

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	Case No.: 24-CR-74 (CJN)
	:	
v.	:	18 U.S.C. § 1752(a)(1)
	:	
DEREK ANDREW NELSON,	:	
	:	
Defendant.	:	
	:	

STATEMENT OF OFFENSE

Pursuant to Fed. R. Crim. P. 11, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Derek Andrew Nelson, with the concurrence of the defendant’s 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 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. The grounds around the Capitol were posted and cordoned off, and the entire area as well as the Capitol building itself were restricted as that term is used in Title 18, United States Code, Section 1752 due to the fact that the Vice President and the immediate family of the Vice President, among others, would be visiting the Capitol complex that day.

3. On January 6, 2021, a joint session of the United States Congress convened at the Capitol. 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 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 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. Officers with the D.C. Metropolitan Police Department were called to assist officers of the USCP who were then engaged in the performance of their official duties. 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 \$2.9 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.

The Defendant's Participation in the January 6, 2021, Capitol Riot

8. On January 6, 2021, Derek Andrew Nelson, along with co-defendant Derek Jaccob Dodder, attended the “Stop the Steal” rally near the Ellipse. Nelson wore a colonial blue peacoat with gold buttons, a tricorn hat, a red shirt, a white neckscarf, black-and-red gloves, and khaki pants. Nelson also wore a black backpack and carried an American flag on a wooden flagpole. Image 1 below is a still image from a publicly available video depicting Nelson’s attire. Nelson had also brought with him a pink respirator and goggles, which he later donned. In other words, Nelson came to D.C. prepared for the possibility of violence.



Image 1: Nelson (circled), with Dodder, wearing colonial attire on January 6, 2021 near the Washington Monument

9. Near the Washington Monument, an individual asked Nelson and two other individuals in colonial attire why they were there. Nelson responded, “To start a revolution. Why

are you here?” After attending the rally, Nelson and Dodder followed the crowd west towards the Capitol. See Image 2.



Image 2: Nelson (circled) walks with Dodder and the crowd towards the Capitol

10. Nelson and Dodder joined the large, rowdy crowd outside the northwest scaffolding. Nelson and Dodder both joined the mob’s chants against line of officers defending the entry to the scaffolding. Nelson and Dodder both joined the mob’s chants against line of officers defending the entry to the scaffolding. Nelson shouted at the line of officers defending the scaffolding, “To protect the constitution of the United States against enemies, foreign and domestic,” as depicted in Image 3 below. Police in the area used chemical sprays, among other crowd control measures, in an effort to disburse the crowd from this restricted area that was not open to the public. Rioters in the crowd themselves were armed with chemical sprays, which they used against the police. At some point, Nelson donned goggles and a respirator mask, and stuffed the flag into his backpack. See Image 4.

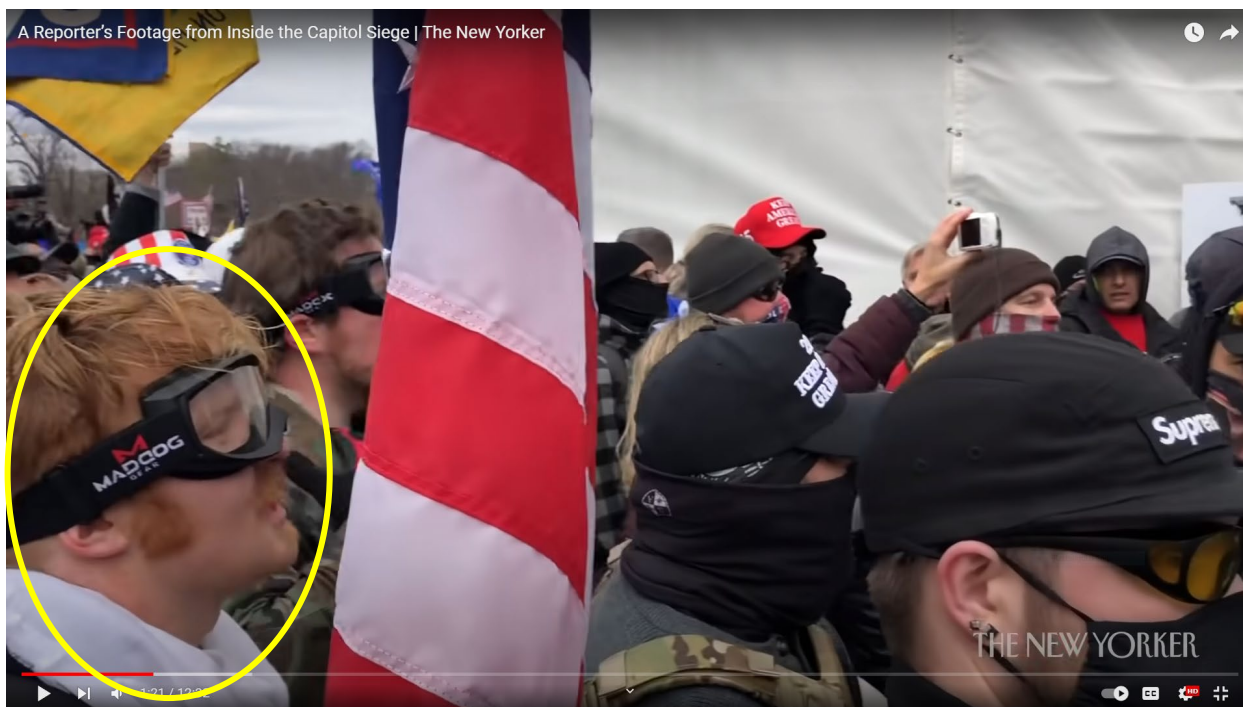


Image 3: Nelson (circled) yells at the officers defending the scaffolding, “To protect the constitution of the United States against enemies, foreign and domestic”



Image 4: Nelson (circled) dons his pink respirator shortly before rioters overrun officers

11. Shortly thereafter, the mob overran the line of officers defending the scaffolding. Nelson joined the mob as it surged forward. Nelson saw the mob’s assaults against law enforcement, including rioters’ use of chemical sprays against officers. See Image 5.



Image 5: Nelson (circled) joins the mob overrunning officers

12. The mob battled up the scaffolding. Partway up the scaffolding, law enforcement defended a chokepoint—an open white doorway—from the mob. Nelson, at the front line, saw violence between law enforcement and rioters, and stopped to pick something up. *See Image 6.* After other rioters overran the officers there too, Nelson continued to follow the mob’s path up the stairs.

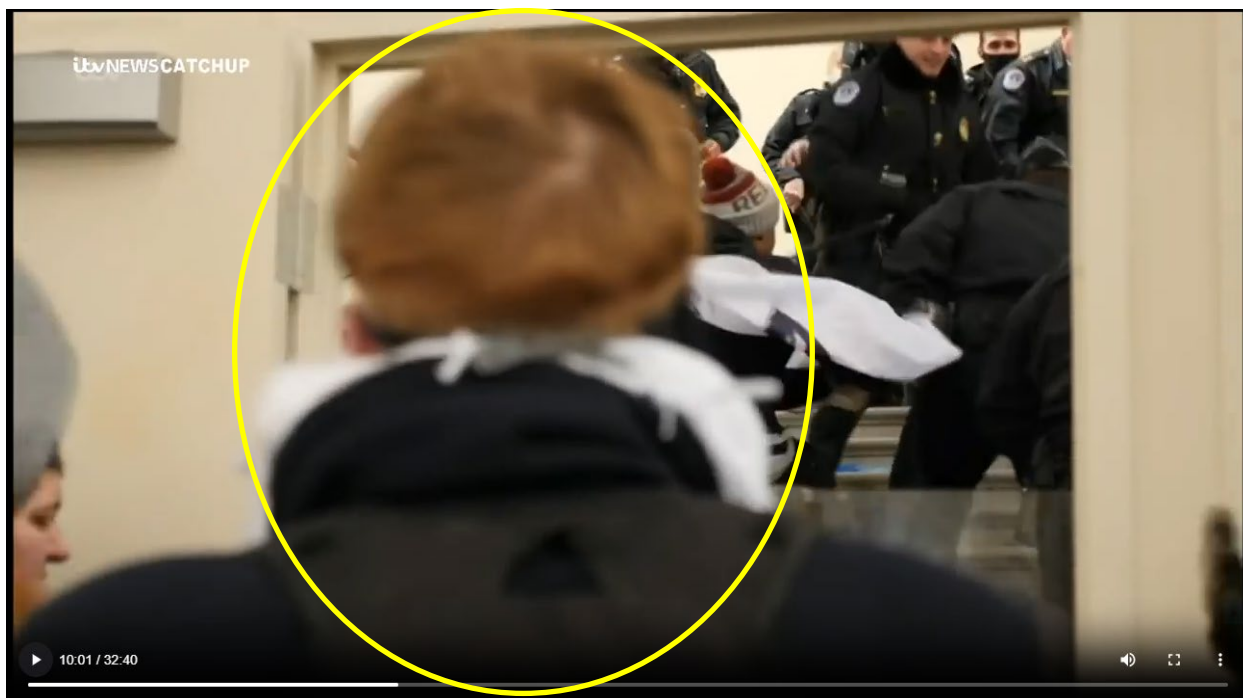


Image 6: Nelson observes violence between police and the members of the mob, and picks up something from the ground.

13. At the top of the scaffolding, the mob encountered yet another defensive line of Capitol police officers against a barricade. Nelson, standing feet from the front line, saw the mob attack and overrun this line too. *See Image 7.*



Image 7: Nelson (yellow square) watches the mob assault and overrun the line of officers at the top of the scaffolding

14. Police fell back several feet to a new defensive line, on a landing at the foot of the stairs leading to the Upper West Terrace. Again, Nelson stood close to the front line. See Image 8.



Image 8: Nelson (circled) near the front line of the mob on landing of the Northwest stairs

15. Minutes later, at 2:09 p.m., rioters broke through this line as well. Nelson joined the mob's surge as it overran the officers, who began retreating to the Upper West Terrace. As

he rushed forward, Nelson encountered one retreating U.S. Capitol Police officer holding a riot shield towards the incoming rioters. *See* Image 9. Nelson grabbed the shield with one hand. *See* Image 10. After lowering his shoulder, Nelson attempted to body-check the officer's shield. *See* Image 11. The officer dropped the shield, which Nelson assisted another rioter in picking up; the other rioter charged ahead now holding the shield. *See* Images 12, 13, 14.



Image 9: Nelson (circled yellow) encounters a USCP officer (circled green) holding a riot shield (red rectangle)



Image 10: Nelson grabs (yellow circle) the officer's riot shield (zoomed image)



Image 11: Nelson (circled yellow) lowers his body and attempts to body-check the shield (red) held by the officer (green) (zoomed)



Image 12 (left) and 13 (right): Nelson (yellow) twice assists other rioters in lifting up the shield (red rectangle) (zoomed)



Image 14: Moments after Nelson's (circled yellow) assistance, another rioter charges up the stairs holding the shield (circled red)

16. At this point, chemical irritants were in the air. After climbing the stairs, Nelson joined the mob facing off against a final defensive line of U.S. Capitol Police officers behind a bike rack barricade at the entrance to the Upper West Terrace. See Image 15. Nelson and the rioters soon overran that line as well.



Image 15: Nelson (circled yellow) near the front of the mob before they overrun the final line of officers defending the entrance to the Upper West Terrace

17. On the Upper West Terrace, Dodder and Nelson initially approached the broken-out window next to the Senate Wing Door. However, both quickly retreated from the window, as rioters can be heard exclaiming “gun” and “rubber bullets.” See Image 16.



Image 16: Nelson (circled) initially retreats from the Senate Wing Door, before going back to the door moments later

18. Moments later, however, Nelson and Dodder headed back towards the Capitol. Nelson and Dodder entered the U.S. Capitol building on the first floor at the Senate Wing at 2:16

p.m., approximately three minutes after the initial breach. Nelson entered the building through a door with an exit sign above it; a continuous alarm was audible at that time. *See Image 17.*

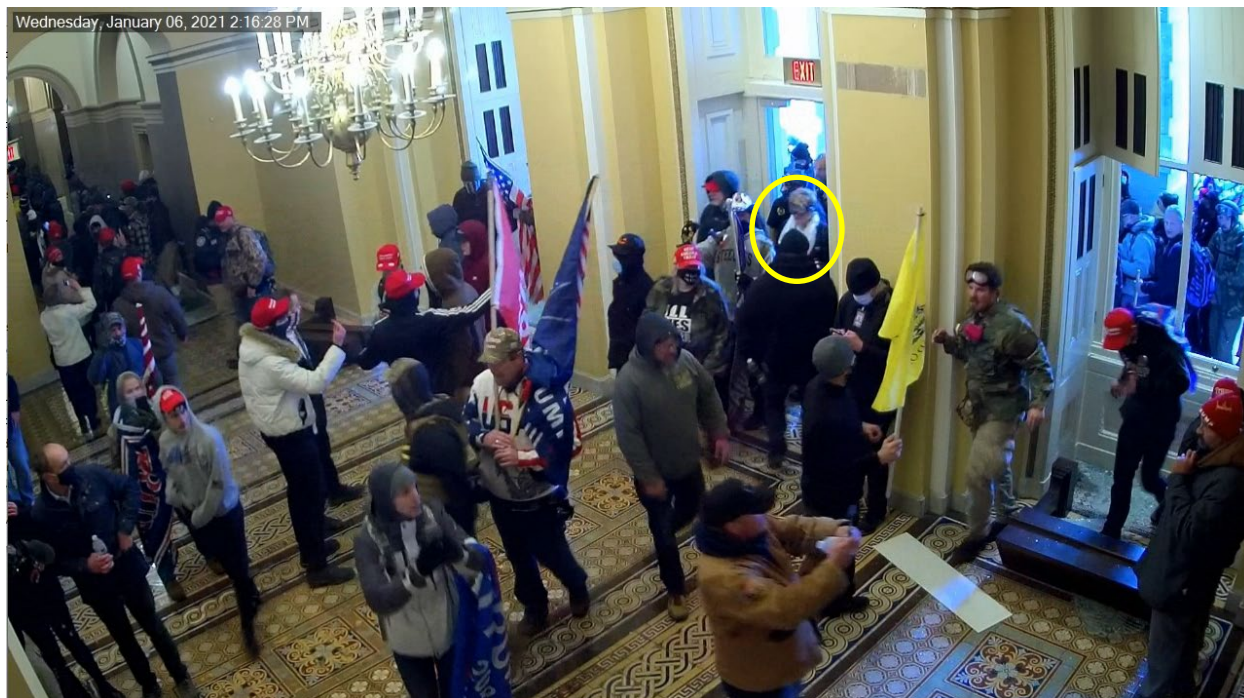


Image 17: Nelson (circled) enters U.S. Capitol Building through Senate Wing Door after Dodder entered through window

19. Nelson and Dodder then walked together to the Crypt, where they arrived at approximately 2:19 p.m. At approximately 2:25 p.m., the large crowd in the Crypt began pushing their way past uniformed police officers toward the south end. Nelson remained in the Crypt until approximately 2:30 p.m.

20. Nelson followed the crowd up a staircase to the second level, toward the Rotunda. Nelson participated a call-and-response with another rioter calling to the crowd asking, “Who do they work for?” Nelson pumped his fist in the air and yelled in response “Us.” *See Image 18.* Nelson knew that this chant was referring to members of Congress then present in the Capitol Building.

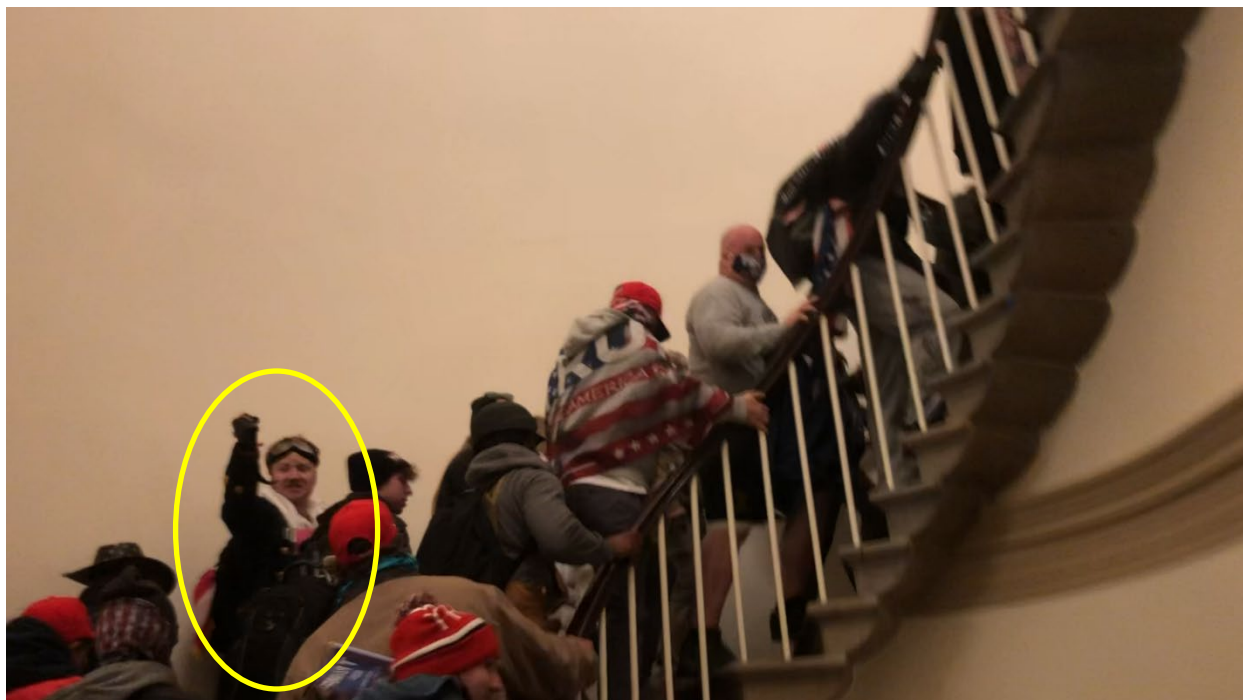


Image 18: Nelson (circled) engages in a call-and-response with another rioter as he climbs to the Rotunda

21. Dodder and Nelson walked to the Rotunda on the second floor of the U.S. Capitol building, arriving at approximately 2:33 p.m. Upon arrival, Nelson made an obscene gesture with his middle finger, as depicted in Image 19 below. Both laughed and celebrated being in the Rotunda. See Image 20.

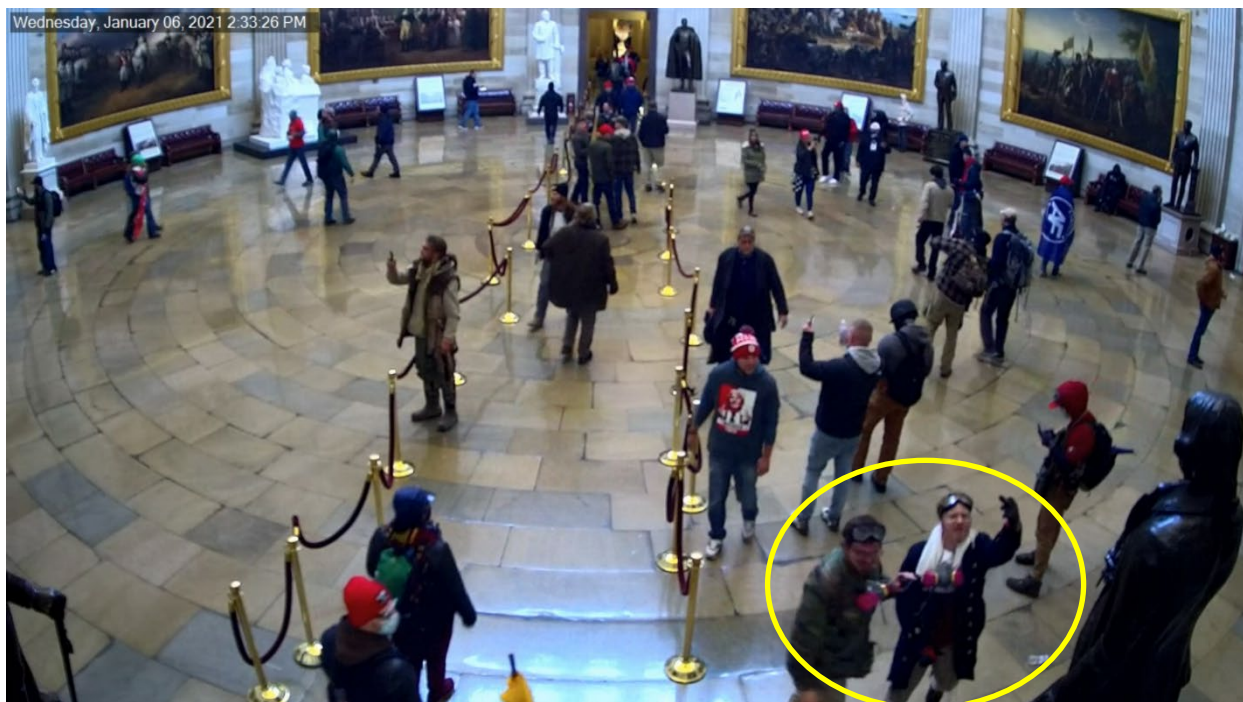


Image 19: After Nelson and Dodder (circled) arrive in the Rotunda, Nelson makes an obscene gesture



Image 20: Nelson (circled) celebrates with Dodder while in the Rotunda of the Capitol Building

22. At approximately 2:35 p.m., Dodder and Nelson walked from the Rotunda through Statuary Hall to join the growing mob outside the Chamber of the U.S. House of Representatives. Dodder and Nelson went to one side of the hallway in the Statuary Hall Connector and looked out a window at a group of officers below. Dodder patted Nelson on the shoulder in a congratulatory fashion and filmed the officers below using his GoPro. *See* Images 10 and 11. Nelson commented to Dodder, “Hurt ‘em. We hurt ‘em boys.” Dodder replied, “We stick with our guys we’re good.” Meanwhile, the mob in the Statuary Hall chanted loudly, “Stop the Steal.”

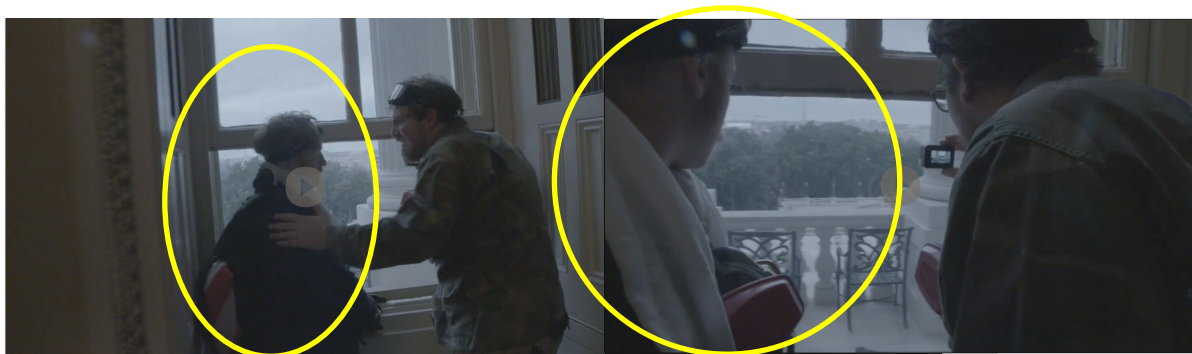


Image 20: Nelson (circled) and Dodder watch officers below

23. At 2:36 p.m., the mob overran the final line of U.S. Capitol police officers defending the outside of the House of Representatives Main Door. Nelson, who was nearby at the time, was aware that the mob had overcome officers by force. Nelson joined the crowd’s chants of “Stop the Steal,” and began making his way to the front of the crowd. *See* Images 21 and 22. Nelson saw the mob outside the House Main Door, trying to breach the chamber itself. *See* Image 23.

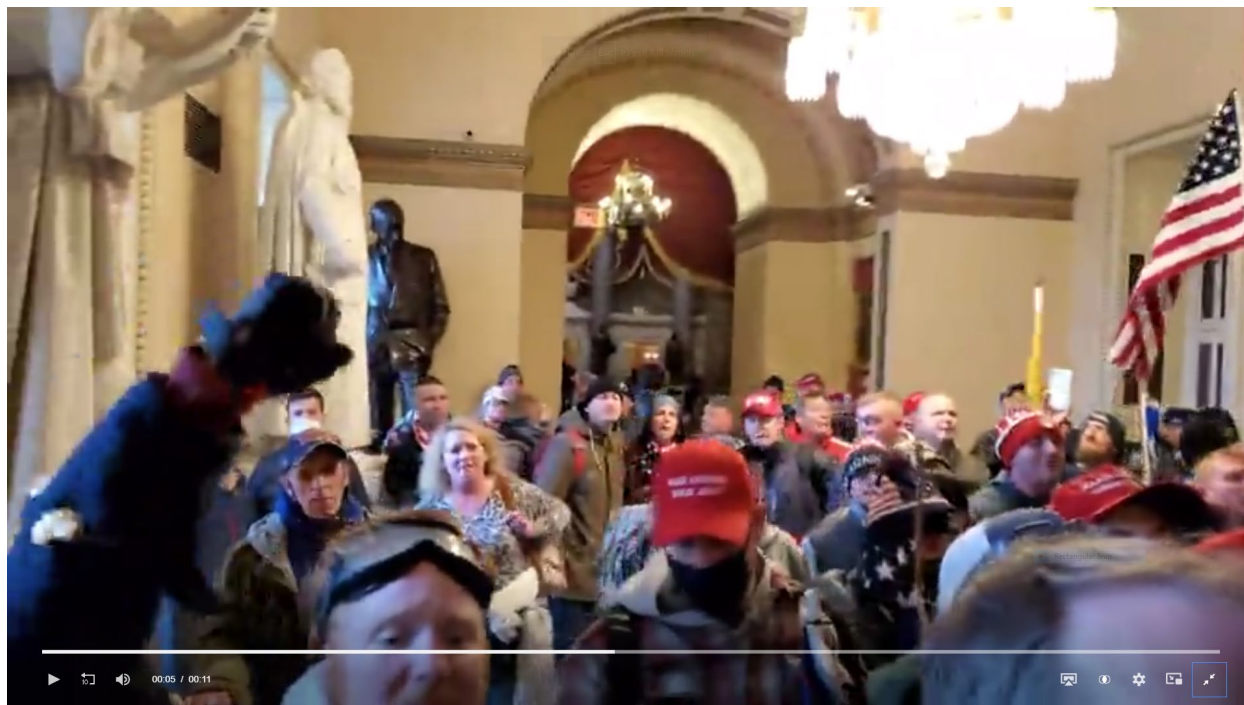


Image 21: After the mob overruns the final line of officers, Nelson (front left) joins the mob's chants of "Stop the Steal" in the Statuary Hall Connector



Image 22: Nelson (circled) makes his way to the front of the mob



Image 23: Nelson (circled) is feet away from the mob trying to get into the House Chamber through the main door

24. Dodder and Nelson remained outside the hallway near the House Main Door for at least 10 minutes. At approximately 2:45 p.m., Nelson and Dodder felt and saw law enforcement deploy tear gas in effort to regain control of the House Main Door. Rather than leave, both Dodder and Nelson donned their respirators and goggles. *See* Image 24.



Image 24: Nelson (circled) and Dodder wear goggles and respirator masks near the main entrance to the House Chamber

25. Nelson and Dodder split up for several minutes near the House Chamber, before meeting up again the Rotunda at approximately 2:52 p.m. See Image 25. Nelson took photos while in the Rotunda. See Image 26.



Image 25: Dodder and Nelson (circled) regroup in the Rotunda



Image 26: Nelson (circled) takes photographs in the Rotunda using his phone

26. Nelson and Dodder both approached the East Rotunda Doors at approximately 2:58 p.m., where they saw rioters exiting the building, but proceeded back into the Rotunda. *See Image 27.*

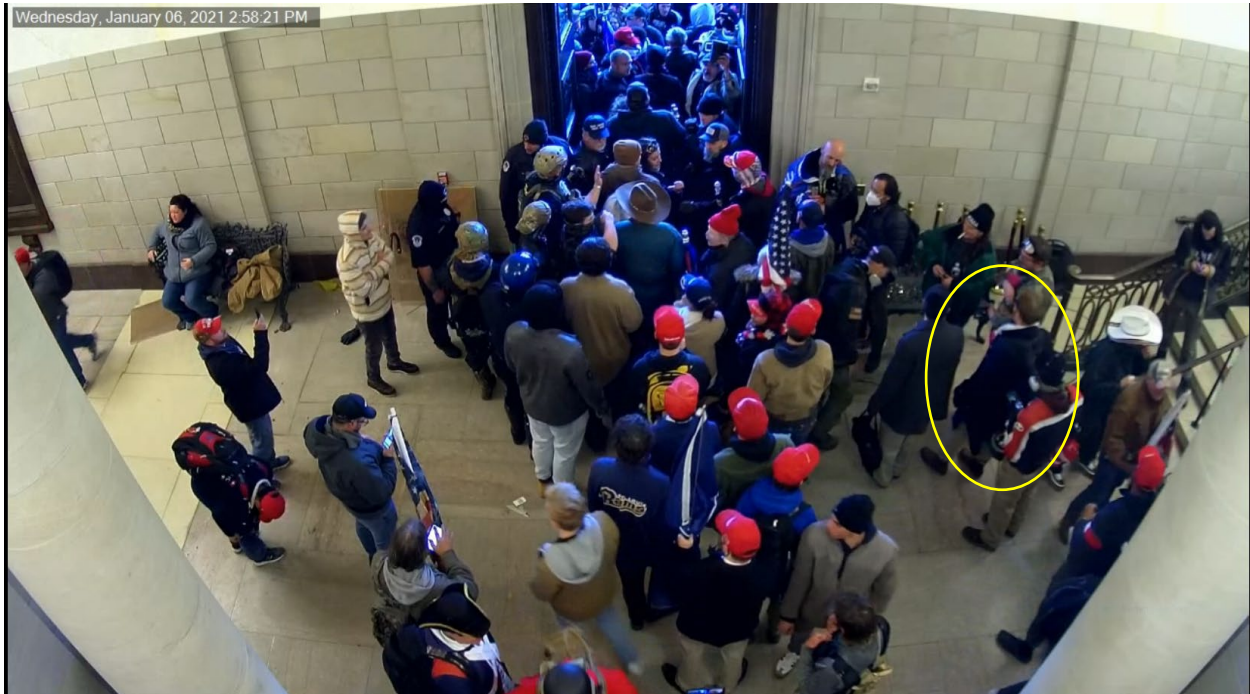


Image 27: Nelson (circled) observes rioters leaving

27. Dodder and Nelson remained in the Rotunda area until approximately 3:04 p.m., when they finally exited the U.S. Capitol building via the Rotunda doors. *See Image 28.* In total, Dodder spent approximately 48 minutes inside the U.S. Capitol Building.



Image 28: Nelson (circled) exits the U.S. Capitol Building via East Rotunda Doors at 3:04 p.m.

Elements of the Offense

28. The parties agree that Entering or Remaining in a Restricted Building or Grounds, 18 U.S.C. § 1752(a)(1), requires the following elements:

- a. First, the defendant entered or remained in a restricted building or grounds without lawful authority to do so.
- b. Second, the defendant did so knowingly

Defendant's Acknowledgments

29. The defendant knowingly and voluntarily admits to all the elements as set forth above. Specifically, the defendant admits that he knowingly entered and remained in the restricted area around U.S. Capitol Building and in the Capitol Building itself. Defendant further admits that he knew that Vice President Mike Pence was present in the U.S. Capitol Building to preside over the Certification of the 2020 Presidential Election.

Respectfully submitted,


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D.C. Bar No. 481052

By: /s/ Michael L. Barclay
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DEFENDANT'S ACKNOWLEDGMENT

I, Derek Andrew Nelson, 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: 2/9/24

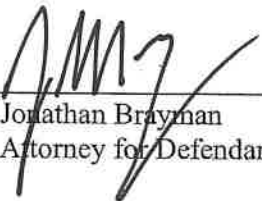


Derek Andrew Nelson
Defendant

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: 2-13-2024



Jonathan Brayman
Attorney for Defendant