

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

<b>UNITED STATES OF AMERICA</b>	:	<b>Case No: 21-cr-622 (APM)</b>
	:	
	:	<b>18 U.S.C. § 231(a)(1) (Civil Disorder)</b>
	:	
<b>v.</b>	:	<b>18 U.S.C. §§ 111(a)(1) and (b) (Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon)</b>
<b>MITCHELL TODD GARDNER II,</b>	:	
<b>Defendant.</b>	:	<b>18 U.S.C. §§ 1512(c)(2) and (2) (Obstruction of an Official Proceeding and Aiding and Abetting)</b>
	:	

**STATEMENT OF OFFENSE**

Pursuant to Federal Rule of Criminal Procedure 11, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Mitchell Todd GARDNER II, with the concurrence of his attorney, agree and stipulate to the below factual basis for the defendant’s guilty plea—that is, if this case were to proceed to trial, the parties stipulate that the United States could prove the below facts beyond a reasonable doubt:

***The Attack at the U.S. Capitol on January 6, 2021***

1. The United States Capitol (“U.S. Capitol”), which is located at First Street, SE, in Washington, D.C., 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 are allowed access inside the U.S. Capitol.

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

3. On January 6, 2021, a joint session of the United States Congress convened at the U.S. 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 U.S. 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. (all times contained herein are Eastern Standard Time) 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.

4. As the proceedings continued in both the House and the Senate, and with Vice President Pence present and presiding over the Senate, a large crowd gathered outside the 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 U.S. Capitol building and the proceedings underway inside.

5. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by U.S. Capitol Police Officers or other authorized security officials.

6. 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 U.S. Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of law enforcement, as others in the crowd encouraged and assisted those acts. The riot resulted in substantial damage to the U.S. Capitol, requiring the expenditure of more than \$2.7 million dollars for repairs.

7. 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 Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the U.S. Capitol, including the danger posed by individuals who had entered the U.S. Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the U.S. Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

***Attempted Breach of the Capitol Building and Assaultive Conduct in Tunnel Leading to the doors of the West Front of the U.S. Capitol Building***

8. One of the most violent confrontations on January 6, 2021 occurred near an entrance to the U.S. Capitol in the area known as the Lower West Terrace. The entrance usually consists of a flight of stairs leading to a doorway. On January 6, 2021, however, the construction

of the inaugural stage converted the stairway into a 10-foot-wide, slightly sloped, short tunnel that was approximately 15 feet long. That tunnel led to two sets of metal swinging doors inset with glass. On the other side of the two sets of swinging doors is a security screening area with metal detectors and an x-ray scanner and belt, that leads into the basement of the U.S. Capitol. The exterior of the tunnel is framed by a stone archway that is a visual focal point at the center of the West Front of the U.S. Capitol. This archway is also of great symbolic significance as it has been the backdrop for nine presidential inaugurations, is draped in bunting during the event, and is the entrance for the President-Elect and other dignitaries on Inauguration Day.

9. On January 6, 2021, when rioters arrived at the doors behind this archway, the outer set of doors was closed and locked, and members of Congress who had fled from the rioters were sheltering nearby. Members of the U.S. Capitol Police, assisted by officers from the District of Columbia Metropolitan Police Department, were arrayed inside the doorway and guarding the entrance.

10. At approximately 2:42 p.m., rioters broke the windows to the first set of doors, and the law enforcement officers reacted immediately by spraying Oleoresin Capsicum spray at the rioters, who continued to resist. The mob continued to grow, and the rioters pushed their way into the second set of doors, physically engaging law enforcement with batons, poles, chemical spray, bottles and other items. Officers created a line in the doorway to block the rioters and physically engaged them with batons and Oleoresin Capsicum spray.

11. The violence and physical battle for control over the Lower West Terrace entrance in the tunnel and doorway area continued for over two hours, during which time rioters repeatedly assaulted, threatened, pushed, and beat law enforcement officers, involving intense hand-to-hand combat.

12. During this battle, the vastly outnumbered officers were assaulted with all manner of objects and weapons, receiving blow after blow from rioters taking turns assaulting them, all in a concerted effort to breach the doorway to the basement area of the U.S. Capitol, disrupt the certification, and overturn the election results by force.

13. Several officers sustained injuries during this prolonged struggle.

***GARDNER's Participation in the January 6, 2021, Capitol Riot***

14. GARDNER was part of the mob on the Lower West Terrace just outside the Lower West Terrace Tunnel, at approximately 3:45 p.m. to at least 4:05 p.m. During that time, he shouted, “drag them out,” “pull the cops out,” and “fight for Trump.”

15. GARDNER used a Metropolitan Police Department Oleoresin Capsicum MK-46 incapacitation device to discharge the contents onto Metropolitan Police Department Officers within the Lower West Terrace Tunnel. The contents hit Metropolitan Police Department Officer J.L. directly in his/her face shield. The contents also splattered onto Metropolitan Police Department Officers K.K. and W.B. This caused police officers to cough for an extended period of time and burn their eyes.

16. GARDNER urged the other rioters to use a large ladder to break a window into the U.S. Capitol, by shouting, “break the window, use it to break the window,” and “break the fucking window!”

17. When the ladder was not used to break the window, GARDNER stood on a window ledge outside of Senate Terrace Room 2 Mezzanine of the U.S. Capitol striking and damaging the window with the Oleoresin Capsicum MK-46 incapacitation device. The cost to replace that window exceeded \$2,900.

18. GARDNER entered Senate Terrace Room 2 Mezzanine of the U.S. Capitol. GARDNER knew at the time he entered the U.S. Capitol that he did not have permission to enter the building.

19. From inside the U.S. Capitol, he waved other rioters to come closer or into the building. Also, while inside, GARDNER handed another rioter what looked to be a table/desk leg. That object was used assault of police officers at approximately 4:57 p.m.

20. After GARDNER exited the U.S. Capitol, he remained on the Lower West Terrace outside the tunnel from at least 4:45 p.m. through approximately 4:58 p.m. As other rioters continued to assault police officers, GARDNER lingered, watched, encouraged their conduct, and even cheered at 4:55 p.m. when a rioter threw a fire extinguisher into the tunnel at police officers.

#### *Elements of the Offense*

21. Mitchell Todd GARDNER II knowingly and voluntarily admits to all the elements of Civil Disorder; Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon; and Obstruction of an Official Proceeding and Aiding and Abetting. Specifically, GARDNER admits that:

- GARDNER knew at the time he was on the Lower West Terrace yelling “drag them out,” “pull the cops out,” “fight for Trump,” and “break the fucking window” that he was attempting to commit an act to obstruct, impede, and interfere with those officers who were lawfully engaged in the lawful performance of their duties, incident to and during the commission of a civil disorder, which in any way and degree obstructed, delayed, and adversely affected commerce and the movement of any article and commodity in commerce and the conduct and performance of any federally protected function.
- GARDNER forcibly assaulted any person designated in 18 U.S.C. § 1114 while engaged in or on account of the performance of their official duties. Specifically, GARDNER sprayed members of the Metropolitan Police Department [persons assisting the United States Capitol Police] with an oleoresin capsicum from close range directly into the Lower West Terrace tunnel, where members of the

Metropolitan Police Department and the United States Capitol Police were protecting the U.S. Capitol. GARDNER knew those officers were engaged in the performance of their official duties and that he assaulted the officers on account of their performance of their official duties. The oleoresin capsicum is a deadly or dangerous weapon.

- GARDNER admits that his urging other rioters to assault law enforcement officers; his assault of officers; his breaking a window into the U.S. Capitol; and his entry into the U.S. Capitol was done to obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, specifically, Congress's certification of the Electoral College vote as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18.

Respectfully submitted,

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

JACQUELINE  
SCHESNOL


 Digitally signed by JACQUELINE  
SCHESNOL  
Date: 2022.06.21 14:14:42 -07'00'

By: /s/ Jacqueline Schesnol  
Jacqueline Schesnol  
Assistant United States Attorney

DEFENDANT'S ACKNOWLEDGMENT

I, Mitchell Todd GARDNER II, have read this Statement of the Offense and have discussed it with my attorney. I fully understand this Statement of the Offense. I agree and acknowledge by my signature that this Statement of the Offense is true and accurate. I do this voluntarily and of my own free will. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

Date: 6/21/22

  
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Mitchell Todd GARDNER II  
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read this Statement of the Offense and have reviewed it with my client fully. I concur in my client's desire to adopt this Statement of the Offense as true and accurate.

Date: June 24, 2022

David Benowitz  
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David Benowitz  
Attorney for Defendant