

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

Holding a Criminal Term

Grand Jury Sworn in on June 14, 2024

UNITED STATES OF AMERICA

v.

NICHOLAS DeCARLO,
also known as "Dick Lambaste,"
also known as "Dick NeCarlo,"

and

NICHOLAS OCHS,

Defendants.

: CRIMINAL NO. 21-CR-73 (BAH)

:

: VIOLATIONS:

: 18 U.S.C. § 372

**: (Conspiracy to Prevent an Officer from
: Discharging Any Duties)**

: 18 U.S.C. § 111(a)(1)

**: (Assaulting, Resisting, or Impeding Certain
: Officers)**

: 18 U.S.C. §§ 111(a)(1) and (b), 2

**: (Assaulting, Resisting, or Impeding
: Certain Officers Using a Dangerous**

: Weapon)

: 18 U.S.C. § 231(a)(3), 2

**: (Obstruction of Law Enforcement During
: Civil Disorder and Aiding and Abetting)**

: 18 U.S.C. §§ 1361, 2

: (Destruction of Government Property)

: 18 U.S.C. §§ 641, 2

: (Theft of Government Property)

: 18 U.S.C. § 1752(a)(1) and (b)(1)(A)

**: (Entering and Remaining in a Restricted
: Building or Grounds with a Deadly or
: Dangerous Weapon)**

: 18 U.S.C. § 1752(a)(2) and (b)(1)(A)

**: (Disorderly Conduct in a Restricted
: Building or Grounds with a Deadly or
: Dangerous Weapon)**

: 18 U.S.C. § 1752(a)(4) and (b)(1)(A)

**: (Engaging in Physical Violence in a
: Restricted Building or Grounds with a
: Deadly or Dangerous Weapon)**

SECOND SUPERSEDING INDICTMENT

The Grand Jury charges that, at all times material to this Second Superseding Indictment (the “Indictment”), on or about the dates stated below:

Introduction

The Transfer of Presidential Power in the United States

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 November 7, 2020, the incumbent president, Donald J. Trump, was projected to have lost the presidential election.
4. The United States Constitution and federal statutes codify the procedures and dates governing the transfer of presidential power in the United States. The Twelfth Amendment requires presidential electors to meet in their respective states and certify “distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each.”
5. 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 the sufficient votes to be elected the next president and vice president of the United States.
6. The Twelfth Amendment also requires that the Vice President “shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall

then be counted.” Title 3, Section 15 of the United States Code provides that the United States Congress must convene during a joint session proceeding (“the Joint Session”) at 1:00 p.m. “on the sixth day of January succeeding every meeting of the electors,” with the Vice President presiding, to count the electoral votes, resolve any objections, certify their validity, and announce the result.

7. On January 6, 2021, a Joint Session of the United States House of Representatives and the United States Senate convened in the United States Capitol building (“the Capitol”) to certify the vote of the Electoral College of the 2020 U.S. Presidential Election (“Electoral College vote”).

The Incursion at the United States Capitol on January 6, 2021

8. The United States 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.

9. The entire Capitol complex—including the Capitol building, the Capitol Visitor Center, and Capitol grounds to include the entire exterior plaza—was barricaded and off limits to the public on January 6, 2021.

10. On January 6, 2021, at approximately 1:00 p.m., the Joint Session convened in the Capitol building to certify the Electoral College vote. Vice President Michael R. Pence, in his constitutional duty as President of the Senate, presided over the Joint Session.

11. 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 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, and no crowd member submitted to security screenings or weapons checks by Capitol Police or other security officials.

12. Shortly thereafter, at approximately 2:20 p.m., members of the House and Senate (including Vice President Pence)—who had withdrawn to separate chambers to resolve an objection—were evacuated from their respective chambers. The Joint Session and the entire official proceeding of the Congress was halted while Capitol Police and other law enforcement officers worked to restore order and clear the Capitol of the unlawful occupants.

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

The Defendants

14. Nicholas DeCarlo, also known as “Dick Lambaste,” also known as “Dick NeCarlo” (“DeCARLO”), was a U.S. citizen residing in Burlison and Fort Worth, Texas as of January 6, 2021.

15. Nicholas Ochs (“OCHS”) was a U.S. citizen residing in Waikiki, Hawaii as of January 6, 2021. He was the founding member of the Proud Boys Hawaii Chapter and has the words “Proud Boy” tattooed on his right arm.

16. The Proud Boys describes itself as a “pro-Western fraternal organization for men who refuse to apologize for creating the modern world; aka Western Chauvinists.” Proud Boys

members routinely attend rallies, protests, and other events, some of which have resulted in violence involving members of the group. There is an initiation process for new members of the Proud Boys, and members often wear black and yellow polo shirts or other apparel adorned with Proud Boys logos and slogans to public events.

COUNT ONE
(Conspiracy—18 U.S.C. § 372)
(Conspiracy to Prevent an Officer from Discharging Any Duties)

17. Paragraphs 1 through 16 are re-alleged and incorporated as if fully set forth herein.

The Conspiracy

18. From in and around December 2020, through in and around January 2021, in the District of Columbia and elsewhere, the defendants,

**NICHOLAS DeCARLO and
NICHOLAS OCHS,**

did knowingly conspire and agree together and with each other to prevent by force, intimidation, and threat, any person, that is, Members of the United States Congress and law enforcement officers, from discharging any duties of any office, trust, and place of confidence under the United States, and to induce by force, intimidation, and threat, any officer of the United States, that is, Members of the United States Congress and law enforcement officers, to leave the place where their duties as officers were required to be performed.

(In violation of Title 18, United States Code, Section 372)

Purpose of the Conspiracy

19. The purpose of the conspiracy was to prevent by force, intimidation, and threat Members of the United States Congress and law enforcement officers at the Capitol from discharging their duties, or to induce them, by force, intimidation, and threat, to leave the place

where their duties as officers were required to be performed in order to stop, delay, and hinder the certification of the results of the November 2020 Presidential Election.

Manner and Means

20. DeCARLO and OCHS, with others known and unknown, carried out the conspiracy through the following manner and means, among others, by:

- a. Agreeing to participate in the interference of, and taking steps to interfere with, the official Congressional proceeding to certify the vote of the Electoral College of the 2020 U.S. Presidential Election on January 6, 2021;
- b. Traveling to the Washington, D.C., area in advance of January 6, 2021;
- c. Soliciting donations to fund their travel to Washington, D.C.;
- d. Marching to the U.S. Capitol to “stop the steal”;
- e. Advancing past exterior barricades, Capitol Police, and other law enforcement officers, and entering the U.S. Capitol on January 6, 2021; and
- f. Throwing smoke bombs at a police line on the west front of the Capitol; and
- g. Entering and remaining in the Capitol building.

Acts in Furtherance of the Conspiracy

21. On November 7, 2020, in response to communications with other Proud Boys discussing news that “Biden won” the election and that it could lead to “civil war,” NICHOLAS OCHS replied, in part, “The odds are with us because of the Supreme Court boys. I’m pro violence but don’t blow your load too soon.” OCHS then added, “Not to be an anti-murder buzzkill but I really think this ISN’T fucked. Once it is, let’s go wild.” He further commented, “Bush/gore ruling took till December . . . Trump has a MUCH stronger case.” After further discussion about

the Supreme Court, OCHS reiterated his belief that the Supreme Court would side with President Trump, OCHS wrote, "I'll still chimp out if I'm wrong about the Supreme Court tho."

22. In or about January 2021, DeCARLO and OCHS attempted to and did raise funds via the Internet to finance their respective travel to Washington, D.C., from Texas and Hawaii. Specifically, DeCARLO posted a message that read, in part, "The DemocRats are at it again! This time: THEY'VE STOLEN A WHOLE ELECTION! It's up to one man, with the help of Nick Ochs, to expose those 'tolerant' leftists for their lies and teach them a lesson they'll NEVER forget: The MAGA TRAIN will KEEP ON ROLLIN'! TRUMP 2020 BABAAAY!" DeCARLO's message continued, in part, "It is CRUCIAL that Dick makes it out to DC to join his fellow patriots to help STOP THE STEAL, but he can't do it without your help!"

23. On or about January 4, 2021, OCHS flew from Honolulu to Washington, D.C., and he arrived on or about January 5, 2021.

24. On January 5, 2021, DeCARLO flew from Dallas, Texas to Philadelphia, Pennsylvania. He rented a car and drove from Philadelphia to a hotel in Alexandria, Virginia, where he and OCHS stayed overnight.

25. On the morning of January 6, 2021, OCHS and DeCARLO drove to Washington, D.C. and attended the "Stop the Steal" rally in support of then-President Donald J. Trump. They then began marching together from the area of the rally to the Capitol with other individuals who had been attending the protest.

26. As they crossed onto Capitol Grounds and approached the Capitol Building, OCHS said, "the steal is in fact right here and we are going to stop it." DeCARLO said, "this is where they are going to steal it. And they called on us. They called on us to stop it. We are putting an

end to it. They said calling all patriots. And our MVPs. Our MVP VIPs. Nick Ochs and Dick NeCarlo. Live on the scene. We're going to put the kai-bosh on this."

27. OCHS and DeCARLO arrived at the West Front of the Capitol, near scaffolding in place for the inauguration. OCHS said to DeCARLO, "we're not supposed to be here, this is beyond the fence." DeCARLO said, "we're all felons, yeah!"

28. At approximately 2:00 p.m., OCHS and DeCARLO watched as rioters sprayed chemical sprays and threw objects, including metal rods, at a line of police were attempting to keep rioters away from the inaugural stage.

29. DeCARLO threw a smoke grenade at the police line. After throwing his, DeCARLO stated, "Oh fuck, I just threw it without pulling the pin. God damn it."

30. DeCARLO then told OCHS how to operate the smoke grenade before throwing it by stating, "yeah, pull the pin and throw it." OCHS then threw a smoke grenade at the police line.

31. DeCARLO then asked OCHS, "Do you think they are scared in there?" OCHS replied, "Yeah, and I fucking love it!"

32. At approximately 2:12 p.m., DeCARLO and OCHS climbed stairs to the Upper West Terrace. At approximately 2:23 p.m., OCHS and DeCARLO entered the Capitol through the Senate Wing Doors. They walked down a hallway, through an atrium, and arrived at the Crypt of the Capitol at approximately 2:26 p.m.

33. OCHS and DeCARLO stopped in the Crypt to smoke cigarettes and take pictures of themselves doing so, which OCHS posted to social media with the caption "Hello from the Capital lol." DeCARLO noted that Congress had gone into lockdown. DeCARLO yelled, "Where's Nancy?" and "Where you at, Nancy?"

34. OCHS and DeCARLO then moved to the Crypt's East Lobby, which led toward the Capitol Visitor's Center. Crash doors in the area were closing as police attempted to cut off rioters' access to parts of the Capitol. At approximately 2:30 p.m., OCHS and DeCARLO stood next to two individuals who wedged the crash doors open with objects. OCHS and DeCARLO encouraged and recorded the individuals' effort to block the crash doors from closing.

35. OCHS and DeCARLO then traveled to the Rotunda of the Capitol. While standing in the Rotunda amidst other rioters, OCHS and DeCARLO yelled "Nancy's office!" and pointed toward a doorway in the Rotunda.

36. OCHS and DeCARLO exited the Capitol building at approximately 3:00 p.m.

37. Less than fifteen minutes later, they approached the Chestnut-Gibson Memorial Door of the Capitol. DeCARLO wrote the words "Murder the Media" with a permanent marker on the door as OCHS held up his phone to record DeCARLO. OCHS and DeCARLO then posed for pictures in front of the Memorial Door. "Murder the Media" was the name of OCHS and DeCARLO's social media channel.

38. DeCARLO and OCHS also rummaged through a U.S. Capitol Police duffel bag near the Memorial Door. DeCARLO took a pair of flexcuffs.

39. Walking away from the Capitol, with the building visible behind him, OCHS said, "sorry we couldn't go live when we stormed the fuckin' U.S. Capitol and made Congress flee." DeCARLO laughed and flashed a thumbs-up sign.

40. After leaving the Capitol on January 6, 2021, OCHS filmed himself and DeCARLO on the streets of Washington, D.C. In the video, OCHS stated, "Viewers, . . . we have some good news: . . . We have just, uh, peeked through this window, and on the television the headline reads that Congress stopped the vote when we stormed the Capitol. And, as we've been saying all day,

we came here to stop the steal.” DeCARLO interjected “we did it,” to which OCHS replied, “we were being sarcastic, but we didn’t know we were actually going to” DeCARLO then asked, “Wait, you were being sarcastic?” OCHS answered, “I was being a bit facetious,” to which DeCARLO replied, “Oh no, that’s what I came down here to do. We fucking did it.” OCHS then said words to the effect of, “It may resume, but the steal is for now stopped. You’re welcome, America!” to which DeCARLO replied “we did our job. We did our job.”

(In violation of Title 18, United States Code, Sections 372).

COUNT TWO
(18 U.S.C. § 111(a)(1))
(Assaulting, Resisting, or Impeding Certain Officers)

41. Paragraphs 1 through 16 and 21 through 40 of this Indictment are re-alleged and incorporated as though set forth herein.

42. As set forth in paragraph 29, on January 6, 2021, in the District of Columbia,

NICHOLAS DeCARLO,

with intent to commit a felony, that is, with intent to obstruct, impede, and interfere with law enforcement officers, lawfully engaged in the lawful performance of their official duties, incident to and during the commission of a civil disorder, as charged in Count Three, did forcibly assault, resist, oppose, impede, intimidate, and interfere with, an officer and employee of the United States, and of any branch of the United States Government (including any member of the uniformed services), by throwing a smoke grenade at a line of law enforcement in the West Plaza of the Capitol.

(In violation of Title 18, United States Code, Section 111(a)(1))

COUNT THREE
(18 U.S.C. §§ 111(a)(1) and (b), 2)
(Assaulting, Resisting, or Impeding Certain Officers)

43. Paragraphs 1 through 16 and 21 through 40 of this Indictment are re-alleged and incorporated as though set forth herein.

44. As set forth in paragraph 30, on January 6, 2021, at approximately 2:00 p.m. in the District of Columbia,

**NICHOLAS DeCARLO and
NICHOLAS OCHS,**

using a deadly and dangerous weapon, that is, a smoke grenade, with intent to commit a felony, that is, with intent to obstruct, impede, and interfere with law enforcement officers, lawfully engaged in the lawful performance of their official duties, incident to and during the commission of a civil disorder, as charged in Count Three, did forcibly assault, resist, oppose, impede, intimidate, and interfere with, an officer and employee of the United States, and of any branch of the United States Government (including any member of the uniformed services), by throwing a smoke grenade at a line of law enforcement in the West Plaza of the Capitol and by aiding and abetting the commission of the same.

(In violation of Title 18, United States Code, Sections 111(a)(1) and (b), and 2)

COUNT FOUR
(18 U.S.C. § 231(a)(3), 2)
(Civil Disorder and Aiding and Abetting)

45. Paragraphs 1 through 16 and 21 through 40 of this Indictment are re-alleged and incorporated as though set forth herein.

46. As set forth in paragraphs 29 and 30, on or about January 6, 2021, at approximately 2:00 p.m. in the District of Columbia and elsewhere, the defendants,

**NICHOLAS DeCARLO and
NICHOLAS OCHS,**

committed and attempted to commit an act to obstruct, impede, and interfere with law enforcement officers, lawfully engaged in the lawful performance of their official duties, incident to and during the commission of a civil disorder which in any way and degree obstructed, delayed, and adversely affected commerce and the movement of any article and commodity in commerce and the conduct and performance of any federally protected function.

(In violation of Title 18, United States Code, Sections 231(a)(3) and 2)

COUNT FIVE

(18 U.S.C. §§ 1361, 2—Destruction of Government Property)

47. Paragraphs 1 through 16 and 21 through 40 of this Indictment are re-alleged and incorporated as if fully set forth herein.

48. On or about January 6, 2021, in the District of Columbia, the defendants,

**NICHOLAS DeCARLO and
NICHOLAS OCHS,**

attempted to, and did, willfully injure and commit depredation against property of the United States, and of any department and agency thereof, and did aid and abet others to do so; that is, DeCARLO and OCHS defaced the Memorial Door of the U.S. Capitol Building, causing damage in an amount less than \$1000.

(In violation of Title 18, United States Code, Sections 1361 and 2)

COUNT SIX

(18 U.S.C. §§ 641, 2—Theft of Government Property)

49. Paragraphs 1 through 16 and 21 through 40 of this Indictment are re-alleged and incorporated as if fully set forth herein.

50. On or about January 6, 2021, in the District of Columbia, the defendants,

**NICHOLAS DeCARLO and
NICHOLAS OCHS,**

did embezzle, steal, purloin, knowingly convert to his use and the use of another, and without authority, sold, conveyed and disposed of any record, voucher, money and thing of value of the United States and any department and agency thereof, that is, flex handcuffs, which have a value of less than \$1000.

(In violation of Title 18, United States Code, Sections 641 and 2)

COUNT SEVEN

(18 U.S.C. § 1752(a)(1) and (b)(1)(A)—Restricted Building or Grounds with a Deadly or Dangerous Weapon)

51. Paragraphs 1 through 16 and 21 through 40 of this Indictment are re-alleged and incorporated as if fully set forth herein.

52. On or about January 6, 2021, in the District of Columbia, the defendants,

**NICHOLAS DeCARLO and
NICHOLAS OCHS,**

did knowingly enter and remain in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, without lawful authority to do so, and, during and in relation to the offense, did use and carry a deadly and dangerous weapon, that is, a smoke grenade.

(In violation of Title 18, United States Code, Section 1752(a)(1) and (b)(1)(A))

COUNT EIGHT

(18 U.S.C. § 1752(a)(2) and (b)(1)(A)— Disorderly and Disruptive Conduct in a Restricted Buildings or Grounds with a Deadly or Dangerous Weapon)

53. Paragraphs 1 through 16 and 21 through 40 of this Indictment are re-alleged and incorporated as if fully set forth herein.

54. On or about January 6, 2021, in the District of Columbia, the defendants,

**NICHOLAS DeCARLO and
NICHOLAS OCHS,**

did knowingly, and with intent to impede and disrupt the orderly conduct of Government business and official functions, engage in disorderly and disruptive conduct in and within such proximity to, a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, when and so that such conduct did in fact impede and disrupt the orderly conduct of Government business and official functions, and, during and in relation to the offense, did use and carry a deadly and dangerous weapon, that is, a smoke grenade.

(In violation of Title 18, United States Code, Section 1752(a)(2) and (b)(1)(A))

COUNT NINE

**(18 U.S.C. § 1752(a)(4) and (b)(1)(A)—Act of Physical Violence in a Restricted Buildings
or Grounds with a Deadly or Dangerous Weapon)**

55. Paragraphs 1 through 16 and 21 through 40 of this Indictment are re-alleged and incorporated as if fully set forth herein.

56. On or about January 6, 2021, in the District of Columbia, the defendants,

**NICHOLAS DeCARLO and
NICHOLAS OCHS,**

did knowingly engage in any act of physical violence against any person and property in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, and, during and in relation to the offense, did use and carry a deadly and dangerous weapon, that is, a smoke grenade.

(In violation of Title 18, United States Code, Section 1752(a)(4) and (b)(1)(A))

A TRUE BILL:

FOREPERSON

United States Attorney in
And for the District of Columbia