

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

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| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | Case No. 21-cr-34 (CRC) |
| | : | |
| JACOB FRACKER, | : | |
| | : | |
| 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, Jacob Fracker, 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, located 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 U.S. Capitol. During the joint session, elected members of the United States House of Representatives and the United States Senate met to certify the vote count of the Electoral College of the 2020 Presidential Election, 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 moved to separate chambers to resolve a particular objection. Vice President Mike Pence, a Secret Service Agency protectee, 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.

8. On January 6, 2021, Jacob Fracker and Thomas Robertson were off-duty from their positions as police officers with the Rocky Mount Police Department in Rocky Mount, Virginia, where Robertson held a higher rank than Fracker.

9. Both Robertson and Fracker served in the U.S. military. Fracker had specialized training in handling crowd control and volatile situations, and during his military service spent time securing a military base in Qatar.

Fracker and Robertson's Participation in the January 6 Capitol Riots

10. Robertson and Fracker were friends on Facebook. As early as November 7, 2020, Robertson began posting on Facebook about the illegitimacy of the 2020 presidential election and the necessity of retaliating with force. For example, on that date, he wrote: "A legitimate republic stands on 4 boxes. The soapbox, the ballot box, the jury box, and then the cartridge box. We just moved to step 3. Step 4 will not be pretty. I cannot speak for others, but being disenfranchised by fraud is my hard line. I've spent most of my adult life fighting a counter insurgency. Im about to become part of one, and a very effective one." Fracker may have read this post by Robertson

before January 6, 2021, and recalls specifically reading posts from Robertson about a forthcoming armed revolution.

11. After the November 7, 2021, presidential election, but before January 6, 2021, Robertson invited Fracker to join him on a trip to the District of Columbia on January 6, 2021.

12. On the morning of January 6, 2021, Fracker went to Robertson's house and together they drove with a neighbor, Person A, to the District of Columbia in Robertson's car. Robertson brought for their use three gas masks, and both Robertson and Fracker traveled with their police identification badges and Rocky Mount Police Department-issued firearms. Robertson also brought a large stick.

13. Upon arrival in the D.C. metropolitan area, Robertson parked the car in a parking lot adjacent to a Metrorail (Metro) station which Fracker believes was in Virginia. Robertson and Fracker agreed to leave their police identification badges and firearms in the vehicle and take the Metro to a stop near the Washington Monument. Robertson told Fracker not to have any police identification on his person. The firearms were not secured within the vehicle. Robertson paid for Metro tickets for himself, Fracker and Person A.

14. Robertson, Fracker and Person A arrived at the Washington Monument and listened to several speeches about allegations of purported election fraud. Fracker had agreed to join Robertson in the District of Columbia, in-part, to hear what Trump was going to do about the purported stolen election, and whether the election was going to be overturned that day or if they needed to "buckle in" for the long haul.

15. Following the speeches, Robertson, Fracker and Person A walked down Pennsylvania Avenue and approached the U.S. Capitol restricted area, where a mob was gathering. During the speeches, Fracker had learned more about Vice President Pence having a role to play

in the election later that day, in part from a “crusty old guy” telling them that “if Mike Pence does whatever he says he is going to do, then the votes don’t count.” This information factored into their decision to continue on to the U.S. Capitol Building as planned.

16. Robertson, Fracker, and Person A donned gas masks and approached the lower west terrace of the U.S. Capitol building, which was restricted area on January 6, 2021. They joined an advancing mob of rioters armed with sticks and other paraphernalia. Robertson carried a large wooden stick or club that Fracker had never seen Robertson carry before.

17. Metropolitan Police Department (MPD) Officers from Civil Disturbance Platoon Unit 42 (CDU-42) arrived at the U.S. Capitol after Robertson, Fracker and Person A, and proceeded in the restricted area to the lower west terrace to assist U.S. Capitol Police Officers attempting to hold back the mob.

18. Based on his own law enforcement and combat experience, Fracker understood what the officers were trying to do—they were attempting to keep the protestors away from the Capitol building and control the crowd.

19. At approximately 2:03pm, Robertson, Fracker, and Person A stood in the path of the MPD officers CDU-42, and Robertson used his stick to impede the officers’ path.

20. Shortly after, Robertson and Fracker ran up the stairs towards the Senate Wing Door of the U.S. Capitol Building, and they were briefly separated.

21. Fracker remembered hearing “stop the steal” and “stop the fraud” being shouted throughout the crowd as he climbed the stairs.

22. At approximately 2:14 p.m. on January 6, 2021, Fracker entered the U.S. Capitol through the Senate Wing Door without lawful authority in a sea of rioters engaged in destructive and violent behavior. While in the U.S. Capitol Building, he understood that something was going

on in the Capitol relating to Vice President Pence and the election, and that the rioters wanted to disrupt this.

23. After entering the building, Fracker looked for Robertson, and then walked into the U.S. Capitol Crypt where he found Robertson. They took a selfie-styled photo making an obscene gesture in front of a statue of John Stark.

24. Robertson and Fracker exited the building together, reunited with Person A, and drove back to Rocky Mount, Virginia.

25. Throughout the day, both Robertson and Fracker used their mobile phones to take photos and video footage of their activity.

26. In the car on the way home, Fracker, Robertson and Person A discussed the fact that they believed they had successfully stopped the election from being stolen. Robertson remarked that this may be the way the next American civil war starts.

27. On January 5, 2021, two new Senators were elected in Georgia. After the election results were announced Fracker participated in a group chat on Facebook in which one participant remarked that the next two years were going to be hard for gun owners. On January 6, 2021, Fracker responded to this message “Don’t worry boys, we holding it down.” Later in the group chat, a friend implies that he [Fracker] is starting the “boog,” and Fracker sent him pictures from the Capitol. When a friend responds in the group chat that the news is reporting that the Senators are sheltering in place and barricading, Fracker responds “good.”

Fracker’s Conduct After January 6, 2021

28. Following his time in the U.S. Capitol on January 6, 2021, Fracker bragged to his friends on social media that he had taken a “piss” in “Nancy P’s toilet,” referring to Nancy Pelosi, the Speaker of the House of Representatives, even though Fracker did not use a toilet in the

Speaker's restroom that day. He also stated in a Facebook post, referring to the John Stark photograph, "Lol to anyone who's possibly concerned about the picture of me going around... Sorry I hate freedom? Sorry I fought hard for it and lost friends for it? [emoji]...Not like I did anything illegal, WAY too much to lose to go there but y'all do what you feel you need to lol. And a foot note: I can protest for what I believe in and still support your protest for you believe in [emoji] just saying...after all, I fought for your right to do it..."

29. On January 7, 2021, Fracker sent a photo and multiple videos to a friend on Facebook. The photo depicted Fracker, dressed in a black sweatshirt with an American flag on the left side, standing in front of a statue which was holding a "Trump 2020, Make America Great Again" flag. After sending the photo but before sending the videos, Fracker told his Facebook friend "Don't share these. Just thought you should know there's hitters out here trying to make a fucking difference at any cost." He also acknowledged he had assisted rioters who had gotten hit with tear gas, and, as an apparent explanation for the events of the day, wrote, "[y]ou put almost if not more than a million of us against...the 25 cops that were up there? Things are gonna get spicy."

30. On or about January 13, 2021, federal law enforcement officers separately called both Fracker and Robertson and informed them of outstanding warrants for their arrest and suggested that Robertson and Fracker turn themselves in to law enforcement, which they each agreed to do.

31. Prior to turning himself in, Fracker drove to Robertson's house to drop off his daughter for Robertson's wife to watch. While at Robertson's house, Fracker gave Robertson his personal mobile phone, at Robertson's request, and Robertson put both Fracker's and his own phone into an ammunition can.

32. Fracker did not retrieve his phone from Robertson's residence after being arrested, and Robertson told Fracker he "took care of" the phone. Fracker interpreted this comment from Robertson as meaning "problem solved," and that both phones had been disposed of. Robertson did not tell Fracker where he took the phones, saying "it was better that way."

33. The personal phone of Fracker's that Robertson "took care of" was the same phone that Fracker used to send Rocky Mount Police Department work-related messages and take Rocky Mount Police Department work-related photographs.

34. Fracker only accessed Facebook through his mobile phone, and his Facebook account was ~~deleted~~ disabled ^{JDF} ^{TBC} ^{EB} ^{ca} contemporaneous with his arrest.

35. Subsequently both Robertson and Fracker got new phones, which they used to communicate and discuss felony charges brought by the Government on January 29, 2021.

36. Since January 6, 2021, Robertson made payments to Fracker totaling more than \$30,000. Robertson first offered to give Fracker money while they were being processed by law enforcement following their self-surrender. Fracker is grateful for this money.

37. Fracker has never seen Robertson use a walking stick.

38. Fracker considers Robertson a father-figure, and mentor. They worked closely together, socialized frequently, and saw each other daily.

Conclusion

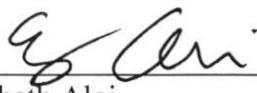
39. Fracker admits that by the time he and Robertson entered the U.S. Capitol Building, they had agreed to attempt to impede, stop or delay the proceedings going on before Congress and that they aided, assisted, encouraged, and facilitated each other in this conduct.

40. This proffer of evidence is not intended to constitute a complete statement of all facts known by Fracker or the government. Rather, it is a limited statement of facts intended to

provide the necessary factual predicate for Fracker's guilty plea.

Respectfully submitted,

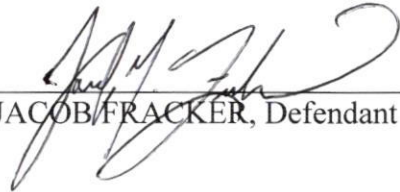
MATTHEW M. GRAVES
United States Attorney

By: /s/ 
Elizabeth Aloï
Assistant United States Attorney
NY Bar No. 4457651
555 4th Street NW
Washington, DC 20530
Elizabeth.Aloï@usdoj.gov
(202) 695-0610

DEFENDANT'S ACCEPTANCE

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

Dated: 3/15/22




JACOB FRACKER, Defendant

ATTORNEY'S ACKNOWLEDGEMENT

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

Dated: 3/16/22



BERNARD CRANE.
Attorney for Jacob Fracker