

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

UNITED STATES OF AMERICA	:	Crim No. 21-cr-34 (CRC)
	:	
v.	:	VIOLATIONS:
	:	
JACOB FRACKER,	:	18 U.S.C. § 371
	:	(Conspiracy)
Defendant.	:	
	:	
	:	
	:	
	:	

SUPERSEDING INFORMATION

Introduction

The 2020 United States Presidential Election and the Official Proceeding on January 6, 2021

1. The 2020 United States Presidential Election occurred on November 3, 2020.
2. The United States Electoral College (“Electoral College”) is a group required by the Constitution to form every four years for the sole purpose of electing the president and vice president, with each state appointing its own electors in a number equal to the size of that state’s Congressional delegation.
3. On December 14, 2020, the presidential electors of the Electoral College met in the state capital of each state and in the District of Columbia and formalized the result of the 2020 U.S. Presidential Election: Joseph R. Biden Jr. and Kamala D. Harris were declared to have won sufficient votes to be elected the next president and vice president of the United States.
4. On January 6, 2021, a Joint Session of the United States House of Representatives and the United States Senate (“the Joint Session”) convened in the United States Capitol (“the

Capitol”) building. The purpose of the Joint Session was to open, count, and resolve any objections to the Electoral College vote of the 2020 U.S. Presidential Election, and to certify the results of the Electoral College vote (“Certification of the Electoral College vote”) as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18.

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

5. The Capitol is secured 24 hours a day by United States Capitol Police (“Capitol Police”). The Capitol Police maintain permanent and temporary barriers to restrict access to the Capitol exterior, and only authorized individuals with appropriate identification are allowed inside the Capitol building.

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

7. On January 6, 2021, at approximately 1:00 p.m., the Joint Session convened in the Capitol building for the Certification of the Electoral College vote. Vice President Michael R. Pence presided, first in the Joint Session and then in the Senate chamber.

8. A large crowd began to gather outside the Capitol perimeter as the Joint Session got underway. Crowd members eventually forced their way through, up, and over Capitol Police barricades onto the Capitol grounds and advanced to the building’s exterior façade. Capitol Police officers attempted to maintain order and stop the crowd from entering the Capitol building, to which the doors and windows were locked or otherwise secured. Nonetheless, shortly after 2:00 p.m., crowd members forced entry into the Capitol building by breaking windows, ramming open doors, and assaulting Capitol Police officers. Other crowd members encouraged and otherwise assisted the forced entry. The crowd was not lawfully authorized to enter or remain

inside the Capitol building or grounds, and no crowd member submitted to security screenings or weapons checks by Capitol Police or other security officials.

9. Shortly thereafter, at approximately 2:20 p.m., members of the House and Senate (including Vice President Pence) were evacuated from their respective chambers. The Joint Session was halted while Capitol Police and other law-enforcement officers worked to restore order and clear the Capitol building and grounds of the unlawful occupants.

10. Later that night, law enforcement regained control of the Capitol building and grounds. At approximately 8:00 p.m., the Joint Session reconvened, presided over by Vice President Pence, who had remained hidden within the Capitol building and grounds throughout these events.

11. In the course of these events, over 100 law enforcement officers were injured. The Capitol suffered over one million dollars in damage—including broken windows and doors, graffiti, and residue from pepper spray, tear gas, and fire extinguishers deployed both by crowd members who stormed the Capitol and by Capitol Police officers trying to restore order. Additionally, many media members were assaulted and had cameras and other news-gathering equipment destroyed.

12. During the times set forth herein, Thomas Robertson and JACOB FRACKER were police officers with the Rocky Mount Police Department in Rocky Mount, Virginia. They were off-duty on January 6, 2021.

13. 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.”

14. On December 19, 2020, Robertson referenced an “open armed rebellion” and an “insurgency” in a post to his Facebook account and stated, “I'm prepared to start one here and know a bunch of like minded and trained individuals.”

15. After the November 3, 2020, 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.

COUNT ONE
(18 U.S.C. § 371 – Conspiracy)

16. The allegations contained in paragraphs 1 through 15 of this Indictment are re-alleged as if fully set forth herein.

The Conspiracy

17. On January 6, 2021, in the District of Columbia and elsewhere, the defendant,
JACOB FRACKER,
did knowingly and unlawfully conspire, confederate, and agree with Thomas Robertson and persons known and unknown to the Grand Jury to corruptly 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 3 U.S.C. §§ 15-18, in violation of 18 U.S.C. § 1512(c)(2).

Purpose of the Conspiracy

18. It was the purpose of the conspiracy to stop, delay, and hinder the Certification of the Electoral College vote.

Manner and Means

19. FRACKER, together with others known and unknown, carried out the conspiracy by the following manner and means, among others:

- a. Traveling to Washington, D.C. on January 6, 2021;
- b. Bringing tactical gear and supplies, including gas masks;
- c. Forcibly storming past exterior barricades and Capitol Police and other law enforcement officers to access the Capitol Grounds, and continuing through damaged exterior doors to gain entry to the Capitol during the Congressional Joint Session; and
- d. Using social media to encourage and celebrate the breach of the U.S. Capitol and interference with the Joint Session.

Overt Acts

20. On the morning of January 6, 2021, FRACKER traveled to Robertson's house and together they drove in Robertson's car with a neighbor, Person A, to the District of Columbia.

21. Robertson brought for their use three gas masks, which he distributed to FRACKER and Person A at the outset of the trip. FRACKER packed the gas mask in a backpack he carried throughout the day.

22. After listening to speeches near the Washington Monument, FRACKER, Robertson, and Person A walked down Pennsylvania Avenue and entered the restricted area on the U.S. Capitol grounds, where a crowd was gathering.

23. FRACKER, Robertson, and Person A donned gas masks and approached the lower west terrace of the U.S. Capitol building, which was within the restricted area of the U.S. Capitol grounds, where they joined an advancing mob of rioters. Robertson carried a large wooden stick.

24. At approximately 2:03 p.m., Metropolitan Police Department (MPD) Officers from Civil Disturbance Unit Platoon 42 (CDU-42) arrived at the U.S. Capitol after FRACKER, Robertson, 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. FRACKER, Robertson, and Person A stood in the path of the MPD officers and Robertson used his stick to impede the officers' path.

25. FRACKER and Robertson were positioned near the northwest stairs to the U.S. Capitol building. With other members of the crowd, FRACKER and Robertson ascended the stairs towards the Senate Wing Door of the U.S. Capitol Building despite law enforcement efforts to stop the crowd from doing so.

26. At approximately 2:14 p.m., FRACKER, alongside rioters engaged in destructive and violent behavior, entered the U.S. Capitol through the Senate Wing Door. Robertson entered a few minutes after, at 2:16 p.m.

27. FRACKER and Robertson reunited in the U.S. Capitol Crypt. They took a selfie-styled photo making an obscene gesture in front of a statue of John Stark.

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

29. Throughout the day, including while inside the U.S. Capitol building, both FRACKER and Robertson used their mobile phones to take photos and video footage of their activity.

30. On January 6, 2021, FRACKER made social media posts that supported and encouraged the mob's actions at the U.S. Capitol on January 6, 2021.

(Conspiracy to Obstruct an Official Proceeding, in violation of Title 18, United States Code, Section 371)

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney
DC Bar No. 481052

By: /s/Elizabeth Aloi
Elizabeth Aloi
DC Bar No. 1015864
Risa Berkower
NY Bar No. 4536538
Assistant United States Attorneys
555 Fourth Street, N.W., Room 5235
Washington, D.C. 20530
Eizabeth.Aloi@usdoj.gov
Risa.Berkower@usdoj.gov
(202) 252-7212 (Aloi)
(202) 252-6782 (Berkower)