

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

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UNITED STATES OF AMERICA

v.

JOHNNY HARRIS,

Defendant.

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No.: 1:21-cr-274 (RDM)

January 27, 2023

**JOINT PRETRIAL STATEMENT**

Pursuant to this Court's October 12, 2022 Minute Order the parties hereby submit the attached statement of the case, proposed jury instructions, and proposed stipulations. The undersigned Assistant U.S. Attorney has received permission from counsel for the defendant, Attorney Samuel J. Randall, to file this Joint Status Report.

Respectfully submitted,

MATTHEW M. GRAVES  
UNITED STATES ATTORNEY  
D.C. Bar No. 481052

By: /s/ Katherine E. Boyles  
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**UNITED STATES DISTRICT COURT  
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v.

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Defendant.

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No.: 21-cr-274 (RDM)

**PROPOSED STATEMENT OF THE CASE**

This is a criminal case, in which the defendant, Johnny Harris, is charged by Information with four counts: Entering or Remaining in a Restricted Building in violation of 18 U.S.C. § 1752(a)(1); Disorderly or Disruptive Conduct in a Restricted Building, in violation of 18 U.S.C. § 1752(a)(2); Violent Entry or Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D); Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G). The government alleges that on January 6, 2021, the defendant entered the restricted area of the Capitol grounds on the west side of the Capitol complex. The defendant then went to the West Plaza, where he encountered physical barricades, police officers, and chemical irritants, and yet remained illegally on the grounds. The defendant made his way to the Upper West Plaza, where he climbed bleachers overlooking the West Front. Harris then entered the Capitol building through the Upper West Terrace doors. Harris traveled further into the building to the Rotunda, and then to the East Foyer near the Columbus Doors. Harris returned to the Rotunda where he encountered police officers attempting to clear the Rotunda of rioters. Harris did not leave the Rotunda willingly and was forced out of that area by police officers. The defendant left the Capitol building through the Memorial Door after being inside for approximately 45 minutes. Harris took photography and video throughout his time inside the building. Harris,

who is presumed innocent, denies the allegations contained in the Information, has entered a plea of not guilty to all of these charges, and has requested a bench trial.

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**JOINT PROPOSED JURY INSTRUCTIONS**

The parties request the following jury instructions.

**A. Jointly Proposed Jury Instructions**

**I. Instructions Before and During Trial**

The parties have no objection to the Pattern Criminal Jury Instructions for the District of Columbia, 2021 Release (“Redbook”), as appropriate based on the developments at trial.

**II. Final Instructions**

1. Count One: Entering or Remaining in a Restricted Building, 18 U.S.C. § 1752(a)(1) [see proposal below]
2. Count Two: Disorderly or Disruptive Conduct in a Restricted Building, 18 U.S.C. § 1752(a)(1) [see proposal below]
3. Count Three: Violent Entry or Disorderly Conduct in a Capitol Building, 40 U.S.C. § 5104(e)(2)(D) [see proposal below]
4. Count Four: Parading, Demonstrating, or Picketing in a Capitol Building, 40 U.S.C. § 5104(e)(2)(G) [see proposal below]

**Proposed Instruction No. 1**

**ENTERING OR REMAINING IN A RESTRICTED BUILDING<sup>1</sup>**

18 U.S.C. § 1752(a)(1)

Count One of the Information charges the defendant with entering or remaining in a restricted building, which is a violation of federal law.

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

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

The term “restricted building” means any posted, cordoned off, or otherwise restricted area of a building where a person protected by the Secret Service is or will be temporarily visiting.

The term “person protected by the Secret Service” includes the Vice President and the immediate family of the Vice President.

A person acts “knowingly” if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant knowingly entered or remained in a restricted building, you may consider all of the evidence, including what the defendant did or said.<sup>2</sup>

A person who enters a restricted building with a good faith belief that he is entering with lawful authority is not guilty of this offense. Thus, you cannot find the defendant guilty of Count

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<sup>1</sup> 18 U.S.C. §§ 1752, 3056; *United States v. Jabr*, 4 F.4th 97, 101 (D.C. Cir. 2021).

<sup>2</sup> See Seventh Circuit Pattern Criminal Jury Instructions; see also *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005).

One unless you are convinced beyond a reasonable doubt that he did not have a good faith belief of his lawful authority to enter or remain in the restricted building.

**Proposed Instruction No. 2**

**DISORDERLY OR DISRUPTIVE CONDUCT IN A RESTRICTED BUILDING<sup>3</sup>**

18 U.S.C. § 1752(a)(2)

Count Two of the Information charges the defendant with disorderly or disruptive conduct in a restricted building, which is a violation of federal law.

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that the defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building or grounds.
2. Second, that the defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions.
3. Third, that the defendant's conduct occurred when, or so that, his conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

“Disorderly conduct” occurs when a person is unreasonably loud and disruptive under the circumstances, or interferes with another person by jostling against or unnecessarily crowding that person.

“Disruptive conduct” is a disturbance that interrupts an event, activity, or the normal course of a process.<sup>4</sup>

The terms “restricted building” and “knowingly” have the same meanings described in the instructions for Count One.

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<sup>3</sup> 18 U.S.C. § 1752.

<sup>4</sup> Redbook 6.643.

**Proposed Instruction No. 3**

**VIOLENT ENTRY OR DISORDERLY CONDUCT IN A CAPITOL BUILDING**

40 U.S.C. § 5104(e)(2)(D)

Count Three of the Information charges the defendant with violent entry and disorderly and disruptive conduct in a Capitol Building, which is a violation of federal law.

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that the defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings.
2. Second, that the defendant did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress.
3. Third, that the defendant acted willfully and knowingly.

The term “United States Capitol Buildings” includes the United States Capitol located at First Street, Southeast, in Washington, D.C.<sup>5</sup>

The term “disorderly or disruptive conduct” has the same meaning described in the instructions for Count Two defining “disorderly conduct” and “disruptive conduct.”

A person acts “willfully” if he acts with the intent to do something that the law forbids, that is, to disobey or disregard the law. “Willfully” does not, however, require proof that the defendant be aware of the specific law or rule that his conduct may be violating.<sup>6</sup>

The term “knowingly” has the same meaning described in the instructions for Count One.

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<sup>5</sup> 40 U.S.C. § 5101

<sup>6</sup> *See United States v. Bryan*, 524 U.S. 184, 190 (1998).



**Proposed Instruction No. 4**

**PARADING, DEMONSTRATING, OR PICKETING IN A CAPITOL BUILDING**

40 U.S.C. § 5104(e)(2)(G)

Count Four of the Information charges the defendant with parading, demonstrating, or picketing in a Capitol Building, which is a violation of federal law.

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that the defendant paraded, demonstrated, or picketed in any of the United States Capitol Buildings.
2. Second, that the defendant acted willfully and knowingly.

The terms “parade” and “picket” have their ordinary meanings. The term “demonstrate” refers to conduct that would disrupt the orderly business of Congress by, for example, impeding or obstructing passageways, hearings, or meetings, but does not include activities such as quiet praying.<sup>7</sup>

The terms “United States Capitol Buildings,” “knowingly,” and “willfully” have the same meanings described in the instructions for Counts One and Three.

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<sup>7</sup> *Bynum v. United States Capitol Police Board*, 93 F. Supp. 2d 50, 58 (D.D.C. 2000).

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Defendant.	:	
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**PROPOSED VERDICT FORM**

I, the Honorable Randolph D. Moss, in the above-titled case, find the defendant:

Count One: Guilty / Not Guilty of Entering or Remaining in a Restricted Building or  
Grounds, in violation of 18 U.S.C. § 1752(a)(1).

Count Two: Guilty / Not Guilty of Disorderly or Disruptive Conduct in a Restricted  
Building or Grounds, in violation of 18 U.S.C.  
§ 1752(a)(2).

Count Three: Guilty / Not Guilty of Violent Entry or Disorderly Conduct in a Capitol  
Building, in violation of 40 U.S.C. § 5104(e)(2)(D).

Count Four: Guilty / Not Guilty of Parading, Demonstrating, or Picketing in a Capitol  
Building, in violation of 40 U.S.C. § 5104(e)(2)(G).

Dated: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE RANDOLPH D. MOSS  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
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UNITED STATES OF AMERICA

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No.: 21-cr-274 (RDM)

**STIPULATION OF THE PARTIES**

The following stipulations have been proposed by the government, and are still under consideration by the defense:

***Trial Testimony and Transcript of Inspector Lanelle Hawa***

Government Exhibit # is a transcript of testimony given by Lanelle Hawa in the trial of *United States v. Hector Emmanuel Vargas Santos*, No. 1:21-cr-0047-RDM on December 8, 2022. The parties agree that this transcript accurately reflects Inspector Hawa's testimony in the *Vargas Santos* trial, and that she would offer the same testimony again here if questioned on the same subject, and that her testimony from the *Vargas Santos* trial is admissible in this trial.

The transcript of the testimony given by Lanelle Hawa in *Vargas Santos* refers to exhibits admitted during the *Vargas Santos* trial:

Government Exhibit 207 in *Vargas Santos* is a diagram of the U.S. Capitol building. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 801 in *Vargas Santos* is a document entitled Head of State Worksheet concerning then Vice President Michael Pence's visit to the U.S. Capitol on January 6, 2021. It includes information pertaining to the location of the Vice-Presidential motorcade upon arrival,

and the anticipated locations of former Vice President Michael Pence while he was in the U.S. Capitol building. This same exhibit is numbered as Government Exhibit # for this trial.

**Trial Testimony and Transcript of Lieutenant George McCree**

Government Exhibit # is a transcript of testimony given by George McCree in the trial of *United States v. Hector Emmanuel Vargas Santos*, No. 1:21-cr-0047-RDM on December 7, 2022. The parties agree that this transcript accurately reflects Lieutenant McCree's testimony in the *Vargas Santos* trial, and that he would offer the same testimony again here if questioned on the same subject, and that his testimony from the *Vargas Santos* trial is admissible in this trial.

The transcript of the testimony given by George McCree in *Vargas Santos* refers to exhibits admitted during the *Vargas Santos* trial:

Government Exhibit 001 in *Vargas Santos* is a montage of video footage on January 6, 2021, from U.S. Capitol Police security. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 101 in *Vargas Santos* is U.S. Capitol Police closed-circuit video footage of the West Front on January 6, 2021. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 102 in *Vargas Santos* is U.S. Capitol Police closed-circuit video footage of the West Front on January 6, 2021. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 103 in *Vargas Santos* is U.S. Capitol Police closed-circuit video footage of the East Foyer facing the Columbus Doors on January 6, 2021. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 104 in *Vargas Santos* is U.S. Capitol Police closed-circuit video footage of the East Foyer facing the Rotunda on January 6, 2021. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 105 in *Vargas Santos* is U.S. Capitol Police closed-circuit video footage of the Rotunda on January 6, 2021. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 106 in *Vargas Santos* is U.S. Capitol Police closed-circuit video footage of Memorial Door from the interior on January 6, 2021. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 107 in *Vargas Santos* is U.S. Capitol Police closed-circuit video footage of Memorial Door from the exterior on January 6, 2021. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 108 in *Vargas Santos* is U.S. Capitol Police closed-circuit video footage of the Columbus Doors from the exterior on January 6, 2021. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 109 in *Vargas Santos* is U.S. Capitol Police closed-circuit video footage of the East Plaza on January 6, 2021. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 201 in *Vargas Santos* is an aerial photograph of the U.S. Capitol. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 202 in *Vargas Santos* is an ariel photograph of the U.S. Capitol, which includes the restricted perimeter on January 6, 2021. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 203 in *Vargas Santos* is a photograph of the West Front of the U.S. Capitol on January 6, 2021. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 204 in *Vargas Santos* is a photograph from January 6, 2021, showing an “Area Closed” sign on the perimeter fence near the Peace Circle. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 205 in *Vargas Santos* is a still from video taken on January 6, 2021, showing an “Area Closed” sign on the perimeter fence near the Peace Circle. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 206 in *Vargas Santos* is a 3D rendering of the U.S. Capitol. This same exhibit is numbered as Government Exhibit # for this trial.

Government Exhibit 207 in *Vargas Santos* is a diagram of the U.S. Capitol building. This same exhibit is numbered as Government Exhibit # for this trial.

### **The Capitol Building and Grounds**

By law, 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. At the U.S. Capitol, the building itself has 540 rooms covering 175,170 square feet of ground, roughly four acres. The building is 751 feet long (roughly 228 meters) from north to south and 350 feet wide (106 meters) at its widest point. The U.S. Capitol Visitor Center is 580,000 square feet and is located underground on the east side of the Capitol. On the west side of the Capitol building is the West Front, which includes variety of open concrete spaces, a fountain surrounded by a walkway, two broad staircases, and multiple terraces at each floor. On January 6, 2021, the inaugural stage



scaffolding was on the West Front of the Capitol building. On the East Front are three staircases, porticos on both the House and Senate side, and two large skylights into the Visitor's Center surrounded by a concrete parkway.

On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public. See Map Outlining Restricted Area on January 6, 2021, attached as Government Exhibit #. These security barriers included bike racks that were positioned to the north of the U.S. Capitol along Constitution Avenue; to the south of the U.S. Capitol along Independence Avenue; to the west of the U.S. Capitol along First Street on the eastern side of that street; and, on the east side of the U.S. Capitol, between the Capitol Plaza (East Front) and the grassy areas located between the Plaza and First Street. Within the West Front of the Restricted Area there were additional temporary barriers due to preparations and ongoing construction for the Inauguration which was scheduled for January 20, 2021, including green snow fencing and signs stating, "Area Closed By order of the United States Capitol Police Board."

On January 6, 2021, the Restricted Area described above and depicted in Government Exhibit # was a posted, cordoned off, or otherwise restricted area where the Vice President and members of his immediate family were and would be temporarily visiting, and therefore constituted a "restricted building or grounds" as that term is used in Title 18, United States Code, Section 1752(c).

### **The Certification of the Electoral College Vote**

On January 6, 2021, a joint session of the United States Congress convened at the U.S. Capitol. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in both the House and Senate 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.

On January 6, 2021, the House of Representatives began its session at approximately 12:00 p.m., the Senate began its session at approximately 12:30 p.m., and the two Houses met together at approximately 1:00 p.m. in the House of Representatives chamber to begin the joint session. Vice President Mike Pence was in the Capitol building and presiding over the joint session. At approximately 1:15 p.m., the House and Senate adjourned to their separate chambers for up to two hours to resolve a particular objection.

At approximately 2:12 p.m., Vice President Pence evacuated the Senate chamber, and approximately one minute later the senator who had become the presiding officer in Vice President Pence's absence declared that the Senate would stand in recess. Senators evacuated the Senate chamber.

At approximately 2:15 p.m., Speaker Nancy Pelosi, who was presiding over the House of Representatives, evacuated the House chamber, and approximately fifteen minutes later the representative who had become the presiding officer in her absence declared that the House would stand in recess. Representatives evacuated the House chamber. Other Representative were evacuated later from the House Gallery.

The joint session was suspended.

The Senate and House resumed meeting at approximately 8:06 p.m. and 9:02 p.m., respectively. Congress's joint session continued until approximately 3:44 a.m. on January 7, 2021, when it completed the certification of the Electoral College vote.

The certification of the vote count of the Electoral College was an "official proceeding" as that term is used in Title 18, United States Code, Section 1512(c)(2) and 1515(a)(1).

**Officers from the United States Capitol Police and  
Washington, D.C., Metropolitan Police Department**

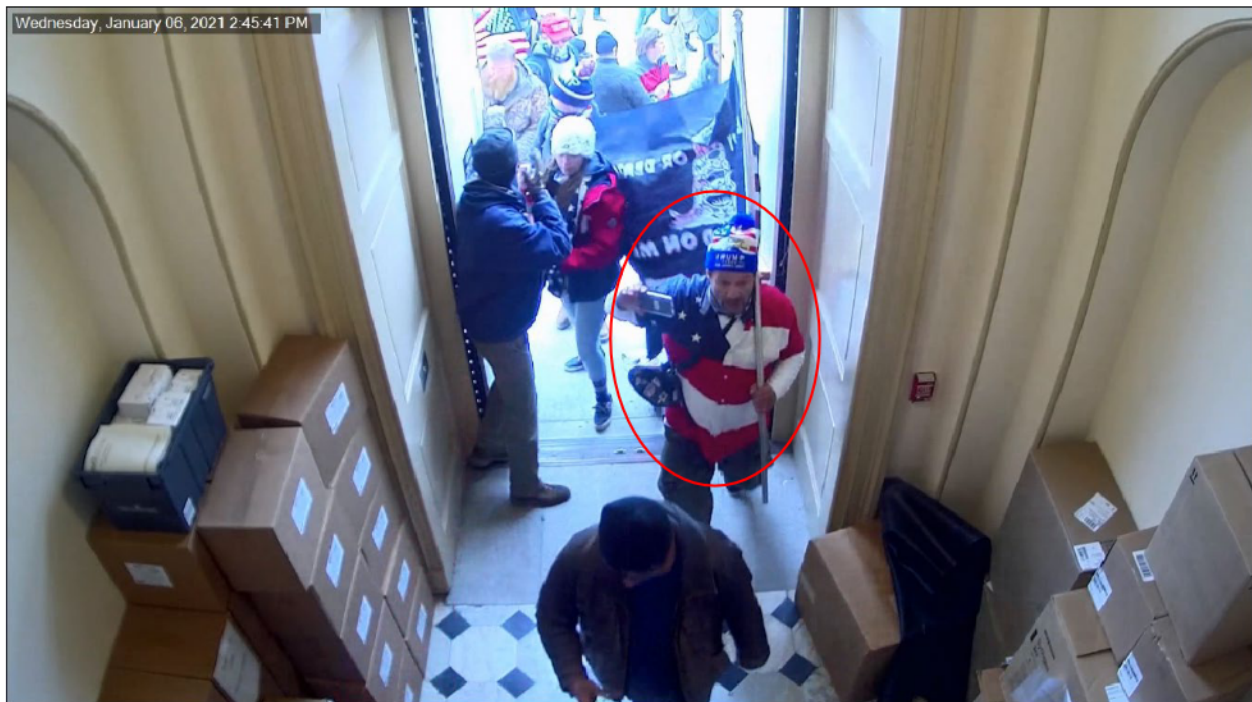


On January 6, 2021, officers from the United States Capitol Police (USCP) on the U.S. Capitol Grounds and in the U.S. Capitol building were engaged in their official duties as officers or employees of the United States or of any agency in any branch of the United States Government, as those terms are used in Title 18, United States Code, Section 1114.

On January 6, 2021, officers from the Washington, D.C., Metropolitan Police Department (MPD) on the U.S. Capitol Grounds and in the U.S. Capitol building were assisting officers from the USCP who were engaged in their official duties as officers or employee of the United States or of any agency in any branch of the United States Government, as those terms are used in Title 18, United States Code, Section 1114.

*Identity of the Parties*

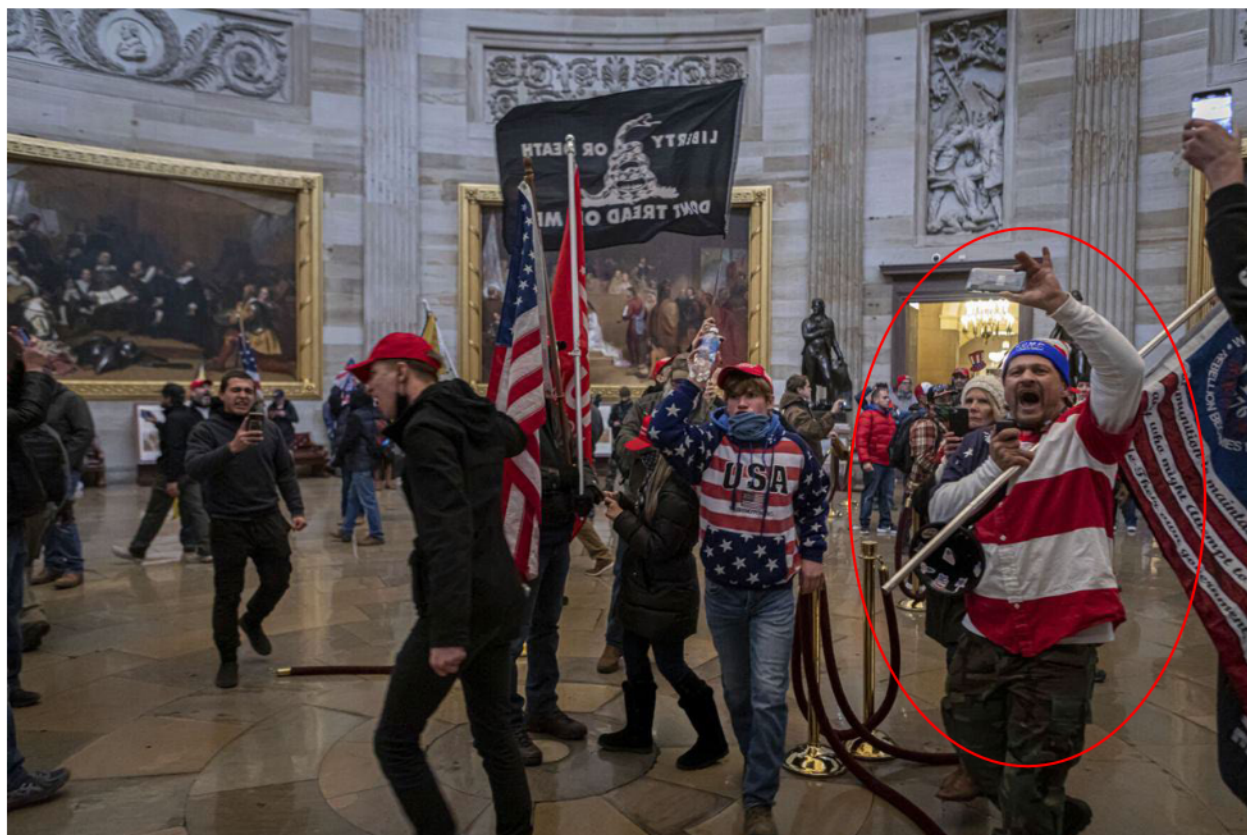
The photos below were taken in Washington, DC on January 6, 2021. Defendant Harris is pictured in Government Exhibits ##-## below.



*Still from Government Exhibit #, timestamp #*



*Still from Government Exhibit #, timestamp #*



*Government Exhibit #*

**United States Capitol Police Closed Circuit Video Monitoring**

The United States Capitol Police (USCP) operate and maintain closed-circuit video monitoring and recording equipment that captures locations inside and outside of the U.S. Capitol building and on the Capitol grounds. The video equipment timestamps each recording with the date and time at which the footage is captured. The USCP-controlled video equipment was in good working order on January 6, 2021, and video footage recovered from the cameras and equipment with the timestamp of January 6, 2021 is footage from January 6, 2021. The events depicted in the video footage are a fair and accurate depiction of the events at the U.S. Capitol on January 6, 2021, the timestamps on the recordings are accurate, and the video footage was not altered or edited in any way. The video footage, contained in Government Exhibits ##-## is authentic in that it is what it purports to be.

**Body Worn Camera**

The body worn camera videos are created and maintained by the Metropolitan Police Department. They are accurate and were created using reliable methods. The video was not altered or edited in any way. The video footage, contained in Government Exhibits ##-## is authentic in that it is what it purports to be. The recording software timestamps each recording with the date and time at which the footage is captured. The timestamps are accurate. The video and/or any other copies are “admissible into evidence to the same extent as the original,” within the meaning of Federal Rule of Evidence 1003.

**Open Source Videos**

The events depicted in the video footage from Government Exhibits ##-## labeled under the Category “Open Source Videos” are a fair and accurate depiction of the events at the U.S. Capitol on January 6, 2021, and the video footage was not altered or edited in any way. The



video footage is authentic in that it is what it purports to be.

**United States House of Representatives and Senate Compilation Video**

On January 6, 2021, much of the proceedings taking place on the Senate and House floors were contemporaneously recorded by the Senate Recording Studio and the House Recording Studio, respectively. The Senate Recording Studio's purpose is to serve the Senate. The House Recording Studio's purpose is to serve the House. Cameras on the Senate and House floors record activity occurring there. This footage is also broadcast through the Cable-Satellite Public Affairs Network (CSPAN). The video footage contained in Exhibits ##-## is a fair and accurate depiction of the events on the Senate and House floors on January 6, 2021, the timestamps on the recordings are accurate, and the video footage was not altered or edited in any way. The video footage is authentic in that it is what it purports to be.

**United States Capitol Police Closed Circuit Video Montage**

The video footage contained in Government Exhibits ##-## was taken from cameras located inside and outside of the U.S. Capitol building and grounds. The cameras from which the video footage was taken were operated and maintained by the United States Capitol Police. The video footage contained in Government Exhibits ##-## is a fair and accurate depiction of the events at the U.S. Capitol on January 6, 2021, the timestamps on the recordings are accurate, and the video footage was not altered or edited in any way. The video footage is authentic in that it is what it purports to be.

**Photographs**

The depictions in the photographs from the Government Exhibits ##-## labeled under the Category "Photographs" are fair and accurate depictions and the photographs were not altered or edited in any way. The photographs are authentic in that they are what they purport

to be.

**Physical Items and Search Warrant Photographs**

The depictions in the search warrant photographs from Government Exhibits ##-## labeled under the Category “Physical Evidence & Photographs From Search” are fair and accurate depictions and the photographs were not altered or edited in any way. The photographs are authentic in that they are what they purport to be. The beanie knit hat, marked as Government Exhibit #, and shown in the photograph marked as Government Exhibit #, the neck gaiter, marked as Government Exhibit #, and shown in the photograph labeled Government Exhibit #, and the shower rod, marked as Government Exhibit #, and shown in the photograph marked as Government Exhibit #, were located by federal agents on or around March 19, 2021, at 411 Whisnant Street, Shelby, North Carolina, pursuant to a search warrant authorized by a federal magistrate judge. 411 Whisnant Street was the residence of Johnny Harris at the time the items were located.

**Cellular Phone**

On March 19, 2021, pursuant to a search warrant authorized by a federal magistrate judge, the FBI seized from Johnny Harris a cellular telephone, Samsung GSM SM-S102DL Galaxy A102, International Mobile Equipment Identity (IMEI) number 356327117549375. During the timeframe of November 1, 2020 through January 31, 2021, Johnny Harris’ phone number was (704) 299-8011. The FBI performed a forensic analysis on the cellular telephone and generated a report. This report is Government Exhibit #. The parties agree to the foundation and authenticity of these reports.

**Facebook Account**

On October 20, 2022, pursuant to a search warrant authorized by a federal magistrate judge,

the FBI received returns from Facebook / Meta Platforms, Inc. The records are true and accurate copies of the subscriber records, account information, and correspondence such as posts, messages, chats, comments, reactions, and other communication to and from the Facebook account Johnny Harris, [www.facebook.com/johnny.harris.39589](https://www.facebook.com/johnny.harris.39589), account number 100000599942034, which the parties stipulate was created and continuously operated by Johnny Harris.

Respectfully submitted,

FOR THE UNITED STATES  
MATTHEW M. GRAVES  
United States Attorney  
D.C. Bar No. 481052

By: /s/ Will N. Widman  
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