

STATEMENT OF FACTS

Your affiant, [REDACTED] is a Special Agent with the Federal Bureau of Investigation, assigned to the Washington Field Office. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Special Agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of violations of Federal criminal laws.

The U.S. Capitol 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 were allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also 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 separate chambers of 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.

As the proceedings continued in both the House and the Senate, and with Vice President Mike 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.

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 around 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

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 Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of

violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

On January 11, 2021, the Metropolitan Police Department (MPD) received a tip to report identification of individuals inside the Capitol building on January 6, 2021. The tipster (hereinafter Witness-1) provided screenshots of a Facebook posts from Witness-2, a female who claimed her brother was inside the Capitol Building on January 6, 2021. Witness-1 advised that Witness-2 posted on Facebook that she was in touch with her brother through FaceTime while the brother was inside the Capitol.

Witness-1 provided screenshots of Witness-2's Facebook posts and conversation to law enforcement. The posts from Witness-2 conveyed her perception that the riot was not chaotic or crazy, though noting a window was broken and her brother relayed there was tear gas. She further explained her brother communicated with her through Facetime while he was in the Capitol building. As well, she provided that her brother and others were there to support contesting election results of certain states.

In addition to the Facebook posts, Witness-1 provided identifying information for Witness-2 and her brothers. Although Witness-1 does not know Witness-2's brothers or which brother Witness-2 referred to in her Facebook posts, Witness-1 located information about Witness-2's two brothers on the internet and identified them to law enforcement as ERIC VON BERNEWITZ ("E. VON BERNEWITZ") and PAUL VON BERNEWITZ ("P. VON BERNEWITZ") (collectively, "the VON BERNEWITZes"). The identifying information of the VON BERNEWITZes further indicated that both brothers lived in Virginia Beach, Virginia. Social media checks conducted by the FBI revealed that the Facebook post provided by Witness-1 originated from the VON BERNEWITZes' sister. As well, social media checks and subsequent records checks confirmed that both VON BERNEWITZes live in Virginia Beach, Virginia.

On January 19, 2021, Special Agents from FBI Norfolk interviewed E. VON BERNEWITZ with his lawyer present by telephone. E. VON BERNEWITZ admitted that he and his brother, P. VON BERNEWITZ, entered the Capitol Building on January 6, 2021. E. VON BERNEWITZ explained that he and his brother drove together to Washington D.C.; according to E. VON BERNEWITZ, P. VON BERNEWITZ went with him for protection because E. VON BERNEWITZ's right arm is paralyzed. E. VON BERNEWITZ stated that they entered the Capitol Building from the Northwest corner in the front and went to the Northeast corner in the back. E. VON BERNEWITZ stated that he turned off his phone before entering the U.S. Capitol because it was low on battery in case he later needed it to find his brother. E. VON BERNEWITZ advised that he got caught up in the excitement of the crowd, went in the Capitol Building unexpectedly, and left within ten minutes.

On January 21, 2021, Special Agents from FBI Norfolk interviewed P. VON BERNEWITZ with his lawyer present by telephone. P. VON BERNEWITZ admitted that he and his brother, E. VON BERNEWITZ, both entered the Capitol Building. P. VON BERNEWITZ explained that his brother asked him to go; and he agreed so that he could take care of his brother, partially due to his brother's disability. According to P. VON BERNEWITZ, he and his brother attended a rally, during which the crowd decided to go to the Capitol building. Outside of the Capitol, the crowd

began to push toward an open door. P. VON BERNEWITZ further advised that he and his brother were in the Capitol for a short period of time, estimating less than ten minutes. P. VON BERNEWITZ further explained that he took approximately four photos inside the Capitol Building and later deleted them as is his normal practice to delete items from his phones. Eventually more police arrived and forced the crowd back outside through the same door which they had entered the building.

On January 21, 2021, P. VON BERNEWITZ consented to a search of his Samsung Galaxy cellphone with phone number ***-***-3976. A review of the cell phone uncovered several photographs, including the one below, taken from inside the U.S. Capitol Building.



Based on the foregoing, your affiant submits that there is probable cause to believe that ERIC VON BERNEWITZ and PAUL VON BERNEWITZ violated 18 U.S.C. § 1752(a)(1) and (2), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; and (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; or attempts or conspires to do so. For purposes of Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant submits there is also probable cause to believe that ERIC VONBERNEWITZ and PAUL VON BERNEWITZ violated 40 U.S.C. § 5104(e)(2)(D) and (G), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings 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; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.


FEDERAL BUREAU OF INVESTIGATION

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 23rd day of March, 2021.



Digitally signed by
G. Michael Harvey
Date: 2021.03.23
15:52:21 -04'00'

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE