

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

UNITED STATES OF AMERICA	:	Case No: 21-cr-___
	:	
v.	:	
	:	18 U.S.C. §§ 371, 1512(c)(2), 2
CALEB BERRY,	:	
	:	
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, Caleb Berry, with the concurrence of his attorney, agree and stipulate to the below factual basis for the 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 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol.

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

3. On January 6, 2021, a joint session of the United States Congress convened at the United States 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 separate chambers of the United States Capitol to certify the vote count of

the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. 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. 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 U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

5. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and officers of the U.S. Capitol Police, 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 by U.S. Capitol Police Officers or other authorized security officials.

6. At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. 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 U.S. 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 U.S. Capitol, requiring the expenditure of more than \$1.4 million dollars for repairs.

7. Shortly thereafter, at approximately 2:20 p.m., members of the United States House of Representatives and United States 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 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the U.S. Capitol, including the danger posed by individuals who had entered the U.S. Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

Caleb Berry's Participation in the January 6, 2021, Capitol Riot

8. In advance of January 6, 2021, Mr. Berry coordinated with certain individuals and affiliates of the Oath Keepers – referred to here as “the co-conspirators” – in making plans for what Mr. Berry and the co-conspirators would be doing in Washington, D.C., on January 6.

9. Mr. Berry and at least some of the co-conspirators discussed the need to bring firearms to the Washington, D.C., metropolitan area for the events of January 6.

10. On January 4 and 5, 2021, Mr. Berry, with at least some of the co-conspirators, drove from Florida to the Washington, D.C., metropolitan area.

11. On January 6, 2021, in the morning, Mr. Berry met up with at least some of the co-conspirators at an event near the White House.

12. In the early afternoon, Mr. Berry marched with at least some of the co-conspirators towards the U.S. Capitol.

13. At around 2:28 p.m., Mr. Berry and at least some of the co-conspirators unlawfully entered the restricted grounds of the U.S. Capitol. Mr. Berry was wearing an Oath Keepers shirt and hat.

14. Mr. Berry then joined together with at least some of the co-conspirators in walking up the stairs on the east side of the U.S. Capitol in a “stack” formation, with each person keeping a hand on the shoulder of the person in front.

15. At around 2:40 p.m., Mr. Berry was present with at least some of the co-conspirators on the plaza outside the east Rotunda doors of the U.S. Capitol. At least some of the co-conspirators and other individuals pushed against U.S. Capitol Police officers and the east Rotunda doors, eventually forcing open the doors. The doors were significantly damaged. Mr. Berry and at least some of the co-conspirators then unlawfully entered the U.S. Capitol Building itself.

16. At the time Mr. Berry unlawfully entered the building, Mr. Berry believed that he and the co-conspirators were trying to obstruct, influence, and impede 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 the statutes listed in sections 15 through 18 of title 3 of the U.S. Code.

17. Mr. Berry intended to affect the government by stopping or delaying the Congressional proceeding, and, in fact, did so. He accomplished this by intimidating and coercing government personnel who were participating in or supporting the Congressional proceeding.

18. On January 7, 2021, Mr. Berry factory-reset his iPhone, deleting the data on the phone that included encrypted communications with at least some of the co-conspirators.

Limited Nature of Factual Basis

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

Respectfully submitted,

CHANNING D. PHILLIPS
Acting United States Attorney
D.C. Bar No. 415793

By: /s/ Jeffrey Nestler
Jeffrey Nestler
Assistant United States Attorney

DEFENDANT'S ACKNOWLEDGMENT

I 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: _____

Caleb Berry
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: _____

Daniel Fernandez
Attorney for Defendant Caleb Berry