

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

UNITED STATES OF AMERICA :
 :
 :
 v. : **Case No.: 21-CR-508 (BAH)**
 :
LUKE WESSLEY BENDER and :
LONDON BRYCE MITCHELL, :
Defendants. :

JOINT SUBMISSION
REGARDING STIPULATED TRIAL

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, Luke Wessley Bender, by and through his counsel, and Landon Bryce Mitchell, by and through his counsel (collectively, “the parties”), file this Joint Submission Regarding Stipulated Trial pursuant to the Court’s November 7, 2022 Minute Entry Order.

As noted in the parties’ Joint Motion to Provide Status Report Regarding Stipulated Trial (ECF No. 74), the parties have agreed to conduct a Stipulated Trial in lieu of a traditional trial by jury. Attached to this submission are the following exhibits: (A) the parties’ Joint Proposed Procedures for Stipulated Trial, (B) the government’s proposed Statement of Facts for Stipulated Trial for Defendant Mitchell, to which Mitchell has agreed, as well as his Agreement and Waiver of Jury Rights, and (C) the government’s proposed Statement of Facts for Stipulated Trial for Defendant Bender, to which Bender has agreed, and his Agreement and Waiver of Jury Rights.

Respectfully submitted,

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UNITED STATES ATTORNEY
D.C. Bar No. 481052

/s/ Samantha R. Miller
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Exhibit A
**Joint Proposed Procedures
for Stipulated Trial**

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UNITED STATES OF AMERICA :
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 :
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JOINT PROPOSED PROCEDURES FOR STIPULATED TRIAL

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, Luke Wesley Bender, by and through his counsel, and Landon Bryce Mitchell, by and through his counsel (collectively, “the parties”), jointly propose the following Procedures for Defendants’ Stipulated Trial.

The Court will conduct the Defendants’ Stipulated Trial on December 2, 2022. The parties have submitted the following documents for each Defendant for the Court’s consideration:

(1) The government’s proposed Statement of Facts for Stipulated Trial:

This submission provides the elements of the offenses alleged against each Defendant and provides the facts and evidence on which the government relies to prove its case beyond a reasonable doubt. Unless otherwise noted, each Defendant agrees that the information contained in this submission is true and accurate.

(2) Each Defendant’s Agreement and Waiver of Jury Rights.

This submission discusses each Defendant’s acknowledgment of his waiver of various rights, and notes that the government has agreed that the Stipulated Trial will not curtail, abridge, or otherwise affect each Defendant’s right to appeal any conviction of his 18 U.S.C. §§ 1512(c)(2) charge.

At the Stipulated Trial, the government will read into the record its Statement of Facts for Stipulated Trial for each Defendant, and may play certain video exhibits, which will provide the

Court with all facts and evidence on which it will determine whether each Defendant is guilty of the crimes charged.

If the Court finds each Defendant guilty of the crimes charged, it will enter judgement against each Defendant.

The Court then will set a sentencing date and direct the Probation Office to prepare a Presentence Investigation Report.

Respectfully submitted,

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Exhibit B
Mitchell's Stipulated Trial Materials

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

UNITED STATES OF AMERICA :
 :
 v. : **Case No.: 21-CR-508 (2) (BAH)**
LANDON BRYCE MITCHELL, :
 :
 Defendant. :

STATEMENT OF FACTS FOR STIPULATED TRIAL

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Landon Bryce Mitchell, with the concurrence of his attorney, hereby submit the Elements and Statement of Facts for Stipulated Trial in this action.

I. Elements

A. Count One: Obstruction of an Official Proceeding.

The essential elements of the offense of obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. The defendant attempted to or did obstruct or impede an official proceeding;
2. The defendant intended to obstruct or impede the official proceeding;
3. The defendant acted knowingly, with awareness that the natural and probable effect of his conduct would be to obstruct or impede the official proceeding; and
4. The defendant acted corruptly.

B. Count Two: Entering and Remaining in a Restricted Building or Grounds.

The essential elements of the offense of entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. The defendant entered or remained in a restricted building or grounds without lawful authority to do so; and,
2. That the defendant did so knowingly.

C. Count Three: Disorderly and Disruptive Conduct in a Restricted Building or Grounds.

The essential elements of the disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2), each of which the government must prove the following beyond a reasonable doubt, are as follows:

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.

D. Count Four: Entering and Remaining on the Floor of Congress.

The essential elements of the offense of entering and remaining on the floor of Congress, in violation of 40 U.S.C. § 5104(e)(2)(A), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. That the defendant entered or remained on the floor of either House of Congress without authorization; and
2. The defendant acted willfully and knowingly.

E. Count Five: Disorderly Conduct in a Capitol Building or Grounds.

The essential elements of the offense of entering and remaining on the floor of Congress, in violation of 40 U.S.C. § 5104(e)(2)(D), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. The defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings;
2. 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; and
3. The defendant acted willfully and knowingly.

F. Count Six: Parading, Demonstrating, or Picketing in a Capitol Building.

The essential elements of the offense of parading, demonstrating, or picketing in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(G), each of which the government must prove beyond a reasonable doubt, are as follows:

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

II. Statement of Offense.

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 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.

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

3. On January 6, 2021, a joint session of the United States Congress convened at the 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 Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on Tuesday, November 3, 2020. The joint session is set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18 and requires a deliberate and legally prescribed assessment of ballots, lists, certificates, and, potentially, written objections. 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.

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 Capitol. Temporary and permanent barricades, as noted above, were in place around the exterior of the Capitol, and USCP officers were present and attempting to keep the crowd away from the Capitol 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. Officers of the USCP were forced to retreat 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 as required by USCP officers or other authorized security officials.

6. At such time, the certification proceedings were still underway, and the exterior doors and windows of the Capitol were locked or otherwise secured. Members of the USCP 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 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 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 House of Representatives and of the 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. on January 6, 2021. In light of the dangerous circumstances caused by the unlawful entry to the Capitol—including the danger posed by individuals who had entered the Capitol without any security screening or weapons check—Congressional proceedings could not resume until after every unauthorized occupant had been removed from or left the Capitol, and USCP confirmed that the building was secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

B. Defendant Landon Bryce Mitchell's Participation in the January 6, 2021, Capitol Riot.

8. The defendant, Landon Bryce Mitchell, lived in Arlington, Virginia.

9. On December 11, 2020, Mitchell shared on his Facebook account a news article about states seceding from the United States with the comment, “I’m down for it. If Biden wins, civil war it shall be[.]”



Ex. 4.1.

10. On December 18, 2020, Mitchell wrote, “It[’]s flat out treason what they’re pulling and the law doesn’t apply to them. So we need to become the law.” Ex. 4.2.

11. On December 26, 2020, Mitchell posted a Facebook meme that stated, “when they invalidated my vote with all their cheating, they invalidated my consent to be governed by them!”



Ex. 4.3.

12. On December 27, 2020, Mitchell posted a Facebook meme that stated, “if we don’t fight now there is no point in ever voting again.”



Ex. 4.4.

13. On December 30, 2020, Mitchell posted to a Facebook page titled “Joe Biden IS NOT MY PRESIDENT,” the statement, “Mornin’ y’all. From Texas, currently living in VA. Better believe I’ll be in DC Jan. 6th! Whose [sic] coming with me?” Ex. 4.5.

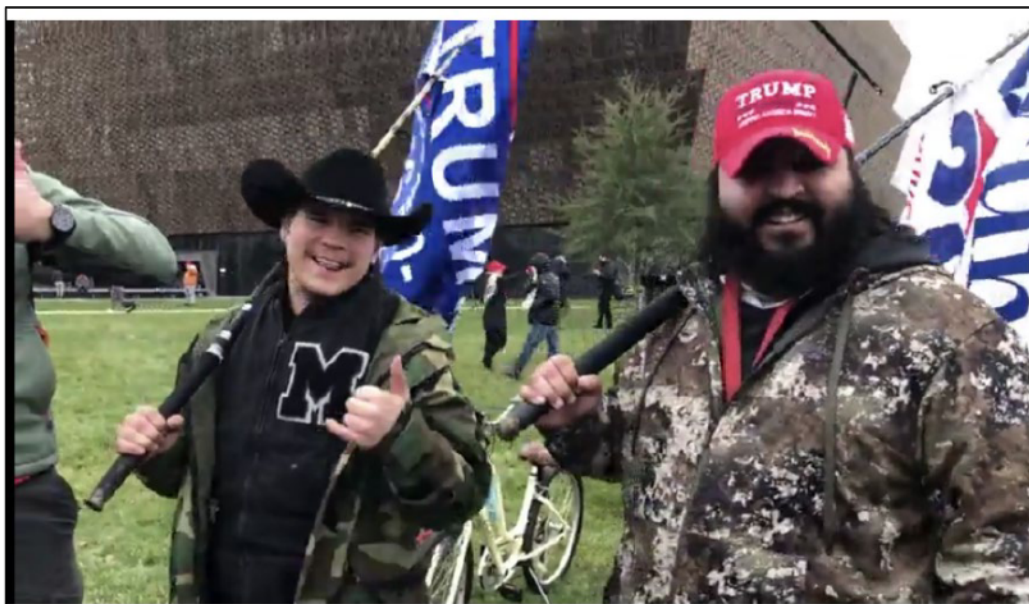
14. On the morning of January 6, 2021, Mitchell traveled to Washington, D.C. with his friend, Luke Wesley Bender, via metro from Arlington, Virginia. The purpose of the trip to Washington, D.C. was to protest Congress’ certification of the Electoral College. *See* Ex. 3.2 at 4:04.

15. Mitchell wore a red baseball cap and carried a large flag, both of which bore the name of former President Donald Trump.



Ex. 2.1, 4.8.

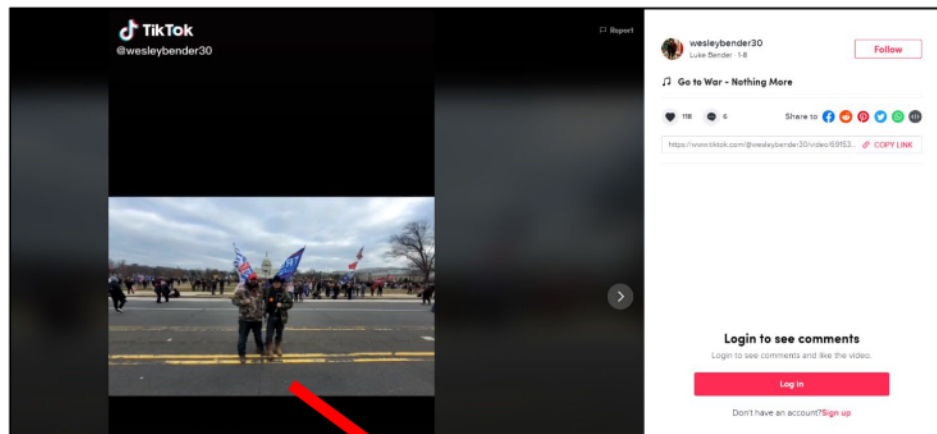
16. Mitchell and Bender then marched with other protestors to the Capitol grounds.





Ex. 2.2, 2.3.

17. As they arrived near the Capitol Building, Mitchell and Bender paused for a picture, which Bender later shared on his TikTok account.



Ex. 4.9, 5.6, 5.7, 5.8.

18. Mitchell and Bender then climbed up scaffolding that had been erected for the inauguration of President Joseph R. Biden, Jr. *See* Ex. 3.2 at 10:40, 11:09. Bender took a cell phone video that captured an image of Mitchell on the scaffolding, the rioters beneath him, and law enforcement officers attempting to defend the Capitol Building using pepper spray.



Ex. 5.9, 5.10.

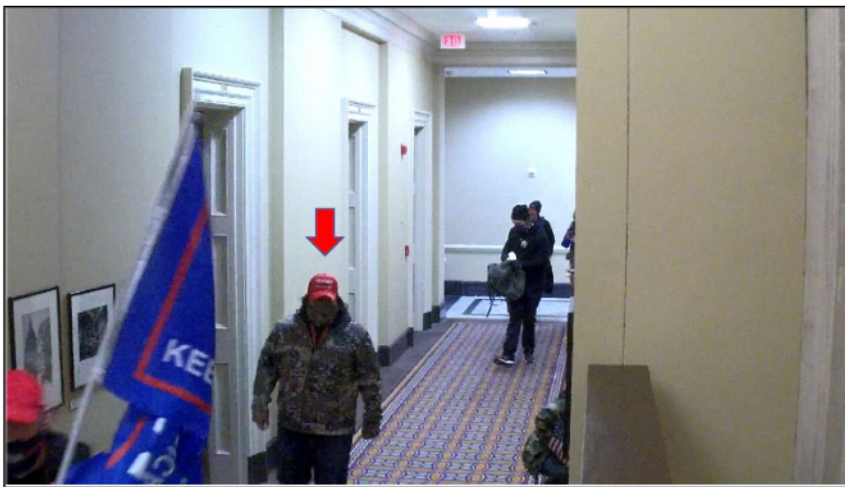
19. At about 2:45 p.m., Bender and Mitchell unlawfully entered the U.S. Capitol Building through the Upper West Terrace Door. Mitchell wore a camouflage gaiter over the lower portion of his face during his entire time inside the Capitol Building.



Ex. 1.1, 1.2.

20. Bender recorded part of his and Mitchell's journey, including their entry into Capitol Building and the Rotunda. *See* Ex. 4.13, 5.12. In one of those videos, the alarm to the Upper West Terrace Door can be heard, and Mitchell's fellow rioters loudly chant, "Whose house? Our House!" Ex. 5.12. In the video, Bender exclaimed, "Right now, we're inside the Capitol. We just stormed the gates!" Ex. 5.13.

21. Mitchell and Bender then proceeded through the Rotunda, down the East Front Corridor, through the Ohio Clock Corridor, down a hall, and into the Senate Chamber.



Ex. 1.3, 1.4, 1.5, 1.6, 1.7, 1.8.

22. Mitchell and Bender entered the Senate Floor of the U.S. Capitol Building at approximately 3:04 p.m.



Ex. 1.9, 1.10, 1.11.

23. While on the Senate Floor, Bender and his co-defendant reviewed documents sitting on tables on the Senate Floor.



Ex. 1.9, 2.4.

24. Mitchell and Bender also took “selfies” from the Senate floor.



Ex. 5.14, 5.15.

25. Bender then ascended to the Senate dais and posed for pictures.



Ex. 1.10, 5.16, 5.17.



26. At approximately 3:08 p.m., USCP officers entered the Senate Floor and directed Bender, Mitchell, and the other rioters to leave the Chamber.



Ex. 1.10, 1.11.

27. Mitchell and Bender left the U.S. Capitol through the Senate Carriage Door at approximately 3:10 p.m. *See* Ex. 1.12, 1.13, 1.14, 1.15, 1.16, 1.17.

28. Later on January 6, 2021, Mitchell stated in Facebook messages to his friends and family members that he “Breached the Capitol today,” that he was “one [of] the very first in,” “one of the first to Breach,” and “climbed the scaffolding up 3 stories, pushed back the police and breached the doors!!” Among the attachments to Mitchell’s Facebook messages include photographs and videos of Mitchell on the Senate Floor on January 6, 2021. *See* Ex. 4.15, 4.16, 4.17, 4.18, 4.19, 4.20.

29. Among his messages on January 6, 2021, Mitchell explained, “Yea, people are fed up with how crooked the government has been and they pretty much been laughing at us thinking we wouldn[*]t do anything about it.” Ex. 4.16.

30. On January 7, 2021, defendant posted on Facebook an image of a skull surrounded by red smoke, with the caption, “Absolutely proud of my fellow Americans who made their voices heard at the Capitol.”



Ex. 4.12.

31. On January 10, 2021, Mitchell commented on a post from January 9, 2021. He stated, “The government calls us traitors and terrorists. They seem to forget that this country was made on rebellion against the ‘legal’ government.” Mitchell also stated, “The breach wasn[’]t so much about Trump as it was about how much we the people are fed up with how our government is mistreating us and lying to us[,]” and “This election was rigged, blatantly. And here they sit laughing at us, the citizens, thinking we won[’]t do anything about it but take it. Wrong.” Ex. 4.23.

32. On January 31, 2021, Mitchell replied to an individual’s comment on a post from January 30, 2021. He stated that, “the people who breached the capitol were heroes and patriots.”

Mitchell also argued that former President Trump did not tell his supporters to storm the Capitol. Ex. 4.24.

33. On February 10, 2021, Mitchell re-posted an image on Facebook of individuals surrounding a vehicle accompanied by a statement, “they want you to forget about this summer.” Mitchell included his own comment with the re-post, stating, “and yet the patriotic capitol breach was seen as a terroristic action (by the scum in congress, not by any true American).” Ex. 4.26.

34. On October 20, 2021, the Federal Bureau of Investigation (“FBI”) interviewed Mitchell, who admitted that he climbed the scaffolding, entered the Capitol Building, and entered the Senate Chamber on January 6, 2021. He explained that he believed that the individuals who entered the Capitol on January 6 did not “go too far” because, “it is our constitutional right, when we are being run by tyrants, to try to do something about it. I don’t think what we did was wrong because I feel like they are overreaching[.]” Ex. 3.2 at 56:45.

35. Mitchell further told FBI that “If I feel like I’m being trampled on, it’s my duty to stick up for other people, too.” *Id.* at 58:05.

Without waiving any arguments set forth in Mr. Mitchell’s Motion to Dismiss Count 1, the parties agree that if the Court finds the existence of these facts beyond a reasonable doubt, the defendant stipulates that this evidence would establish each and every element of the charged offenses for Counts 1 through 6 of the Indictment. ECF No 7, in light of the Court’s ruling on the Motion to Dismiss Count 1 and without waiving objection to the Court’s ruling

Respectfully submitted,

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DEFENDANT'S ACKNOWLEDGMENT

I, LANDON BRYCE MITCHELL, have read this Statement of Facts for Stipulated Trial and have discussed it with my attorney. I fully understand the elements and the facts that are set forth. I agree and acknowledge by my signature that this Statement of Facts for Stipulated Trial 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 Facts for Stipulated Trial fully.

Date: _____

LANDON BRYCE MITCHELL
Defendant

ATTORNEY'S ACKNOWLEDGMENT

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

Date: _____

ELIZABETH MULLIN
Attorney for Defendant Mitchell

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FOR THE DISTRICT OF COLUMBIA**

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LUKE WESSLEY BENDER and :

LONDON BRYCE MITCHELL, :

Defendants. :

UNITED STATES' EXHIBIT LIST

The United States has identified the following exhibits it may use at the Stipulated Trial.

Exhibit No.	Description	Length
Video Evidence		
Exhibit 1	U.S. Capitol CCTV	
1.1	Upper West Terrace Door_2021-01-06_14h40min00s797ms.mp4, 2:45 p.m.	0:15
1.2	Upper West Terrace - 2021-01-06_19h40min01s.mp4, 2:45 p.m.	0:20
1.3	Rotunda North - 2021-01-06_19h50min24s.mp4, 2:51 p.m.	1:30
1.4	East Front Corridor near S206 - 2021-01-06_19h40min01s.mp4, 2:56 p.m.	0:29
1.5	S207 - 2021-01-06_19h40min02s.mp4, 2:57 p.m.	0:25
1.6	Ohio Clock Corridor near S208_2021-01- 06_14h40min02s917ms.mp4, 2:57 p.m.	0:09
1.7	Hall By S208_2021-01-06_14h40min01s367ms.mp4, 2:57 p.m.	0:29
1.8	Senate Chamber Near S214_2021-01-06_15h00min01s567ms.mp4, 3:02 p.m.	0:20
1.9	Senate Floor ISOCAM6_SENFL_1.mp4, 3:04 p.m.	6:05
1.10	Senate Floor ISOCAM1_SENFL.mp4, 3:04 p.m.	4:40
1.11	Senate Floor ISOCAM4_SENFL_2.mp4, 3:04 p.m.	5:22
1.12	Hall By S208 - 2021-01-06_20h00min01s.mp4, 3:09 p.m.	0:45
1.13	Senate Carriage Door - 2021-01-06_20h00min02s.mp4, 3:10 p.m.	0:34
1.14	Senate Carriage Door - 2021-01-06_20h00min02s.mp4, 3:10 p.m.	0:45
1.15	Senate Carriage Door Exterior - 2021-01-06_20h00min01s.mp4, 3:10 p.m.	0:19
1.16	House Plaza - 2021-01-06_20h24min22s.mp4, 3:27 p.m.	0:22
1.17	SW Drive near RHOB Taxi Stnd - 2021-01-06_20h28min26s.mp4, 3:29 p.m.	0:31

Exhibit No.	Description	Length
Exhibit 2 Open-Source Images and Video		
2.1	Washingtonian Picture of Bender and Mitchell at Rally	n/a
2.2	Bender and Mitchell Near Rally (You Tube video) at 26:29 – 26:52	1:58.56
2.3	Still Image of Bender and Mitchell Marching (Inconvenient Truth You Tube)	n/a
2.4	New Yorker Video – Luke Mogelson	12:32
2.5	Image of Bender at Senator’s Desk	n/a
Evidence Collected from Defendants		
Exhibit 3 Post-Arrest Interviews		
3.1	Video of Interview of Luke Bender	45:34
3.2	Video of Interview of Landon Mitchell	1:08.50
Exhibit 4 Social Media		
4.1	Mitchell Facebook 12.11.20	
4.2	Mitchell Facebook 12.18.20	
4.3	Mitchell Facebook 12.26.20	
4.4	Mitchell Facebook 12.27.20	
4.5	Mitchell Facebook 12.30.20	
4.6	Bender TikTok 12.31.20	0:39
4.7	Bender TikTok 1.20.21	0:14
4.8	Bender Instagram Video at Rally 1.6.21	0:13
4.9	Bender Tiktok outside Capitol “Go to War” 1.6.21	0:08
4.10	Bender Instagram “we’re storming the Capitol” 1.6.21	0:16
4.11	Bender Instagram 1.6.21	
4.12	Bender/Mitchell Facebook Message 1.7.21	
4.13	Bender TikTok Tiktok Inside Capitol 1.6.21	0:12
4.14	Mitchell Facebook Message 1.19.21	
4.15	Mitchell Facebook 1.6.21	
4.16	Mitchell Facebook 1.6.21	
4.17	Mitchell Facebook 1.6.21	
4.18	Mitchell Facebook 1.17.21	
4.19	Mitchell Facebook 1.6.21	
4.20	Mitchell Facebook 1.18.21	
4.21	Bender TikTok 1.6.21	0:17
4.22	Mitchell/Bender Facebook 1.7.21	
4.23	Mitchell Facebook 1.10.21	
4.24	Mitchell Facebook 1.31.21	
4.25	Mitchell Facebook 1.31.21	
4.26	Mitchell Facebook 2.10.21	
Exhibit 5 Cell Phone Images & Video		
5.1	Bender cell phone image 12.20.20 march for Trump	
5.2	Bender SnapChat Post 1.5.21	

Exhibit No.	Description	Length
5.3	Bender cell phone image "wild protest"	
5.4	Bender cell phone Three Percenter Logo	
5.5	Bender cell phone Three Percenter Logo	
5.6	Bender cell phone picture – Capitol building	
5.7	Bender cell phone picture – Bender and Mitchell in front of Capitol	
5.8	Cell phone image of Bender and Mitchell in front of Capitol	
5.9	Bender cell phone video from outside Capitol	0:10
5.10	Bender cell phone video from outside Capitol	0:15
5.11	Bender cell phone picture – outside Capitol with two others	
5.12	Bender cell phone video of entry into Capitol and Rotunda	0:39
5.13	Bender cell phone video of Bender inside Rotunda	0:11
5.14	Mitchell cell phone image of Bender and Mitchell "selfie" inside Senate chamber	
5.15	Mitchell cell phone picture – inside Senate chamber	
5.16	Mitchell cell phone picture of Mitchell on dais	
5.17	Mitchell cell phone picture of Mitchell on dais	
5.18	Mitchell cell phone picture of others on dais	

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

UNITED STATES OF AMERICA :
 :
 :
 v. : **Case No.: 21-CR-508 (BAH)**
 :
LUKE WESSLEY BENDER and :
LONDON BRYCE MITCHELL, :
Defendants. :

AGREEMENT AND WAIVER OF JURY TRIAL RIGHTS

Defendant Landon Bryce Mitchell, by and through counsel, hereby acknowledges that he will be waiving the following rights by proceeding with a Stipulated Trial:

1. The constitutional right to trial by jury. At a trial, the government would have to present evidence to prove the defendant's guilt beyond a reasonable doubt.
2. The right to cross-examine witnesses presented by the government and the right to have witnesses called to court to testify on behalf of the defendant.
3. The right to counsel to assist the defendant at trial.
4. The right to testify if the defendant chose to do so. However, if the defendant chose not testify, the Court would instruct the jury that the decision could not be used against the defendant.
5. At a jury trial, the defendant could not be convicted unless all 12 jurors agreed that the Government had proved the defendant's guilt beyond a reasonable doubt.
6. If you are not a citizen of the United States, your conviction could result in your deportation or have other immigration consequences.

If the Court grants leave to proceed with a Stipulated Trial, you will give up these rights. The government agrees that proceeding with a Stipulated Trial will not curtail, abridge, or otherwise affect your right to appeal the Court's denial of your motion to dismiss Count 1 of the current indictment, which charges a violation of 18 U.S.C. §§ 1512(c)(2). The Court will consider the Statement of Facts and if it believes that the Government has proven your guilt beyond a reasonable doubt, the Court will find you guilty. Your signature means that you wish to proceed by a Stipulated Trial and give up those rights.

LANDON BRYCE MITCHELL

DATE

Exhibit C
Bender's Stipulated Trial Materials

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No.: 21-CR-508 (1) (BAH)
LUKE WESSLEY BENDER,	:	
	:	
Defendant.	:	

STATEMENT OF FACTS FOR STIPULATED TRIAL

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Luke Wesley Bender, with the concurrence of his attorney, hereby submit the Elements and Statement of Facts for Stipulated Trial in this action.

I. Elements

A. Count One: Obstruction of an Official Proceeding.

The essential elements of the offense of obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. The defendant attempted to or did obstruct or impede an official proceeding;
2. The defendant intended to obstruct or impede the official proceeding;
3. The defendant acted knowingly, with awareness that the natural and probable effect of his conduct would be to obstruct or impede the official proceeding; and
4. The defendant acted corruptly.

B. Count Two: Entering and Remaining in a Restricted Building or Grounds.

The essential elements of the offense of entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. The defendant entered or remained in a restricted building or grounds without lawful authority to do so; and,
2. That the defendant did so knowingly.

C. Count Three: Disorderly and Disruptive Conduct in a Restricted Building or Grounds.

The essential elements of the disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2), each of which the government must prove the following beyond a reasonable doubt, are as follows:

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.

D. Count Four: Entering and Remaining on the Floor of Congress.

The essential elements of the offense of entering and remaining on the floor of Congress, in violation of 40 U.S.C. § 5104(e)(2)(A), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. That the defendant entered or remained on the floor of either House of Congress without authorization; and
2. The defendant acted willfully and knowingly.

E. Count Five: Disorderly Conduct in a Capitol Building or Grounds.

The essential elements of the offense of entering and remaining on the floor of Congress, in violation of 40 U.S.C. § 5104(e)(2)(D), each of which the government must prove the following beyond a reasonable doubt, are as follows:

1. The defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings;
2. 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; and
3. The defendant acted willfully and knowingly.

F. Count Six: Parading, Demonstrating, or Picketing in a Capitol Building.

The essential elements of the offense of parading, demonstrating, or picketing in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(G), each of which the government must prove beyond a reasonable doubt, are as follows:

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

II. Statement of Offense.

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 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.

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

3. On January 6, 2021, a joint session of the United States Congress convened at the 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 Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on Tuesday, November 3, 2020. The joint session is set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18 and requires a deliberate and legally prescribed assessment of ballots, lists, certificates, and, potentially, written objections. 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.

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 Capitol. Temporary and permanent barricades, as noted above, were in place around the exterior of the Capitol, and USCP officers were present and attempting to keep the crowd away from the Capitol 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. Officers of the USCP were forced to retreat 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 as required by USCP officers or other authorized security officials.

6. At such time, the certification proceedings were still underway, and the exterior doors and windows of the Capitol were locked or otherwise secured. Members of the USCP 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 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 Capitol, requiring the expenditure of more than \$2.7 million dollars for repairs.

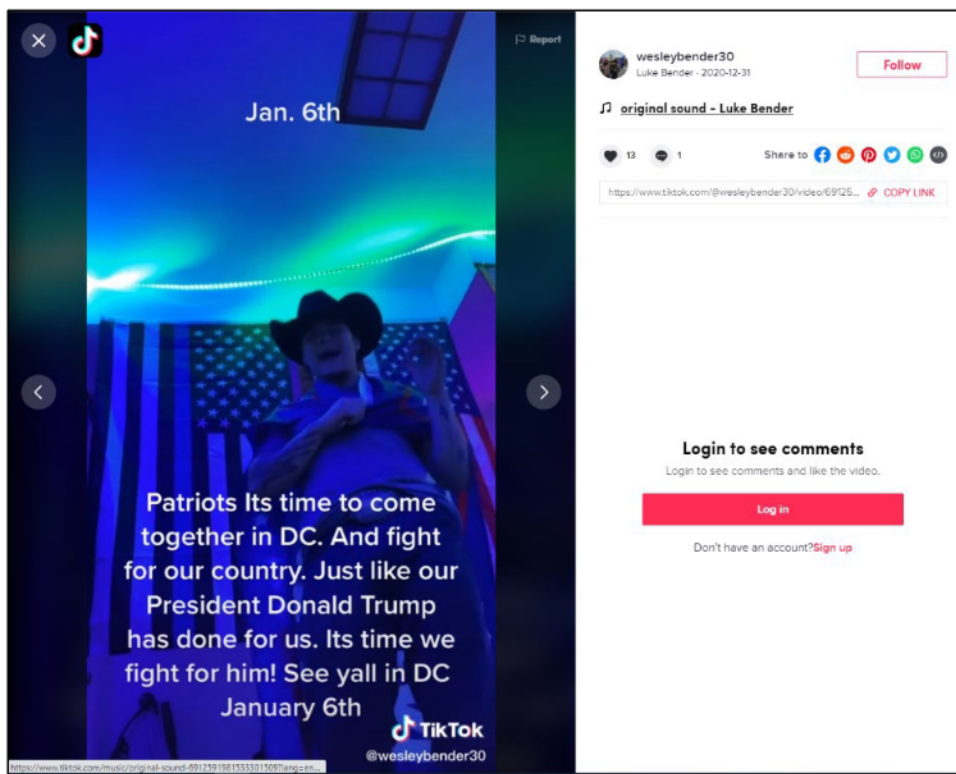
7. Shortly thereafter, at approximately 2:20 p.m., members of the House of Representatives and of the Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. on January 6, 2021. In light of the dangerous circumstances caused by the unlawful entry to the Capitol—including the danger posed by individuals who had entered the Capitol without any security screening or weapons check—Congressional proceedings could not resume until after every unauthorized occupant had been removed from or left the Capitol, and USCP confirmed that the building was secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

B. Defendant Luke Wessley Bender's Participation in the January 6, 2021, Capitol Riot.

8. The defendant, Luke Wessley Bender, lives in Fairfax, Virginia.

9. Prior to January 6, 2021, Bender posted various images and videos on his social media accounts showing his belief in a purported “stolen election” and voicing Bender’s support for then-President Donald J. Trump.

10. On December 31, 2020, Bender posted a video to his TikTok social media account indicating he intended to travel to Washington, D.C. on January 6, 2021. Bender, wrapped in a flag bearing the name of former President Donald Trump and standing in front of two American flags, swayed to music. Superimposed on his video is the message, “Jan. 6th Patriots Its time to come together in DC. And fight for our country. Just like our President Donald Trump has done for us. Its time we fight for him! See yall in DC January 6th.”



Ex. 4.6.

11. On January 5, 2021, Bender posted a SnapChat video of himself in front of a Confederate flag and an American flag. He appears to be wearing a tactical vest. Bender included the caption, “Antifa and BLM ain’t nothin. I’ll see y’all tomorrow in dc. I ain’t afraid to get dirty if I have too [sic].”



Ex. 5.2.

12. On the morning of January 6, Bender traveled to Washington, D.C. with his co-defendant, Landon Bryce Mitchell, via metro from Arlington, Virginia. Bender and Mitchell attended the “Stop the Steal” rally at the Ellipse. Bender stated that the rally on January 6, 2021 “was for the stolen election,” and that is why he attended. Ex. 3.1 at 26:32.

13. Bender carried a large flag bearing the name of former President Donald Trump.



Ex. 2.1, 4.8.

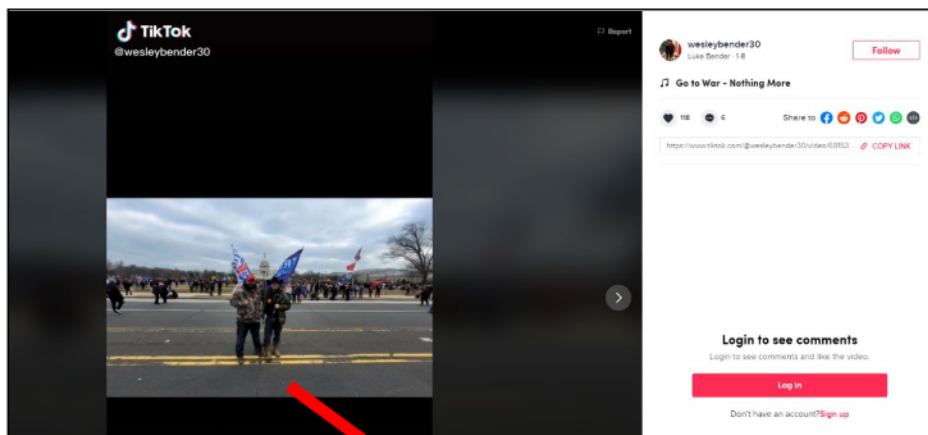
14. Bender and Mitchell and then marched with other protestors to the Capitol grounds.





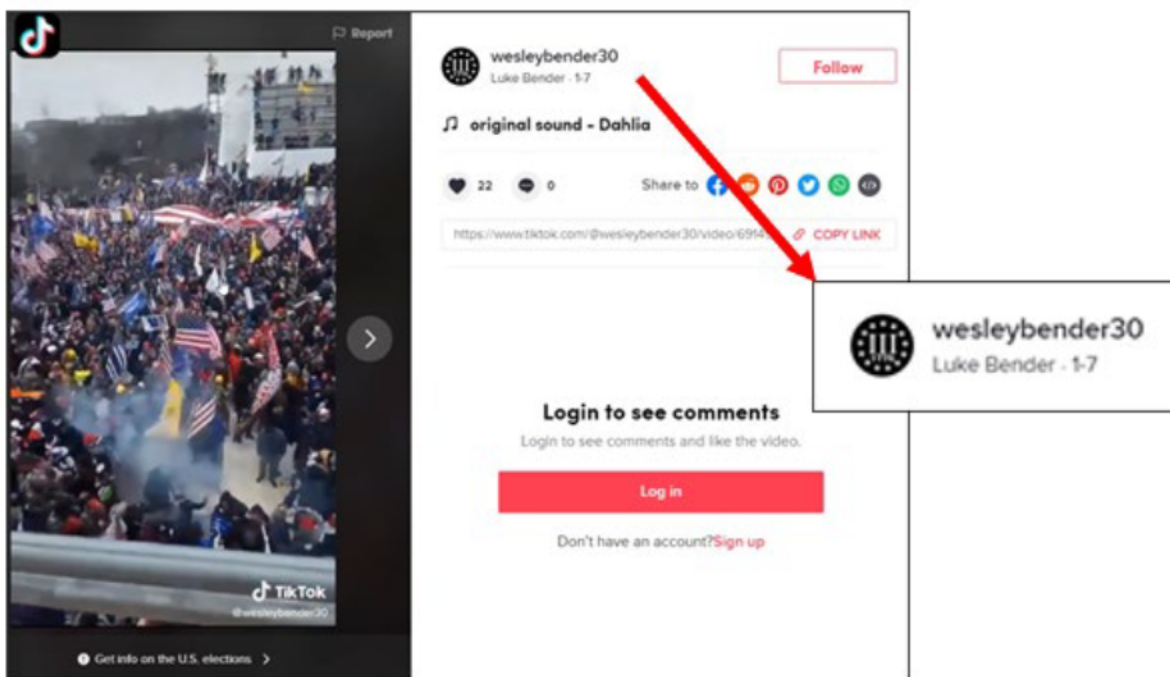
Ex. 2.2, 2.3.

15. As they arrived near the Capitol Building, Bender and Mitchell paused for a picture, which Bender later shared on his TikTok account, accompanied by a song entitled, “Go to War.”



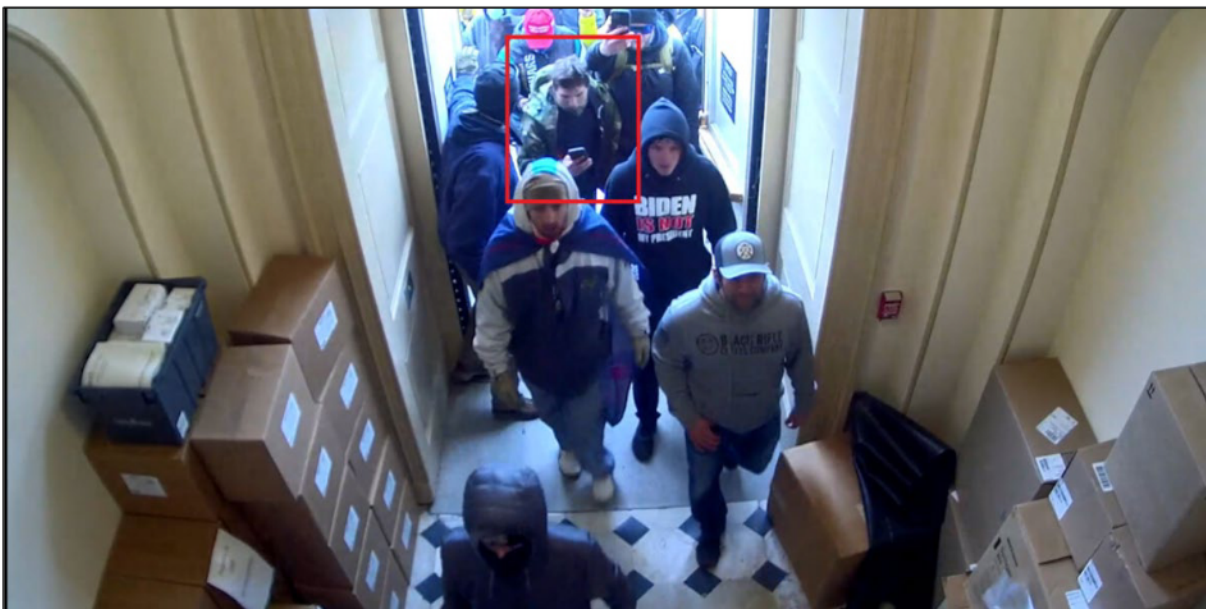
Ex. 4.9, 5.6, 5.7, 5.8.

16. Bender and Mitchell then climbed up scaffolding that had been erected for the inauguration of President Joseph R. Biden, Jr. *See* Ex. 3.1 at 11:15 – 12:45. He took a cell phone video of the rioters below him and law enforcement officers attempting to defend the Capitol Building using pepper spray. Bender then panned to an entrance of the Capitol Building and exclaimed, “we’re storming the Capitol!” Bender later shared that video on his TikTok account.



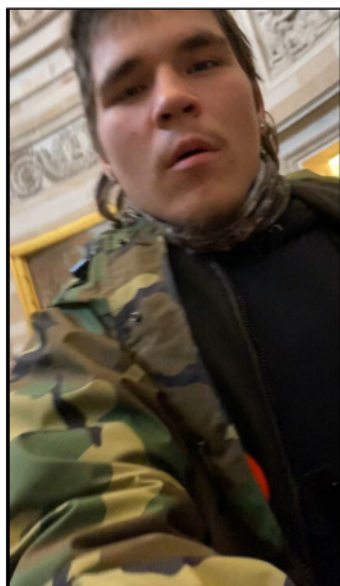
Ex. 4.10, 5.9, 5.10, 5.11.

17. At about 2:45 p.m., Bender and Mitchell unlawfully entered the U.S. Capitol Building through the Upper West Terrace Door.



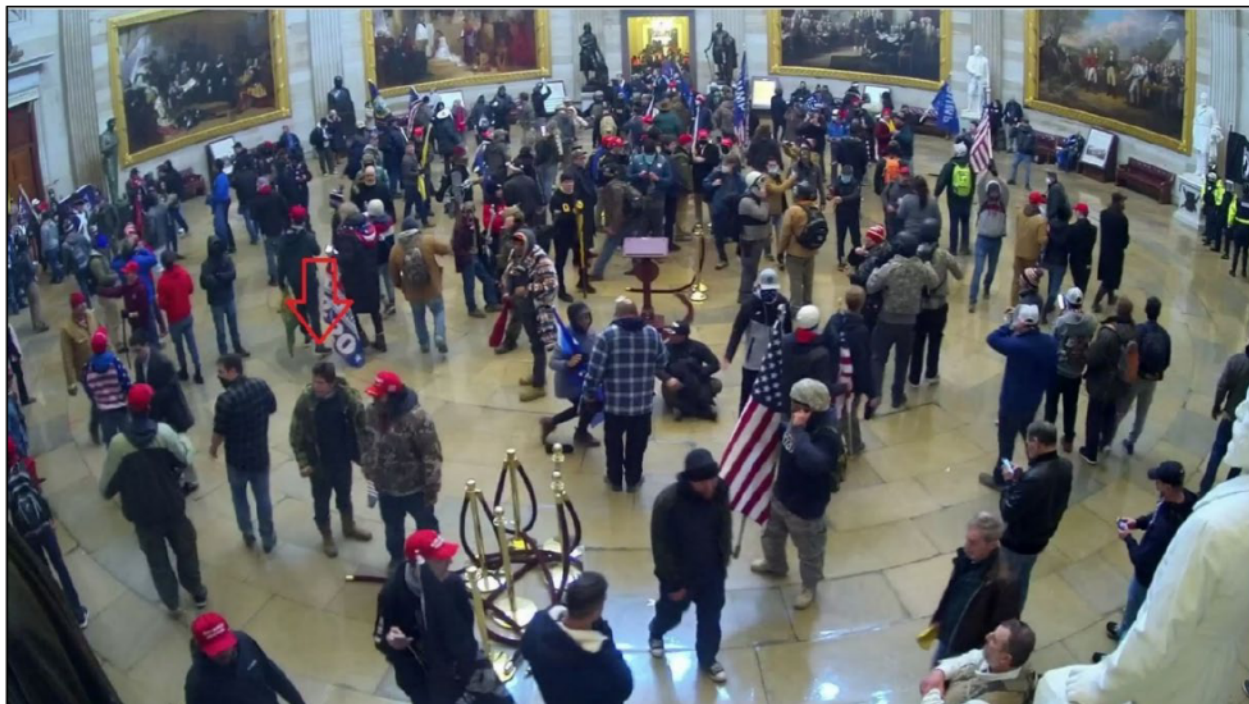
Ex. 1.1, 1.2.

18. Bender recorded part of his journey, including his entry into Capitol Building and the Rotunda. *See* Ex. 4.13, 5.12, 5.13. In one of those videos, the alarm to the Upper West Terrace Door can be heard, and Bender joined other individuals inside the U.S. Capitol and chanted, “Whose house? Our House!” Ex. 5.12. As he entered the Rotunda, Bender exclaimed, “Right now, we’re inside the Capitol. We just stormed the gates!”



Ex. 5.13.

19. Bender and Mitchell then proceeded through the Rotunda, down the East Front Corridor, through the Ohio Clock Corridor, down a hall, and into the Senate Chamber.



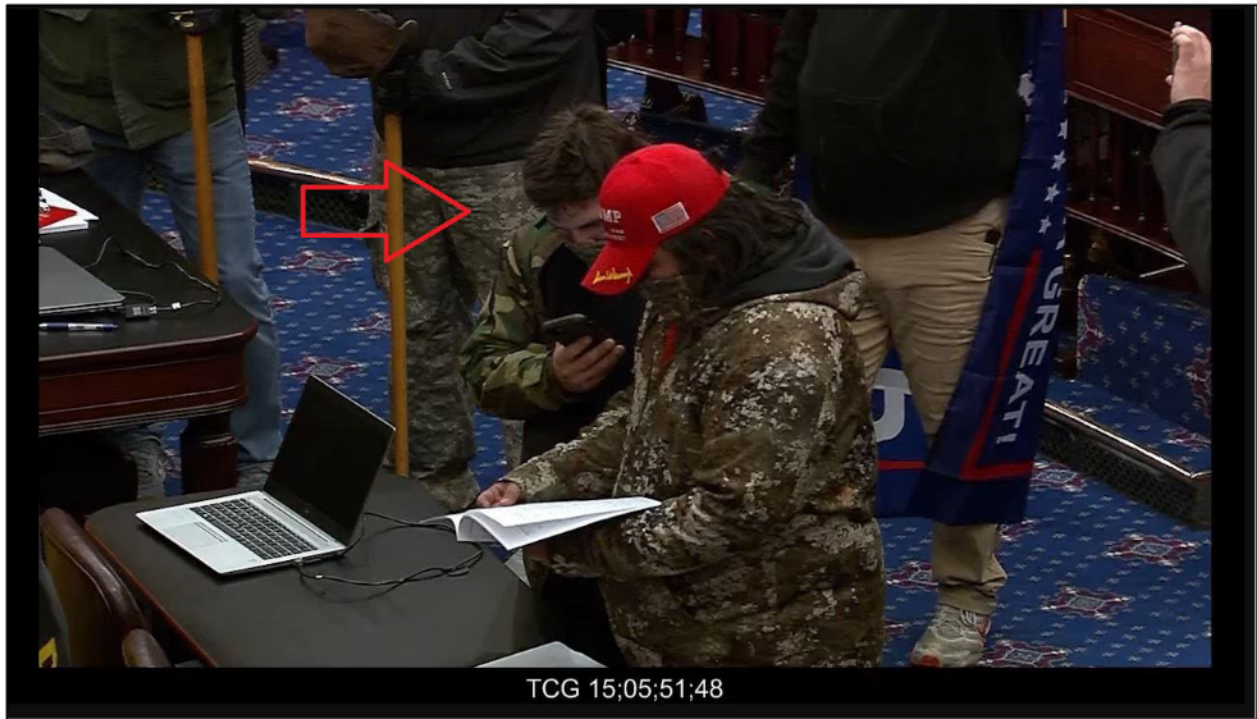
Ex. 1.3, 1.4, 1.5, 1.6, 1.7, 1.8.

20. Bender and Mitchell entered the Senate Floor of the U.S. Capitol Building at approximately 3:04 p.m.



Ex. 1.9, 1.10, 1.11.

21. While on the Senate Floor, Bender and his co-defendant reviewed documents sitting on tables on the Senate Floor.



Ex. 1.9, 2.4.

22. Bender sat at a Senator's desk, while Mitchell took his picture.



Ex. 2.5, 1.11.

23. Bender and Mitchell also took “selfies” from the Senate floor.



Ex. 5.14, 5.15.

24. Bender then ascended to the Senate dais and posed for pictures with fellow rioter Jacob Chansley.





Ex. 1.11.

25. At approximately 3:08 p.m., USCP officers entered the Senate Floor and directed Bender, Mitchell, and other individuals to leave the Chamber.



Ex. 1.10, 1.11

26. Bender and Mitchell left the U.S. Capitol through the Senate Carriage Door at approximately 3:10 p.m. *See* Ex. 1.12, 1.13, 1.14, 1.15, 1.16, 1.17.

27. Later on January 6, Bender posted the Tik Tok videos described above. He included captions such as, “It was so awesome [sic] to be apart [sic] of this. We made our voices heard” and “A once in a lifetime day. #patriots #fyp #trump2020 #viral #dc #patriotparty #proudboys[.]” Ex. 4.21 (metadata only). In an Instagram post on January 6, 2021, Bender included the caption, “Today was something special if you were there. It was great to be apart [sic] of it. #trump2020 #trump #dc #capital[.]”



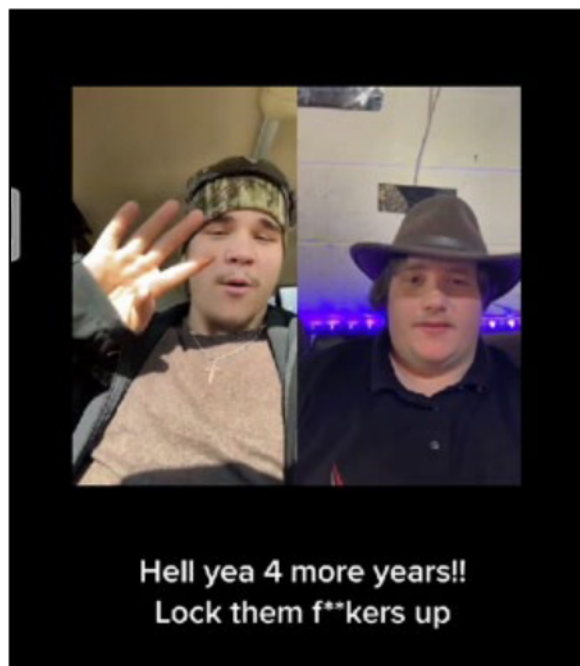
Ex. 4.8, 4.11.

28. On January 7, 2021, Bender shared on Facebook a post from Mitchell. The post contained an image of a skull surrounded by red smoke, with the caption, “Absolutely Proud of my fellow Americans who made their voices heard at the Capitol.”



Ex. 4.12.

29. On the night before inauguration was to take place, January 20, 2021, Bender posted a video to his TikTok account; the post itself had the following caption: “#duet with @brysonzero1 4 More years! #trumpismypresident #patriotparty #fuckbiden 🤡🤡 #fyp[.]” At the bottom of the video’s screen, Bender wrote, “Hell yea 4 more years!! Lock them F**kers up[.]”



Ex. 4.7.

30. On July 29, 2021, the Federal Bureau of Investigation (“FBI”) interviewed Bender, who waived his *Miranda* rights and agreed to speak to law enforcement. Bender acknowledged his presence on the National Mall on January 6, 2021 and his choice to enter the U.S. Capitol. Bender identified himself in screen shots of video from inside the U.S. Capitol and identified defendant Mitchell, who also entered the U.S. Capitol, as the person with whom Bender attended the events of January 6, 2021. Bender also provided information to law enforcement regarding where Mitchell worked and completed a written consent form permitting the FBI to search his electronic devices. He also told the FBI that after returning to his and his parents’ home on January 6, 2021, on his parents’ direction, he deleted the photographs he had taken at the U.S. Capitol, stopped using that phone, and began using a new phone his parents had purchased for him. Ex. 3.1 at 16:00 – 17:45.

Without waiving any arguments set forth in Bender’s Motion to Dismiss Count 1, the parties agree that if the Court finds the existence of these facts beyond a reasonable doubt, the defendant

stipulates that this evidence would establish each and every element of the charged offenses for Counts 1 through 6 of the Indictment, ECF No. 7, in light of the Court's ruling on the Motion to Dismiss Count 1 and without waiving objection to the Court's ruling

Respectfully submitted,

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

By: /s/ Samantha R. Miller
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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

DEFENDANT'S ACKNOWLEDGMENT

I, LUKE WESSLEY BENDER, have read this Statement of Facts for Stipulated Trial and have discussed it with my attorney. I fully understand the elements and the facts that are set forth. I agree and acknowledge by my signature that this Statement of Facts for Stipulated Trial 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 Facts for Stipulated Trial fully.

Date: _____

LUKE WESSLEY BENDER
Defendant

ATTORNEY'S ACKNOWLEDGMENT

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

Date: _____

CHRISTOPHER MACCHIAROLI
Attorney for Defendant Bender

**UNITED STATES DISTRICT COURT
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:

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UNITED STATES' EXHIBIT LIST

The United States has identified the following exhibits it may use at the Stipulated Trial.

Exhibit No.	Description	Length
Video Evidence		
Exhibit 1	U.S. Capitol CCTV	
1.1	Upper West Terrace Door_2021-01-06_14h40min00s797ms.mp4, 2:45 p.m.	0:15
1.2	Upper West Terrace - 2021-01-06_19h40min01s.mp4, 2:45 p.m.	0:20
1.3	Rotunda North - 2021-01-06_19h50min24s.mp4, 2:51 p.m.	1:30
1.4	East Front Corridor near S206 - 2021-01-06_19h40min01s.mp4, 2:56 p.m.	0:29
1.5	S207 - 2021-01-06_19h40min02s.mp4, 2:57 p.m.	0:25
1.6	Ohio Clock Corridor near S208_2021-01-06_14h40min02s917ms.mp4, 2:57 p.m.	0:09
1.7	Hall By S208_2021-01-06_14h40min01s367ms.mp4, 2:57 p.m.	0:29
1.8	Senate Chamber Near S214_2021-01-06_15h00min01s567ms.mp4, 3:02 p.m.	0:20
1.9	Senate Floor ISOCAM6_SENFL_1.mp4, 3:04 p.m.	6:05
1.10	Senate Floor ISOCAM1_SENFL.mp4, 3:04 p.m.	4:40
1.11	Senate Floor ISOCAM4_SENFL_2.mp4, 3:04 p.m.	5:22
1.12	Hall By S208 - 2021-01-06_20h00min01s.mp4, 3:09 p.m.	0:45
1.13	Senate Carriage Door - 2021-01-06_20h00min02s.mp4, 3:10 p.m.	0:34
1.14	Senate Carriage Door - 2021-01-06_20h00min02s.mp4, 3:10 p.m.	0:45
1.15	Senate Carriage Door Exterior - 2021-01-06_20h00min01s.mp4, 3:10 p.m.	0:19
1.16	House Plaza - 2021-01-06_20h24min22s.mp4, 3:27 p.m.	0:22
1.17	SW Drive near RHOB Taxi Stnd - 2021-01-06_20h28min26s.mp4, 3:29 p.m.	0:31

Exhibit No.	Description	Length
Exhibit 2 Open-Source Images and Video		
2.1	Washingtonian Picture of Bender and Mitchell at Rally	n/a
2.2	Bender and Mitchell Near Rally (You Tube video) at 26:29 – 26:52	1:58.56
2.3	Still Image of Bender and Mitchell Marching (Inconvenient Truth You Tube)	n/a
2.4	New Yorker Video – Luke Mogelson	12:32
2.5	Image of Bender at Senator’s Desk	n/a
Evidence Collected from Defendants		
Exhibit 3 Post-Arrest Interviews		
3.1	Video of Interview of Luke Bender	45:34
3.2	Video of Interview of Landon Mitchell	1:08.50
Exhibit 4 Social Media		
4.1	Mitchell Facebook 12.11.20	
4.2	Mitchell Facebook 12.18.20	
4.3	Mitchell Facebook 12.26.20	
4.4	Mitchell Facebook 12.27.20	
4.5	Mitchell Facebook 12.30.20	
4.6	Bender TikTok 12.31.20	0:39
4.7	Bender TikTok 1.20.21	0:14
4.8	Bender Instagram Video at Rally 1.6.21	0:13
4.9	Bender Tiktok outside Capitol “Go to War” 1.6.21	0:08
4.10	Bender Instagram “we’re storming the Capitol” 1.6.21	0:16
4.11	Bender Instagram 1.6.21	
4.12	Bender/Mitchell Facebook Message 1.7.21	
4.13	Bender TikTok Tiktok Inside Capitol 1.6.21	0:12
4.14	Mitchell Facebook Message 1.19.21	
4.15	Mitchell Facebook 1.6.21	
4.16	Mitchell Facebook 1.6.21	
4.17	Mitchell Facebook 1.6.21	
4.18	Mitchell Facebook 1.17.21	
4.19	Mitchell Facebook 1.6.21	
4.20	Mitchell Facebook 1.18.21	
4.21	Bender TikTok 1.6.21	0:17
4.22	Mitchell/Bender Facebook 1.7.21	
4.23	Mitchell Facebook 1.10.21	
4.24	Mitchell Facebook 1.31.21	
4.25	Mitchell Facebook 1.31.21	
4.26	Mitchell Facebook 2.10.21	
Exhibit 5 Cell Phone Images & Video		
5.1	Bender cell phone image 12.20.20 march for Trump	
5.2	Bender SnapChat Post 1.5.21	

Exhibit No.	Description	Length
5.3	Bender cell phone image "wild protest"	
5.4	Bender cell phone Three Percenter Logo	
5.5	Bender cell phone Three Percenter Logo	
5.6	Bender cell phone picture – Capitol building	
5.7	Bender cell phone picture – Bender and Mitchell in front of Capitol	
5.8	Cell phone image of Bender and Mitchell in front of Capitol	
5.9	Bender cell phone video from outside Capitol	0:10
5.10	Bender cell phone video from outside Capitol	0:15
5.11	Bender cell phone picture – outside Capitol with two others	
5.12	Bender cell phone video of entry into Capitol and Rotunda	0:39
5.13	Bender cell phone video of Bender inside Rotunda	0:11
5.14	Mitchell cell phone image of Bender and Mitchell "selfie" inside Senate chamber	
5.15	Mitchell cell phone picture – inside Senate chamber	
5.16	Mitchell cell phone picture of Mitchell on dais	
5.17	Mitchell cell phone picture of Mitchell on dais	
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LUKE WESSLEY BENDER

DATE