

APPEAL,CAP,CAT B,CLOSED

**U.S. District Court
District of Columbia (Washington, DC)
CRIMINAL DOCKET FOR CASE #: 1:21-cr-00619-BAH-1**

Case title: USA v. HERRERA

Magistrate judge case number: 1:21-mj-00556-GMH

Date Filed: 10/06/2021

Assigned to: Chief Judge Beryl A.
Howell

Defendant (1)

ERIK HERRERA

represented by **Cuauhtemoc Ortega**
OFFICE OF THE FEDERAL PUBLIC
DEFENDER
321 E. 2nd Street
Los Angeles, CA 90012
213-894-2854
Fax: 213-894-0081
Email: cuauhtemoc_ortega@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Public Defender or Community
Defender Appointment

Jonathan Kenji Ogata
FEDERAL PUBLIC DEFENDER
411 West Fourth Street
Suite 7110
Santa Ana, CA 92701
714-338-4500
Email: jonathan_ogata@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Public Defender or Community
Defender Appointment

Pending Counts

18:1512(c)(2) and 2;
TAMPERING WITH A
WITNESS, VICTIM OR
INFORMANT; Obstruction of an
Official Proceeding and Aiding
and Abetting
(1)

Disposition

Defendant sentenced to a concurrent term of
forty-eight (48) months incarceration followed by a
concurrent term of thirty-six (36) months of
supervised release; Defendant ordered to pay to the
Clerk of Court a special assessment in the amount
of \$100.00, a fine in the amount of \$1,000.00, and
restitution to be disbursed to the Architect of the

18:1752(a)(1); TEMPORARY
RESIDENCE OF THE
PRESIDENT; Entering and
Remaining in a Restricted
Building or Grounds
(2)

18:1752(a)(2); TEMPORARY
RESIDENCE OF THE
PRESIDENT; Disorderly and
Disruptive Conduct in a Restricted
Building or Grounds
(3)

40:5104(e)(2)(D); VIOLENT
ENTRY AND DISORDERLY
CONDUCT ON CAPITOL
GROUNDS; Disorderly Conduct
in a Capitol Building
(4)

40:5104(e)(2)(G); VIOLENT
ENTRY AND DISORDERLY
CONDUCT ON CAPITOL
GROUNDS; Parading,
Demonstrating, or Picketing in a
Capitol Building
(5)

Capitol in the amount of \$2,000.00.

Defendant sentenced to a concurrent term of twelve (12) months incarceration followed by a concurrent term of twelve (12) months of supervised release; Defendant ordered to pay to the Clerk of Court a special assessment in the amount of \$25.00.

Defendant sentenced to a concurrent term of twelve (12) months incarceration followed by a concurrent term of twelve (12) months of supervised release; Defendant ordered to pay to the Clerk of Court a special assessment in the amount of \$25.00.

Defendant sentenced to a concurrent term of six (6) months incarceration and ordered to pay to the Clerk of Court a special assessment in the amount of \$10.00.

Defendant sentenced to a concurrent term of six (6) months incarceration and ordered to pay to the Clerk of Court a special assessment in the amount of \$10.00.

Highest Offense Level (Opening)

Felony

Terminated Counts

None

**Highest Offense Level
(Terminated)**

None

Complaints

COMPLAINTS in VIOLATION
of 18 U.S.C. § 1752(a)(1); 40
U.S.C. § 5104(e)(2); 18 U.S.C. §
1512(c)(2)

Disposition

Disposition

Plaintiff

USA

represented by **Christopher Matthew Cook**
 DOJ-USAO
 Western District of Pennsylvania
 700 Grant Street
 Suite 4000
 Pittsburgh, PA 15219
 412-894-7566
 Email: christopher.cook5@usdoj.gov
ATTORNEY TO BE NOTICED
Designation: Assistant U.S. Attorney

Cindy Jane Cho
 DOJ-USAO
 Southern District of Indiana
 10 West Market Street
 Suite 2100
 Indianapolis, IN 46204
 317-229-2425
 Email: cindy.cho@usdoj.gov
TERMINATED: 07/05/2022
Designation: Assistant U.S. Attorney

Jacqueline N. Schesnol
 DOJ-USAO
 United States Attorney's Office
 40 North Central Avenue
 Suite 1800
 Phoenix, AZ 85004-4449
 (602) 514-7689
 Email: jacqueline.schesnol@usdoj.gov
ATTORNEY TO BE NOTICED
Designation: Assistant U.S. Attorney

John Witherspoon Borchert
 U.S. ATTORNEY'S OFFICE FOR THE
 DISTRICT OF COLUMBIA
 Criminal Division
 555 Fourth Street, NW
 Washington, DC 20001
 (202) 252-7679
 Fax: (202) 307-2304
 Email: john.borchert@usdoj.gov
TERMINATED: 05/05/2022
Designation: Assistant U.S. Attorney

Date Filed	#	Page	Docket Text
08/06/2021	<u>1</u>		SEALED COMPLAINT as to ERIK HERRERA (1). (Attachments: # <u>1</u> Statement of Facts) (zltp) [1:21-mj-00556-GMH] (Entered: 08/09/2021)
08/06/2021	<u>3</u>		MOTION to Seal Case by USA as to ERIK HERRERA. (Attachments: # <u>1</u> Text of Proposed Order)(zltp) [1:21-mj-00556-GMH] (Entered: 08/09/2021)

08/06/2021	<u>4</u>		ORDER granting <u>3</u> Motion to Seal Case as to ERIK HERRERA (1). Signed by Magistrate Judge G. Michael Harvey on 8/6/2021. (zlt) [1:21-mj-00556-GMH] (Entered: 08/09/2021)
08/19/2021			Arrest of ERIK HERRERA (1). (ztl) [1:21-mj-00556-GMH] (Entered: 09/12/2021)
08/19/2021	<u>5</u>		Arrest Warrant Returned Executed on 8/19/2021 as to ERIK HERRERA (1) in Los Angeles, CA. (ztl) [1:21-mj-00556-GMH] (Entered: 09/12/2021)
08/25/2021	<u>20</u>		Rule 5(c)(3) Documents Received as to ERIK HERRERA from US DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA Case Number 8:21-mj-573 (zlt) (Entered: 12/14/2021)
09/02/2021			MINUTE ORDER as to Defendant ERIK HERRERA : It is hereby ORDERED that Defendant ERIK HERRERA appear for an initial appearance on Thursday, September 9, 2021 at 1:00 p.m. before Magistrate Judge Zia M. Faruqui. The hearing will be conducted by video teleconference; call-in instructions will be provided to counsel prior to the hearing. Counsel for the United States is directed to ensure that counsel for Defendant has received this Order and will provide the information to Defendant. If Defendant does not have counsel, counsel for the United States is directed to contact the Office of the Federal Public Defender for the District of Columbia and provide their office with the information contained in this Order. If the parties have questions about this Order or the scheduled hearing, please contact the Courtroom Deputy at 202-354-3173; So Ordered by Magistrate Judge Zia M. Faruqui on 9/2/2021. (zkk) [1:21-mj-00556-GMH] (Entered: 09/02/2021)
09/09/2021			Case unsealed as to ERIK HERRERA (1). (ztl) [1:21-mj-00556-GMH] (Entered: 09/12/2021)
09/09/2021			ORAL MOTION to Unseal Case by USA as to ERIK HERRERA (1). (ztl) [1:21-mj-00556-GMH] (Entered: 09/12/2021)
09/09/2021			ORAL MOTION for Speedy Trial by USA as to ERIK HERRERA (1). (ztl) [1:21-mj-00556-GMH] (Entered: 09/12/2021)
09/09/2021			Minute Entry for proceedings held before Magistrate Judge Zia M. Faruqui: Initial Appearance as to ERIK HERRERA (2) held on 9/9/2021. Defendant present by video. Due Process Order given to the Government. Oral Motion by the Government to Unseal Case as to ERIK HERRERA (2); heard and grant. Defendant placed on Standard Conditions of Release. Defendant waives his right to a Preliminary Hearing in 21 days. Oral Motion by the Government for Speedy Trial as to ERIK HERRERA (2); heard and granted. Defense consents to exclusion. Speedy Trial Excluded from 9/9/2021 to 11/2/2021 in the Interest of Justice (XT). Preliminary Hearing set for 11/2/2021 at 1:00 PM by Telephonic/VTC before Magistrate Judge Robin M. Meriweather. Bond Status of Defendant: Defenant Remain on Personal Recognizance; Court Reporter: FTR-Gold; FTR Time Frame: Ctrm 4: [1:45:42-2:07:10]; Defense Attorney: Jonathan Ogata-FPD-CA; US Attorney: Kelly Smith for John Borchert; Pretrial Officer: Christine Schuck. (ztl) [1:21-mj-00556-GMH] (Entered: 09/12/2021)
09/10/2021	<u>6</u>		ORDER Setting Conditions of Release as to ERIK HERRERA (1) Personal Recognizance. Signed by Magistrate Judge Zia M. Faruqui on 9/10/2021.

		(Attachment: # <u>1</u> Appearance Bond) (ztl) [1:21-mj-00556-GMH] (Entered: 09/14/2021)
10/06/2021	<u>8</u>	INDICTMENT as to ERIK HERRERA (1) count(s) 1, 2, 3, 4, 5. (bb) (Entered: 10/06/2021)
10/07/2021		NOTICE OF HEARING as to ERIK HERRERA. The parties shall take notice that an Arraignment/Status Hearing is scheduled for 10/15/2021, at 11:00 AM before Chief Judge Beryl A. Howell. (ztg) (Entered: 10/07/2021)
10/07/2021	<u>10</u>	STANDING ORDER. Signed by Chief Judge Beryl A. Howell on October 7, 2021. (lcbah3) (Entered: 10/07/2021)
10/12/2021	<u>11</u>	NOTICE OF ATTORNEY APPEARANCE: Jonathan Kenji Ogata appearing for ERIK HERRERA (Ogata, Jonathan) (Entered: 10/12/2021)
10/15/2021	<u>12</u>	NOTICE of Filing by USA as to ERIK HERRERA (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(Borchert, John) (Entered: 10/15/2021)
10/15/2021		Minute Entry for proceedings held before Chief Judge Beryl A. Howell: Arraignment/Initial Status Hearing as to ERIK HERRERA held via videoconference on 10/15/2021; the Defendant agreed to participate via videoconference after consultation with counsel. Defendant arraigned on Count 1, 2, 3, 4, and 5 of the Indictment filed on 10/6/2021; reading of the Indictment waived; plea of not guilty to all counts entered by the Defendant. A Status Hearing is scheduled for 11/19/2021, at 9:15 AM, Eastern Time, before Chief Judge Beryl A. Howell. Time excluded under the Speedy Trial Act from 10/15/2021 through 11/19/2021, in the interests of justice and those interests outweigh the interests of the public and the defendant in a speedy trial in order to allow the parties to discuss a resolution short of trial. Bond Status of Defendant: Personal Recognizance. Present: Defense Attorney: Jonathan K. Ogata; US Attorney: John W. Borchert; Pretrial Officer: Christine Schuck (telephonically). Court Reporter: Elizabeth Saint-Loth. (ztg) (Entered: 10/15/2021)
10/27/2021	<u>13</u>	STATUS REPORT <i>Regarding Discovery as of October 21, 2021</i> by USA as to ERIK HERRERA (Borchert, John) (Entered: 10/27/2021)
10/27/2021	<u>14</u>	Unopposed MOTION for Protective Order <i>Regarding Discovery</i> by USA as to ERIK HERRERA. (Attachments: # <u>1</u> Text of Proposed Order)(Borchert, John) (Entered: 10/27/2021)
10/27/2021		MINUTE ORDER granting <u>14</u> Motion for Protective Order as to ERIK HERRERA (1). Signed by Chief Judge Beryl A. Howell on 10/27/2021. (ztg) (Entered: 10/27/2021)
10/27/2021	<u>15</u>	PROTECTIVE ORDER as to ERIK HERRERA. Signed by Chief Judge Beryl A. Howell on October 27, 2021. (lcbah1) (Entered: 10/27/2021)
11/18/2021	<u>16</u>	Unopposed MOTION to Continue <i>Status Hearing and Exlude Time Under the Speedy Trial Act</i> by USA as to ERIK HERRERA. (Attachments: # <u>1</u> Text of Proposed Order)(Borchert, John) (Entered: 11/18/2021)
11/18/2021		MINUTE ORDER granting <u>16</u> United States' Unopposed Motion to Continue Status Hearing and to Exclude Time Under the Speedy Trial Act as to ERIK HERRERA (1). Upon consideration of the unopposed motion, it is hereby

		ORDERED that the Status Hearing currently scheduled for November 19, 2021, shall be CONTINUED to January 21, 2022, at 9:00 AM before Chief Judge Beryl A. Howell; it is FURTHER ORDERED that time under the Speedy Trial Act shall be excluded for the reasons outlined in the motion from 11/19/2021 through 1/21/2022, in the interests of justice and those interests outweigh the interests of the public and the defendant in a speedy trial. Signed by Chief Judge Beryl A. Howell on 11/18/2021. (ztg) (Entered: 11/18/2021)
11/18/2021	18	MOTION to Exclude Time Under the Speedy Trial Act by USA as to ERIK HERRERA. (See DE <u>16</u> to view document). (bb) (Entered: 11/30/2021)
11/19/2021	<u>17</u>	STATUS REPORT <i>Regarding Discovery as of November 5, 2021</i> by USA as to ERIK HERRERA (Borchert, John) (Entered: 11/19/2021)
12/10/2021	<u>19</u>	NOTICE of Attachment "A" To Defendant's Acceptance by ERIK HERRERA (Ogata, Jonathan) (Entered: 12/10/2021)
01/20/2022	<u>22</u>	Unopposed MOTION to Continue <i>Status Hearing and to Exclude Time under the Speedy Trial Act</i> by USA as to ERIK HERRERA. (Attachments: # <u>1</u> Text of Proposed Order)(Borchert, John) (Entered: 01/20/2022)
01/20/2022		MINUTE ORDER granting <u>22</u> United States' Unopposed Motion to Continue Status Hearing and to Exclude Time Under the Speedy Trial Act as to ERIK HERRERA. Upon consideration of the unopposed motion, it is hereby ORDERED that the Status Hearing currently scheduled for January 21, 2022, shall be CONTINUED to March 4, 2022, at 9:15 AM before Chief Judge Beryl A. Howell; the parties are DIRECTED to submit jointly 4 days prior to the next Status Hearing 3 proposed dates for trial and a motions schedule if the plea offer is not accepted to dispose of this case short of trial; it is FURTHER ORDERED that time under the Speedy Trial Act shall be excluded for the reasons outlined in the motion from 1/21/2022 through 3/4/2022, in the interests of justice and those interests outweigh the interests of the public and the defendant in a speedy trial. Signed by Chief Judge Beryl A. Howell on 1/20/2022. (ztg) (Entered: 01/20/2022)
01/20/2022	23	MOTION to Exclude Time Under the Speedy Trial Act by USA as to ERIK HERRERA. (See DE <u>22</u> to view document). (bb) (Entered: 01/25/2022)
02/28/2022		Set/Reset Hearings as to ERIK HERRERA: Status Hearing rescheduled for 3/4/2022, at 9:00 AM via videoconference before Chief Judge Beryl A. Howell. (ztg) (Entered: 02/28/2022)
03/02/2022	<u>25</u>	Unopposed MOTION to Continue <i>Status Hearing</i> , Unopposed MOTION to Exclude <i>Time from Speedy Trial Act Calculation</i> by USA as to ERIK HERRERA. (Attachments: # <u>1</u> Text of Proposed Order)(Borchert, John) (Entered: 03/02/2022)
03/02/2022		MINUTE ORDER granting <u>25</u> United States' Unopposed Motion to Continue Status Hearing and to Exclude Time Under the Speedy Trial Act as to ERIK HERRERA. Upon consideration of the unopposed motion, it is hereby ORDERED that the Status Hearing currently scheduled for March 4, 2022, shall be CONTINUED to April 1, 2022 at 9:15 AM before Chief Judge Beryl A. Howell; it is FURTHER ORDERED that time under the Speedy Trial Act shall be excluded from March 4, 2022 through April 1, 2022, in the best interests of justice and those interests outweigh the interests of the public and the defendant

		in a speedy trial. Signed by Chief Judge Beryl A. Howell on 3/2/2022. (ztg) (Entered: 03/02/2022)
03/31/2022	<u>27</u>	Unopposed MOTION to Continue <i>Status Hearing</i> , Unopposed MOTION to Exclude <i>Time Under the Speedy Trial Act</i> by USA as to ERIK HERRERA. (Attachments: # <u>1</u> Text of Proposed Order)(Borchert, John) (Entered: 03/31/2022)
03/31/2022		MINUTE ORDER granting <u>27</u> United States' Unopposed Motion to Continue Status Hearing and to Exclude Time Under the Speedy Trial Act as to ERIK HERRERA. Upon consideration of the unopposed motion, it is hereby ORDERED that the Status Hearing currently scheduled for April 1, 2022, shall be CONTINUED to April 29, 2022, at 10:30 AM before Chief Judge Beryl A. Howell; it is FURTHER ORDERED that time under the Speedy Trial Act shall be excluded from April 1, 2022 through April 29, 2022, in the best interests of justice and those interests outweigh the interests of the public and the defendant in a speedy trial. Signed by Chief Judge Beryl A. Howell on 3/31/2022. (ztg) (Entered: 03/31/2022)
03/31/2022		MINUTE ORDER (paperless), as to ERIK HERRERA, DIRECTING the parties to inform the Court by noon on April 25, 2022, whether the parties anticipate that a plea offer to dispose of this case short of trial will be accepted in advance of the April 29, 2022 status conference, and if not, providing the Court with three proposed trial dates and a proposed motions schedule, so that a trial and motions schedule may be set at the April 29, 2022 hearing. Signed by Chief Judge Beryl A. Howell on March 31, 2022. (lcbah3) (Entered: 03/31/2022)
03/31/2022		Set/Reset Deadlines as to ERIK HERRERA: Response to Order of the Court due by noon on 4/25/2022. (ztg) (Entered: 03/31/2022)
04/08/2022	<u>28</u>	NOTICE OF ATTORNEY APPEARANCE: Cuauhtemoc Ortega appearing for ERIK HERRERA (Ortega, Cuauhtemoc) (Entered: 04/08/2022)
04/25/2022	<u>29</u>	NOTICE OF ATTORNEY APPEARANCE Christopher Matthew Cook appearing for USA. (Cook, Christopher) (Entered: 04/25/2022)
04/25/2022	<u>30</u>	Unopposed MOTION for Extension of Time to <i>Respond to March 31 Order</i> , Unopposed MOTION to Continue <i>Status Hearing</i> , Unopposed MOTION to Exclude <i>Time under the Speedy Trial Act</i> by USA as to ERIK HERRERA. (Attachments: # <u>1</u> Exhibit Proposed Order)(Borchert, John) (Entered: 04/25/2022)
04/26/2022		MINUTE ORDER as to ERIK HERRERA, granting <u>30</u> United States' Unopposed Motion to Enlarge Time to Respond to the Court's March 31 Order, to Continue Status Hearing and to Exclude Time Under the Speedy Trial Act. Upon consideration of the unopposed motion, it is hereby ORDERED that the Status Hearing currently scheduled for April 29, 2022, shall be CONTINUED to May 13, 2022, at 10:00 AM via videoconference before Chief Judge Beryl A. Howell; the parties are DIRECTED to inform the Court by noon on May 9, 2022, whether the parties anticipate that a plea offer to dispose of this case short of trial will be accepted in advance of the next status conference, and if not, provide the Court with three proposed trial dates and a proposed motions schedule, so that a trial and motions schedule may be set at the next status hearing; it is FURTHER ORDERED that time under the Speedy Trial Act shall

		be excluded from April 29, 2022 through May 13, 2022, in the interests of justice and those interests outweigh the interests of the public and the defendant in a speedy trial. SO ORDERED. Signed by Chief Judge Beryl A. Howell on 4/26/2022. (ztg) (Entered: 04/26/2022)
04/29/2022	<u>31</u>	MOTION to Withdraw as Attorney by John Borchert. by USA as to ERIK HERRERA. (Borchert, John) (Entered: 04/29/2022)
05/05/2022		MINUTE ORDER as to ERIK HERRERA, granting <u>31</u> Motion to Withdraw as Attorney filed by John Witherspoon Borchert. Upon consideration of the motion to withdraw, it is hereby ORDERED that the appearance of Attorney John W. Borchert for the United States of America in this matter shall be WITHDRAWN. SO ORDERED. Signed by Chief Judge Beryl A. Howell on 5/5/2022. (ztg) (Entered: 05/05/2022)
05/09/2022	<u>32</u>	STATUS REPORT by USA as to ERIK HERRERA (Attachments: # <u>1</u> Text of Proposed Order)(Cook, Christopher) (Entered: 05/09/2022)
05/10/2022		<p>MINUTE ORDER (paperless), as to ERIK HERRERA, ISSUING, in light of the parties' joint <u>32</u> Status Report and adopting one of the trial dates proposed by the parties therein, the following SCHEDULING ORDER:</p> <p>(1) By June 17, 2022, the parties shall file any pretrial motions, including any motions in limine, with any opposition due by July 1, 2022, and any reply due by July 8, 2022;</p> <p>(2) By July 15, 2022, the parties shall file their Joint Pretrial Statement, see <u>10</u> Standing Order ¶ 10;</p> <p>(3) On August 5, 2022, at 10:00 AM, the parties are DIRECTED to appear in person in Courtroom 22A for a pretrial conference in this matter; and</p> <p>(4) On August 15, 2022, at 9:00 AM, the parties are DIRECTED to appear for jury selection for a trial in this matter.</p> <p>Signed by Chief Judge Beryl A. Howell on May 10, 2022. (lcbah3) (Entered: 05/10/2022)</p>
05/10/2022		Set/Reset Deadlines/Hearings as to ERIK HERRERA: Pretrial motions due by 6/17/2022; oppositions due by 7/1/2022; replies due by 7/8/2022; Joint Pretrial Statement due by 7/15/2022; Pretrial Conference scheduled for 8/5/2022, at 10:00 AM in Courtroom 22A– In Person before Chief Judge Beryl A. Howell; Jury Selection/Jury Trial scheduled for 8/15/2022, at 9:00 AM before Chief Judge Beryl A. Howell. (ztg) (Entered: 05/10/2022)
05/13/2022		Minute Entry for proceedings held before Chief Judge Beryl A. Howell: Status Hearing as to ERIK HERRERA held via videoconference on 5/13/2022; parties directed to abide by the trial scheduling Minute Order entered on 5/10/2022; time excluded under the Speedy Trial Act from 5/13/2022 through the Trial date of 8/15/2022, in the interests of justice and those interests outweigh the interests of the public and the defendant in a speedy trial. Bond Status of Defendant: Personal Recognizance. Present via videoconference: Defense Attorneys: Cuauhtemoc Ortega and Jonathan K. Ogata; US Attorney: Christopher Cook; Pretrial Officer: Christine Schuck (telephonically). Court Reporter: Elizabeth Saint–Loth. (ztg) (Entered: 05/13/2022)
06/01/2022	<u>34</u>	

		NOTICE OF ATTORNEY APPEARANCE Cindy Jane Cho appearing for USA. (Cho, Cindy) (Entered: 06/01/2022)
06/13/2022	<u>35</u>	Joint MOTION to Continue <i>Motion in Limine Deadline</i> by ERIK HERRERA. (Attachments: # <u>1</u> Proposed Order)(Ogata, Jonathan) (Entered: 06/13/2022)
06/14/2022		MINUTE ORDER (paperless), as to ERIK HERRERA, DENYING the parties' <u>35</u> Joint Motion to Continue Motion in Limine Deadline. Given the demands of the Court's docket, the current briefing schedule, which was set five weeks ago without any concerns raised by the parties, is designed to provide sufficient time for thorough consideration and resolution of all pretrial motions prior to or at the pretrial conference to be held on August 5, 2022, and the parties' proposed modification of that schedule does not do the same. Signed by Chief Judge Beryl A. Howell on June 14, 2022. (lcbah3) (Entered: 06/14/2022)
06/17/2022	<u>36</u>	MOTION to Change Venue by ERIK HERRERA. (Ortega, Cuauhtemoc) (Entered: 06/17/2022)
06/17/2022	<u>37</u>	MOTION in Limine by ERIK HERRERA. (Ogata, Jonathan) (Entered: 06/17/2022)
06/17/2022	<u>38</u>	MOTION to Dismiss Count <i>One, Two and Three of the Indictment</i> by ERIK HERRERA. (Ogata, Jonathan) (Entered: 06/17/2022)
06/28/2022	<u>39</u>	NOTICE OF ATTORNEY APPEARANCE Jacqueline N. Schesnol appearing for USA. (Schesnol, Jacqueline) (Entered: 06/28/2022)
07/01/2022	<u>40</u>	RESPONSE by USA as to ERIK HERRERA re <u>38</u> MOTION to Dismiss Count <i>One, Two and Three of the Indictment</i> (Cook, Christopher) (Entered: 07/01/2022)
07/01/2022	<u>41</u>	RESPONSE by USA as to ERIK HERRERA re <u>37</u> MOTION in Limine (Cook, Christopher) (Entered: 07/01/2022)
07/01/2022	<u>42</u>	RESPONSE by USA as to ERIK HERRERA re <u>36</u> MOTION to Change Venue (Cook, Christopher) (Entered: 07/01/2022)
07/01/2022	<u>44</u>	Unopposed MOTION to Strike <i>Portions of the Indictment</i> by USA as to ERIK HERRERA. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(Schesnol, Jacqueline) (Entered: 07/01/2022)
07/05/2022		MINUTE ORDER granting <u>44</u> Unopposed Government's Motion to Strike Portions of the Indictment as to ERIK HERRERA. Signed by Chief Judge Beryl A. Howell on 7/5/2022. (ztg) (Entered: 07/05/2022)
07/05/2022	<u>45</u>	NOTICE of Withdrawal by Cindy J. Cho. by USA as to ERIK HERRERA. (Cho, Cindy) Modified Text on 7/5/2022 (zhsj). (Entered: 07/05/2022)
07/05/2022		MINUTE ORDER as to ERIK HERRERA, granting <u>45</u> Motion to Withdraw as Attorney. The appearance of Attorney Cindy J. Cho for the Government is hereby TERMINATED. Signed by Chief Judge Beryl A. Howell on 7/5/2022. (ztg) (Entered: 07/05/2022)
07/08/2022	<u>46</u>	REPLY in Support by ERIK HERRERA re <u>36</u> MOTION to Change Venue (Ortega, Cuauhtemoc) (Entered: 07/08/2022)
07/08/2022	<u>47</u>	

		REPLY in Support by ERIK HERRERA re <u>37</u> MOTION in Limine (Ogata, Jonathan) (Entered: 07/08/2022)
07/08/2022	<u>48</u>	REPLY in Support by ERIK HERRERA re <u>38</u> MOTION to Dismiss Count <i>One, Two and Three of the Indictment</i> (Ogata, Jonathan) (Entered: 07/08/2022)
07/15/2022	<u>49</u>	PRETRIAL MEMORANDUM <i>Joint Pretrial Statement</i> by USA as to ERIK HERRERA (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit)(Cook, Christopher) (Entered: 07/15/2022)
07/25/2022	<u>50</u>	Unopposed MOTION to Permit <i>DEFENDANT TO APPEAR FOR THE AUGUST 5, 2022 PRETRIAL CONFERENCE BY VIDEOCONFERENCE</i> by ERIK HERRERA. (Attachments: # <u>1</u> Proposed Order)(Ogata, Jonathan) (Entered: 07/25/2022)
07/26/2022		MINUTE ORDER (paperless), as to ERIK HERRERA, DIRECTING defendant, in light of his <u>50</u> Unopposed Motion to Permit Defendant to Appear for the August 5, 2022 Pretrial Conference by Videoconference, to file, by July 28, 2022, explanations regarding two topics not addressed in the motion: (1) whether, given that a California office of the Federal Public Defender appears to be providing for <i>two</i> attorneys to attend the scheduled pretrial conference in Washington, D.C., resources of that office may be re-prioritized to provide for defendant himself to attend along with a <i>single</i> attorney; and (2) how to reconcile defendant's stated inability to finance his travel to attend the required pretrial conference, which has been scheduled for over two months, with his apparent ability to have financed travel to Washington, D.C. on January 6, 2021. Signed by Chief Judge Beryl A. Howell on July 26, 2022. (lcbah3) (Entered: 07/26/2022)
07/26/2022		Set/Reset Deadlines as to ERIK HERRERA: Response to Order of the Court due by 7/28/2022. (ztg) (Entered: 07/26/2022)
07/28/2022	<u>51</u>	RESPONSE TO ORDER OF THE COURT by ERIK HERRERA re Order,,, (Attachments: # <u>1</u> Exhibit A)(Ortega, Cuauhtemoc) (Entered: 07/28/2022)
07/29/2022		MINUTE ORDER (paperless), as to ERIK HERRERA, GRANTING <u>50</u> Defendant's Unopposed Motion to Permit Defendant to Appear for the August 5, 2022 Pretrial Conference by Videoconference. Signed by Chief Judge Beryl A. Howell on July 29, 2022. (lcbah3) (Entered: 07/29/2022)
08/01/2022		MINUTE ORDER (paperless), as to ERIK HERRERA, DIRECTING defendant to file by noon on Wednesday, August 3, 2022, the precise exhibit numbers from the government's [49-3] proposed exhibit list that correspond to the four categories of information he seeks to exclude in his <u>37</u> Motion <i>in Limine</i> . Signed by Chief Judge Beryl A. Howell on August 1, 2022. (lcbah3) (Entered: 08/01/2022)
08/02/2022		Set/Reset Deadlines as to ERIK HERRERA: Defendant's response to Order of the Court due by noon on 8/3/2022. (ztg) (Entered: 08/02/2022)
08/03/2022	<u>52</u>	RESPONSE TO ORDER OF THE COURT by ERIK HERRERA re Order, (Ogata, Jonathan) (Entered: 08/03/2022)
08/04/2022	<u>54</u>	MEMORANDUM AND ORDER, AS TO ERIK HERRERA, DENYING the defendant's <u>36</u> Motion for Change of Venue. See Order for further details. Signed by Chief Judge Beryl A. Howell on August 4, 2022. (lcbah3) (Entered: 08/04/2022)

		08/04/2022)
08/04/2022	<u>55</u>	MEMORANDUM AND ORDER as to ERIK HERRERA, DENYING IN PART defendant's <u>38</u> Motion to Dismiss Counts One, Two, and Three as to Counts Two and Three, and DEFERRING ruling on the remainder of defendant's <u>38</u> Motion until the pretrial conference scheduled on Aug. 5, 2022. See Order for further details. Signed by Chief Judge Beryl A. Howell on August 4, 2022. (lcbah3) (Entered: 08/04/2022)
08/05/2022		Minute Entry for proceedings held before Chief Judge Beryl A. Howell: Pretrial Conference as to ERIK HERRERA held on 8/5/2022. The Defendant agreed to appear via videoconference. Bond Status of Defendant: Personal Recognizance. Present: Defense Attorneys: Cuauhtemoc Ortega and Jonathan K. Ogata; US Attorneys: Christopher M. Cook and Jacwqueline N. Schesnol (via videoconference); Pretrial Officer: Christine Schuck. (ztg) (Entered: 08/05/2022)
08/05/2022		MINUTE ORDER (paperless) as to ERIK HERRERA, for the reasons stated on the record during the parties' August 5, 2022, pretrial conference, DENYING defendant's <u>38</u> Motion to Dismiss Count One; and DENYING WITHOUT PREJUDICE as partially moot and partially premature defendant's <u>37</u> Motion in Limine. Defendant may raise objections to specific government exhibits at trial for resolution. Signed by Chief Judge Beryl A. Howell on August 5, 2022. (lcbah3) (Entered: 08/05/2022)
08/10/2022	<u>59</u>	FINAL TRIAL ORDER as to ERIK HERRERA. Signed by Chief Judge Beryl A. Howell on August 10, 2022. (lcbah3) (ztg). Modified to correct courtroom number on 8/10/2022 (ztg). (Entered: 08/10/2022)
08/12/2022	<u>60</u>	EXHIBIT LIST by USA as to ERIK HERRERA (Cook, Christopher) (Entered: 08/12/2022)
08/15/2022		Minute Entry for proceedings held before Chief Judge Beryl A. Howell: Jury Selection as to ERIK HERRERA held and concluded on 8/15/2022, 12 jurors and 2 alternates selected and sworn; Jury Trial began as to ERIK HERRERA on Counts 1, 2, 3, 4, and 5; Jury Trial continued to 8/16/2022, at 9:15 AM in Courtroom 22A – In Person before Chief Judge Beryl Al Howell. Bond Status of Defendant: Personal Recognizance. Present: Defense Attorneys: Jonathan K. Ogata; US Attorney: Cuauhtemoc Ortega; US Attorneys Jacqueline N. Schesnol and Christopher Cook. Court Reporter: Elizabeth Saint-Loth;. (ztg) (Entered: 08/15/2022)
08/15/2022		Set/Reset Hearings as to ERIK HERRERA: Jury Trial scheduled for 8/16/2022, at 9:15 AM in Courtroom 22A– In Person before Chief Judge Beryl A. Howell. (ztg) (Entered: 08/15/2022)
08/15/2022		MINUTE ORDER: The Court having impaneled the jury in this action, it is hereby ORDERED that during trial and deliberations all meals for said jury shall be paid by the Clerk of the Court for the U.S. District Court for the District of Columbia. Signed by Chief Judge Beryl A. Howell on 8/15/2022. (ztg) (Entered: 08/15/2022)
08/16/2022		Minute Entry for proceedings held before Chief Judge Beryl A. Howell: Jury Trial as to ERIK HERRERA held on 8/16/2022 on Counts 1, 2, 3, 4, and 5. Jury Trial resumed with the same jury of 12 and 1 alternate, 1 juror excused for

		cause; Jury Trial continued to 8/17/2022, at 9:15 AM in Courtroom 22A– In Person before Chief Judge Beryl A. Howell. Bond Status of Defendant: Personal Recognizance. Present: Defense Attorneys: Jonathan K. Ogata and Cuauhtemoc Ortega; US Attorneys: Jacqueline N. Schesnol and Christopher M. Cook; Government Witnesses: 1) U.S. Capitol Police Captain Carneysha C. Mendoza, 2) WMATA Police Officer Aaric Wright, 3) U.S. Secret Service Agent Paul Wade, 4) Metropolitan Police Officer Jemal Averette, 5) U.S. Capitol Police Office Mark Gazelle (testimony to resume on 8/17/2022). Court Reporter: Elizabeth Saint–Loth. (ztg) (Entered: 08/16/2022)
08/16/2022	<u>63</u>	MOTION in Limine by USA as to ERIK HERRERA. (Schesnol, Jacqueline) (Entered: 08/16/2022)
08/17/2022	<u>64</u>	Memorandum in Opposition by ERIK HERRERA re <u>63</u> Motion in Limine (Ogata, Jonathan) (Entered: 08/17/2022)
08/17/2022		Minute Entry for proceedings held before Chief Judge Beryl A. Howell: Jury Trial as to ERIK HERRERA held on 8/17/2022 on Counts 1, 2, 3, 4, and 5. Jury Trial resumed with the same jury of 12 and 1 alternate; Jury Trial continued to 8/18/2022, at 9:00 AM in Courtroom 22A– In Person before Chief Judge Beryl A. Howell. The government rested its case. Bond Status of Defendant: Personal Recognizance. Present: Defense Attorneys: Jonathan K. Ogata and Cuauhtemoc Ortega; US Attorneys: Jacqueline N. Schesnol and Christopher M. Cook; Government's Witnesses: 5) Officer Mark Gazelle (testimony resumed and concluded), 6) FBI Special Agent Kelsey Randall; Defendant's Witnesses: 1) Investigator John Nguyen, 2) Erik Herrera (testimony continued to 8/18/2022). Court Reporter: Elizabeth Saint–Loth. (ztg) (Entered: 08/17/2022)
08/18/2022		Minute Entry for proceedings held before Chief Judge Beryl A. Howell: Jury Trial as to ERIK HERRERA held on 8/18/2022 on Counts 1, 2, 3, 4, and 5. Jury Trial resumed and concluded with the same jury of 12 and 1 alternate; Defendant rested his case; Defendant's Rule 29 Motion for a Judgment of Acquittal, heard and denied; 1 alternate juror excused. Jury deliberations began and are scheduled to continue on 8/19/2022, at 9:00 AM in Courtroom 22A– In Person before Chief Judge Beryl A. Howell. Bond Status of Defendant: Personal Recognizance. Present: Defense Attorney: Jonathan K. Ogata and Cuauhtemoc Ortega; US Attorney: Jacqueline N. Schesnol and Christopher M. Cook; Defense Witness: Erik Herrera (testimony resumed and concluded). Court Reporter: Lorraine Herman. (ztg) (Entered: 08/18/2022)
08/18/2022	<u>65</u>	Jury Instructions as to ERIK HERRERA. (ztg) (Entered: 08/18/2022)
08/18/2022	<u>66</u>	ATTORNEYS' ACKNOWLEDGMENT OF TRIAL EXHIBITS and EXHIBIT LOGS as to ERIK HERRERA (ztg) (Entered: 08/18/2022)
08/19/2022		Minute Entry for proceedings held before Chief Judge Beryl A. Howell: Jury Trial as to ERIK HERRERA held on 8/19/2022 on Counts 1, 2, 3, 4, and 5. Jury deliberations resumed and concluded with the same Jury of 12; JURY VERDICT rendered as to ERIK HERRERA, Defendant found guilty on all 5 Counts; Jury of 12 polled and discharged. Jury notes (1). Case referred to the Probation Office for presentence investigation; Sentencing Hearing scheduled for 11/10/2022, at 9:00 AM in Courtroom 22A– In Person before Chief Judge Beryl A. Howell. The Defendant will remain released on his own personal recognizance pending sentencing under the same conditions of release imposed

		by the Court; Bond Status of Defendant: Personal Recognizance. Present: Defense Attorneys: Jonathan K. Ogata and Cuauhtemoc Ortega; US Attorneys: Jacqueline N. Schesnol and Christopher M. Cook. Court Reporter: Lorraine Herman. (ztg) (Entered: 08/19/2022)
08/19/2022	<u>67</u>	Jury Note as to ERIK HERRERA. (ztg) (Entered: 08/19/2022)
08/19/2022	<u>68</u>	Signature Page of Foreperson as to ERIK HERRERA in Jury Note. (Access to the PDF Document is restricted pursuant to the E-Government Act. Access is limited to Counsel of Record and the Court.) (ztg) (Entered: 08/19/2022)
08/19/2022	<u>69</u>	VERDICT FORM as to ERIK HERRERA. (ztg) (Entered: 08/19/2022)
08/19/2022	<u>70</u>	Signature Page of Foreperson as to ERIK HERRERA in Jury Verdict. (Access to the PDF Document is restricted pursuant to the E-Government Act. Access is limited to Counsel of Record and the Court.) (ztg) (Entered: 08/19/2022)
08/19/2022		MINUTE ORDER (paperless) denying <u>63</u> United States' Motion in Limine for the reasons stated on the record on August 17, 2022. Signed by Chief Judge Beryl A. Howell on August 19, 2022. (lcbah3) (Entered: 08/19/2022)
10/14/2022	<u>72</u>	Unopposed MOTION to Continue <i>Sentencing Hearing Date and Briefing Schedule</i> by ERIK HERRERA. (Attachments: # <u>1</u> Proposed Order)(Ortega, Cuauhtemoc) (Entered: 10/14/2022)
10/17/2022		MINUTE ORDER granting <u>72</u> Unopposed Motion to Continue Sentencing Hearing Date and Briefing Schedule as to ERIK HERRERA. Upon consideration of the unopposed motion, it is hereby ORDERED that the Sentencing Hearing currently scheduled for November 10, 2022, shall be CONTINUED to January 13, 2023, at 1:00 PM in Courtroom 22A- In Person before Chief Judge Beryl A. Howell. SO ORDERED. Signed by Chief Judge Beryl A. Howell on 10/17/2022. (ztg) (Entered: 10/17/2022)
12/27/2022	<u>75</u>	SENTENCING MEMORANDUM by USA as to ERIK HERRERA (Schesnol, Jacqueline) (Entered: 12/27/2022)
12/27/2022	<u>76</u>	NOTICE of <i>Sentencing Exhibits</i> by USA as to ERIK HERRERA (Schesnol, Jacqueline) (Entered: 12/27/2022)
12/29/2022	<u>77</u>	SENTENCING MEMORANDUM by ERIK HERRERA (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14)(Ortega, Cuauhtemoc) (Entered: 12/29/2022)
01/04/2023	<u>78</u>	REPLY by ERIK HERRERA To <u>75</u> Government's Sentencing Memorandum. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5) (Ortega, Cuauhtemoc) Modified on 1/5/2023 (zhsj). (Entered: 01/04/2023)
01/11/2023		MINUTE ORDER (paperless) DIRECTING the parties, by January 13, 2023 at 1 PM, to provide their positions whether the photo and video evidence

		described in the government's <u>76</u> Notice of Sentencing Exhibits may be made publicly available without restriction. Signed by Chief Judge Beryl A. Howell on January 11, 2023. (lcbah3) (Entered: 01/11/2023)
01/11/2023		Set/Reset Deadlines as to ERIK HERRERA: Response to Order of the Court due by 1/13/2023. (ztg) (Entered: 01/11/2023)
01/13/2023	<u>80</u>	RESPONSE TO ORDER OF THE COURT by ERIK HERRERA re Order, (Ortega, Cuauhtemoc) (Entered: 01/13/2023)
01/13/2023	<u>81</u>	RESPONSE TO ORDER OF THE COURT by USA as to ERIK HERRERA re Order, (Cook, Christopher) (Entered: 01/13/2023)
01/13/2023	<u>82</u>	<p>TRANSCRIPT OF PROCEEDINGS, in case as to ERIK HERRERA, before Chief Judge Beryl A. Howell, held on 8-05-2022. Page Numbers: 1 – 121. Date of Issuance: 1-13-2023. Court Reporter: Elizabeth Saint-Loth, Telephone number: 202-354-3242, Transcripts may be ordered by submitting the <u>Transcript Order Form</u></p> <p>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.</p> <p>Redaction Request due 2/3/2023. Redacted Transcript Deadline set for 2/13/2023. Release of Transcript Restriction set for 4/13/2023.(Saint-Loth, Elizabeth) (Entered: 01/13/2023)</p>
01/13/2023		<p>Minute Entry for proceedings held before Chief Judge Beryl A. Howell:Sentencing held on 1/13/2023 as to ERIK HERRERA. Defendant sentenced on Counts 1, 2, 3, 4, and 5 of the Indictment. Defendant sentenced on Count 1 to a concurrent term of forty-eight (48) months incarceration followed by a concurrent term of thirty-six (36) months of supervised release, on each of Counts 2 and 3 Defendant sentenced to concurrent terms of twelve (12) months incarceration followed by concurrent terms of twelve (12) months of supervised release, on each of Counts 4 and 5 Defendant sentenced to concurrent terms of six (6) months incarceration; Defendant ordered to pay to the Clerk of Court a special assessment in the total amount of \$170.00 (\$100.00 as to Count 1, \$25.00 as to each of Counts 2 and 3, and \$10.00 as to each of Counts 4 and 5), a fine in the amount of \$1,000.00, and restitution to be disbursed to the Architect of the Capitol in the amount of \$2,000.00. Oral motion by counsel for the Defendant for a recommendation for prison camp designation to Terminal Island or to any prison in Southern California, granted. The Defendant will be allowed to self-surrender and will remain released under the same conditions of release. Bond Status of Defendant: Personal Recognizance pending</p>

		self-surrender. Present: Defense Attorney: Cuauhtemoc Ortega; US Attorneys: Christopher M. Cook and Jacqueline N. Schesno; Probation Officer: Jessica Reichler (remotely); Pretrial Officer: John Copes (telephonically); the Defendant. Court Reporter: Elizabeth Saint-Loth. (ztg) Modified to correct date on 1/17/2023 (ztg). (Entered: 01/17/2023)
01/17/2023	<u>83</u>	JUDGMENT as to ERIK HERRERA. Statement of Reasons Not Included. Signed by Chief Judge Beryl A. Howell on 1/13/2023. (zhsj) (Entered: 01/17/2023)
01/17/2023	<u>84</u>	STATEMENT OF REASONS as to ERIK HERRERA re <u>83</u> Judgment Access to the PDF Document is restricted per Judicial Conference Policy. Access is limited to Counsel of Record and the Court. Signed by Chief Judge Beryl A. Howell on 1/13/2023. (zhsj) (Entered: 01/17/2023)
01/17/2023		MINUTE ORDER (paperless), as to ERIK HERRERA, DIRECTING the government, in light of the parties' lack of objections as noted in the government's <u>81</u> Response to Court's January 11, 2023 Order and defendant's <u>80</u> Response to Court's January 11, 2023 Order, promptly to make the video exhibits identified in its <u>76</u> Notice of Sentencing Exhibits publicly available without restrictions by providing access using the "drop box" technical solution described in Standing Order 21-28, <i>In re: Media Access to Video Exhibits in Pretrial Capitol Cases</i> . Signed by Chief Judge Beryl A. Howell on January 17, 2023. (lcbah3) (Entered: 01/17/2023)
01/20/2023	<u>85</u>	NOTICE OF APPEAL – Final Judgment by ERIK HERRERA re <u>83</u> Judgment. Fee Status: No Fee Paid. Parties have been notified. (Ortega, Cuauhtemoc) (Entered: 01/20/2023)

United States District Court for the District of Columbia

UNITED STATES OF AMERICA

vs.

Erik HerreraCriminal No. 1:21-cr-619-BAH

NOTICE OF APPEAL

Name and address of appellant:

Erik Herrera
433 Emerald Avenue
El Cajon, CA 92020

Name and address of appellant's attorney:

Cuauhtemoc Ortega
Federal Public Defender
321 East 2nd Street
Los Angeles, CA 90012

Offense: 18:1512(c)(2), (2); 18:1752(a)(1); 18:1752(a)(2); 40:5104(e)(2)(D); 40:5104(e)(2)(G)

Concise statement of judgment or order, giving date, and any sentence:

On 1/13/2023 defendant was committed to the custody of the Federal Bureau of Prisons for a total term of 48 months on Count 1; 12 months on counts 2 & 3; 6 months on counts 4 & 5 all counts to run concurrently.

Name and institution where now confined, if not on bail:

I, the above named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

DATE

1/18/2023

APPELLANT

ATTORNEY FOR APPELLANT

GOVT. APPEAL, NO FEE ☐CJA, NO FEE ☒PAID USDC FEE ☐PAID USCA FEE ☐

Does counsel wish to appear on appeal?

YES ☒NO ☐

Has counsel ordered transcripts?

YES ☒NO ☐

Is this appeal pursuant to the 1984 Sentencing Reform Act?

YES ☐NO ☒

FILED

JAN 17 2023

Clerk, U.S. District and
Bankruptcy Courts

UNITED STATES DISTRICT COURT

District of Columbia

UNITED STATES OF AMERICA

v.

ERIK HERRERA

JUDGMENT IN A CRIMINAL CASE

Case Number: 21CR619-01 (BAH)

USM Number: 60957-509

Cuahtemoc Ortega and Jonathan K. Ogata

Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☒ was found guilty on count(s) 1, 2, 3, 4, 5 of the Indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC 1512(C)(2), (2)	Obstruction of an Official Proceeding and Aiding and Abetting	1/6/2021	1
18 USC 1752(a)(1)	Entering and Remaining in a Restricted Building or Grounds	1/6/2021	2

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/13/2023

Date of Imposition of Judgment

Signature of Judge

Beryl A. Howell, Chief U.S. District Judge

Name and Title of Judge

Date

DEFENDANT: ERIK HERRERA
CASE NUMBER: 21CR619-01 (BAH)

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC 1752(a)(2)	Disorderly and Disruptive Conduct in a Restricted Building or Grounds	1/6/2021	3
40 USC 5104(e)(2)(D)	Disorderly Conduct in a Capitol Building	1/6/2021	4
40 USC 5104(e)(2)(G)	Parading, Demonstrating, or Picketing in a Capitol Building	1/6/2021	5

DEFENDANT: ERIK HERRERA
CASE NUMBER: 21CR619-01 (BAH)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
FORTY-EIGHT (48) MONTHS on Count 1; TWELVE (12) MONTHS on Counts 2 and 3; and SIX (6) MONTHS on Counts 4 and 5, ALL COUNTS TO RUN CONCURRENTLY.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
That the Bureau of Prisons designate incarceration at Terminal Island in San Pedro, CA or at any facility located in Southern California.
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☒ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ERIK HERRERA
CASE NUMBER: 21CR619-01 (BAH)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

THIRTY-SIX (36) MONTHS as to Count 1 and TWELVE (12) MONTHS as to Counts 2 and 3, TO RUN CONCURRENTLY.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: ERIK HERRERA
CASE NUMBER: 21CR619-01 (BAH)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: ERIK HERRERA
CASE NUMBER: 21CR619-01 (BAH)

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

Special Assessment - The defendant is ordered to pay a special assessment on \$100.00 as to Count 1; \$25.00 as to each of Counts 2 and 3; and \$10.00 as to each of Counts 4 and 5, for a total of \$170.00, in accordance with 18 USC 3013.

DEFENDANT: ERIK HERRERA
CASE NUMBER: 21CR619-01 (BAH)

SPECIAL CONDITIONS OF SUPERVISION

Financial Information Disclosure - The defendant must provide the probation officer access to any requested financial information and authorize the release of any financial information. The Probation Office may share financial information with the United States Attorney's Office.

Substance Abuse Testing - The defendant must submit to substance abuse testing to determine if he has used a prohibited substance. He must not attempt to obstruct or tamper with the testing methods.

Mental Health Treatment - The defendant must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise the defendant's participation in the program (provider, location, modality, duration, intensity, etc.).

Re-entry Progress Hearing - Within sixty days of release from incarceration or placement on supervision, the defendant will appear before the Court for a re-entry progress hearing. Prior to the hearing, the probation officer will submit a report summarizing the defendant's status and compliance with release conditions. If the defendant is supervised by a district outside of the Washington DC metropolitan area, the United States Probation Office in that district will submit a progress report to the Court within 60 days of the commencement of supervision; upon receipt of the progress report, the Court will determine if the defendant's appearance is required.

Restitution and Fine - The defendant is ordered to pay a fine in the amount of \$1,000.00, and to make restitution in the amount of \$2,000.00 to the Architect of the Capitol. The Court determined that he does not have the ability to pay interest and therefore waives any interest or penalties that may accrue on the balance.

Restitution payments shall be made to the Clerk of the Court for the United States District Court, District of Columbia, for disbursement to the following victim: Architect of the Capitol, Office of the Chief Financial Officer, Attn.: Kathy Sherrill, CPA, Ford House Office Building, Room H2-205B, Washington, DC 20515. Amount of Loss: \$2,000.00

Restitution and Fine Obligation - The defendant must pay the balance of any restitution owed at a rate of no less than \$50.00 each month, and of the criminal fine at a rate of no less than \$50.00 each month, with payments suspended during the period of his incarceration.

The financial obligations are immediately payable to the Clerk of the Court for the U.S. District Court, 333 Constitution Avenue, NW, Washington, DC 20001. Within 30 days of any change of address, the defendant shall notify the Clerk of the Court of the change until such time as the financial obligation is paid in full.

The Probation Office shall release the presentence investigation report to all appropriate agencies, which includes the United States Probation Office in the approved district of residence, in order to execute the sentence of the Court. Treatment agencies shall return the presentence report to the Probation Office upon the defendant's completion or termination from treatment.

DEFENDANT: ERIK HERRERA
 CASE NUMBER: 21CR619-01 (BAH)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 170.00	\$ 2,000.00	\$ 1,000.00	\$ 0.00	\$ 0.00

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Architect of the Capitol		\$2,000.00	
Office of the Chief Financial Officer			
Attn.: Kathy Sherrill, CPA			
Ford House Office Building			
Room H2-205B			
Washington, DC20515			

TOTALS	\$	0.00	\$	2,000.00
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☒ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ERIK HERRERA
CASE NUMBER: 21CR619-01 (BAH)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 170.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
The defendant shall pay a \$170 special assessment, a \$1,000.00 fine, and \$2,000.00 restitution. These amounts are due and payable to the Clerk of the U.S. District Court for the District of Columbia. The defendant must pay the balance of any restitution owed at a rate of no less than \$50.00 each month, and of the criminal fine at a rate of no less than \$50.00 each month, with payments suspended during the period of his incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.