

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

ANDREW ALAN HERNANDEZ,

Defendant.

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Case No.: 21-CR-00445 (CKK)

18 U.S.C. §§ 1512(c)(2), 2

STATEMENT OF OFFENSE

Pursuant to Fed. R. Crim. P. 11, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and defendant, ANDREW ALAN HERNANDEZ (“defendant” or “Hernandez”), with the concurrence of his attorney, agree and stipulate to the below factual basis for defendant’s guilty plea—that is, if this case were to proceed to trial, the parties stipulate that the United States could prove the below facts beyond a reasonable doubt:

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

1. 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.

2. On January 6, 2021, the exterior plaza of the Capitol was closed to members of the public.

3. On January 6, 2021, a joint session of the United States Congress convened at the Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting

in 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. The joint session began at approximately 1:00 pm. Shortly thereafter, by approximately 1:30 pm, the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

4. As the proceedings continued in both the House and the Senate, and with Vice President Pence present and presiding over the Senate, a large crowd gathered outside the Capitol. Temporary and permanent barricades, as noted above, were in place around the exterior of the Capitol, and USCP officers were present and attempting to keep the crowd away from the Capitol and the proceedings underway inside.

5. At approximately 2:00 pm, certain individuals in the crowd forced their way through, up, and over the barricades. Officers of the USCP were forced to retreat and 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 security screenings or weapons checks as required by USCP officers or other authorized security officials.

6. At such time, the certification proceedings were still underway, and the exterior doors and windows of the Capitol were locked or otherwise secured. Members of the USCP attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 pm, 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. The riot resulted in substantial damage to the Capitol, requiring the expenditure of more than \$1.4 million dollars for repairs.

7. Shortly thereafter, at approximately 2:20 pm, members of the House of Representatives and of the Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 pm on January 6, 2021. In light of the dangerous circumstances caused by the unlawful entry to the Capitol—including the danger posed by individuals who had entered the Capitol without any security screening or weapons check—Congressional proceedings could not resume until after every unauthorized occupant had been removed from or left the Capitol, and USCP confirmed that the building was secured. The proceedings resumed at approximately 8:00 pm 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.

Defendant Hernandez's Participation in the January 6, 2021, Capitol Riot

8. Defendant Hernandez lives in Riverside, California. On or about January 5, 2021, defendant traveled from Phoenix, Arizona to Washington, D.C., via plane. The purpose of the defendant's trip to Washington, D.C., was to protest Congress' certification of the Electoral College. Prior to January 6, on November 6, 2020, defendant Hernandez posted on one of his social media accounts, the following: "If people do not fight now go out and protest the vote/election fraud. Than [stet] your voting days are over. They are trying to steal the vote and will perfect and protect their fraudulent voting system when in power. . . You will have a tyrannical dictatorship. Fight[.] Fight[.] Fight[.]" In another post from one of Hernandez's accounts, on January 1, 2021, wrote, "Happy New Year to You and your Family Courageous Mr. President. You are the Greatest President These United States of American Has Had! We the People are

Honored to Stand with You, Fight and Defeat this [hidden] ENEMY Once and For All. For God and Country We Fight!”

9. On January 6, 2021, defendant Hernandez attended the “Stop the Steal” rally and then marched with other protestors to the U.S. Capitol. Defendant Hernandez made his way to the East side of the U.S. Capitol. Defendant Hernandez carried a backpack and U.S. flag on a pole with a Go-pro camera attached. Defendant Hernandez was standing by a series of bicycle racks, which were set up to keep people from entering the restricted grounds of the Capitol and were manned by U.S. Capitol Police officers. While defendant Hernandez was there, at approximately 1:59 pm, individuals in the group pushed down the bicycle barricades on the East side of the Capitol. Defendant Hernandez came around the bike racks just moments after the racks were pushed over and made his way with the mob to the base of the Center Steps of the East Plaza below the Rotunda door where police had set up a line to defend the Capitol from intrusion.

10. At approximately 2:06 pm, protestors breached the line of U.S. Capitol police at the Center Steps of the East Plaza. Defendant Hernandez was part of the crowd making its way up the stairs and pushing towards the Rotunda door.

11. On January 6, 2021, at approximately 2:37 pm, a short time after the East Rotunda door was initially breached, defendant Hernandez entered the Capitol. Defendant Hernandez shouted along with the crowd as he entered and then went up the stairs to the south of the door – away from the Rotunda. Defendant Hernandez then made his way down a southeast corridor and into the Senate Gallery. After entering the Senate Gallery, defendant Hernandez stood a few feet inside the door and then moved down towards the railing overlooking the Senate chamber. While Hernandez stood in the Senate Gallery, others yelled, amongst other things, “treason.” Defendant Hernandez was inside the Senate Gallery from approximately 2:34 pm to 2:45 pm and took a few

“selfies” of himself inside the Senate Gallery. Defendant Hernandez then went out the same Senate Gallery door and down the corridor. He proceeded down the stairs and left the Capitol through the Rotunda door at around 2:51 pm. In total, defendant Hernandez was in the Capitol for approximately fourteen minutes.

12. On January 11, 2021, after returning to California, defendant Hernandez posted on one of his social media pages, ““THE ELECTION WAS FRAUD!”

Elements of the Offense

13. Defendant Hernandez knowingly and voluntarily admits to all the elements of aiding and abetting obstruction of an official proceeding, in violation of 18 U.S.C. §§ 1512(c)(2) and 2.

14. Specifically, defendant Hernandez admits that he willfully and knowingly entered the U.S. Capitol Building knowing that that he did not have permission to do so. Defendant Hernandez further admits that while inside the Capitol, he corruptly obstructed, influenced, and impeded 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.

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney
D.C. Bar No. 481052

By:



DIANE G. LUCAS
Assistant United States Attorney
D.C. Bar No. 443610

DEFENDANT'S ACKNOWLEDGMENT

I, Andrew Alan Hernandez, have read this Statement of the Offense and have discussed it with my attorney. I fully understand this Statement of the Offense. I agree and acknowledge by my signature that this Statement of the Offense is true and accurate. I do this voluntarily and of my own free will. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

Date: 8/18/22



ANDREW ALAN HERNANDEZ
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read this Statement of the Offense and have reviewed it with my client fully. I concur in my client's desire to adopt this Statement of the Offense as true and accurate.

Date: 9/12/22

Sam Moore

SAMUEL C. MOORE
Attorney for Defendant

CHECKLIST FOR PLEAS

Case Name: *United States v. Andrew Alan Hernandez*

Case No.: Criminal No. 21-cr-00455(CKK)

Plea Date: September 21, 2022, at 2:00 p.m.

Name of Person / Counsel Completing This Form: Diane Lucas
AUSA

Address: 601 D Street, N.W.
Room 5.1303
Washington D.C 20530

Phone: 202-252-7724

1. **Charged Offense:**

In Criminal Indictment:

Count One: Aiding and Abetting Obstruction of an Official Proceeding, in violation of Title 18, United States Code, Sections 1512(c)(2), 2.

Count Two: Entering and Remaining in a Restricted Building or Grounds, in violation of Title 18, United States Code, Section 1752(a)(1).

Count Three: Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of Title 18, United States Code, Section 1752(a)(2).

Count Four: Disorderly Conduct in a Capitol Building, in violation of Title 40, United States Code, Section 5104(e)(2)(D).

Count Five: Parading, Demonstrating, or Picketing in a Capitol Building, in violation of Title 40, United States Code, Section 5104(e)(2)(G).

2. **Charge in Plea:**

The defendant will be pleading guilty to Count One of the Indictment, Aiding and Abetting Obstruction of an Official Proceeding, in violation of Title 18, United States Code, Sections 1512(c)(2), 2.

3. **Elements of the Offense:**

A. **Statute:**

Section 1512(c) Whoever corruptly -- (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official

proceeding, or attempts to do so.

Section 2(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

B. Elements:

The elements of Aiding and Abetting Obstruction of an Official Proceeding, in violation of Title 18, United States Code, Sections 1512(c)(2), 2 are:

1. That the defendant corruptly obstructed, influenced, or impeded any official proceeding or attempted to do so; and
2. Under 18 U.S.C. § 2, that the defendant committed the offense against the United States or aided, abetted, counseled, commanded, induced or procured its commission.

Title 18, United States Code, Section 1515(a)(1)(B) defines “official proceeding” as “a proceeding before the Congress.”

4. Copy of the Plea Agreement:

Please see attached Information, Plea Agreement, Statement of Offense, and Consent Order of Forfeiture.

5. Penalties

The maximum penalties for Aiding and Abetting Obstruction of an Official Proceeding are:

1. A term of imprisonment of not more than 20 years, pursuant to Title 18, United States Code, Section 1512(c)(2);
2. A term of probation of supervised release of not more than 3 years, pursuant to Title 18, United States Code, Section 3583(b)(2);
3. A fine not to exceed \$250,000, pursuant to Title 18, United States Code, Section 3571(b)(3); and

Special Fines and Assessments:

- (1) A special assessment of \$100 per felony conviction to the Clerk of the United States District Court for the District of Columbia.
- (2) The Court may also impose a fine that is sufficient to pay the federal government the costs of any imprisonment, term of supervised release, and period of probation,

pursuant to 18 U.S.C. § 3572 and § 5E1.2 of the United States Sentencing Commission, *Guidelines Manual* (2015).

6. Guideline Calculations

U.S.S.G. § 2J1.2(a) Base Offense Level	14
U.S.S.G. § 2J1.2(b)(2) Specific Offense Characteristics (Substantial Interference with the Administration of Justice)	3
Total	17

Without a 3-point reduction for Acceptance of Responsibility:

Offense Level	17
Criminal History Category	I (0 points)
Guideline Range	24-30 months (Zone D)

With a 3-point reduction for Acceptance of Responsibility:

Offense Level	14
Criminal History Category	I (0 points)
Guideline Range	15-21 months (Zone D)