

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	Case No.: 23-cr-432 RBW
	:	
v.	:	18 U.S.C. § 1752(a)(1) (Entering or
	:	Remaining in a Restricted Building
XYAN CLARY,	:	or Grounds)
	:	
Defendant.	:	
	:	

STATEMENT OF OFFENSE

Pursuant to Fed. R. Crim. P. 11, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Xyan Clary, with the concurrence of the defendant’s 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 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. The grounds around the Capitol were posted and cordoned off, and the entire area as well as the Capitol building itself were restricted as that term is used in Title 18, United States Code, Section 1752 due to the fact that the Vice President and the immediate family of the Vice President, among others, would be visiting the Capitol complex that day.

3. On January 6, 2021, a joint session of the United States Congress convened at the Capitol. 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 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 began at approximately 1:00 PM. Shortly thereafter, by approximately 1:30 PM, 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 PM, 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. Officers with the D.C. Metropolitan Police Department were called to assist officers of the USCP who were then engaged in the performance of their official duties. 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 PM, 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 \$2.9 million dollars for repairs.

7. Shortly thereafter, at approximately 2:20 PM, 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 PM 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 PM 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.

The Defendant's Participation in the January 6, 2021, Capitol Riot

8. On January 6, 2021, Xyan and his mother Nico Clary attended the “Stop the Steal” rally at the Ellipse. After the rally, they marched with the crowd to the Capitol. Xyan Clary was dressed in a red and black flannel top and blue jeans, gray gloves, and a red baseball cap. Throughout the day he carried a Gadsden Flag.

9. Xyan and Nico Clary were observed at the Peace Monument at approximately 1:57 PM. Both had in their possession flags. *See Figure 1.*



Figure 1

10. At approximately 2:44 p.m., Xyan and Nico Clary stood on the Balustrade of the Northwest Steps, while Xyan chanted, “U.S.A., U.S.A.!” and other rioters scaled the side of the building. *See Figure 2.*



Figure 2

11. At approximately 2:59 p.m., Xyan and Nico Clary joined other rioters in singing the National Anthem as the Capitol Building is overtaken. *See Figure 3.*



Figure 3

12. Xyan Clary then makes his way through the crowd to enter the building through the Senate Wing Door with Nico Clary at approximately 3:21 p.m. *See Figure 4.* The two remained within the Senate Wing Lobby for approximately six minutes.



Figure 4

13. At approximately 3:27 p.m., Xyan Clary exited the Capitol through a broken window. See *Figure 5*. Nico Clary left through the Senate Wing Door at the same time.



Figure 5

14. After the Clary's left the building, they remained at the Upper West Terrace. See in *Figure 6* at approximately 4:02 p.m.



Figure 6

15. Xyan and Nico Clary remained on the grounds until pushed out by Police at approximately 4:40 p.m. *See Figure 7.*



Figure 7

Elements of the Offense

16. The parties agree that 18 U.S.C. § 1752(a)(1) requires the following elements:
- a. First, the defendant entered or remained in a restricted building or grounds without lawful authority to do so.
 - b. Second, the defendant did so knowingly.

Defendant's Acknowledgments

17. The defendant knowingly and voluntarily admits to all the elements as set forth above. Specifically, the defendant admits that he entered the U.S. Capitol Building and subsequently remained there. The defendant admits that he knew he was not permitted to enter or remain in the U.S. Capitol Building, which was restricted.

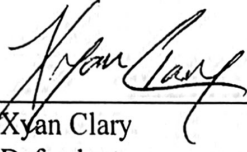
Respectfully submitted,

MATTHEW M. GRAVES
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By: /s/ Adam M. Dreher
Adam M. Dreher
Assistant United States Attorney
Mich. Bar No. P79246


DEFENDANT'S ACKNOWLEDGMENT

I, Xyan Clary, 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: 12/28/23 
Xyan Clary
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: 12/28/23 
Kira West
Attorney for Defendant