

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	Case No. 23-cr-179-APM
	:	
v.	:	
	:	
JAMES BREHENY,	:	
	:	
Defendant.	:	
	:	

STATEMENT OF OFFENSE

Pursuant to Federal Rule of Criminal Procedure 11, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, JAMES BREHENY, with the concurrence of his attorneys, agree and stipulate to the below factual basis for the defendant’s guilty plea. If this case were to proceed to trial, the parties stipulate that the United States could prove the below facts beyond a reasonable doubt:

Introduction: The Transfer of Presidential Power in the United States

1. The United States Constitution and federal statutes codify the procedures and dates governing the transfer of presidential power in the United States. The Twelfth Amendment requires presidential electors to meet in their respective states and certify “distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each.” It further requires that the Vice President “shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.” Title 3, Section 15 of the United States Code provides that the United States Congress must convene during a joint session proceeding (“the Joint Session”) at 1:00 p.m. “on the sixth day of January succeeding every meeting of the electors,” with the Vice President presiding, to count the electoral votes, resolve any objections, certify their validity, and announce the result (“Certification of the

Electoral College vote”). The Twentieth Amendment provides that the terms of the President and Vice President shall accordingly end at noon on the 20th day of January, “and the terms of their successors shall then begin.”

2. The 2020 United States Presidential Election (“Presidential Election”) occurred on November 3, 2020. As of November 7, 2020, the incumbent President Donald J. Trump was projected to have lost the Presidential Election.

3. In response to the election, certain members of the Oath Keepers, a large but loosely organized collection of individuals, some of whom are associated with militias, mobilized to prevent the transfer of power. Some members of the Oath Keepers believe that the federal government has been coopted by a cabal of elites actively trying to strip American citizens of their rights. Though the Oath Keepers will accept anyone as members, they explicitly focus on recruiting current and former military, law enforcement, and first-responder personnel. The organization’s name alludes to the oath sworn by members of the military and police to defend the Constitution “from all enemies, foreign and domestic.” BREHENY was the Bergen County Coordinator for the Oath Keepers in New Jersey. The Oath Keepers are led by Stewart Rhodes.

4. On December 14, 2020, in response to the November 2020 Presidential election, Rhodes published on the Oath Keepers’ website a letter titled, “Open letter to President Trump: You Must Use Insurrection Act to ‘Stop the Steal’ and Defeat the Coup.” Citing “well-orchestrated mass vote fraud” resulting in the “install[ation]” by “Communist Chinese and their domestic enemy allies” of “illegitimate puppet, Joe Biden,” Rhodes implored President Trump to:

[A]ct NOW as a wartime President, pursuant to your oath to defend the Constitution, which is very similar to the oath all of us veterans swore. We are already in a fight. It’s better to wage it with you as Commander-in-Chief than to have you comply with a fraudulent election, leave office, and leave the White House in the hands of illegitimate usurpers and Chinese puppets. Please don’t do it. Do NOT concede, and do NOT wait until January 20, 2021. Strike now.

5. Rhodes further warned: “If you fail to act while you are still in office, we the people will have to fight a bloody civil war and revolution against these two illegitimate Communist Chinese puppets, and their illegitimate regime.” Rhodes ultimately requested in this letter that President Trump “[i]ssue a Presidential Proclamation, directly invoking the Insurrection Act, declaring an insurrection, rebellion, and coup to be in effect by domestic enemies of the U.S. Constitution and traitors who are in collusion with and/or acting as agents of a foreign enemy (specifically Communist China, but also other known or unknown foreign enemies) and to call up the militia (including the National Guard, us veterans, and patriotic Americans of military age) and US military to suppress the insurrection.”

6. On December 21, 2020, BREHENY invited Rhodes to a leadership meeting of “multiple patriot groups” from the Mid-Atlantic states that was to take place in Quarryville, Pennsylvania on January 3, 2021. BREHENY forwarded Stewart Rhodes a message describing the purpose of the meeting, which was to prepare for a January 6 rally in Washington, DC. The message stated, “This will be the day we get our comms on point with multiple other patriot groups, share rally points etc. This one is important and I believe this is our last chance to organize before the show. This meeting will be for leaders only.” In inviting Rhodes to this meeting, BREHENY cautioned, “No cell phones. Need to be Faraday bag prior to site.”

BREHENY Obstructs the Congressional Proceedings on January 6

7. On the morning of January 6, BREHENY used the Washington, DC metro system to enter Washington, D.C. That same morning, Rhodes added BREHENY to a chat titled “DC OP: Jan 6 21” (“Leadership Signal Chat”) on Signal, a secure messaging application. The chat included several Oath Keepers leaders from various states.

8. At approximately 6:27 a.m., Rhodes stated on the chat that “[w]e will have several well equipped QRFs outside DC. And there are many, many others, from other groups, who will be watching and waiting on the outside in case of worst case scenarios.”

9. At approximately 10:00 a.m., BREHENY traveled to the Ellipse area with another member of the Oath Keepers where he listened to several speeches at a rally.

10. Later in the afternoon, BREHENY and others marched to the United States Capitol. The Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by United States Capitol Police. Restrictions around the Capitol include permanent and temporary security barriers and posts manned by Capitol Police. Only authorized people with appropriate identification are allowed access inside the Capitol.

11. On January 6, 2021, the exterior plaza of the Capitol was closed to members of the public as the Joint Session convened inside the building. During the Joint Session, elected members of the United States House of Representatives and the United States Senate met to certify the vote count of the Electoral College of the 2020 Presidential Election. The Joint Session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. United States Vice President Michael R. Pence was present and presiding, first in the Joint Session, and then in the Senate chamber.

12. As the proceedings continued in both the House and Senate chambers, and with Vice President Pence present and presiding over the Senate, a large crowd gathered outside the Capitol. As noted above, temporary and permanent barricades were erected around the exterior of the Capitol. Capitol Police were present and attempting to keep the crowd away from the Capitol and the proceedings underway inside.

13. Just before 1:30 p.m., in response to a claim by an Oath Keeper affiliate on the Leadership Intel Chat that Antifa had breached the Capitol, Rhodes replied: “Nope. I’m right here. These are Patriots.” Rhodes then posted to the Leadership Signal Chat: “Pence is doing nothing. As I predicted.” Rhodes added, “All I see Trump doing is complaining. I see no intent by him to do anything. So the patriots are taking it into their own hands. They’ve had enough.”

14. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and pushed past the officers of the Capitol Police who were attempting to keep them back. The crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to required security screenings or weapons checks by Capitol Police Officers or other authorized security officials.

15. At such time, the Joint Session was still underway, and the exterior doors and windows of the Capitol were locked or otherwise secured. Members of the Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the Capitol, including by breaking windows and by assaulting members of law enforcement, as others in the crowd encouraged and assisted those acts.

16. Around that time, at approximately 2:20 p.m., members of the House of Representatives and Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all congressional proceedings, including the Joint Session, were suspended.

17. At 2:38 p.m., a co-conspirator in the “Leadership Signal Chat,” Edward Vallejo, messaged, “QRF standing by at hotel. Just say the word...”

18. At approximately 2:39 p.m., the Rotunda doors were forced open, and a mob of people forcibly entered the Capitol through the doors after a sustained assault on law enforcement officers guarding the doors. The entering mob included fourteen Oath Keepers—many of whom were wearing paramilitary clothing and patches with the Oath Keepers name, logo, and insignia—who had moved up and through the crowd on the east side of the Capitol in a military-style “stack” formation (“Stack One”). Less than a minute after Stack One breached the doors, BREHENY followed them into the building. BREHENY took these actions in part to join the efforts to obstruct Congress from certifying the electoral college vote.

19. After exiting the Capitol, BREHENY gathered with other Oath Keepers approximately 100 feet from the northeast corner of the Capitol.

20. At 3:22 pm, in response to someone in the “Leadership Signal Chat” claiming that “Antifa” was storming the Capitol, Rhodes stated, “Nope, I’m right here. These are Patriots.”

21. Because of the dangerous circumstances caused by the unlawful entry into the Capitol by BREHENY and others, including the danger posed by individuals who had entered the Capitol without any security screening or weapons checks, Congressional proceedings could not resume until after law enforcement had removed every unauthorized occupant from the Capitol and confirmed the building was secured. Accordingly, the proceedings did not resume until approximately 8:00 p.m. on January 6, 2021, after the building had been secured. Vice President Pence remained in the Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

Following the Riot, BREHENY Sent Messages Admitting that He Breached the Capitol and then Deleted Evidence of his Involvement

22. After the riot, BREHENY sent multiple messages to contacts where he bragged about gaining entry to the Capitol, as well as his interest in subsequently avoiding detection by law enforcement. These messages included:

- a. "I breached the Capital door!"
- b. "We breached the door Baby."
- c. "Made it in Brother."
- d. "Made it in."
- e. "Yup. Made it in [laughing emoji]."
- f. [In response to a statement from a contact about how BREHENY will be sought-after]: "Yes I heard."
- g. "I got in."
- h. "Made it in!" "Capital."

23. In one of the text message conversations in response to BREHENY'S pictures of the Capitol, the associate advised BREHENY, "Don't post it on FB," to which BREHENY responded, "Nope." "FB" is common shorthand for "Facebook." BREHENY also texted, "I have to clear chats."

24. In another text message conversation, an associate advised BREHENY of the following: "They're going through social media looking at pictures to try to identify and prosecute anyone in the Capitol building".

25. On January 8, 2021, an associate sent a message via Signal and advised BREHENY to "Delete all pictures, messages and get a new phone. Praying for you brother."

26. BREHENY subsequently deleted photos of his presence in the Capitol on his phone and deleted his Facebook account, which contained information detailing his presence in the riot.


Limited Nature of Factual Basis

27. This proffer of evidence is not intended to constitute a complete statement of all facts known by BREHENY or the government. Rather, it is a limited statement of facts intended to provide the minimal necessary factual predicate for BREHENY's guilty plea.

Respectfully submitted,

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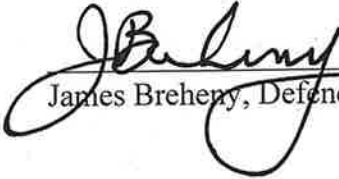
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June 6, 2023

DEFENDANT'S ACCEPTANCE

I have read every word of this Statement of Offense. Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, after consulting with my attorney, Christian Dysart, Esq., I agree and stipulate to this Statement of Offense. The Statement of Offense is a summary made for the purpose of providing the Court with a factual basis for my guilty plea. It does not include all of the facts known to me regarding these offenses. I make this statement knowingly and voluntarily and because I am in fact guilty of the crime to which I am pleading guilty.


Dated: 06/06/23


James Breheny, Defendant

ATTORNEY'S ACKNOWLEDGEMENT

I have read this Factual Basis and have reviewed it with my client fully. I concur in my client's desire to adopt and stipulate to this Factual Basis.

Dated: 06/06/23


Harley Breite, Esq.
Attorney for James Breheny