The January 6th Hearings: A Criminal Evidence Tracker  
Updated on June 18, 2022  

By Noah Bookbinder, Norman L. Eisen, Fred Wertheimer, Jason Powell, Debra Perlin and Colby Galliher

An initial introduction to the Criminal Evidence Tracker is available at Just Security, as well as introductions to the updates following the second and third public hearings.

**Criminal Evidence Tracker 1: Whether Donald Trump Conspired to Defraud the United States**  
By Norman Eisen, Noah Bookbinder, Fred Wertheimer, Jason Powell and Debra Perlin

<table>
<thead>
<tr>
<th>18 U.S. Code § 371 – Conspiracy to commit offense or to defraud the United States</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>It is a criminal offense “[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy.”</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Elements of the Crime that Must be Proved</th>
<th>Facts and Evidence</th>
</tr>
</thead>
</table>
| 1. Two or more people entered into an agreement | Donald Trump and John Eastman  
- Attorney John Eastman communicated with Trump by phone and email through his assistant or agent about a plan to overturn the election results memorialized in two memoranda (here and here). A court recently found that “there was likely an agreement between President Trump and Dr. Eastman to enact a plan articulated” in the two memos.  
Donald Trump and Jeffrey Clark  
- In December 2020, Trump and Clark met in apparent violation of DOJ and White House policy to discuss allegations of election fraud and find ways to overturn the election results.  
- Unlike the rest of DOJ’s leadership, Clark was sympathetic to Trump’s arguments, leading Trump to consider installing Clark as acting Attorney General - a plan Trump only abandoned in the face of threats of massive DOJ and White House counsel resignations. |
Donald Trump and Mark Meadows

- Meadows appears to have played a key role in orchestrating the agreements and advancing Trump’s plans with both Clark and Eastman by (1) introducing Trump to Clark and repeatedly emailing DOJ leadership to investigate bogus fraud claims; (2) encouraging state legislators to embrace Eastman’s alternate slate of electors strategy; and (3) sending Pence’s staff a memo with a plan for Pence reject electoral votes from battleground states. The actions of all three men – Trump, Eastman, and Clark – appeared to work in concert with Meadows to help form the agreement.
- Meadows also helped organize and participated in the January 2, 2021, phone call where Trump demanded that Georgia Secretary of State Brad Raffensperger “find” enough votes to overturn the election.

**New Evidence from Select Committee’s Third June Hearing (June 16, 2022):**
- Pence’s Chief Counsel, Greg Jacob testified that, despite ending a January 4, 2021, Oval Office meeting between Trump, Pence, Eastman, and others with Eastman specifically not recommending that Pence simply reject electors, when Jacob met again with Eastman again the next day, Eastman began the meeting by explicitly requesting that Pence reject electors outright during the joint session of Congress. It appears that he changed his recommendation after reaching an agreement with Trump to pursue that course of action, given that Trump tweeted that same morning that Pence had the authority to do what Eastman requested saying, “The Vice President has the power to reject fraudulently chosen electors.”

<table>
<thead>
<tr>
<th>2. Those people had specific intent to obstruct a lawful function of the government</th>
</tr>
</thead>
</table>

| The electoral count is a core function entrusted by law to the federal government, and only capable of being lawfully fulfilled by the federal government. |
- Eastman’s memos were clearly intended to set out a plan to reject or delay the counting of electoral votes on January 6, 2021, and in public and in closed-door meetings, Trump backed Eastman’s scheme.
- Eastman and Trump repeatedly urged Pence in private to adopt the memo’s legal reasoning and in public via social media pressured Pence to “come[] through for us” so we can win the Presidency and “giv[e] States a chance to certify a corrected set of facts.”
- Trump and Clark appear to have specifically intended to interfere with the Justice Department’s election protection function by drafting a letter containing unsupported claims that the Department had taken notice of election irregularities, and recommending that states call a special legislative session to determine who “won the most legal votes” and consider appointing new slates of Electors. This letter was drafted despite the DOJ legally having no role in determining who won an election.
- Meadows appears to have specifically intended to confuse and interfere with the count of electoral votes through his support and advancement of the scheme, outlined in Eastman’s memo, to send alternate slates of electors to Congress. |
New Evidence from Select Committee’s First June Hearing (June 9, 2022):

- Vice Chair Cheney said: “President Trump believed his supporters at the Capitol, and I quote, ‘were doing what they should be doing.’ This is what he told his staff as they pleaded with him to call off the mob, to instruct his supporters to leave.”
- Vice Chair Cheney said based on the evidence: "President Trump gave no order to deploy the National Guard that day, and he made no effort to work with the Department of Justice to coordinate and deploy law enforcement assets.”
- Chairman of the Joint Chiefs of Staff, Gen. Mark Milley said the Vice President issued orders to the military to secure the Capitol, and, in contrast. Meadows was focused on “politics” and the “narrative” of whether Trump appeared to be in charge, which Milley referred to as a “red flag.”
- Numerous members of the January 6th mob confirmed that they came to D.C. because “Trump asked us to come” to stop the election from being stolen. In the words of one Trump supporter, “He asked me for my vote and he asked me to come on Jan. 6th.”

New Evidence from Select Committee’s Second June Hearing (June 13, 2022):

- On election night, Trump was told by multiple people including Campaign Manager Bill Stepien and Trump campaign advisor Jason Miller that it was too early to declare victory because votes were still being counted. Nonetheless, Trump decided to reject their counsel and instead, according to Miller, followed the advice of an intoxicated Rudy Giuliani to “go and declare victory and say that we’d won it outright” on election night. Note: Trump had reportedly planned well in advance of election night to declare victory even if he lost.
- Stepien told the Committee that he had warned Trump about early voting and a potential “red mirage” in 2016 and in 2020 and said that by November 7, 2020, the chances of him winning the presidential election were “very, very, very bleak.”
- On multiple occasions, then-Acting Attorney General Jeffrey Rosen, and then-Acting Deputy Attorney General Richard Donoghue told Trump that his various claims of election fraud were incorrect or had already been debunked by the Department of Justice.

New Evidence from Select Committee’s Third June Hearing (June 16, 2022):

- Eastman and Trump pursued a joint plan to have Pence either reject certain electoral votes cast for Biden and then declare Trump the winner of the 2020 election, or suspend the counting of electoral votes for 10 days and return the electoral votes from certain states back for the state legislatures to reconsider the votes. Eastman admitted to Jacob that this plan violated several provisions of the Electoral Count Act and that if it came before the Supreme Court, it would lose unanimously.
One member of the January 6 mob seemed to understand Trump’s likely intent, stating during the attack, “[t]he hope is that there is such a show of force here that Pence would decide to do the right thing,” referring to Trump’s public calls for Pence to reject the electors from battleground states.

In addition to the information presented in an earlier hearing about Trump’s failure to take action to stop the riot, White House Deputy Press Secretary Sarah Matthews said, “When that tweet — the Mike Pence tweet was sent out I remember us saying that that was the last thing that needed to be tweeted at that moment. The situation was already bad, and so it felt like he was pouring gasoline on the fire by tweeting that.”

3. The individuals used deceitful or dishonest means.

Trump and his allies knew, or should have known, that he lost a free and fair election. Trump was told so by Attorney General William Barr, Acting AG Jeffrey Rosen, a campaign data expert, and Georgia Secretary of State Brad Raffensperger among others.

Eastman admitted that the scheme violated the Electoral Count Act (ECA) on four separate grounds, acknowledged that he was asking Pence to commit a “relatively minor” violation of the ECA, and admitted that the Supreme Court would unanimously reject this plan.

Jeffrey Clark knew that his direct unauthorized communications with Trump violated DOJ policies.

The letter that Clark, and apparently Trump, wanted the DOJ to send to battleground states contained dishonest, deceptive and unsupported claims that the Department had taken notice of election irregularities. The letter recommended that states adopt alternative slates of electors, which could be accepted at the Joint Session of Congress on January 6th, consistent with Eastman’s knowingly illegal plan. White House counsel told Trump and Clark the letter was “a murder-suicide pact. And it will damage anyone and anything that it touches.”

Despite being told by White House counsel that the plan was not legally sound, Meadows moved forward, presumably at Trump’s direction, to have 7 states send dishonest and deceptive certificates declaring that Trump, instead of Biden, had been victorious in those states.

New Evidence from Select Committee’s First June Hearing (June 9, 2022):

Then-acting Deputy Attorney General Richard Donoghue told Clark, “What you’re proposing is nothing less than the United States Justice Department meddling in the outcome of a presidential election.”

President Trump’s campaign lawyer tasked with assessing allegations of election fraud reported to Meadows in “mid to late” November 2020 he wasn’t “finding anything that would be sufficient to, um, change the results in any of the key states,” and Meadows appeared to accept his conclusion stating: “so there's no, there, there.”

The hearing contained other new evidence that Trump was aware that he did not win the election, such as Bill Barr’s statements that he “did not agree with the idea of saying the election was stolen and putting out this stuff, which [he] told the president was bullshit,” and Trump campaign senior aide Jason Miller’s statement that, in the days after the 2020 election, “the lead data person [of the Trump campaign] …
delivered to the president [in] pretty blunt terms that he [Trump] was going to lose.”

**New Evidence from Select Committee’s Second June Hearing (June 13, 2022):**

- In describing Trump’s claims of fraud and attempts to overturn the election, Stepien said “I didn’t think what was happening was honest or professional.”
- According to Trump Campaign General Counsel, Matt Morgan, law firms would not represent Trump in his election challenges because they were not comfortable making the arguments that Giuliani was making publicly.
- On December 1, 2020, after Barr told a reporter that there was no evidence of election fraud, Barr was called to a meeting with Trump, who was “as mad as [Barr had] ever seen him.” In response to Barr questioning former White House Chief of Staff Mark Meadows and Jared Kushner about how far Trump would take his fraud claims, that Barr had informed Trump were “not meritorious,” Meadows seemed to acknowledge the election claims were not meritorious, stating, “I think he [Trump] is becoming more realistic,” according to Barr. And, according to Barr, Kushner said “yeah, we’re working on this.”
- When on election night Trump said he wanted all vote counting to stop, and he didn’t want “them to find” more ballots at 4 AM, he had already been briefed by Stepien that it would take a long time to count all of the votes because mail-in ballots were counted at different times than in-person ballots.
- Then-Acting Deputy Attorney General Richard Donoghue said Trump refused to accept proof that he lost the election. According to Donoghue: “There were so many of these allegations that when you gave him a very direct answer on one of them, he wouldn't fight us on it, but he'd move to another allegation.” He said about Trump’s claims of fraud in counting the ballots in Fulton County, Georgia, “I told the president myself that several times, in several conversations, that these allegations about ballots being smuggled in a suitcase and run through the machines several times, it was not true.”
- Alex Cannon, former Trump campaign lawyer, said he told Trump directly there was no evidence of election fraud.
- On December 14, 2020, Trump gave Barr an “amateurish” report about Dominion voting machine irregularities and asserted that it meant Trump was going to have a second term.
- Trump repeated allegations of election fraud that were clearly and irrefutably false, and he was apparently told that by his attorney general. Barr testified: “The president has repeatedly suggested that there was some kind of outpouring of unexpected votes in inner city areas like Philadelphia;” “what [Mastriano] did was he mixed apples and oranges. He took the number of applications for the Republican primary and he compared it to the number of absentee votes cast in the general election. But once you actually go and look and compare apples to apples, there’s no discrepancy at all. And, you know, that's one of the — I — I think at some point I covered that with the president.”
New Evidence from Select Committee’s Third June Hearing (June 16, 2022):

- Jacob said Eastman admitted in front of Trump that his plan to overturn the election violated several provisions of the Electoral Count Act.
- Jacob confirmed the context of a Jan. 6 email exchange with Eastman in which Eastman said that he advised Trump in his professional judgment the Vice President does not have the power to decide things unilaterally but that “once [President Trump] gets something in his head, it’s hard to get him to change course.”
- Pence’s Chief of Staff, Marc Short, said Meadows told him multiple times that he agreed that the Vice President did not have authority to do what Trump and Eastman were suggesting.
- Trump campaign advisor Jason Miller said that then-White House Counsel Pat Cipollone thought the idea that Pence could overturn the election “was nutty” and said Cipollone told Miller that he confronted Eastman with the same sentiment.
- Miller said Clark and Trump’s campaign General Counsel, Matt Morgan, thought the Eastman theory was crazy and had no validity to it, and that they expressed that to everyone who would listen before January 6, 2021.
- White House lawyer Eric Herschmann said Giuliani called him on the morning of January 6, 2021, about the Eastman plan, and admitted that Herschmann was “probably right” and the Trump team “couldn't sustain the argument, long-term,” that Pence could unilaterally overturn the election or reject electors. Nevertheless, later that same day Giuliani declared in his speech at the rally at the ellipse “every single thing that has been outlined as the plan for today …is perfectly legal.”
- Short said that Pence told Trump directly and consistently many times that he didn’t have the authority to reject electors or send the decision back to state legislatures. Jacob said Pence “never budged” from that position. Nevertheless, according to Miller, Trump personally dictated most of a January 5, 2021 statement claiming that Trump and Pence were in “total agreement” that Pence had the authority to overturn the election. That was “false,” Short said. Short testified that he called Miller to complain about the statement.
- Despite Eastman publicly suggesting at the January 6, 2021, rally at the Ellipse that Thomas Jefferson had done the same thing Trump and Eastman were pressing Pence to do, Jacob said that Eastman had previously admitted, on January 5, 2021, that Jefferson did not at all support his position and did not assert authority to reject electors. Eastman acknowledged there was actually “no historical practice whatsoever that supported his position.”

4. One of the conspirators must have committed at least one overt act in

- Trump and Eastman pressured Pence to execute their plan, as evidenced by: (1) both men meeting together with Pence in the Oval Office on January 4 and again on January 5, 2021; (2) Trump calling Pence twice on January 6 and mocking Pence for “not [being] tough enough” to reject votes or delay the count; and (3) Trump sending multiple public tweets on January 6, stating in one: “All Mike Pence has to do is send them back to the States, AND WE WIN...”
- In Georgia, Trump (1) called Governor Brian Kemp to urge him to call a special legislative session to appoint...
alternative electors; (2) called Georgia’s chief elections investigator to urge her to find voter fraud, and (3) called Secretary of State Raffensperger demanding he “find” enough votes to overturn Biden’s victory.

- Trump and Eastman called state legislators to try to convince them to overturn the election, and Trump’s team, including Chief of Staff Mark Meadows, acting at Trump’s behest, moved forward with a plan to send alternate slates of electors to Congress and have would-be false electors in battleground states sign and submit phony electoral certificates showing that Trump, rather than Biden, had won.
- Clark drafted a “proof of concept” letter containing unsupported claims of election irregularities, and requested permission from Justice Department leadership to send it to Georgia. Clark tells Rosen he will decline Trump’s offer to him of Rosen’s job as acting attorney general if Rosen signs and sends the proof of concept letter.
- Meadows moved forward a plan, presumably at Trump’s direction, to have battleground states adopt alternative slates of electors.

New Evidence from Select Committee’s Third June Hearing (June 16, 2022):

- Ivanka Trump, then-White House lawyer, Eric Herschmann, and others described the January 6, 2021 “heated” call during which Trump pressured Pence to reject electors or delay the count. White House staffer Nicholas Luna said Trump called Pence a wimp, and Julia Radford, former Chief of Staff to Ivanka Trump, said that Ivanka told her that her father called Pence “the p-word.” Ivanka Trump testified, “It was a different tone than I’d heard him take with the Vice President before.”
## Criminal Evidence Tracker 2: Whether Donald Trump Conspired to Obstruct an Official Proceeding

By Norman Eisen, Noah Bookbinder, Fred Wertheimer, Jason Powell and Debra Perlin

### 18 U.S. Code § 1512 – Obstructing an official proceeding

**Under 18 U.S. Code § 1512(c)(2)** “Whoever corruptly—... obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.”

**Under 18 U.S. Code § 1512(k)** “Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.”

<table>
<thead>
<tr>
<th>Elements that Must be Proved</th>
<th>Facts and Evidence</th>
</tr>
</thead>
</table>
| 1. The individual(s) acted corruptly. | • Despite the fact that Donald Trump and his inner circle knew, or should have known, that Trump lost a free and fair election, they still pursued a scheme, outlined in two memoranda ([here](#) and [here](#)), to overturn the election so that Trump could remain in power despite his duty to uphold the Constitution.  
• Trump and Eastman [called](#) state legislators to try to convince them to overturn the election, and [Trump’s team](#), including Chief of Staff [Mark Meadows](#), acting at Trump’s behest, moved forward with a plan to send alternate slates of electors to Congress and have would-be false electors in battleground states [sign and submit](#) phony electoral certificates showing that Trump, rather than Biden, had won.  
• Trump and Eastman [pressured](#) then-Vice President Mike Pence to carry out their illegal scheme in: (1) [two separate Oval Office meetings](#) on January 4 and January 5, 2021; (2) a [phone call](#) on January 6, 2021, during which Trump mocked Pence for “not [being] tough enough” to reject votes or delay the count; and (3) and in multiple public [tweets](#) on January 6, 2021, stating in one: “All Mike Pence has to do is send them back to the States, AND WE WIN.”  
• Despite the DOJ legally having no role in determining who won an election, then-Acting Assistant Attorney General Clark [drafted and pushed DOJ leadership to send a letter supported by Trump](#) to battleground states containing [unsupported claims](#) of election irregularities and recommending that states consider appointing new slates of Electors.  
• Trump coerced and [threatened to replace](#) Justice Department leadership who did not cooperate with his scheme to [weaponize](#) the agency.  
• Despite his constitutional duty, Trump endorsed violence in response to unfavorable election results by, among other things, (1) [refusing to condemn](#) violent rhetoric; (2) telling the Proud Boys “stand back and stand by;” and (3) encouraging people to “fight like hell” during his public [speech](#) on January 6, 2021. |
New Evidence from Select Committee’s Second June Hearing (June 13, 2022):

- As early as April 2020, months before the election, Trump claimed that the only way he could lose the election is because of fraud. He started claiming fraud was going to occur months before the election and months before there was any evidence of fraud in the election.
- Trump campaign manager Bill Stepien, and former advisor Jason Miller said they urged Trump not to declare victory on election night, but he refused their advice. Instead, they said Trump listened to an “apparently inebriated” Rudy Giuliani, who pressured Trump to declare victory before all votes were counted. “It was far too early to be making any calls like that,” Stepien said. Jared Kushner, a former Trump White House official and adviser, said he told Trump not to take advice from Giuliani.

New Evidence from Select Committee’s Third June Hearing (June 16, 2022):

- At a meeting with Trump on January 5, 2021, Eastman admitted that his plan to have Pence invalidate Biden electors likely violated the Electoral Count Act. Jacob testified that he told Eastman that the plan violated the Electoral Count Act and that “Mr. Eastman acknowledged that that was the case.” Thus, Trump knew that he was asking Pence to take action that even Eastman considered to be illegal but Trump nonetheless persisted in pressuring Pence to do so.
- Trump and Eastman engaged in a concerted campaign to pressure Pence to illegally interfere in the counting of electoral votes by either rejecting Biden electors or by suspending the electoral vote count for 10 days and sending electoral votes back to state legislatures to reconsider. This pressure campaign began on or about December 23 and through January 6, and consisted of numerous meetings and phone calls involving Pence, and tweets and other public statements in which Trump cajoled Pence to do what Trump wanted.
- In a call to Pence on the morning of January 6, Trump told Pence he would be a “wimp” and a “[p-word]” if he did not do what Trump wanted. Even after Trump knew his supporters were attacking the Capitol with the vice president inside, he tweeted a public condemnation of him, further whipping up a crowd chanting “Hang Mike Pence!”

2. The individual(s) had specific intent to obstruct, influence, or impede.

- Eastman’s memos (here and here) set out a plan clearly intended to obstruct, influence, or impede the counting of electoral votes on January 6, 2021, by having Mike Pence reject, or delay the counting, of the electoral college results. Eastman and Trump repeatedly urged Pence in private to adopt the memos’ reasoning and in public via social media pressured him to “come[] through for us” so “we will win the Presidency” and “giv[e] States a chance to certify a corrected set of facts.”
- Clark drafted a letter intended to influence the January 6, 2021 counting of the electoral college votes which contained unsupported claims that the Department had taken notice of election irregularities and recommending that states consider appointing alternative slates of Electors.
- Meadows, apparently at Trump’s direction, appears to have specifically intended to influence and impede the count
of electoral votes through his support and advancement of the scheme to send phony slates of electors to Congress.

● Despite having a duty to respond to the January 6th attack and the security threat posed by the insurrectionists, Trump waited for hours after the attack began before telling his supporters to go home, and even then he did not condemn their actions. Allowing them, in fact, to obstruct the joint session of Congress on January 6, 2021, is evidence that he intended that outcome.

● Trump made statements lauding the invasion and praising the invaders as “very special” “patriots” whom he professed to “love” and showed his endorsement of what had gone on.

New Evidence from Select Committee’s First June Hearing (June 9, 2022):

● Vice Chair Cheney said: “President Trump believed his supporters at the Capitol, and I quote, ‘were doing what they should be doing.’ This is what he told his staff as they pleaded with him to call off the mob, to instruct his supporters to leave.”

● Vice Chair Cheney said based on the evidence: "President Trump gave no order to deploy the National Guard that day, and he made no effort to work with the Department of Justice to coordinate and deploy law enforcement assets”

● Chairman of the Joint Chiefs of Staff, Gen. Mark Milley said the Vice President issued orders to the military to secure the Capitol, and, in contrast. Meadows was focused on "politics" and the "narrative" of whether Trump appeared to be in charge, which Milley referred to as a "red flag."

● Numerous members of the January 6th mob confirmed that they came to D.C. because “Trump asked us to come” to stop the election from being stolen. In the words of one Trump supporter, “He asked me for my vote and he asked me to come on January 6th.”

● A hand-written document by a member of the White House staff advised what Trump needed to say, “anyone who entered the capital without proper authority should leave immediately,” but Trump refused to say so.

● When aware of the rioter's chanting to hang Mike Pence, Trump responded, “Maybe our supporters have the right idea. [Mike Pence] deserves it.”

New Evidence from Select Committee’s Second June Hearing (June 13, 2022):

● Former Attorney General Bill Barr said he told Trump there was “zero evidence” of widespread election fraud — and said Trump was "detached from reality if he really believes this stuff." Barr called Trump's claims "bullshit," "idiotic," "stupid," "complete nonsense" and "crazy stuff.” He said about his discussions with Trump, “There was no interest in what the facts were.” Barr also said there was “zero basis” for arguing the election contractor Dominion Voting Systems had rigged the voting machine in favor of Joe Biden.

● Then-Acting Deputy Attorney General Richard Donoghue said Trump refused to accept proof that he lost
the election. According to Donoghue: “There were so many of these allegations that when you gave him a very direct answer on one of them, he wouldn't fight us on it, but he'd move to another allegation.” He said about Trump’s claims of fraud in counting the ballots in Fulton County, Georgia, “I told the president myself that several times, in several conversations, that these allegations about ballots being smuggled in a suitcase and run through the machines several times, it was not true.”

- Alex Cannon, former Trump campaign lawyer, said he told Trump directly there was no evidence of election fraud.
- On December 14, 2020, Trump gave Barr an “amateurish” report about Dominion voting machine irregularities and asserted that it meant Trump was going to have a second term.

**New Evidence from Select Committee’s Third June Hearing (June 16, 2022):**

- Eastman and Trump pursued a joint plan to have Pence either reject certain electoral votes cast for Biden and then declare Trump the winner of the 2020 election, or suspend the counting of electoral votes for 10 days and return the electoral votes from certain states back for the state legislatures to reconsider the votes. Eastman admitted to Jacob that this plan violated the Electoral Count Act and that if it came before the Supreme Court, it would lose unanimously.
- In addition to the information presented in an earlier hearing about Trump’s failure to take action to stop the riot, White House Deputy Press Secretary Sarah Matthews said, “When that tweet — the Mike Pence tweet was sent out I remember us saying that that was the last thing that needed to be tweeted at that moment. The situation was already bad, and so it felt like he was pouring gasoline on the fire by tweeting that.”

| 3. The actions were targeted at an official proceeding. | Courts have **unanimously found** the congressional count of electoral votes to be an “official proceeding” within the meaning of 18 U.S.C. 1512(c). All but one judge has upheld the Justice Department's charges of January 6 defendants under 18 U.S.C. 1512(c); that one judge held it must be alleged that the defendant took an action with respect to a document or record. |
Donald Trump and John Eastman
- Attorney John Eastman communicated with Trump by phone and email through his assistant or agent about the plan to overturn the election results, and a court recently found that “there was likely an agreement between President Trump and Dr. Eastman to enact the plan articulated” in the two memos drafted by Eastman.

Donald Trump and Jeffrey Clark
- In December 2020, Trump and Clark met in apparent violation of DOJ policy to discuss allegations of election fraud and find ways to overturn the election results.
- Unlike the rest of DOJ’s leadership, Clark was sympathetic to Trump’s arguments, leading Trump to consider installing Clark as acting Attorney General - a plan Trump only abandoned in the face of threats of massive DOJ resignations. Clark, himself, told then-acting Attorney General Jeffrey Rosen that he had spoken to Trump and accepted Trump’s offer to replace Rosen as the head of DOJ so that he could move forward with actions supported by Trump.

Donald Trump and Mark Meadows
- Meadows appears to have played a key role in orchestrating the agreements and advancing Trump’s plans with both Clark and Eastman by (1) introducing Trump to Clark and repeatedly emailing DOJ leadership to investigate bogus fraud claims; (2) encouraging state legislators to embrace Eastman’s alternate slate of electors strategy; and (3) pushing Pence’s staff to have Pence reject electoral votes from battleground states. The actions of all three men – Trump, Eastman, and Clark – appeared to work in concert with Meadows to help form the agreement.
- Meadows also helped organize and participated in the January 2, 2021, phone call where Trump demanded that Georgia Secretary of State Brad Raffensperger “find” enough votes to overturn the election.

New Evidence from the Select Committee’s Third June Hearing (June 16, 2022):
- Jacob testified as to how, the weeks prior to the counting of the electoral votes on January 6, Trump and Eastman worked together to hold a series of meetings and phone calls with Pence and his staff to try to pressure Pence to overturn the election results.

Donald Trump and his allies knew, or should have known, that he lost a free and fair election. Trump was told so by a campaign data expert, Attorney General William Barr, Acting AG Jeffrey Rosen, and Georgia Secretary of State Brad Raffensperger among others. Nevertheless, Trump intentionally joined with Eastman, Clark, and Meadows to attempt to overturn the election.
- Eastman admitted that he knew the scheme violated the Electoral Count Act (ECA) on four separate grounds, acknowledged that he knew was asking Pence to commit a “relatively minor” violation of the ECA, and admitted that he knew the Supreme Court would likely unanimously reject this plan. Nonetheless, Trump and Eastman
| with an awareness of its unlawful purpose. | pressured Pence to carry out their scheme in two separate Oval Office meetings on January 4 and again on January 5, 2021 during which Pence told them he did not have the legal authority to do what they were asking. |
| | ● Despite being advised by White House counsel that the plan was not legally sound, Mark Meadows moved forward with a scheme, presumably at Trump’s direction, to have battleground states send false certificates declaring that Trump, instead of Biden, won those states. |
| New Evidence from Select Committee’s First June Hearing (June 9, 2022): | ● Then-acting Deputy Attorney General Richard Donoghue told Clark, “What you’re proposing is nothing less than the United States Justice Department meddling in the outcome of a presidential election.” |
| | ● President Trump’s campaign lawyer tasked with assessing allegations of election fraud reported to Meadows in “mid to late” November 2020 he wasn’t “finding anything that would be sufficient to, um, change the results in any of the key states,” and Meadows responded: “so there's no, there, there.” |
| New Evidence from the Select Committee’s Second June Hearing (June 13, 2022): | ● See rows 1 and 2 above in this chart for evidence bearing on Trump’s knowledge of unlawful purpose. |
| New Evidence from the Select Committee’s Third June Hearing (June 16, 2022): | ● At a meeting on January 4, Trump was present when Eastman said it would violate several provisions of the Electoral Count Act for Pence to reject the counting of certain electoral votes or to suspend the counting. Trump thus knew that he was pressuring Pence to engage in activity which Trump’s own legal advisor said would be illegal. |
| | ● Jacob confirmed the context of a Jan. 6 email exchange with Eastman in which Eastman said that he advised Trump in his professional judgment the Vice President does not have the power to decide things unilaterally but that "once [President Trump] gets something in his head, it's hard to get him to change course." Eastman admitted to Jacob that his plan violated several provisions of the Electoral Count Act and that if it came before the Supreme Court, it would lose unanimously. |
Criminal Evidence Tracker 3: Whether Donald Trump Solicited Election Fraud in the State of Georgia
By Noah Bookbinder, Norman Eisen, Fred Wertheimer, and Colby Galliher

GA Code § 21-2-604 - Criminal solicitation to commit election fraud

“A person commits the offense of criminal solicitation to commit election fraud in the first degree when, with intent that another person engage in conduct constituting a felony under this article, he or she solicits, requests, commands, importunes, or otherwise attempts to cause the other person to engage in such conduct. A person commits the offense of criminal solicitation to commit election fraud in the second degree when, with intent that another person engage in conduct constituting a misdemeanor under this article, he or she solicits, requests, commands, importunes, or otherwise attempts to cause the other person to engage in such conduct.”

<table>
<thead>
<tr>
<th>Elements of the Crime that Must be Proved</th>
<th>Facts and Evidence¹</th>
</tr>
</thead>
</table>
| 1. Solicitation: The defendant must solicit, request, command, importune, or otherwise attempt to cause another person to engage in conduct. | ● On January 2, 2021, then-President Trump, on a call with Georgia Secretary of State Brad Raffensperger, urged Raffensperger to “find 11,780 votes,” one more vote than Democratic candidate Joseph R. Biden’s victory in the state. Trump exhorted Raffensperger to “give [him] a break” due to the fact that he “only need[ed] 11,000 votes,” stressing to Raffensperger that “it is really important that [Raffensperger] meet tomorrow and work out on these numbers.” After Raffensperger rejected Trump’s false claims regarding voter fraud in Georgia’s election, Trump admonished him that it would be “illegal” and “a big risk” to resolve against “reporting” Trump’s false claims. Trump also warned Raffensperger that his stance proclaiming that there was “no criminality” in the election was “very dangerous.”
● Before Trump’s January 2 call to Raffensperger, on December 23 he placed a call to Frances Watson, Raffensperger’s chief investigator in the Secretary of State’s Office, while Watson was leading a small-sample audit of mail-in ballots in Cobb County. Trump pressed Watson to go back in her ballot inquiry “two years, as opposed to just checking, you know, one against the other.” He also urged her to pursue “dishonesty” and specifically to “get to Fulton,” the Atlanta-anchored county that went heavily for Biden in the 2020 vote. Finally, he implored Watson to extend the ballot review past Christmas but to finish it before January 6. In making these requests, Trump reiterated how “important” the chief investigator was and declared that she would receive praise |

¹ Much of the analysis provided in this chart is adapted from a September 2021 Brookings report, “Fulton County, Georgia’s Trump Investigation: An Analysis of the Reported Facts and Applicable Law.”
for coming to the “right answer.”

- Reportedly, Trump also placed a December call to Georgia Attorney General Chris Carr, in which Trump warned Carr “not to interfere” with a separate filing submitted by the Texas attorney general challenging Biden’s win in a handful of swing states. Carr had described the Texas filing as “constitutionally, legally, and factually wrong” prior to Trump’s call.

**New Evidence from the Select Committee’s First June Hearing (June 9, 2022):**

- Vice Chairwoman Cheney stated that specific evidence relevant to Georgia is forthcoming in future hearings, including additional details relating to Trump’s January 2 call to Secretary of State Brad Raffensperger and to Jeffrey Clark’s unsent letter to Georgia state legislators claiming fraud in the election. We know that Raffensperger has already appeared before the committee, and we anticipate that he may be a live or recorded witness in a future hearing.

**New Evidence from the Select Committee’s Second June Hearing (June 13, 2022):**

- BJ Pak, the former U.S. attorney for the Northern District of Georgia who resigned after being told that the former president planned to fire him for Pak’s resistance to claims of election fraud, testified that, in early December 2020, former Attorney General Bill Barr contacted him and asked him to look into Georgia fraud claims being circulated by Trump, Rudy Giuliani, and others within Trump’s circle. Specifically, Barr noted a conspiracy theory being pushed by Giuliani that video footage showed poll workers at State Farm Arena in Atlanta bringing out a box of unofficial ballots from beneath a table and adding them to the official vote count. Pak told the committee that he and his office looked into the claim and found that the footage was taken out of context by Trump and his allies; the “suitcase” was an official ballot lockbox containing legitimate ballots. Pak further testified that his successor, Bobby Christine, continued to investigate election-fraud leads and found nothing that would have altered the outcome of the election.

- Using Trump’s own speeches and statements, the committee established that as early as April 2020, Trump had been insisting that he would only lose the election if it were rigged against him. These claims—all lacking basis—continued from the spring before the election through to Election Night and to the congressional certification of the election results on January 6.

- The committee aired recorded testimony and received live testimony from additional witnesses who recounted the weeks and months leading up to and following Election Night. These witnesses, nearly all from Trump’s inner circle—most prominently Attorney General Bill Barr and 2020 Campaign Manager Bill Stepien—recollected telling the president, both on Election Night and in the days and weeks to come, that reliable data from his own campaign indicated that he had lost the election. Despite their efforts to guide Trump away from a crusade against the election outcome, the former president chose instead to listen to aides, including Giuliani and Sidney Powell, who were willing to trumpet conspiracy theories and push
the campaign to overturn the election into more extreme stages.

- DOJ officials, including Acting Attorney General Jeffrey Rosen and Deputy Attorney General Richard Donoghue, recalled playing “whack-a-mole” with the multitudinous—but equally baseless—fraud claims that the former president and his aides brought to them. Donoghue in particular related that as soon as he or his team relayed to the former president that an investigation into a specific fraud claim had turned up nothing of significance, Trump would immediately move on to the next claim or theory.

New Evidence from the Select Committee’s Third June Hearing (June 16, 2022):

- The committee zeroed in on Trump’s remarks at a northwest Georgia rally on January 4, 2021, where he publicly urged Pence to “come through” in his plot to overturn the 2020 election results despite knowing that the vice president had repeatedly and properly informed Trump that he had no authority to unilaterally declare a winner, and even John Eastman having told the President that day that Pence’s doing so would violate several provisions of federal law.

- In live and pre-recorded interviews, former Pence aides testified that Trump was told numerous times that the plan was illegal even by Eastman himself and by Pence explaining he had no such legal authority. Notably, Pence’s counsel Greg Jacob testified that Eastman acknowledged in front of the president that his scheme to reject electors from contested states (such as Georgia, although the state was not expressly mentioned) would require Pence to break federal law. (Jacob also memorialized this statement in a memorandum dated Jan. 5.) Notwithstanding these warnings, Trump and Eastman continued their pressure campaign against Pence, with Jacob recalling one instance on January 5 when Dr. Eastman bluntly asked for the vice president to reject Biden electors. In an email exchange that was put in context in the hearing, Jacob asked Eastman, “Did you advise the President that in your professional judgment, the Vice President does not have the power to decide things unilaterally?” And ended the email saying, “it does not appear that the President ever got the memo.” Eastman replied, “He’s been so advised,” and ended his email saying, “But you know him – once he gets something in his head, it’s hard to get him to change course.”

- Jacob alleged that just hours after the violence unfolded at the Capitol, Eastman requested that Pence delay certification for 10 days to allow state legislatures to determine the winner. Even after the riot, Eastman clung on to hopes of nullifying electoral votes in key states, including Georgia. In a videotaped testimony, White House attorney Eric Herschmann similarly revealed that Eastman contacted him on January 7 to discuss “dealing with Georgia” in a potential appeal.

- The committee disclosed that Eastman apparently feared prosecution in the aftermath of the insurrection, emailing Trump’s lawyer Rudy Giuliani to request that Eastman be granted a preemptive presidential pardon. Combined with the revelation that he invoked the Fifth Amendment (approximately) one hundred times when questioned by the House panel, this suggests that Eastman was cognizant of his actions’
| 2. Intent: The defendant must intend that the other person engage in that conduct. | On all three above-mentioned calls, the evidence shows Trump was gravely serious about his entreaties to Raffensperger, Watson, and Carr. That is all the more obvious given Trump’s status as the President of the United States at the time of the call and the implicit pressures that stature placed upon state officials administering the election results. The available transcripts of the Raffensperger and Watson calls contain clear requests, and at times, demands and threats, that the state officials carry out Trump’s will. Trump’s outreach to the three state officials occurred in the wider context of his campaign to overturn the duly certified election results. Alongside his Georgia-specific efforts, Trump was filing or joining election-focused lawsuits; inviting Republican state lawmakers to the White House to discuss the possibility of overturning the election in their states; and dispatching his surrogates to those states to trumpet his election fraud claims or meet with state officials, including in Georgia, to push them to take action against the certified election results. His social media posts, particularly his Twitter feed, also demonstrate the concerted campaign to overturn the election in which the Georgia calls took place. Since leaving office, Trump has continued to exhibit his fixation on Georgia and the 2020 election there. He has released statements claiming that election fraud has been proven in the state; has held rallies in the state in which he has reiterated his claim that the state’s 2020 election was marred by fraud and stolen from him; and has vociferously endorsed and campaigned for 2022 Republican primary candidates for statewide offices who have parroted his election claims, including challengers to Governor Brian Kemp and Secretary of State Brad Raffensperger, two officials who refused to bend to Trump’s pressure. |

New evidence from the Select Committee’s First June Hearing (June 9, 2022):

- The hearing revealed considerable additional evidence about the wider context of Trump’s campaign, characterizing it as a “seven-point plan,” as more fully detailed in the accompanying federal evidence summaries. Vice Chair Cheney has said the hearings will detail those seven points, multiple of which will likely prove relevant to Georgia.
- The hearing contained other new evidence that Trump was aware that he did not win the election, such as Bill Barr’s statements that he “did not agree with the idea of saying the election was stolen and putting out this stuff, which [he] told the president was bullshit,” and Trump campaign senior aide Jason Miller’s statement that, in the days after the 2020 election, “the lead data person [of the Trump campaign] … delivered to the president [in] pretty blunt terms that he [Trump] was going to lose.” Other material details...
 included in the first hearing are catalogued in the two companion federal charts. While this evidence did not specifically name Georgia, Trump’s conduct relating to that state is clearly included.

New Evidence from the Select Committee’s Second June Hearing (June 13, 2022):

- Specific to Georgia, BJ Pak’s testimony that his office pursued Trump’s fraud claims but turned up nothing of import demonstrates that by the time Trump placed his call to Secretary of State Brad Raffensperger on January 2, 2021, Trump had access to information—not just from close aides and DOJ officials, but from the top prosecutor in Georgia’s Northern District—that no significant fraud had occurred in the state. This fact accentuates that when Trump urged Raffensperger to just “find 11,780 votes” that would flip the state to his column, Trump was requesting that Raffensperger fabricate votes on his behalf.
- Barr and other witnesses testified that Trump had been repeatedly and forcefully told that the fraud claims had no basis in reality by those he trusted most made clear that Trump knew he had lost the election and yet continued on his quest to see the results overturned. Asked specifically about the Fulton County allegations, Donoghue testified that in addition to his colleagues, “I told the president myself that several times in several conversations, that these allegations about ballots being smuggled in in a suitcase and run through the machine several times, it was not true, that we looked at it. We looked at the video, we interviewed the witnesses, that it was not true.” This established that Trump knew what he was doing when he called Raffensperger on January 2 and asked him to change the results on the former president’s behalf.

New Evidence from the Select Committee’s Third June Hearing (June 16, 2022):

- The hearing established that Trump and Eastman knew that there was no legal or factual basis for the wider scheme to overturn Biden’s victory in Georgia and other contested states after repeated warnings from Vice President Pence and legal authorities. Despite these alerts, Trump forged ahead in his multiple efforts to overturn election results. While investigators did not explicitly focus on Georgia or the president’s correspondence with Georgia election officials, these revelations are useful in proving Trump’s overall state of mind and knowledge that his claims had no merit.

3. Crime: That conduct must constitute a felony (or misdemeanor) under Georgia law.

- Several types of the conduct Trump attempted to solicit from Raffensperger, Watson, and Carr would qualify as Georgia felonies if the state officials had carried out his wishes. Those are:
  a) **Interference with Primaries and Elections** (Ga. Code Ann. § 21-2-566). **Eight component acts** comprise Ga. Code Ann. § 21-2-566. The eighth, applying to any person who “willfully tampers with any electors list, voter’s certificate, numbered list of voters, ballot box, voting machine, direct recording electronic (DRE) equipment, electronic ballot marker, or tabulating machine,” is most relevant to Trump’s requests of Raffensperger and Watson. For Raffensperger to carry out Trump’s request of him—namely the request to “find” the ballots Trump wanted thrown out—the Secretary of State would have had to change actual voter data, whether by tampering with lists of voters, voting machines, ballot records, DRE equipment, tabulating machines, or voter/ballot data.
housed on the Secretary’s website. The same analysis could be applied to Trump’s call to Watson, who would have had to manipulate or alter ballots or voter data to find the “dishonesty” Trump was seeking.

b) **Counterfeit Ballots or Ballot Labels (Ga. Code Ann. § 21-2-575).** “Any person who makes, constructs, or has in his or her possession any counterfeit of an official ballot or ballot label shall be guilty of a felony.” If Raffensperger or Watson had attempted to complete Trump’s request to “find” votes (as with Raffensperger) or identify “dishonesty” (as with Watson) by fabricating fraudulent ballots, they would have violated Ga. Code Ann. § 21-2-575.

c) **Fraudulent Entries; Unlawful Alteration or Destruction of Entries (Ga. Code Ann. § 21-2-562).** There are four elements of Ga. Code Ann. § 21-2-562, the first two of which involve “insert[ing] or permit[ing] to be inserted any . . . fraudulent entry in any . . . record or document authorized or required to be made, used, signed, returned, or preserved for any public purpose in connection with any primary or election[,]” and “alter[ing] materially or intentionally destroy[ing] an entry which has been lawfully made therein.” If Raffensperger or Watson had altered the types of records to which the statute refers in their execution of Trump’s urgings, they may have violated Ga. Code Ann. § 21-2-562. Those records are generally relevant only to the pre-voting stage of an election, i.e. to voter data and registration, so the conduct may not apply here.

- Several types of the conduct Trump attempted to solicit from Raffensperger, Watson, and Carr would qualify as Georgia misdemeanors if the state officials had carried out his wishes. Those are:
  a) **Failure of Public or Political Officer to Perform Duty (Ga. Code Ann. § 21-2-596).** “Any public officer or any officer of a political party or body on whom a duty is laid by this chapter [Title 21, Chapter 2] who willfully neglects or refuses to perform his or her duty shall be guilty of a misdemeanor.” As the Secretary of State and their office’s employees are charged with administering elections under Georgia state code, if Raffensperger and Watson had followed Trump’s orders, which would have required them circumventing or undermining official election procedures to obtain the outcome Trump desired, they would have violated Ga. Code Ann. § 21-2-596. (This component misdemeanor would not apply to Trump’s call to Attorney General Chris Carr, whose office is not included in the statute.)
  b) **Making a False Statement (Ga. Code Ann. § 21-2-560).** “Any person who shall make a false statement under oath or affirmation regarding any material matter or thing relating to any subject being investigated, heard, determined, or acted upon by any public official, in accordance with this chapter, shall be guilty of a misdemeanor.” In this instance, if the conduct that Trump implored Raffensperger and Watson to carry out would reasonably have entailed making a false statement under oath or affirmation in connection with the tabulation or certification of election results, it would have constituted a crime.
  c) **Destroying, Defacing or Removing Ballots (Ga. Code Ann. § 21-2-576).** “Any person who willfully destroys or defaces any ballot or willfully delays the delivery of any ballots shall be guilty of a misdemeanor.” If Raffensperger or Watson had destroyed or otherwise altered electoral ballots in fulfilling Trump’s requests of them, the two officials would have violated Ga. Code Ann. § 21-2-576.
New Evidence from the Select Committee’s First June Hearing (June 9, 2022):
• Vice Chair Cheney’s statement about the January 2, 2021 call between Trump and Secretary of State Brad Raffensperger, if substantiated by live or recorded testimony by Raffensperger, would constitute additional evidence of Ga. Code Ann. § 21-2-566, felony interference with primaries and elections, as well as Ga. Code Ann. § 21-2-560, making a false statement.

New Evidence from the Select Committee’s Second June Hearing (June 13, 2022):
• If BJ Pak had bowed to Trump’s pressure to identify nonexistent voter fraud and pursued further legal action on that false basis, he could have violated any number of the component crimes listed above, including Ga. Code Ann. § 21-2-566, interference with primaries and elections, or Ga. Code Ann. § 21-2-560, making a false statement.

New Evidence from the Select Committee’s Third June Hearing (June 16, 2022):
• The committee’s reference to Trump’s January 4 comments in Georgia and their part in the pressure campaign against Mike Pence may allow Georgia prosecutors to investigate misdemeanors or felonies relating to the overall pattern of threats against the vice president or the other aspects of the alleged conspiracy. The January 2 call, the January 4 appearance in Georgia, and the other contacts with Georgia (including those highlighted in this tracker) are all relevant to that determination.