

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

|                                 |   |                                 |
|---------------------------------|---|---------------------------------|
| <b>UNITED STATES OF AMERICA</b> | : | <b>Case No. 21-CR-108 (TSC)</b> |
|                                 | : |                                 |
| v.                              | : |                                 |
|                                 | : |                                 |
| <b>MICHAEL JOSEPH FOY,</b>      | : |                                 |
|                                 | : |                                 |
| <b>Defendant.</b>               | : |                                 |

**STATEMENT OF OFFENSE FOR STIPULATED TRIAL**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Michael Joseph FOY, with the concurrence of his attorney, hereby submit the Elements and Statement of Facts for Stipulated Trial as to Count Two of the pending Indictment, charging Mr. Foy with Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. § 1512(c)(2) and 2; and Count One of the attached Information to be filed in this case, charging Mr. Foy with Assaulting, Resisting, or Impeding Certain Officers, in violation of 18 U.S.C. § 111(a)(1).

**I. Elements**

The essential elements of the offense of obstruction of an official proceeding and aiding and abetting, in violation of 18 U.S.C. § 1512(c)(2), each of which the government must prove the following beyond a reasonable doubt:

1. The defendant attempted to or did obstruct or impede an official proceeding;
2. The defendant intended to obstruct or impede the official proceeding;
3. The defendant acted knowingly, with awareness that the natural and probable effect of his conduct would be to obstruct or impede the official proceeding; and
4. The defendant acted corruptly. To act “corruptly,” the defendant must use

independently unlawful means or act with an unlawful purpose, or both. The defendant must also act with “consciousness of wrongdoing.” “Consciousness of wrongdoing” means with an understanding or awareness that what the person is doing is wrong or unlawful.

The government further alleges that the defendant aided and abetted others in committing obstruction of an official proceeding. To satisfy its burden of proof in proving that the defendant aided and abetted others in committing this offense, the government must prove the following beyond a reasonable doubt:

1. Others committed obstruction of an official proceeding by committing each of the elements of the offense charged;
2. The defendant knew that obstruction of an official proceeding was going to be committed or was being committed by others;
3. The defendant performed an act or acts in furtherance of the offense;
4. The defendant knowingly performed that act or acts for the purpose of aiding, assisting, soliciting, facilitating, or encouraging others in committing the offense of obstruction of an official proceeding; and
5. The defendant did that act or acts with the intent that others commit the offense of an obstruction of an official proceeding.

The essential elements of Assaulting, Resisting, or Impeding Certain Officers, in violation of 18 U.S.C. § 111(a)(1), each of which the government must prove the following beyond a reasonable doubt are:

1. That the defendant assaulted, resisted, opposed, impeded, intimidated, or interfered with MPD Officer D.P.;

2. That the defendant did so forcibly;
3. That the defendant did such acts voluntarily and intentionally;
4. That the defendant did so while the officer or employee was engaged in or on account of the performance of their official duties; and
5. That the assault involved physical contact with the victim or the intent to commit another felony.

## **II. Statement of Offense**

### ***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 twenty-four hours a day by U.S. Capitol Police (USCP). Restrictions around the Capitol include permanent and temporary security barriers and posts manned by USCP. Only authorized people with appropriate identification are allowed access inside the Capitol.

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

3. On January 6, 2021, a joint session of the United States Congress convened at the 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 the Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on Tuesday, November 3, 2020. The joint session is set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18. The joint session began at approximately 1:00 PM. Shortly thereafter, by approximately 1:30 PM, 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 Capitol. Temporary and permanent barricades, as noted above, were in place around the exterior of the Capitol, and USCP officers were present and attempting to keep the crowd away from the Capitol and the proceedings underway inside.

5. At approximately 2:00 PM, certain individuals in the crowd forced their way through, up, and over the barricades. Officers of the USCP were forced to retreat 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 as required by USCP officers or other authorized security officials.

6. At such time, the certification proceedings were still underway, and the exterior doors and windows of the Capitol were locked or otherwise secured. Members of the USCP attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 PM, individuals in the crowd forced entry into the 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 Capitol, requiring the expenditure of more than \$2.7 million dollars for repairs.

7. Shortly thereafter, at approximately 2:20 PM, members of the House of Representatives and of the 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 PM on January 6, 2021. In light of the dangerous circumstances caused by the unlawful entry to

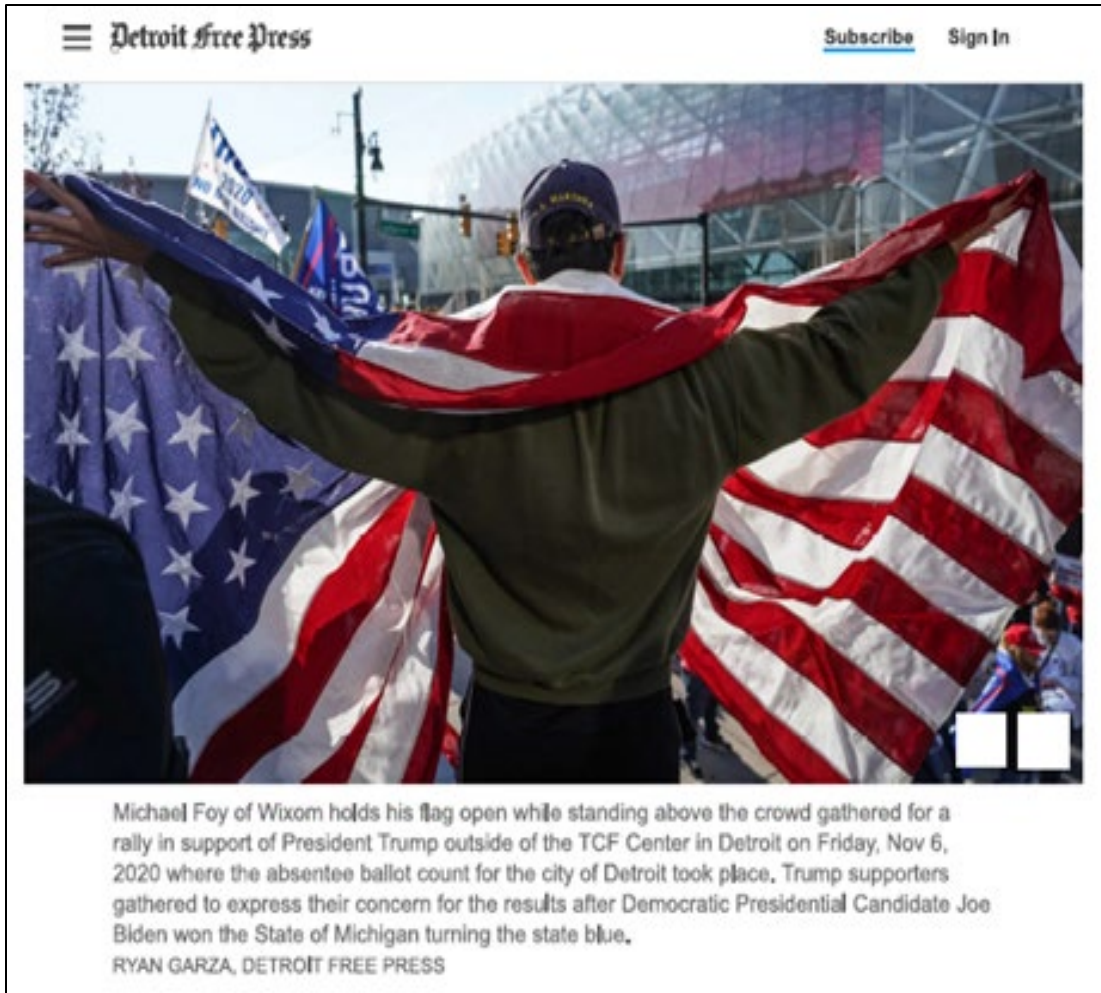
the Capitol—including the danger posed by individuals who had entered the Capitol without any security screening or weapons check—Congressional proceedings could not resume until after every unauthorized occupant had been removed from or left the Capitol, and USCP confirmed that the building was secured. The proceedings resumed at approximately 8:00 PM after the building had been secured. Vice President Pence remained in the Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

***Michael Joseph FOY's Actions Prior to January 6, 2021***

8. The government can prove beyond a reasonable doubt the following: FOY's actions on January 6, 2021 were not his first foray into joining mass demonstrations to protest the results of the 2020 Presidential election. Indeed, on November 6, 2020, just two months prior to his illegal activity at the United States Capitol, defendant FOY joined a throng of other protestors at the TCF Center in Detroit, Michigan. There, the crowd had gathered outside the building where Michigan citizens were working to count absentee ballots. The Detroit Free Press captured FOY on November 6, 2020 in the below images:



Michael Foy of Wixom holds his flag open while standing above the crowd gathered for a rally in support of President Trump outside of the TCF Center in Detroit on Friday, Nov 6, 2020 where the absentee ballot count for the city of Detroit took place, Trump supporters gathered to express their concern for the results after Democratic Presidential Candidate Joe Biden won the State of Michigan turning the state blue.  
RYAN GARZA, DETROIT FREE PRESS



*Figure 1 & 2 above: defendant FOY protests in Detroit on November 6, 2020*

***Michael Joseph FOY's Actions in the January 6, 2021 Capitol Riot***

9. On or about January 6, 2021, FOY traveled alone from his home of Wixom, Michigan to Washington, D.C. with plans to attend the “Stop the Steal” rally. In D.C., FOY planned to protest the results of the presidential election, and to support members of Congress who he believed would raise objections to or delay the official certification of electoral votes.

10. On the morning of January 6, 2021, defendant FOY went to the Ellipse in downtown, D.C., where former President Trump was speaking at the “Stop the Steal” rally. After hearing the speeches, defendant FOY wanted to protest so that the Vice President would block the certification of the vote, where defendant FOY made his way to the U.S. Capitol grounds,

intending to stop or prevent Congress from certifying the Electoral College vote results.



Figure 3 above shows FOY is dressed in a camouflage jacket and hat, is wrapped in a large American flag, while attending the "Stop the Steal" rally.

11. In addition, while at the National Mall, FOY posed for the following pictures:







*Figure 4 & 5 above shows FOY on the Ellipse before going to the Capitol grounds while dressed in a camouflage jacket and hat, is wrapped in a large American flag, and is also waving a TRUMP 2020 flag mounted on a hockey stick.*

12. On January 6 at sometime after 2:00 p.m., defendant FOY joined the crowd to march to the U.S. Capitol. FOY was dressed in a camouflage jacket and hat, is wrapped in a large American flag, and is also waving a TRUMP 2020 flag.





*Figure 6 & 7 above shows FOY marching with other rioters after he left the Ellipse area going to the Capitol grounds while dressed in a camouflage jacket and hat, is wrapped in a large American flag, and is also waving a TRUMP 2020 flag mounted on a hockey stick.*

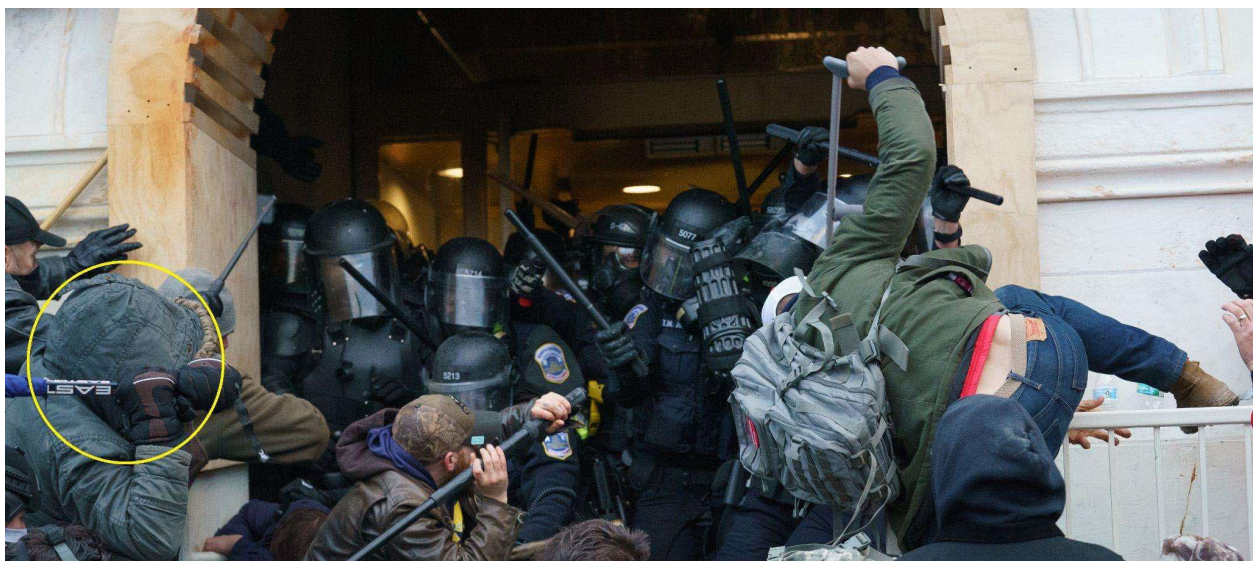
13. On January 6, 2021, at approximately 2:00 p.m. defendant FOY joined the crowd gathering on the West Front of the U.S. Capitol grounds. Defendant FOY was wearing a camouflage jacket and hat, is wrapped in a large American flag, and is also waving a TRUMP 2020 flag mounted on a hockey stick.

14. FOY marched with others past “AREA CLOSED” signs, past discarded bike racks that once had been a barrier of protection between law-abiding citizens and restricted Capitol grounds and went onto the scaffolding with other rioters. He carried in his hand an ice hockey stick, which he brought from home and with which he would assault an MPD Officer D.P. See below Figure 8.



15. Sometime after 4:00 p.m., FOY made his way to the Lower West terrace of the U.S. Capitol. While on the grounds of the U.S. Capitol, starting on and after 4:27 p.m., defendant FOY stood at the front of the line of rioters facing members of the U.S. Capitol Police and the Metropolitan Police Department.





*Figures 9, 10, & 11 above: FOY used his hockey stick to assault MPD Officer D.P.*

17. Specifically, FOY joined other violent rioters on the Capitol's Lower West Terrace, where he willfully and deliberately used a hockey stick to assault MPD Officer D.P. and FOY tossed a metal pole in the direction of officers. Video captured from that area of the Capitol shows FOY using his hockey stick to repeatedly strike MPD Officer D.P. FOY

admits and acknowledges that he was not acting in self-defense or in defense of others at the time he used the hockey stick to repeatedly assault MPD Officer D.P., in the face, head, neck, and body area. *See* below Figure 12.

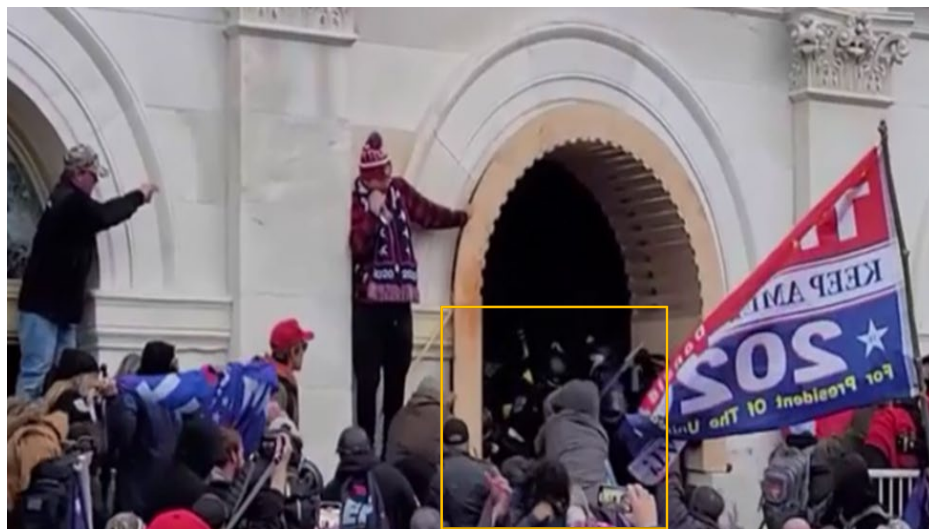


*Figure 12 above: FOY used his hockey stick to assault.*

15. Video from that area of the Capitol shows FOY using his hockey stick to repeatedly strike at MPD Officer D.P.<sup>1</sup> *See* below Figure 13.

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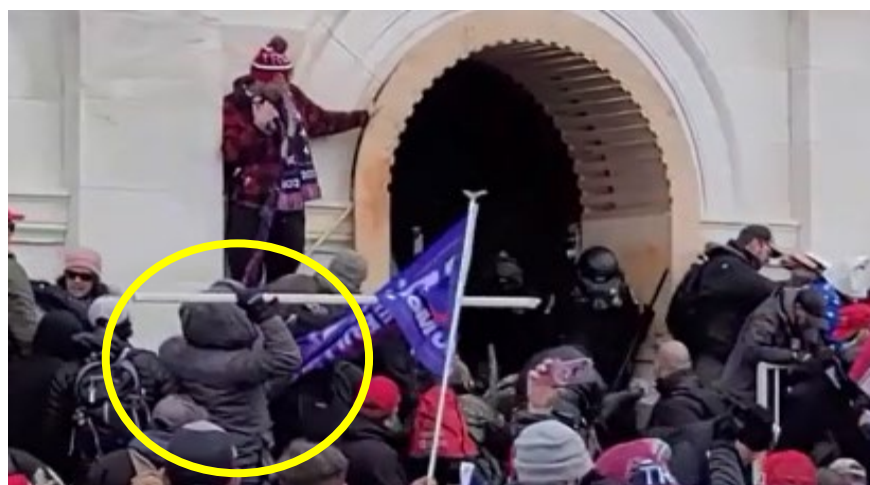
<sup>1</sup> In advance of the Stipulated Trial, the government will also provide the Court and defense with relevant video clips of defendant FOY's assault on the officers.



*Figure 13: FOY striking towards law enforcement officers with his hockey stick on January 6, 2021.*

16. FOY admits and acknowledges that he assaulted MPD Officer D.P. at the center doorway of the Lower West Terrace to gain entrance to the U.S. Capitol Building.

17. FOY admits and acknowledges he threw what appears to be a sharpened pole at the officers. See below Figure 14. Below Figures 14 and 15 are from some of the videos taken of the riot and show FOY with his hockey stick and sharpened pole.

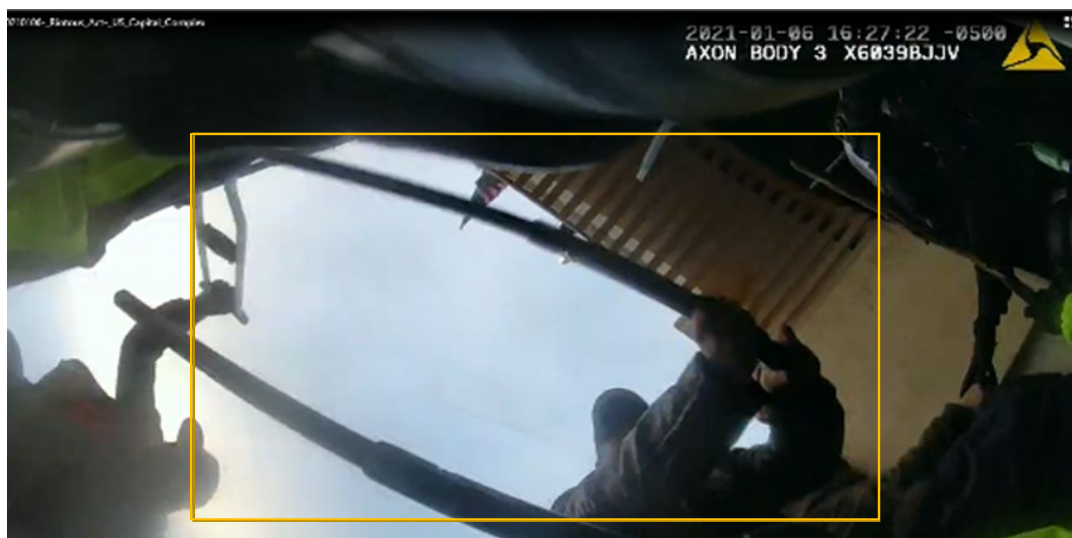


*Figure 14: FOY throws a sharpened pole at Police Officers.*



*Figures 15: shows FOY strikes several times with his hockey stick.*

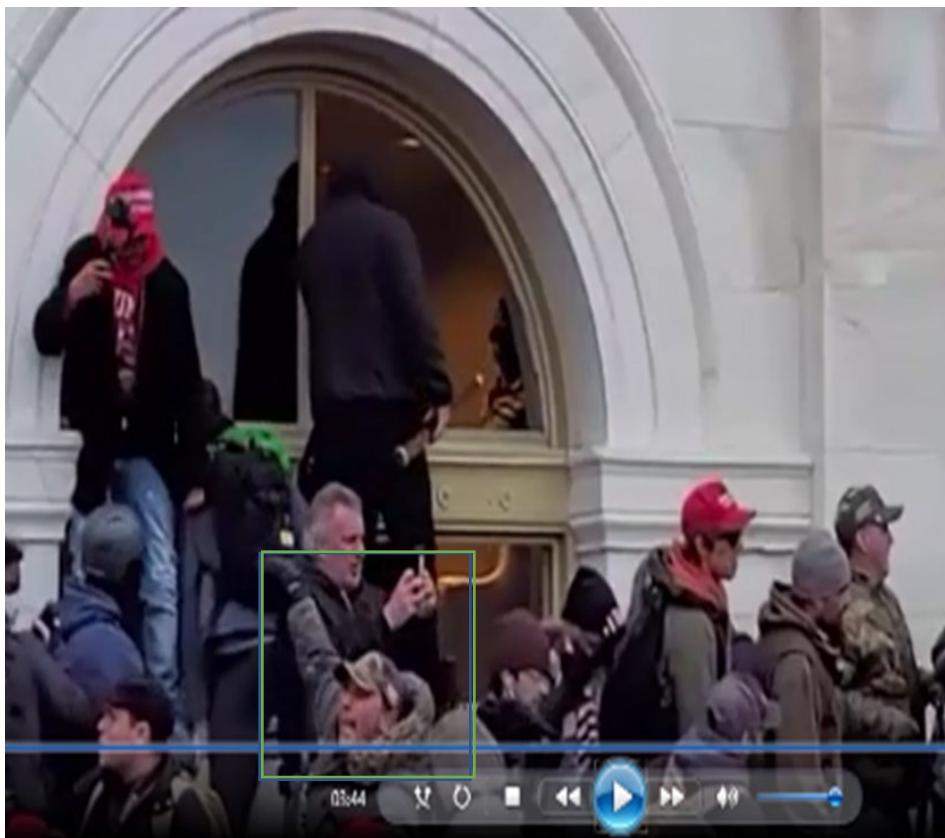
18. Specifically, FOY admits and acknowledges he began striking MPD Officer D. P. with his hockey stick as she was assisting in the protection of the U.S. Capitol. See below Figure 16.



*Figure 16: FOY's assault as seen from an MPD officer's body-worn camera*



19. Then, after assaulting MPD Officer D.P., FOY shouting and encouraging the other rioters by saying things such as, “LET’S GO!!!,” inside the Capitol while pointing at the U.S. Capitol building. *See* below Figure 17.



20. Moments later, FOY gained entry inside the U.S. Capitol when he crawled through a destroyed window and into the Capitol of the United States with his hockey stick in hand. While inside, FOY encouraged other rioters by saying “LET’S GO!!!” *See* below Figure 18 & 19.



*Figure 18 FOY gained entry inside the U.S. Capitol when he crawled through a destroyed window and into the Capitol of the United States*



*Figure 19 FOY encouraged other rioters to unlawfully enter the Capitol as well as to join him inside the U.S. Capitol*

21. A photograph taken from FOY's cell phone shows some of the rioters standing in the Capitol, glass on the carpet, tables overturned, destruction evident. See below Figure 20.



*Figure 20: rioters standing in the Capitol, glass on the carpet, tables overturned, destruction evident.*

22. Moreover, on January 6, 2021, FOY admits and acknowledges he knew at the time he entered the U.S. Capitol Building that he did not have permission to enter the building. FOY admits and acknowledges he obstructed and/or attempted 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 3 U.S.C. §§ 15-18.

23. Without waiving any arguments set forth in Defendant's Motion to Dismiss Count 1, the parties agree that if the Court finds the existence of these facts beyond a reasonable doubt, this evidence would establish each and every element of the charged offenses for Count Two of the pending Indictment, charging your client with Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. § 1512(c)(2) and 2; and in light of the Court's ruling and without waiving objection to that ruling; and Count One of the attached Information to be filed in this case, charging your client

with Assaulting, Resisting, or Impeding Certain Officers, in violation of 18 U.S.C. § 111(a)(1).

Respectfully submitted,

MATTHEW M. GRAVES  
United States Attorney  
D.C. Bar No. 481052

By: /s/ Emory V. Cole  
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**DEFENDANT'S ACKNOWLEDGMENT**

I, Michael Joseph FOY, 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: 06-19-23



\_\_\_\_\_  
Michael Joseph FOY  
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: 6/19/2023



\_\_\_\_\_  
Elizabeth Mullin  
Eugene Ohm  
Attorneys for Defendant FOY