebook post, “going to rent a suburban. Team of four rotating eight hours each. Need room for the ‘gear.’”

30. On December 25, 2020, MELE made reservations for the nights of January 5 and 6, 2021 at a Courtyard Marriott hotel in downtown Washington, D.C.

31. On December 27, 2020, MELE posted to Facebook, “January 6, 2021-Congress counts the electoral votes Congress meets in joint session to count the electoral votes. The Vice President, as President of the Senate, presides over the count and announces the results of the Electoral College vote. We are going to be there to show support!”

32. On December 28, 2020, WARNER initiated a group text message thread through which WARNER, MELE, KINNISON, and MARTINEZ discussed logistics and expenses for a cross-country road trip from California to Washington, D.C. from January 2 through 9, 2021. That same day, MELE used the text thread to send WARNER, KINNISON, and MARTINEZ a screenshot of an Enterprise car rental reservation confirmation for a premium SUV.

33. On December 29, 2020, MELE posted to Facebook, “Soldiers hitting the highway soon to be in DC on the 6th. Ready up!”

34. On the same date, in response to a question about when to be at the Capitol on the morning of January 6, 2021, Taylor posted to the Answer the Call Telegram chat, “I personally want to be on the front steps and be one of the first ones to breach the doors!”.

35. On December 29, 2021, HOSTETTER and Taylor texted each other regarding travel to Washington, D.C.

- a. HOSTETTER texted, “I’ll be heading to DC on 12/31. Let’s hook up on 12/30 so you can give me your backpack,” followed by three hatchet emojis.
- b. Taylor responded, “Oh shiz. I need to pack that up. Alan are you bringing firearms?”
- c. HOSTETTER texted back, “NO NEVER (Instagram now monitors all text messages ... this has been a public service announcement),” followed by three emojis of faces laughing with tears coming out of their eyes.

36. On December 30, 2020, KINNISON sent a text message to MELE, WARNER, and MARTINEZ in which he attached a flyer advertising the January 5, 2021 rally outside the Supreme Court, at which Taylor, HOSTETTER, and PERSON ONE were named speakers for the American Phoenix Project. After KINNISON sent this message, MELE wrote, “We need to make sure we roll into town earlier on the 5th now,” to which KINNISON responded, “We can leave Saturday.”

37. On December 30, 2020, Taylor posted to his “russ.taylor” Instagram account:

Spread the word to other CALIFORNIA Patriots to join us as we March into the Capitol Jan 6. The Plan right now is to meet up at two occasions and locations: 1. Jan 5th 2pm at the Supreme Court steps for a rally. (Myself, Alan, [and others] will be speaking) 2. Jan 6th early 7am meet in front of the Kimpton George Hotel ... we will leave at 7:30am sharp and March (15 mins) to the Capital to meet up with the stop the steal organization and surround the capital. There will be speakers there and we will be part of the large effort for the "Wild Rally" that Trump has asked us all to be part of.

January 1, 2021: Taylor Initiates the California Patriots-DC Brigade Telegram Group

38. On January 1, 2021, Taylor created a Telegram chat called “The California Patriots-DC Brigade” (the “DC Brigade”) and invited other individuals to join. Taylor, HOSTETTER, WARNER, KINNISON, MARTINEZ, and MELE all joined, along with more than 30 others.

39. In the “about” section that described the purpose of the DC Brigade group, Taylor wrote:

This group will serve as the Comms for able bodied individuals that are going to DC on Jan 6. Many of us have not met before and we are all ready and willing to fight. We will come together for this moment that we are called upon.

40. In a series of messages on January 1, 2021, Taylor further explained the purpose of the group. In one message, he explained: “This thread is exclusive to be utilized to organize a group of fighters to have each other’s backs and ensure that no one will trample on our rights. Also, if there is key intel that we need to be aware of for possible threats.” He added: “I am assuming that you have some type of weaponry that you are bringing with you and plates as well.” Taylor also asked members to identify if they had previous law enforcement experience, military experience, or “special skills relevant to our endeavors,” as well as the planned date and time of their arrival in D.C.

41. WARNER, MARTINEZ, MELE and KINNISON all joined the DC Brigade on January 1, 2021.

42. From January 1 through January 6, 2021, participants used the DC Brigade Telegram chat to identify themselves to each other, to communicate, and to coordinate with each other. Taylor, KINNISON, MELE, WARNER, and MARTINEZ all posted to the DC Brigade chat during this time period.

43. On January 1, 2021, in his introductory post to the DC Brigade, KINNISON

attached a picture of himself, MARTINEZ, and WARNER with the following message: “From left to right, I’m Derek aka midnightrider the short guy, Tony aka blue collar patriot, Erik aka silvir surfer...We are 3 percent so cal. Also coming with us is redline Ron [MELE].” In the photo, all three are flashing a hand signal that designates affiliation with a Three Percenter group.

44. In a second post on January 1, 2021, KINNISON explained that he, MELE, and WARNER “are part of so cal 3%, we work well and train with each other,” and that the group was “[l]eaving tomorrow and driving instead of flying because our luggage would be too heavy. We will have lots of gear from medical kits, radios, multiple cans of bear spray, knives, flags, plates[,] goggles, helmets I think we should clear all text in this chat the morning of the 5th just in case for opsec purposes.”

45. Also on January 1, 2021, Taylor asked KINNISON to “take point lead on Comms” for the DC Brigade group. Three minutes later, KINNISON responded “No problem.”

46. On January 2, 2021, in a DC Brigade Telegram chat regarding what weapons could be carried in D.C., Taylor suggested a “[h]atchet,” “[b]at,” or “[l]arge metal flashlight” and then stated: “I believe that you can carry most fixed blades just not into the government buildings. Something tells me though if we are inside government buildings it won't be on the top of our list.”

Final Planning and Travel to Washington, D.C.

47. HOSTETTER drove his personal vehicle from California to Washington, D.C. On January 3, 2021, HOSTETTER sent a text message stating: “Finally arrived at the hotel. Just unloaded my gear, Russ [Taylor], [PERSON ONE] and my wife's gear.”

48. Also on January 3, 2021, in a post from his americanphoenixproject Instagram account, HOSTETTER stated: “Only 3% of Americans actually fought in our War of Independence. There will likely be 3% of us again that will commit fully to this battle but, just as in 1776 patriots will prevail. Things are going to come to a head in the U.S. in the next several

days. Stay tuned!”

49. HOSTETTER checked in to the Kimpton a day early, on January 3, 2021, and checked out on January 8, 2021.

50. Prior to leaving California for Washington, D.C., KINNISON, MELE, MARTINEZ, and WARNER continued to exchange messages on a group text thread to coordinate and plan their trip. On January 1, 2021, KINNISON sent a text message to MELE, WARNER, and MARTINEZ in which he wrote, “Bring your radios guys.” Later that same day, WARNER asked, “Do one of you guys have a clear earpiece for the radio I can use?” In response, KINNISON wrote, “I have an earpiece for you.”

51. On January 2, 2021, KINNISON wrote a text message to MELE, WARNER, and MARTINEZ asking if they were sure they wanted to bring a “shotty” and “another long iron” in the SUV that MELE had rented. MELE responded to the group, “Shorter the better. Mine will be able to be stashed under the seat. I'll bring it. 18"barrel.”

52. On January 2, 2021, KINNISON sent a text message to MELE, WARNER, and MARTINEZ, “Got the bandolier.” KINNISON attached a “selfie” photograph that showed KINNISON wearing a bandolier of shotgun ammunition around his body.

53. On January 2, 2021, KINNISON, MELE, WARNER, and MARTINEZ met at MELE’s house in Temecula, California. Before leaving in the SUV, the four men posed for a photograph in which they all made a hand gesture signaling affiliation with a Three Percenter group. They then drove the SUV cross-country, arriving in Washington, D.C. on January 4, 2021. Upon their arrival, MARTINEZ notified the DC Brigade by posting this information to the Telegram group.

54. On January 3, 2021, when another member of the DC Brigade chat asked the group

about what tone to set their radios to, Taylor responded: “@midnightriderZ8 [KINNISON] will be point on Comms.” On the same date, KINNISON, who was traveling to D.C. at the time, responded with the message: “No tones just 142.422 simplex.”

55. Taylor flew from California to Washington D.C. on January 4, 2021 and returned on January 7, 2021, and he stayed at the Kimpton throughout that period.

Washington, D.C.: January 5, 2021

56. On January 5, 2021, Taylor spoke at a Virginia Women for Trump rally in front of the United States Supreme Court as part of a panel of American Phoenix Project speakers. In his speech, he stated:

I am Russell Taylor and I am a free American. And I stand here in the streets with you in defiance of a communist coup that is set to take over America. But we are awake and we are never going back to sleep. We are free Americans and in these streets, we will fight and we will bleed before we allow our freedom to be taken from us. We declare that we will never bend a knee to the Marxists within Antifa, to the tyrannical Democrat governors who are puppets, and to the deep state commie actors who threaten to destroy America. But now these anti-Americans have made the fatal mistake, and they have brought out the Patriot's fury onto these streets and they did so without knowing that we will not return to our peaceful way of life until this election is made right, our freedoms are restored, and America is preserved.

57. At 11:28 pm on January 5, 2021, Taylor posted a photo to a chat on another encrypted messaging service showing gear arranged on a bed, including a khaki backpack, black plate-carrier vest, two hatchets, a walkie talkie-type radio, a stun baton, helmet, scarf and a knife. In the caption he wrote, "Now getting ready for tomorrow."

58. On January 5, 2021, members of the DC Brigade posted messages on the chat group to coordinate with each other in Washington, D.C. In one message, a user asked the group, “Any updates on radio?” to which KINNISON responded, “We’re using 142.422.” MARTINEZ

then announced his physical location at “Freedom Plaza,” and confirmed, “We’re on coms.”

January 6, 2021: Participation in the Riot at the U.S. Capitol

59. In the early morning hours, Taylor, HOSTETTER, PERSON ONE, and others known and unknown met in a group in downtown Washington, D.C. to walk to the Ellipse for a rally featuring a speech by President Trump. HOSTETTER carried a backpack containing a hatchet. Taylor wore the black plate-carrier vest and carried a knife in a vest pocket. He also carried a backpack containing a stun baton and a hatchet. HOSTETTER and Taylor remained outside the secure area of the Ellipse where President Trump was speaking because they were carrying “personal protective gear” that was not allowed inside under Secret Service regulations.

60. Prior to the rally on the Ellipse, HOSTETTER made plans to “move back to the Capitol” after the events at the Ellipse concluded.

61. Taylor, HOSTETTER, and PERSON ONE congregated with others known and unknown in the crowd on the Mall for the rally.

62. MELE, MARTINEZ, KINNISON, and WARNER also congregated on the National Mall and posed for a photo there. In the photo, MARTINEZ, KINNISON, and WARNER made a hand signal showing affiliation with a Three Percenter group. MELE and MARTINEZ wore camouflage-print plate-carrier vests.

63. Taylor, HOSTETTER and others known and unknown walked down Pennsylvania Avenue to the Capitol. Taylor made a “selfie” video as he walked, in which he stated, “We are on the move. Heading up to the Capitol.” In response to a police siren and the sight of officers standing nearby, Taylor stated, “We’ll see who these guys end up working for.” Taylor then reiterated, “On the march to the Capitol.”

64. At 2:13 pm, WARNER entered the Capitol Building through a broken window.

65. At approximately 2:30 pm, Taylor and HOSTETTER joined rioters on the lower West Terrace of the Capitol who were pushing through a line of law enforcement officers trying to hold them back. Taylor, still carrying a knife in the front chest pocket of his plate carrier vest, urged on rioters attempting to push through another line of officers on a lower level of the West Terrace, saying, "Move forward Americans!" Taylor then turned back to the officers a few feet away from him, who were trying to keep the rioters from moving toward the Upper West Terrace and Capitol Building, saying, "Last chance boys. Move back!" Taylor, followed closely by HOSTETTER, then pushed through the area that the law enforcement officers had been blocking, moved up the stairs onto a structure erected for the Inauguration, and continued moving on to the Upper West Terrace.

66. On the Upper West Terrace, HOSTETTER stated, "The people have taken back their house. Hundreds of thousands of patriots showed up today to take back their government!" Taylor yelled to other rioters, "Inside!", and Taylor and HOSTETTER then moved toward the Capitol Building.

67. At 2:38 pm, MARTINEZ, wearing a plate-carrier vest, and KINNISON, wearing a gas mask, joined rioters in the restricted area on the Upper West Terrace of the Capitol Building.

68. MELE shot a "selfie" video of the riot on his cell phone from the steps next to the Upper West Terrace and stated, "We stormed the Capitol."

69. Taylor met MARTINEZ and KINNISON on the Upper West Terrace of the Capitol.

70. At 6:18 pm, Taylor posted to a Telegram chat, "I was pushing through traitors all day today. WE STORMED THE CAPITOL! Freedom was fully demonstrated today!"

71. HOSTETTER posted a photo to his americanphoenixproject Instagram account of himself and Taylor taken from the Upper West Terrace of the Capitol in which a crowd of rioters

can be seen in the background, with the message: “This was the “shot heard round the world!”... the 2021 version of 1776. That war lasted 8 years. We are just getting started.”

72. Between 7:52 and 9:11 pm, Taylor sent text messages to several individuals saying that he “stormed the capital,” but because he “had weapons,” he did not go inside. When asked by one of the individuals with whom he was texting what happens next, Taylor responded, “Insurrection!”

(In violation of Title 18, United States Code, Section 1512(k))

COUNT TWO
**(18 U.S.C. §§ 1512(c)(2) and 2-Obstruction of an Official Proceeding
and Aiding and Abetting)**

73. Paragraphs 1 through 22 and paragraphs 25 through 72 of this Indictment are re-alleged and incorporated as though set forth herein.

74. On January 6, 2021, in the District of Columbia, the defendants,

**ERIK SCOTT WARNER,
FELIPE ANTONIO "TONY" MARTINEZ,
DEREK KINNISON and
RONALD MELE**

attempted to, and did, corruptly obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, specifically, Congress's certification of the Electoral College vote as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18, and did aid and abet each other and others known and unknown to do the same.

(In violation of Title 18, United States Code, Sections 1512(c)(2) and 2.)

COUNT THREE

(18 U.S.C. § 1752(a)(1)- Entering and Remaining in a Restricted Building or Grounds)

75. Paragraphs 1 through 22 and paragraphs 25 through 72 of this Indictment are re-alleged and incorporated as though set forth herein.

76. On January 6, 2021, in the District of Columbia, the defendants,

**ERIK SCOTT WARNER,
FELIPE ANTONIO “TONY” MARTINEZ,
DEREK KINNISON and
RONALD MELE**

did knowingly enter and remain in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the Capitol and its grounds, where the Vice President was temporarily visiting, without lawful authority to do so.

(In violation of Title 18, United States Code, Section 1752(a)(1))

COUNT FOUR

(18 U.S.C. § 1752(a)(2) - Disorderly and Disruptive Conduct in a Restricted Building or Grounds)

77. Paragraphs 1 through 22 and paragraphs 25 through 72 of this Indictment are re-alleged and incorporated as though set forth herein.

78. On January 6, 2021, in the District of Columbia, the defendants,

**ERIK SCOTT WARNER,
FELIPE ANTONIO “TONY” MARTINEZ,
DEREK KINNISON and
RONALD MELE,**

did knowingly, and with intent to impede and disrupt the orderly conduct of Government business and official functions, engage in disorderly and disruptive conduct in and within such proximity to, a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the Capitol and its grounds, where the Vice President was temporarily visiting, when and so that such conduct did in fact impede and disrupt the orderly conduct of Government business and official functions.

(In violation of Title 18, United States Code, Section 1752(a)(2))

COUNT FIVE

(18 .S.C. § 1512(c)(1)-Tampering with Documents or Proceedings)

79. Paragraphs 1 through 22 and paragraphs 25 through 72 of this Indictment are re-alleged and incorporated as though set forth herein.

80. On January 6, 2021, the Washington, D.C. Field Office of the Federal Bureau of Investigation (“FBI”) opened an investigation into the attack on the Capitol, and a grand jury of the United States District Court for the District of Columbia subsequently opened an investigation.

81. Between January 6, 2021, and February 19, 2021, in the District of Columbia and elsewhere, the defendant

DEREK KINNISON

did corruptly alter, destroy, mutilate, and conceal a record, document, and other object, and attempted to do so, with the intent to impair its integrity and availability for use in an official proceeding, that is, KINNISON erased and obscured the DC Brigade Telegram chat from his cell phone to hide it from the grand jury investigation into the attack on the Capitol on January 6, 2021.

(In violation of Title 18, United States Code, Section 1512(c)(1))

COUNT SIX

(18 .S.C. § 1512(c)(1)-Tampering with Documents or Proceedings)

82. Paragraphs 1 through 22 and paragraphs 25 through 72 of this Indictment are re-alleged and incorporated as though set forth herein.

83. Between January 6, 2021, and February 19, 2021, in the District of Columbia and elsewhere, the defendant

ERIK WARNER

did corruptly alter, destroy, mutilate, and conceal a record, document, and other object, and attempted to do so, with the intent to impair its integrity and availability for use in an official proceeding, that is, WARNER erased and obscured the DC Brigade Telegram chat from his cell phone to hide it from the grand jury investigation into the attack on the Capitol on January 6, 2021.

(In violation of Title 18, United States Code, Section 1512(c)(1))

A TRUE BILL

FOREPERSON

Attorney of the United States in
and for the District of Columbia