

## STATEMENT OF FACTS

Your affiant, [REDACTED], has been a duly sworn law enforcement officer for over twenty-two years. During this time, I have accumulated approximately 2,500 hours of specialized investigative training. Over my last two decades of employment, I have had the opportunity to investigate various types of crimes including: narcotic and firearms related offenses, sex offenses, terrorism-related offenses, offenses involving child abuse and child pornography, and many other violations of law. Since August of 2014, I have been assigned to the Joint Terrorism Task Force of the Federal Bureau of Investigation (“FBI”) as a Task Force Officer. In my duties as a Task Force Officer, I have received training and gained experience in a variety of criminal laws and procedures, primarily in complex and lengthy investigations into matters involving various terrorism-related offenses. Currently, I am tasked with investigating criminal activity in and around the U.S. Capitol Building on January 6, 2021. As a Task Force Officer, I am authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of a violation of Federal criminal laws.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification were allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States 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 separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., 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.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, around 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President

Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

### FACTS SPECIFIC TO THIS CASE

Following the riot at the United States Capitol, unlawful breach of the Capitol Building, and entry by numerous unauthorized individuals, law enforcement officers and citizen sleuths began the process of reviewing the significant amount of photographic and video imagery in order to identify individuals who violated the law on January 6, 2021. Of particular interest was identifying those who assembled on the Lower West Terrace of the United States Capitol and assaulted officers while attempting to proceed further into the restricted Capitol grounds and, eventually, breach the United States Capitol Building.

Body-worn camera footage of Washington, D.C. Metropolitan Police Officer L.H., a static screenshot and a closeup image of which are shown below, revealed one such individual, a white male, thinly built, approximately 18 to 25 years old, with long “dirty blonde” hair, and wearing grey sweatpants, a black “puffer” style jacket, and a disposable light blue face mask over his mouth. At approximately 2:35 p.m., that individual can be seen standing in the crowd of rioters in a restricted area, the Lower West Terrace, holding what appears to be a large gold-colored canister.

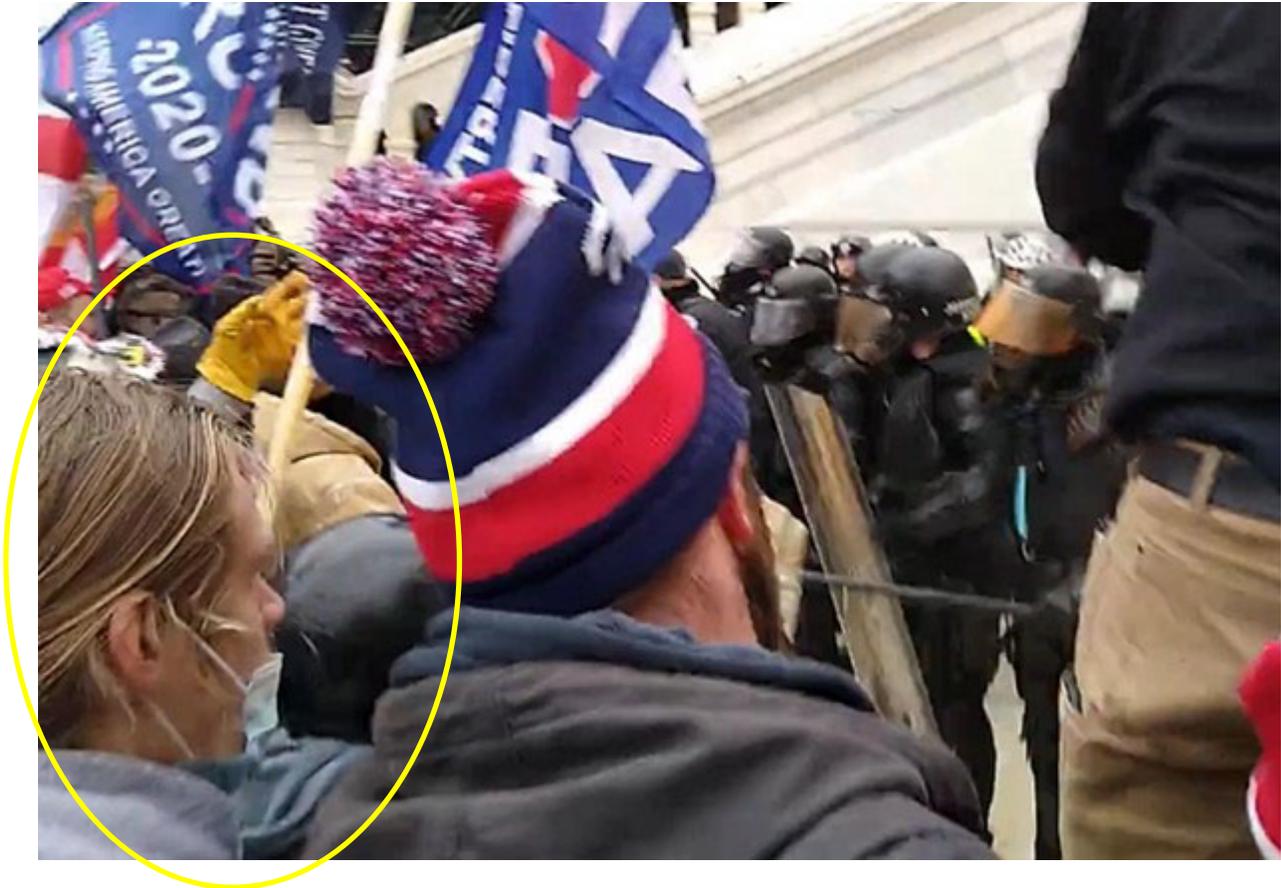




Officer L.H.'s body-worn camera then shows the individual pointing the nozzle of the canister toward a line of uniformed law enforcement officers from both the D.C. Metropolitan Police Department and the U.S. Capitol Police and activating the propellant, discharging an orange-colored liquid spray against the group of officers.



The below images, obtained through open-source video taken on January 6, 2021 show the same incident from behind the individual as he and other encroaching rioters faced the defensive line of officers:





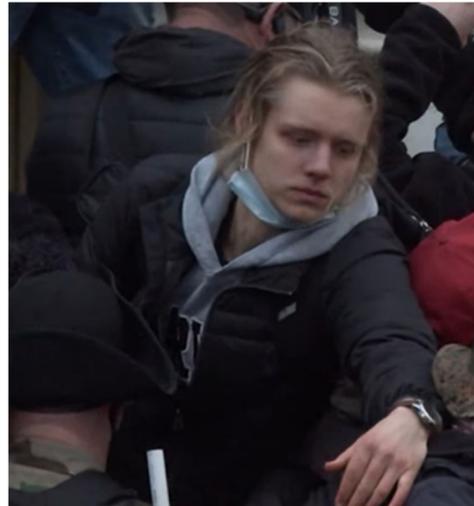
Through my training and experience, I believe that the canister contained a product commonly referred to as “bear spray.” Bear spray is a chemical irritant designed for exclusive use as a bear repellent. Bear spray is not intended for use against humans primarily due to its higher concentration of the active ingredient capsaicin. For reference, capsaicin is found in a majority of chemical based self-defense products that are commonly known as “pepper spray.” Additionally, the misuse of such products as a weapon against humans is well-established and regularly encountered during civil unrest events.

MPD Officer L.H. was interviewed about the incident that took place at the Lower West Terrace at approximately 2:35 pm on January 6, 2021. L.H. was also shown excerpts of the video created by his body-worn camera. L.H. recalled being assaulted with bear spray on multiple occasions on January 6, 2021. Through his training and experience, L.H. instantly recognized the orange liquid as a capsaicin-based product but described it as being far stronger than any chemical munition he had previously been exposed to. L.H.’s exposure to the bear spray caused him extreme pain and incapacitated him. This incapacitation prevented him from carrying out his law enforcement duties. L.H. stated he was sprayed multiple times on January 6, 2021 by multiple individuals before ultimately retreating from the rioters to recover and decontaminate. Additionally, L.H. stated he was aware of multiple other law enforcement officers, in immediate proximity to him, who were also sprayed in a similar fashion and affected in a similar way. L.H. specifically mentioned a MPD officer who was so severely affected by his exposure to the bear spray that he required emergency medical attention and transport to a hospital for further treatment.

Law enforcement officers reviewed additional open-source videos taken during the riot at the United States Capitol on January 6, 2021 and observed someone who appeared to be the same

individual near the stage created for the inauguration of President Joseph R. Biden, Jr., to the left of a tunnel into the Capitol Building, and next to one of the three windows adjacent to that tunnel. The individual was wearing the same attire, but his face was unobscured by the disposable facemask, a wristwatch is visible on his left wrist, and a grey sweatshirt with maroon lettering that appears to spell the word “Harvard” is visible under his black “puffer” jacket.

The images included below are derived from those videos:



Many of the videos reviewed by law enforcement officers were publicly available over the internet through video sharing websites and/or social media platforms. Multiple third-party entities created websites which posted and categorized these videos in an effort to identify individuals who might have committed criminal acts. Certain unknown individuals were given a nickname for the logical categorization of their video appearances. The individual described above was given the hashtag name of “#HarvardSweats,” based upon the grey Harvard sweatshirt under his black “puffer” style jacket that was visible in many images captured on January 6, 2021.

At a time believed to be around 4:10 pm on January 6, 2021, the individual referred to as #HarvardSweats is shown on open-source videos standing within a large crowd of people who

have gathered in front of a large glass window of the U.S. Capitol Building. This window is assessed be left (north) of the entrance tunnel.

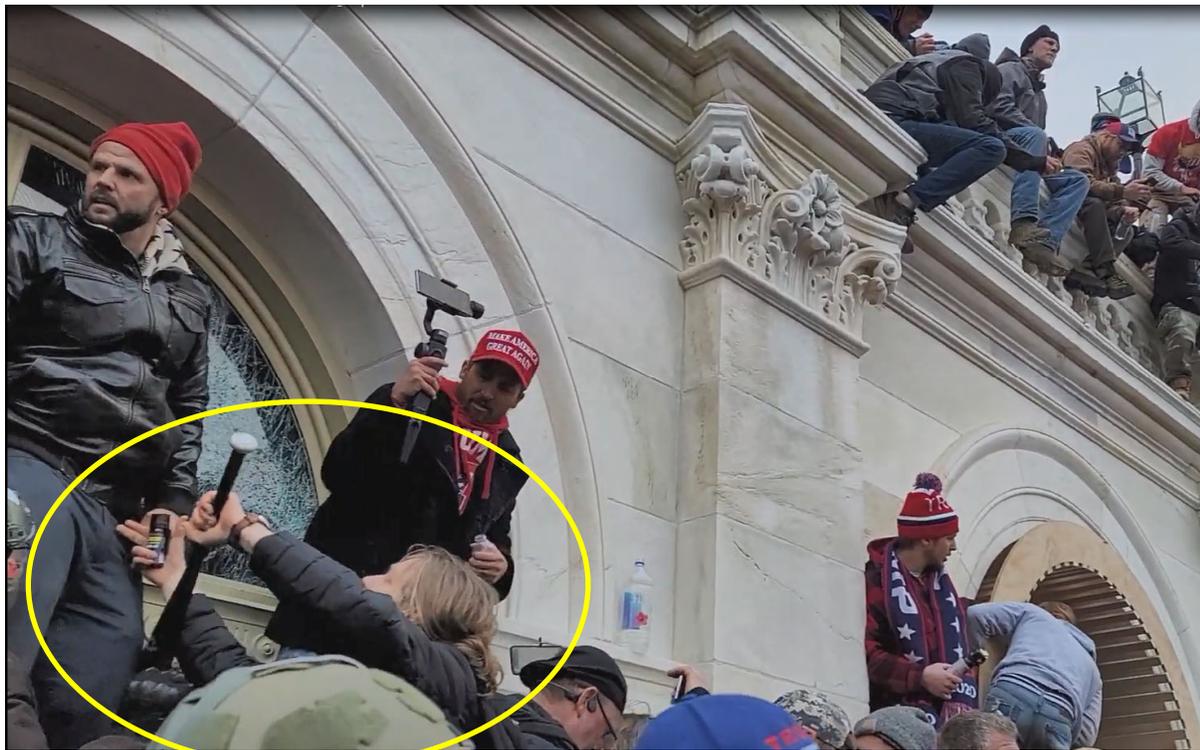
At various moments, individuals, including an individual later identified as Mitchell Todd Gardner II, are seen repeatedly striking the window with weapons and tools in an obvious attempt to break the window. At one point, the individual referred to as #HarvardSweats can be seen standing next to and below an individual who is striking the glass with what appears to be a small axe, while encouraging him by shouting, "Window! Window! Break it!" and clapping.



In another video, #HarvardSweats can be seen standing next to and below Gardner, who is actively attempting to breaking the glass with a cannister.



In another open-source video, the individual dubbed #HarvardSweats is observed holding an object, which appears to be a different cannister of chemical irritant, in his right hand. Also visible in the image is a silver-colored watch with a brown strap on his left wrist. #HarvardSweats then appears to nod to an unknown person below him who hands him a baseball bat. He then turns and attempts to hand the bat to Gardner to assist breaching the window.



In yet another open-source video, #HarvardSweats is observed himself using the same bat to strike the lower portion of the glass window in an attempt to breach the U.S. Capitol Building.

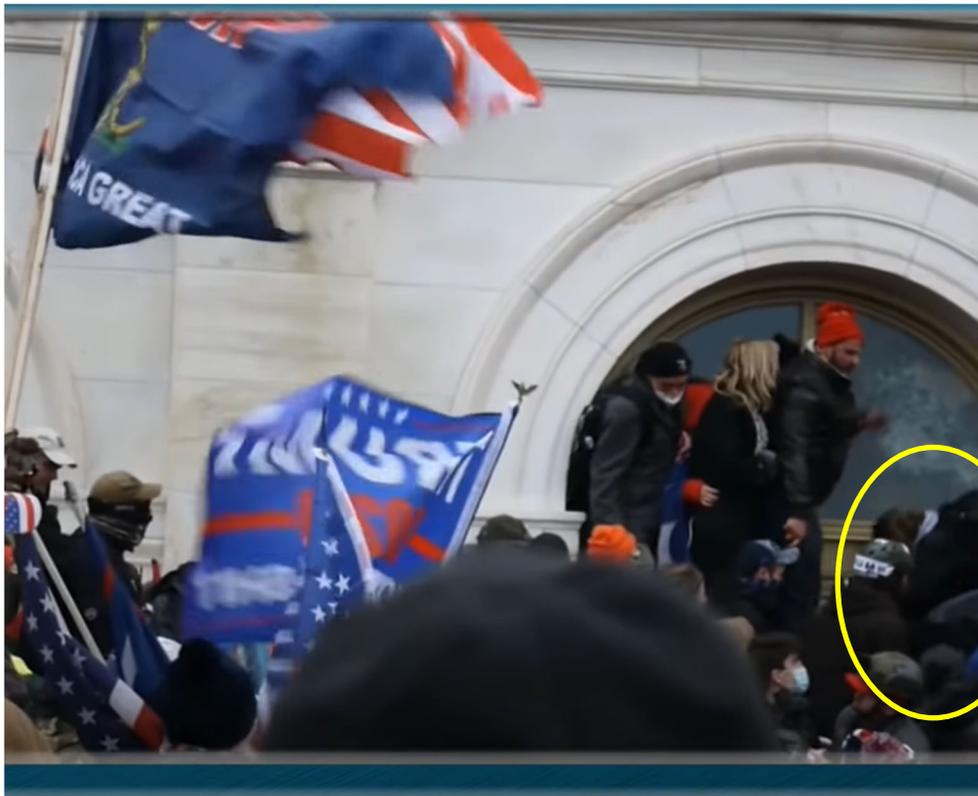


Moments later, the male dubbed #HarvardSweats has successfully shattered the lower glass portion of the window. He then turns to face the crowd and appears to clap and shout in an apparent act of encouragement for people to start entering the U.S. Capitol Building through the window.

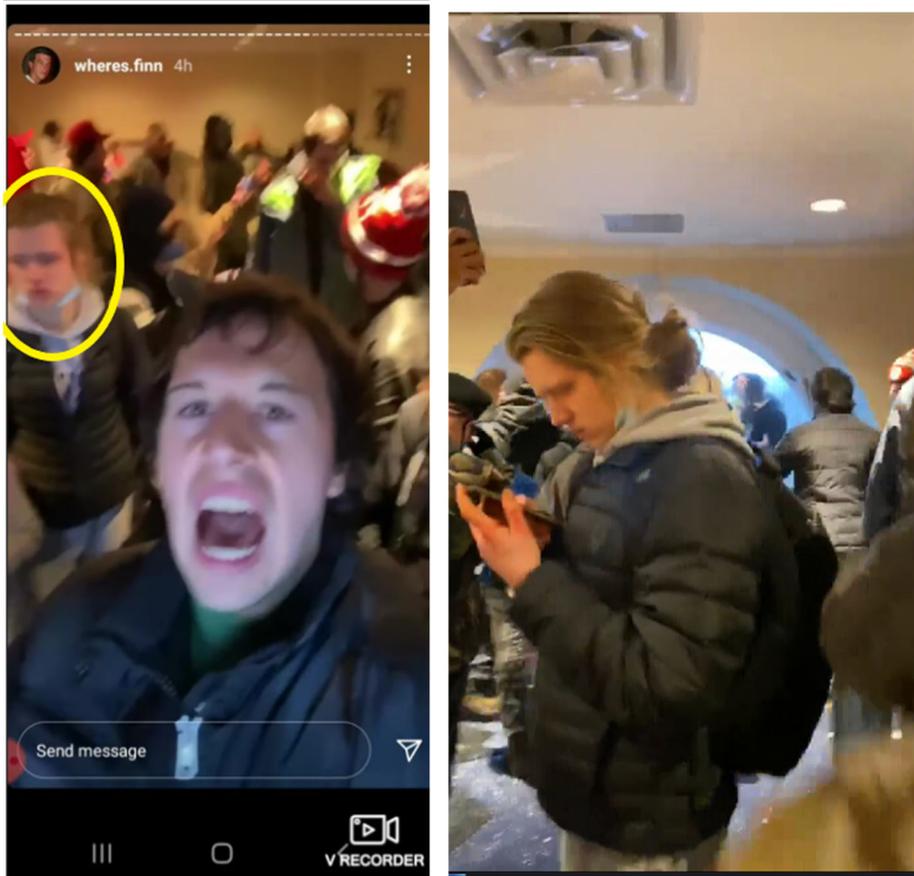


The FBI determined that the U.S. Capitol window the individual dubbed #HarvardSweats struck led to room ST-2M (Senate Terrace Room 2 Mezzanine) inside the U.S. Capitol Building and the estimated cost to replace the window that he broke exceeded \$1,000.

Soon after, many people, including the individual, entered the U.S. Capitol Building by crawling through the window that the individual had shattered. The picture below is a still image from a video that shows #HarvardSweats climbing into the U.S. Capitol Building:



Other open-source videos and cell phone video captured by individuals who entered room ST-2M show the individual referred to as #HarvardSweats within that U.S. Capitol Building room. One video shows the individual looking at his cell phone while inside room ST-2M on January 6, 2021.



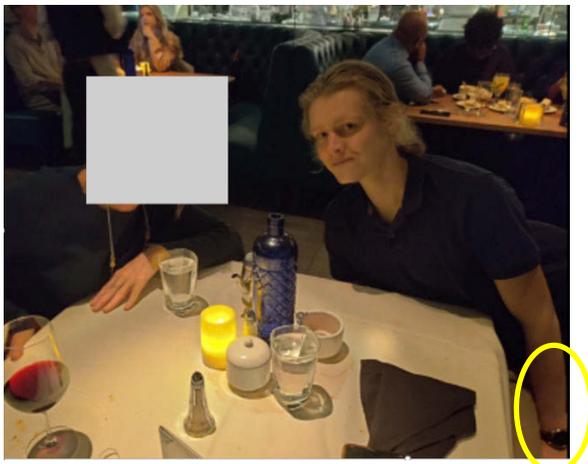
Other individuals who entered room ST-2M then took items from that conference room that could be used as weapons, such as table legs and lamps, and passed them to people outside the broken window in order to aid the rioters who were assaulting law enforcement officers in the tunnel area of the Inauguration stage.

Law enforcement obtained a May 14, 2020 booking photo for AIDEN HENRY BILYARD (“BILYARD”), for comparison to the video and photos of #HarvardSweats, above. Comparison

of the booking photo shows that BILYARD bears a strong physical resemblance to the individual referred to herein as #HarvardSweats.



In addition, I reviewed a publicly accessible Facebook account associated with the name [ ] Bilyard. BILYARD's mother is named [ ] Bilyard. My review of the [ ] Bilyard Facebook page revealed images of a woman with a white male, thinly built, approximately 18 to 25 years old, with long "dirty blonde" hair, who looked similar to the individual in the videos described above. In one of these photographs, the individual is seen wearing a silver-colored watch with a brown strap on his left wrist (circled below). In another photo, he is shown wearing a gray hooded sweatshirt with the word "Harvard" across the front in maroon letters. Both the sweatshirt and watch look identical to those worn on January 6, 2021 by the individual known as #HarvardSweats.



On August 4, 2021, I interviewed BILYARD at Lackland Air Force Base near San Antonio, Texas. At the time, BILYARD was attending basic training for the United States Air Force but has since separated from the Air Force and moved back home to Cary, North Carolina. BILYARD admitted that he was on and around the U.S. Capitol Building grounds on January 6, 2021. BILYARD claimed that he only participated in lawful activities. After BILYARD was shown portions of some of the aforementioned videos showing his apparent participation in criminal acts and asked what he recalled about being at the U.S. Capitol Building on January 6, 2021, he terminated the interview, stating, “I think this is where I take my leave.”

On August 5, 2021, I interviewed BILYARD’s mother, [] Bilyard, at her home in Cary, North Carolina. [] Bilyard appeared to be the same woman shown in the images from the Facebook account associated with the name [] Bilyard. During this consensual interview, [] Bilyard confirmed that BILYARD traveled to Washington, D.C. on or about January 6, 2021. I showed her some of the images and video from the U.S. Capitol Building grounds on January 6, 2021 described above, and she identified BILYARD as the individual depicted in those images and videos. Unprompted by any question, [] Bilyard pointed to the gold canister held by BILYARD in one of the images and stated that, “I just threw that away.” [] Bilyard said that she found a gold canister in the cargo area of BILYARD’s vehicle while cleaning it out after he left to attend basic training. She told me that BILYARD stated that the canister was empty, that he found it on the ground while at the U.S. Capitol on January 6, 2021, and that she could throw it away. Additionally, [] Bilyard recognized the Harvard sweatshirt depicted in some of the images as being one previously worn by BILYARD. [] Bilyard retrieved the sweatshirt and voluntarily gave it to your affiant. The “Harvard” sweatshirt with maroon lettering appears identical to the one worn by BILYARD in the videos taken on January 6, 2021.

Through further investigation, namely a review of the contact number provided by BILYARD upon his May 14, 2020 arrest in North Carolina, the FBI learned that a cellphone associated with the number XXX-XXX-2415 is used by BILYARD. According to an online database, the carrier for XXX-XXX-2415 is T-Mobile Wireless. Pursuant to legal process, T-Mobile provided subscriber information for the phone number showing that the account holder is [] Bilyard, that the account is a family plan, and is associated with a home address in Cary, North Carolina. The records returned by T-Mobile Wireless on or around October 31, 2021 for telephone number XXX-XXX-2415 included the International Mobile Equipment Identity (“IMEI”), 354404066007101. An IMEI is a 15-digit code that uniquely identifies a wireless device. According to an online database, IMEI 354404066007101 is currently associated with an Apple iPhone 6. The cell phone in the image of BILYARD is consistent with the size and shape of an Apple iPhone 6.

According to records obtained through a search warrant which was served on T-Mobile Wireless, the cellphone associated with the number XXX-XXX-2415 was not identified having utilized a cell site consistent with providing service to a geographic area that includes the interior of the U.S. Capitol Building and within its restricted grounds around the time of the breach of the U.S. Capitol Building on January 6, 2021. However, T-Mobile Wireless cautioned that there are significantly fewer devices in the T-Mobile data than the company would expect.

Based on the foregoing, I submit that there is probable cause to believe that BILYARD violated 18 U.S.C. §§111(a)(1), (b), and 2, which make it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with certain designated individuals, and to use a deadly or dangerous weapon or inflict bodily injury during the commission of such acts, or to aid, abet, counsel, command, induce, or procure the commission of such offenses. Within the meaning of this statute, a designated individual is an officer or employee of the United States or of any agency in a branch of the United States Government (including any member of the uniformed services), while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer in the performance of official duties or on account of that assistance.

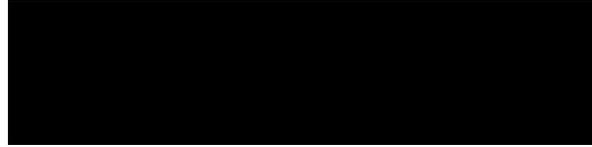
I further submit that there is probable cause to believe that BILYARD violated 18 U.S.C. §§ 1752(a)(1), (2), and (4), (b)(1)(A), and 2, which make it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; or attempts or conspires to do so; (4) knowingly engage in any act of physical violence against any person or property in any restricted building or grounds; or attempt or conspire to do so; and (b)(1)(A) to commit any of the aforementioned offenses with a deadly or dangerous weapon or firearm; or to aid, abet, counsel, command, induce, or procure the commission of such offenses. For purposes of Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

I submit that there also is probable cause to believe that BILYARD violated 18 U.S.C. §§ 1361 and 2, which makes it a crime to destroy government property, or to aid, abet, counsel, command, induce, or procure the commission of such offense, by willfully injuring or deprecating of any property of the United States, namely by striking and breaking the lower window to room ST-2M, repair of which exceeds \$1,000.

I submit that there also is probable cause to believe that BILYARD violated 40 U.S.C. §§ 5104(e)(2)(D) and (F), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; and (F) engage in any act of physical violence in the Grounds or any of the Capitol Buildings.

Finally, I submit that there is probable cause to believe that BILYARD violated 18 U.S.C. §§ 231(a)(3) and 2, which make it unlawful to commit or attempt to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which

in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof. This includes the Joint Session of Congress where the Senate and House count Electoral College votes.



Task Force Officer  
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1  
by telephone, this 15th day of November 2021.

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G. MICHAEL HARVEY  
U.S. MAGISTRATE JUDGE