

I. STIPULATION

The Government and defendant have agreed to the following stipulations. Prior to trial, the Government will prepare and introduce each stipulation as a trial exhibit.

a. The United States Capitol Building & Grounds

By law, the U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured twenty-four hours a day by U.S. Capitol Police (USCP). Restrictions around the Capitol include permanent and temporary security barriers and posts manned by USCP. Only authorized people with appropriate identification are allowed access inside the Capitol. At the U.S. Capitol, the building itself has 540 rooms covering 175,170 square feet of ground, roughly four acres. The building is 751 feet long (roughly 228 meters) from north to south and 350 feet wide (106 meters) at its widest point. The U.S. Capitol Visitor Center is 580,000 square feet and is located underground on the east side of the Capitol. On the west side of the Capitol building is the West Front, which includes variety of open concrete spaces, a fountain surrounded by a walkway, two broad staircases, and multiple terraces at each floor. On January 6, 2021, the inaugural stage scaffolding was on the West Front of the Capitol building. On the East Front are three staircases, porticos on both the House and Senate side, and two large skylights into the Visitor's Center surrounded by a concrete parkway.

On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public. These security barriers included bike racks that were positioned to the north of the U.S. Capitol along Constitution Avenue; to the south of the U.S. Capitol along Independence Avenue; to the west of the U.S. Capitol along First Street on the eastern side of that street; and, on the east side of the U.S. Capitol, between the Capitol Plaza (East Front) and the grassy areas located between the Plaza and First Street. Within the West Front of the Restricted Area there were additional temporary barriers due to preparations and ongoing construction for the Inauguration which was

scheduled for January 20, 2021, including green snow fencing and signs stating, “Area Closed By order of the United States Capitol Police Board.”

On January 6, 2021, the Restricted Area described above and depicted in Exhibit 806 was a posted, cordoned off, or otherwise restricted area where the Vice President and members of his immediate family were and would be temporarily visiting, and therefore constituted a “restricted building or grounds” as that term is used in Title 18, United States Code, Section 1752(c).

b. Donald J. Trump’s Speech at the “Stop the Steal” Rally

On January 6, 2021, then-President Donald J. Trump held the “Stop the Steal” rally on the “Ellipse,” a 52-acre park, located south of the White House and north of the National Mall, bordered by 15th Street NW to the east, 17th Street, NW to the west, E Street NW to the north, and Constitution Avenue NW to the south. Several individuals made speeches at the rally, commencing at approximately 8:30 a.m. Trump himself began speaking at approximately 11:57 a.m. and spoke for approximately one hour and eleven minutes.

c. The Certification of the Electoral College Vote

On January 6, 2021, a joint session of the United States Congress convened at the U.S. Capitol. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in both the House and Senate chambers of the Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on Tuesday, November 3, 2020.

On January 6, 2021, the House of Representatives began its session at approximately 12:00 p.m., the Senate began its session at approximately 12:30 p.m., and the two Houses met together at approximately 1:00 p.m. in the House of Representatives chamber to begin the joint session. Vice President Mike Pence was in the Capitol building and presiding over the joint session. At

approximately 1:15 p.m., the House and Senate adjourned to their separate chambers for up to two hours to resolve a particular objection.

At approximately 2:12 p.m., Vice President Pence evacuated the Senate chamber, and approximately one minute later the senator who had become the presiding officer in Vice President Pence's absence declared that the Senate would stand in recess. Senators evacuated the Senate chamber.

At approximately 2:15 p.m., Speaker Nancy Pelosi, who was presiding over the House of Representatives, evacuated the House chamber, and approximately fifteen minutes later the representative who had become the presiding officer in her absence declared that the House would stand in recess. Representatives evacuated the House chamber. Other Representatives were evacuated later from the House Gallery.

The joint session was suspended.

The Senate and House resumed meeting at approximately 8:06 p.m. and 9:02 p.m., respectively. Congress's joint session continued until approximately 3:44 a.m. on January 7, 2021, when it completed the certification of the Electoral College vote.

a. United States Capitol Police Closed Circuit Video Monitoring

The United States Capitol Police (USCP) operate and maintain closed-circuit video monitoring and recording equipment that captures locations inside and outside of the U.S. Capitol building and on the Capitol grounds. The video equipment timestamps each recording with the date and time at which the footage is captured. The USCP-controlled video equipment was in good working order on January 6, 2021, and video footage recovered from the cameras and equipment for the day of January 6, 2021, is footage of January 6, 2021. The events depicted in the video footage are a fair and accurate depiction of the events at the U.S. Capitol on January 6, 2021. Where the timestamps are visible on the recordings, they are accurate. The video footage was not altered

or edited in any way except to create clips. The video footage is authentic in that it is what it purports to be.

b. Metropolitan Police Department Body-Worn Cameras

Members of the Metropolitan Police Department utilize equipment known as body-worn cameras (“BWC”). BWC record both audio and video. The BWC equipment timestamps each recording with the date and time at which the footage is captured. The BWC equipment was in good working order on January 6, 2021, and video footage recovered from the cameras and equipment with the timestamp of January 6, 2021 is footage from January 6, 2021. The events depicted in the video footage are a fair and accurate depiction of the events at the U.S. Capitol on January 6, 2021, the timestamps on the recordings are accurate, and the video footage was not altered or edited in any way other except to create clips. The video footage is authentic in that it is what it purports to be.

f. House and Senate Recording Studio Closed Circuit Video Monitoring

The House Recording Studio and the Senate Recording Studio operate and maintain closed-circuit video monitoring and recording equipment that captures locations inside the House Chamber and the Senate Chamber. The video equipment timestamps each recording with the date and time at which the footage is captured. The House Recording Studio and Senate Recording Studio controlled video equipment was in good working order on January 6, 2021, and video footage recovered from the cameras and equipment for the day of January 6, 2021, is footage of January 6, 2021. The events depicted in the video footage are a fair and accurate depiction of the events in the Senate Chamber and House Chamber on January 6, 2021.

g. Civil Disorder

Beginning at approximately 12:53 p.m. on January 6, 2021, and continuing until approximately 6:30 p.m. on January 6, 2021, the events on the Grounds of the U.S. Capitol and in

the U.S. Capitol building constituted a “civil disorder” as that term is used in Title 18, United States Code, Section 231(a)(3). This means that it was a public disturbance involving acts of violence by assemblages of three or more persons, which caused an immediate danger of or resulted in damage or injury to the property or person of any other individual.

h. Interstate Commerce

The civil disorder on the Grounds of the U.S. Capitol and in the U.S. Capitol building on January 6, 2021, as described above, obstructed, delayed, or adversely affected commerce or the movement of any article or commodity in commerce as those terms are used in Title 18, United States Code, Section 231(a)(3). The term “commerce” means commerce (A) between any State or the District of Columbia and any place outside thereof; (B) between points within any State or the District of Columbia, but through any place outside thereof; or (C) wholly within the District of Columbia. Under the Constitution, Congress has the exclusive power to enact laws for the District of Columbia.

i. Federally Protected Function

The civil disorder on the Grounds of the U.S. Capitol and in the U.S. Capitol building on January 6, 2021, as described above, adversely affected a “federally protected function” as that term is used in Title 18, United States Code, Section 231(a)(3). That means that the civil disorder adversely affected any function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof. The federally protected functions that were adversely affected included the following: the United States Capitol Police’s protection of the U.S. Capitol and the Capitol grounds, and the United States Secret Service’s protection of the Vice President of the United States and immediate family members of the Vice President.

II. STATEMENT OF FACTS

The parties agree that, had the Government proceeded to trial on Counts Two, Three, Six, and Seven of the Indictment, the Government would have established beyond a reasonable doubt that:

On January 6, 2021, Kyle Alan Mlynarek and his co-defendant, Ronald Michael Balhorn, attended the “Stop the Steal” rally outside the White House. When that rally concluded, they traveled along the National Mall to the Capitol grounds.

Around 2:00 P.M., a group of officers from the Metropolitan Police Department (“MPD”) tried to make their way through a crowd of rioters that had gathered on the Northwest side of the Capitol, near the scaffolding assembled for the presidential inauguration. Mlynarek was part of the crowd and yelled at officers.

At approximately 2:01 P.M., the group of MPD officers attempted to push forward through the crowd but were stopped. Most of the officers were contained within a group that was pushed and shoved by several protestors. In audio of several body-worn cameras (“BWCs”), an officer can be heard shouting “10-33” (which means that an officer is in need of assistance) and then saying, “We’re being trampled.”

Mlynarek entered the building through the Senate Wing door at approximately 2:22 P.M.

Once inside the Capitol, Mlynarek traveled to the building’s Crypt around 2:27 P.M. Around 2:29 P.M. the group he traveled with pushed their way through officers and into a hallway. Mlynarek then walked upstairs to Statuary Hall around 2:29 P.M.

Mlynarek walked into the Statuary Hall Connector at approximately 2:31 p.m., which connects Statuary Hall to the entrance of the House Chambers. Mlynarek was within the crowd for several minutes before the crowd pushed past a line of U.S. Capitol Police officers and into the next hallway near the entrance to the House Chambers. He was part of a group that tried to enter

the House Chamber doors. Mlynarek yelled "Let's go" several times toward the crowd and House Chamber doors. A few seconds later, the crowd started shouting "Break it down!"

Around 2:45 P.M., Mlynarek walked back through the Statuary Hall Connector and into Statuary Hall. A minute later, he entered the Capitol Rotunda. He exited the Rotunda at 2:47 P.M. through the south door towards the Senate Wing. After he left the Rotunda, Mlynarek exited the U.S. Capitol via the Senate Wing door at approximately 2:50 P.M.

At approximately 7:05 P.M. on January 6, Mlynarek texted Balhorn, "Told u we should have stayed!" Balhorn replied, "Nope we left in time. We got in. Let the idiots do the rest."

III. ELEMENTS OF EACH OFFENSE

The parties agree that, had the Government proceeded to trial, the Government would have established beyond a reasonable doubt the elements of Counts Two, Three, Six, and Seven of the Indictment.

First, with respect to Count Two (entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1)), the parties agree that:

- The defendant entered or remained in a restricted building or grounds without lawful authority to do so.
- The defendant did so knowingly.

Second, with respect to Count Three (disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2)), the parties agree that:

- The defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building or grounds.
- The defendant did so knowingly, and with the intent to impede or disrupt the orderly

conduct of Government business or official functions.

- The defendant's conduct occurred when, or so that, his conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

Third, with respect to Count Six (disorderly conduct in a capitol building, in violation of 40 U.S.C. § 5104(e)(2)(D)), the parties agree that:

- The defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings or Grounds.
- The defendant did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either house of Congress.
- The defendant acted willfully and knowingly.

Fourth, with respect to Count Seven (parading, demonstrating, or picketing in a capitol building, in violation of 40 U.S.C. § 5104(e)(2)(G)), the parties agree that:

- The defendant paraded, demonstrated, or picketed in any of the United States Capitol Buildings.
- The defendant acted willfully and knowingly.

IV. STATUTORY MAXIMUM SENTENCES

A violation of 18 U.S.C. § 1752(a)(1) carries a maximum sentence of one (1) year of imprisonment; a fine of \$100,000, pursuant to 18 U.S.C. § 3571(b)(5); a term of supervised release of not more than 1 year, pursuant to 18 U.S.C. § 3583(b)(3); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

A violation of 18 U.S.C. § 1752(a)(2) carries a maximum sentence of one (1) year of imprisonment; a fine of \$100,000, pursuant to 18 U.S.C. § 3571(b)(5); a term of supervised release of not more than 1 year, pursuant to 18 U.S.C. § 3583(b)(3); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

A violation of 40 U.S.C. § 5104(e)(2)(D) carries an additional maximum sentence of six (6) months of imprisonment, pursuant to 40 U.S.C. § 5109(b); a term of probation of not more than five (5) years, pursuant to 18 U.S.C. § 3561(c); a fine of not more than \$5,000, pursuant to 18 U.S.C. § 3571(b)(6); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

A violation of 40 U.S.C. § 5104(e)(2)(G) carries an additional maximum sentence of six (6) months of imprisonment, pursuant to 40 U.S.C. § 5109(b); a term of probation of not more than five (5) years, pursuant to 18 U.S.C. § 3561(c); a fine of not more than \$5,000, pursuant to 18 U.S.C. § 3571(b)(6); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

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FOR THE DEFENDANT



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Respectfully submitted,

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