

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

**UNITED STATES OF AMERICA** :  
 :  
 **v.** : **Case No.: 1:22-cr-34 (RBW)**  
 :  
 **AIDEN HENRY BILYARD** :  
 :  
 **Defendant.** :

**UNITED STATES’ SUBMISSION IN SUPPORT OF GUILTY PLEA**

On September 6, 2022, defendant Aiden Henry Bilyard notified the Court that he intended to plead guilty to the all of the crimes alleged in the nine-count Indictment, ECF No. 20. *See* ECF Entry, 9/6/2022. On the same date, the Court directed the government to submit a written submission including the elements of each offense in the indictment, the factual basis supporting the charges, the maximum penalties for each offense of conviction, and an estimate of the defendant’s applicable Sentencing Guidelines range.

**I. Background.**

On January 26, 2022, the grand jury returned a nine-count indictment in the above-captioned case. ECF No. 20. The indictment charges the defendant with:

- Count One: Civil Disorder, in violation of 18 U.S.C. § 231(a)(3);
- Count Two: Assaulting, Resisting or Impeding Certain Officers Using a Deadly and Dangerous Weapon, in violation of 18 U.S.C. §§ 111(a)(1) and (b);
- Count Three: Entering and Remaining in a Restricted Building or Grounds with a Deadly and Dangerous Weapon, in violation of 18 U.S.C. §§ 1752(a)(1) and (b)(1)(A);
- Count Four: Disorderly and Disruptive Conduct in a Restricted Building or Grounds with a Deadly and Dangerous Weapon, in violation of 18 U.S.C. §§ 1752(a)(2) and (b)(1)(A);
- Count Five: Engaging in Physical Violence in a Restricted Building or Grounds with a Deadly and Dangerous Weapon, in violation of 18 U.S.C. §§ 1752(a)(4) and (b)(1)(A);

- Count Six: Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D);
- Count Seven: Act of Physical Violence in the Capitol Grounds or Building, in violation of 40 U.S.C. § 5104(e)(2)(F);
- Count Eight: Destruction of Government Property and Aiding and Abetting, in violation of 18 U.S.C. §§ 1361 and 2;
- Count Nine: Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G).

## **II. Elements and Maximum Penalties of Each Offense.**

### ***A. Count One: Civil Disorder, in violation of 18 U.S.C. § 231(a)(3).***

To prove that the defendant is guilty of Civil Disorder in violation of 18 U.S.C. § 231(a)(3), the government must prove the following beyond a reasonable doubt:

1. That the defendant committed or attempted to commit any act to obstruct, impede or interfere with any law enforcement officer;
2. That the law enforcement officer was lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder; and
3. That the civil disorder in any way or degree obstructed, delayed, or adversely affected commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function.

Title 18, United States Code, Section 232(3) defines “federally protected function” as “any 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.”

The maximum penalties for Civil Disorder are:

1. A term of imprisonment of not more than 5 years;
2. A term of supervised release of not more than 1 year;
3. A fine not to exceed \$250,000; and
4. A special assessment of \$100.

***B. Count Two: Assaulting, Resisting or Impeding Certain Officers Using a Deadly and Dangerous Weapon, in violation of 18 U.S.C. §§ 111(a)(1) and (b).***

To prove that the defendant is guilty of Assaulting, Resisting, or Impeding Certain Officers in violation of 18 U.S.C. § 111(a)(1), the government must prove the following beyond a reasonable doubt:

1. That the defendant assaulted, resisted, opposed, impeded, intimidated, or interfered with any officer or employee of the United States or of any agency in any branch of the United States Government;
2. That the defendant did so with some use of force;
3. That the defendant did so while the officer or employee was engaged in or on account of the performance of official duties; and
4. That the assault involved physical contact with the victim or the intent to commit another felony.

To prove that the defendant is also guilty of using a deadly or dangerous weapon in violation of 18 U.S.C. § 111(b), the government must prove both the above-listed elements, as well as the following element, beyond a reasonable doubt:

5. That, in the commission of any acts described in subsection (a), the defendant used a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicted bodily injury.

An object is a “deadly or dangerous weapon” if it is capable of causing serious bodily injury or death to another person and the defendant used it in that manner.

The maximum penalties for Assaulting, Resisting, or Impeding Certain Officers Using a Deadly or Dangerous Weapon are:

1. A term of imprisonment of not more than 20 years;
2. A term of supervised release of not more than 3 years;
3. A fine not to exceed \$250,000; and
4. A special assessment of \$100.

***C. Count Three: Entering and Remaining in a Restricted Building or Grounds with a Deadly and Dangerous Weapon, in violation of 18 U.S.C. §§ 1752(a)(1) and (b)(1)(A).***

To prove that the defendant is guilty of Entering and Remaining in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(1), the government must prove the following beyond a reasonable doubt:

1. That the defendant knowingly entered or remained in any restricted building or grounds without lawful authority to do so.

Title 18, United States Code, Section 1752(c)(1)(B) defines “restricted building or grounds” as “any posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting.” Section 1752(c)(2) further defines “other person protected by the Secret Service” as “any person whom the United States Secret Service is authorized to protect under section 3056 of this title or by Presidential memorandum, when such person has not declined such protection.”

To prove that the defendant is also guilty of using a deadly or dangerous weapon in violation of 18 U.S.C. § 1752(b)(1)(A), the government must prove both the above-listed element, as well as the following element, beyond a reasonable doubt:

2. That, in the commission of any acts described in subsection (a), the defendant used a deadly or dangerous weapon or firearm.

An object is a “deadly or dangerous weapon” if it is capable of causing serious bodily injury or death to another person and the defendant used it in that manner.

The maximum penalties for Entering and Remaining in a Restricted Building or Grounds with a Deadly and Dangerous Weapon are:

1. A term of imprisonment of not more than 10 years;
2. A term of supervised release of not more than 3 years;
3. A fine not to exceed \$250,000; and
4. A special assessment of \$100.

***D. Count Four: Disorderly and Disruptive Conduct in a Restricted Building or Grounds with a Deadly and Dangerous Weapon, in violation of 18 U.S.C. §§ 1752(a)(2) and (b)(1)(A).***

To prove that the defendant is guilty of Disorderly and Disruptive Conduct in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(2), the government must prove the following beyond a reasonable doubt:

1. That the defendant engaged in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds;
2. That such conduct occurred when, or so that, such conduct, in fact, impeded or disrupted the orderly conduct of Government business or official functions; and
3. That the defendant did so knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions.

To prove that the defendant is also guilty of using a deadly or dangerous weapon in violation of 18 U.S.C. § 1752(b)(1)(A), the government must prove both the above-listed elements, as well as the following element, beyond a reasonable doubt:

4. That, in the commission of any acts described in subsection (a), the defendant used a deadly or dangerous weapon or firearm.

An object is a “deadly or dangerous weapon” if it is capable of causing serious bodily injury or death to another person and the defendant used it in that manner.

The maximum penalties for Disorderly and Disruptive Conduct in a Restricted Building or Grounds with a Deadly and Dangerous Weapon are:

1. A term of imprisonment of not more than 10 years;
2. A term of supervised release of not more than 3 years;
3. A fine not to exceed \$250,000; and
4. A special assessment of \$100.

***E. Count Five: Engaging in Physical Violence in a Restricted Building or Grounds with a Deadly and Dangerous Weapon, in violation of 18 U.S.C. §§ 1752(a)(4) and (b)(1)(A).***

To prove that the defendant is guilty of Engaging in Physical Violence in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(4), the government must prove the following beyond a reasonable doubt:

1. That the defendant knowingly engaged in any act of physical violence against any person or property in any restricted building or grounds.

To prove that the defendant is also guilty of using a deadly or dangerous weapon in violation of 18 U.S.C. § 1752(b)(1)(A), the government must prove both the above-listed element, as well as the following element, beyond a reasonable doubt:

2. That, in the commission of any acts described in subsection (a), the defendant used a deadly or dangerous weapon or firearm.

An object is a “deadly or dangerous weapon” if it is capable of causing serious bodily injury or death to another person and the defendant used it in that manner.

The maximum penalties for Engaging in Physical Violence in a Restricted Building or Grounds are:

1. A term of imprisonment of not more than 10 years;
2. A term of supervised release of not more than 3 years;
3. A fine not to exceed \$250,000; and
4. A special assessment of \$100.

***F. Count Six: Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D).***

To prove that the defendant is guilty of Disorderly Conduct in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(D), the government must prove the following beyond a reasonable doubt:

1. That the defendant uttered loud, threatening, or abusive language, or engaged in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings; and

2. That the defendant engaged in such actions 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.

Title 40, United States Code, Section 5101, defines “Capitol Buildings” as including “the United States Capitol.” This definition applies throughout the chapter, to include the charges in Counts seven and nine, detailed below.

The maximum penalties for Disorderly Conduct in a Capitol Building are:

1. A term of imprisonment of not more than 6 months;
2. A term of probation of not more than 5 years;
3. A fine not to exceed \$5,000; and
4. A special assessment of \$10.

***G. Count Seven: Act of Physical Violence in the Capitol Grounds or Building, in violation of 40 U.S.C. § 5104(e)(2)(F).***

To prove that the defendant is guilty of Acts of Physical Violence in the Capitol Grounds or Building, in violation of 40 U.S.C. § 5104(e)(2)(F), the government must prove the following beyond a reasonable doubt:

1. That the defendant engaged in an act of physical violence in the Grounds or any of the Capitol Buildings; and
2. That the defendant did so willfully and knowingly.

Title 40, United States Code, Section 5104(a)(1) defines “act of physical violence” as “any act involving (A) an assault or other infliction or threat of infliction of death or bodily harm on an individual; or (B) damage to, or destruction of, real or personal property.”

The maximum penalties for Acts of Physical Violence in the Capitol Grounds or Building are:

1. A term of imprisonment of not more than 6 months;
2. A term of probation of not more than 5 years;
3. A fine not to exceed \$5,000; and
4. A special assessment of \$10.

***H. Count Eight: Destruction of Government Property and Aiding and Abetting, in violation of 18 U.S.C. §§ 1361 and 2.***

To prove that the defendant is guilty of Destruction of Government Property and Aiding and Abetting in violation of 18 U.S.C. § 1361 and 2, the government must prove the following beyond a reasonable doubt:

1. That the defendant injured or committed any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof;
2. Or, that the defendant attempted to commit any of the foregoing offenses; and,
3. Under 18 U.S.C. § 2, that the defendant committed the offense against the United States or aided, abetted, counseled, commanded, induced or procured its commission.

The maximum penalties for Destruction of Government Property and Aiding and Abetting are:

If the damage or attempted damage to such property exceeds the sum of \$1,000:

1. A term of imprisonment of not more than 10 years;
2. A term supervised release of not more than 3 years;
3. A fine not to exceed \$250,000; and
4. A special assessment of \$100.

***I. Count Nine: Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G).***

To prove that the defendant is guilty of Parading, Demonstrating, or Picketing in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(G), the government must prove the following beyond a reasonable doubt:

1. That the defendant paraded, demonstrated, or picketed;
2. That the defendant did so in any of the Capitol Buildings; and
3. That the defendant did so willfully and knowingly.

The maximum penalties for Parading, Demonstrating, or Picketing in a Capitol Building are:

1. A term of imprisonment of not more than 6 months;
2. A term of probation of not more than 5 years;
3. A fine not to exceed \$5,000; and

4. A special assessment of \$10.

### **III. Factual Basis Supporting the Charges.**

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

1. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured 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. 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 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.

3. 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 Capitol building and the proceedings underway inside.

4. 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.

5. 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, 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.

6. The riot resulted in substantial damage to the U.S. Capitol, requiring the expenditure of more than \$1.4 million dollars for repairs. As of April 5, 2022, the approximate losses suffered as a result of the siege at the U.S. Capitol building was \$2,734,783.15, which reflects, among other things, damage to the U.S. Capitol Building and grounds and certain costs borne by the United States Capitol Police.

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 United States Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

***B. Aiden Henry Bilyard's Participation in the January 6, 2021 Capitol Riot.***

8. The defendant, Aiden Henry Bilyard, lives in Cary, North Carolina. During the morning of January 6, 2021, the defendant traveled from North Carolina to Washington, D.C., by automobile. The purpose of the defendant's trip to Washington, D.C., was to protest Congress's certification of the Electoral College.

9. The defendant attended the former President's "Stop the Steal" rally on the Ellipse and then marched with other protestors to the Capitol.

10. At approximately 2:35 p.m. on January 6, 2021, Bilyard stood with a crowd of rioters in a restricted area, the Upper West Plaza of the U.S. Capitol grounds. He carried a gold-colored canister of "home defense pepper gel."

11. Bilyard pointed the nozzle of the canister at a line of officers who were attempting to prevent the rioters from proceeding further toward the Capitol Building. Bilyard then discharged an orange-colored liquid spray containing a chemical agent – a deadly or dangerous weapon – toward the group of officers, which included Metropolitan Police Department Officers L.H. and C.W.

12. Immediately after the defendant sprayed the chemical agent toward the line of officers, he and his fellow rioters overwhelmed the police line, causing the officers to retreat through a stairwell to the Lower West Terrace and then into a tunnel leading into the Capitol Building.

13. The defendant took the same set of stairs to the Lower West Terrace, near the stage built for the inauguration. At or around 4:10 p.m., the defendant stood with a large group of people who gathered in front of a glass window of the Capitol Building, to the left (north) of a tunnel leading into the Building. The window led to Senate Terrace Mezzanine Room 2.

14. At one point, the defendant stood next to and below an individual who struck the glass with what appears to be a small axe. The defendant encouraged the individual by shouting, “Window! Window! Break it!” and clapping. Shortly thereafter, the defendant stood next to and below rioter Mitchell Todd Gardner II, charged elsewhere, who actively attempted to break the glass of the window of Senate Terrace Mezzanine Room 2 with a canister. The defendant held an object, which was a different canister of chemical irritant, in his right hand.

15. The defendant then nodded to an unknown person who handed him a baseball bat. The defendant turned and attempted to hand the bat to Gardner to assist breaching the window. Gardner refused to take the bat. The defendant then used 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 defendant successfully shattered the lower glass portion of the window. He then turned to face the crowd and clapped and shouted in an act of encouragement for people to start entering the U.S. Capitol Building through the window. According to the Architect of the Capitol, the repair to the window outside Senate Terrace Mezzanine Room 2 cost \$2,388.

16. Soon after, many people, including the defendant, entered the U.S. Capitol Building by crawling through the window that the defendant had shattered. Open-source videos and cell phone videos captured by the defendant and other rioters who entered Senate Terrace Mezzanine Room 2 show the defendant unlawfully present within that U.S. Capitol Building room.

**IV. Government's Preliminary Calculation of Defendant's Applicable Sentencing Guidelines.**

***A. Estimated Sentencing Range Under the U.S. Sentencing Guidelines Manual.***

Based on preliminary calculations performed by the government, pursuant to U.S.S.G. § 5, Part A, the government submits that the defendant's total combined offense level is 25, criminal history category is I, and his estimated sentencing Guidelines Range is 57 to 71 months' imprisonment. In addition, pursuant to U.S.S.G. § 5E1.2, should the Court impose a fine, at Guidelines level 25, the estimated applicable fine range is \$20,000 to \$200,000. The United States reserves the right to amend its position regarding the above sentencing guidelines estimates between now and the time of sentencing—including, but not limited to, the right to request an upward departure pursuant to U.S.S.G. § 3A1.4.

***B. Analysis Pursuant to Missouri v. Frye, 566 U.S. 134 (2012).***

On June 17, 2022, the United States submitted a plea offer by which Bilyard would enter a guilty plea to Count Two of the Indictment, Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon, and the remaining counts would be dismissed at sentencing. The proposed plea agreement estimated his Sentencing Guidelines to be 46 months to 57 months imprisonment and a possible fine of \$20,000 to \$200,000. Bilyard was presented the plea offer by his counsel and they discussed the offer on numerous occasions between June 17, 2022 and September 1, 2022.

Respectfully submitted,

MATTHEW M. GRAVES  
United States Attorney

By: /s/ Jordan A. Konig  
JORDAN A. KONIG  
Supervisory Trial Attorney, Tax Division,  
U.S. Department of Justice

Detailed to the U.S. Attorney's Office  
For the District of Columbia  
P.O. Box 55, Washington, D.C. 20044  
202-305-7917 (v) / 202-514-5238 (f)  
Jordan.A.Konig@usdoj.gov

*/s/ Samantha R. Miller*  
\_\_\_\_\_  
SAMANTHA R. MILLER  
Assistant United States Attorney  
New York Bar No.: 5342175  
United States Attorney's Office  
For the District of Columbia  
601 D Street, NW 20001  
Samantha.Miller@usdoj.gov