

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

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Case No. 1:21-cr-00708-RCL-1
	:	
LEO CHRISTOPHER KELLY,	:	
	:	
Defendant.	:	

STIPULATION OF THE PARTIES

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, **LEO CHRISTOPHER KELLY**, with the concurrence of his attorneys, agree and stipulate to the following:¹

701 - Defendant's Identification

The defendant agrees that he is the defendant charged in the Indictment.

702 - The Capitol Building and 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)

¹ The parties have strived in good faith to present the stipulations referenced herein. The parties continue to exchange discovery and may supplement their respective exhibit and witness lists. The parties reserve the right to amend or supplement the Stipulations prior to trial with reasonable notice to the opposing party and the Court.

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 designated as closed to members of the public by the placement of certain security barriers. *See* Map Outlining Restricted Area on January 6, 2021, attached as Government Exhibit 1. This map shows, in red font, the locations of the security barriers that were put in place on January 6, 2021, some of which were ultimately breached or dismantled by rioters. 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." Beginning at approximately 12:58 p.m., some of the above-mentioned barricades, snow fencing, and signs (including some of those on the West side of the Capitol Building) were breached, moved, or dismantled by rioters.

On January 6, 2021, the restricted area described above and depicted in Exhibit 1, 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).

By this stipulation, the parties do not agree or stipulate anything regarding any knowledge, or lack thereof, on the part of Mr. Kelly related to any of the facts described herein.

703 - 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.

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.

By this stipulation, the parties do not agree or stipulate anything regarding any knowledge, or lack thereof, on the part of Mr. Kelly related to any of the facts described herein.

704 - 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 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. The video footage contained in the Government and Defense Exhibits is authentic in that it is what it purports to be and may be introduced into evidence at trial without establishing additional foundation beyond this stipulation.

705 - Open-Source Videos

The events depicted in the video footage from the Government and Defense Exhibits labeled under the Category “Open Source Videos” are a fair and accurate depiction of the events at the U.S. Capitol on January 6, 2021 and the video footage was not altered or edited in any way. The video footage is authentic in that it is what it purports to be and may be introduced into evidence at trial without establishing additional foundation beyond this stipulation.

706 - Standard Protocols for Device Extraction

As part of this case, the Federal Bureau of Investigation (“FBI”) performed a digital forensic extraction of Defendant Leo Christopher Kelly’ cell phone. The United States and Defendant Leo Christopher Kelly agree and stipulate to the following:

1. Leo Christopher Kelly’s cell phone number was (319) 533-7109 from at least January 1, 2021, through at least January 18, 2021.
2. On or about January 18, 2021, FBI agents seized Leo Christopher Kelly’s cell phone during his arrest and retained it as evidence in this case.
3. Former FBI ITS-FE Agent Robert Webber employed proper and reliable techniques to extract the data from Leo Christopher Kelly’s cell phone.
4. Government Exhibits 100-101.13 and 401-413 are accurate and authentic copy of digital content extracted from Leo Christopher Kelly’s cell phone’s cell phone.

707 – Photographs and Screen Captures

The depictions in the photographs and screen captures in Government Exhibits 1-2, 13-13.4, labeled under the 100 Series Category “Photographs and Screen Captures,” and the photographs in Defendant’s series 100 and 300 exhibits, and other than marks highlighting Defendant or others are fair and accurate depictions and the photographs and screen captures were

not altered or edited in any way. The photographs and screen captures are authentic in that they are what they purport to be and may be introduced into evidence at trial without establishing additional foundation beyond this stipulation.

708 - Videos Recovered From Other Video Sources

The events depicted in the video footage from the Defense Series 400 Exhibits labeled under the Category “Other Video Sources” are a fair and accurate depictions of the events at the U.S. Capitol on January 6, 2021 and the video footage was not altered or edited in any way. The video footage is authentic in that it is what it purports to be and may be introduced into evidence at trial without establishing additional foundation beyond this stipulation.

709- Congressional Montage Video

Government Exhibit 15 is a montage of footage of the official proceedings on January 6, 2021 before the suspension of the official proceedings and after the resumption of the official proceedings at approximately 8:00 p.m. and is comprised of the relevant Congressional Record, references the relevant constitutional and statutory provisions, and relevant recordings from the United States Senate Recording Studio and the House Recording Studio of the Office of the Chief Administrative Officer of the United States House of Representatives. The montage includes, and is not limited to, information and video from Government Exhibit 3, Douglas Massengale Certificate of Authenticity; Government Exhibit 4, Diego Torres Certificate of Authenticity; Government Exhibit 5, Senate Concurrent Resolution 1; Government Exhibit 6, 3 U.S.C. Section 15 (Counting electoral votes in Congress); Government Exhibit 7, 3 U.S.C. Section 16 (seats for officers and Members of two Houses in Joint meeting); Exhibit 8, 3 U.S.C. Section 17 (limit of debate); Exhibit 9, 3 U.S.C. Section 18 (Parliamentary Procedures at joint meeting); Exhibit 10, U.S. Constitution 12th Amendment; Government Exhibit 11, Congressional Record of 117th

Congress. The events depicted in the video footage in Government Exhibit 15 is a fair and accurate depiction of the official proceedings at the U.S. Capitol on January 6, 2021, the timestamps on the recordings are accurate, and the video footage is authentic in that it is what it purports to be. The parties agree that the exhibits referenced in this stipulation and the supporting exhibits (Exhibits 3 and 4) may be introduced into evidence at trial without establishing additional foundation beyond this stipulation.

710 – Senate Recording Studio Videos

Government Exhibits 501-509 are a fair and accurate visual depiction of the Senate Chamber when the Senate went into recess subject to the call of the chair. The Senate-controlled video 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 inside the Senate Chamber on January 6, 2021, the timestamps on the recordings are accurate, and the video footage was not altered or edited in any way and may be introduced into evidence at trial without establishing additional foundation beyond this stipulation.

Ex. 711 - CSPAN Video

Defense Exhibits 1 (full version) - 2 (clipped version) are fair and accurate depictions and recordings both in visual depiction and audio of the speech given by Donald Trump, the then President of the United States at the rally in the Ellipse in Washington, DC on January 6, 2021 beginning at approximately 11:57 a.m. and ending at approximately 1:10 p.m.

Ex. 712 - U.S. Capitol Police Montage Video

Government Exhibit 14 and Defendant's Exhibits 209 and 316, are montage videos of the events at certain areas of the U.S. Capitol on January 6, 2021. The events depicted in the video

montages are fair and accurate depictions of events at the U.S. Capitol on January 6, 2021. The timestamps on the recordings are accurate and the video footage is authentic in that it is what it purports to be and may be introduced into evidence at trial without establishing additional foundation beyond this stipulation.

Respectfully submitted,

FOR THE DEFENDANT

LEO CHRISTOPHER KELLY
Defendant

s/ _____
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