

Case: 1:23-mj-00229
Assigned To : Harvey, G. Michael
Assign. Date : 8/25/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, [REDACTED] is a Special Agent with the Federal Bureau of Investigation [REDACTED]. In my duties as a Special Agent, I am assigned to domestic terrorism investigations. 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, detection, investigation, or prosecution of a violation 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, 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.

According to information provided by Google, pursuant to a search warrant previously served by the FBI, a device associated with a Google email account jh[XXXXXXX]@gmail.com was located inside an area consistent with the area within the restricted area of the United States Capitol on January 6, 2021, and specifically within the United States Capitol Building itself between approximately 2:49 p.m. to 2:53 p.m. According to the same information provided by Google, the Google account was associated with an individual named Joseph Hicks and the phone number xxx-xxx-3079 (“phone number ending in -3079”). As a result of this information, the FBI conducted database checks and identified an individual to whom this account likely belonged, JOSEPH KERRY HICKS, with a home address in Springfield, Missouri.

On June 14, 2021, another agent of the FBI and I located and conducted a voluntary interview with JOSEPH KERRY HICKS at his place of work. This interview was surreptitiously recorded. During that interview, HICKS admitted to going inside the Capitol building but did not specify where he went inside the Capitol. HICKS stated it was an error in judgment. HICKS claimed he did not assault any law enforcement or damage property. HICKS said he was let in by people at the door. HICKS declined to give information on who else traveled with him. HICKS stated that on January 6, 2021, he was wearing a face mask, a red sweatshirt, a hat, and a hoodie. HICKS claimed that the Google email account, jh[XXXXXXX]@gmail.com, belonged to him. I had previously attempted to contact HICKS via the phone number ending in -3079; during the interview, HICKS confirmed receiving that phone call but did not answer it.

Based on my review of publicly available videos and photos from January 6, 2021, as well as my review of Capitol surveillance footage, I have identified photos and videos of HICKS both outside and inside the Capitol Building on January 6, 2021. I know that it is HICKS depicted in these images and videos because (i) the person in the videos and images is wearing a face mask, a red sweatshirt, a hat, and a hoodie, which is similar to HICKS’ description during his interview of the clothing he was wearing and (ii) his appearance is consistent with the person that I interviewed, who admitted to being inside the Capitol. Accordingly, I believe the person that I interviewed and the person depicted in the following images and videos are the same person, JOSEPH KERRY HICKS.

On January 5, 2021, Facebook user J.C. wrote in a previously publicly available post, “Left to Washington DC at 8:00pm tonight! Woo-hoo!!!! God, Please be with us!” An image of the post is included below as Image 1. I believe that one of the individuals in the photo, circled in red, is HICKS. HICKS is wearing white sunglasses, a red ball cap, a red hoodie, and a dark jacket. As further confirmation, subsequent database checks indicate that J.C. is from a similar general area of Missouri as HICKS.

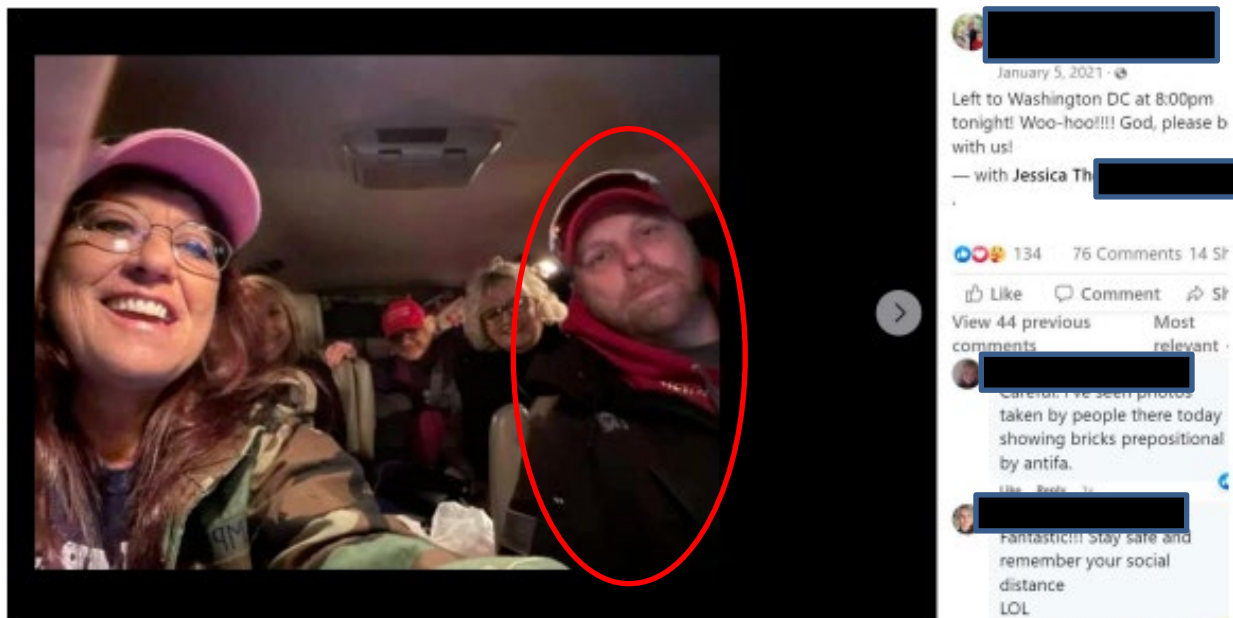


Image 1 (redactions added)

According to USCP surveillance footage (“CCTV”), at approximately 2:41 p.m. ET, HICKS is observed on the exterior of the East side doors, otherwise known as the Rotunda Doors.¹ This door had been breached a few minutes prior by rioters on the inside of the building. HICKS entered the Rotunda Doors at approximately 2:41 p.m. ET. HICKS then headed west towards the Rotunda.



Image 2

¹ Times that appear in UTC have been converted to Eastern Time, which on January 6, 2021 was 5 hours behind UTC.

HICKS is seen on CCTV walking around the Rotunda for several minutes, unfurling and waving his flag, and taking to and fist-bumping other rioters. At approximately 2:46 p.m. ET, HICKS exited the South side of the Rotunda (Image 3) and entered Statuary Hall (Image 4), where he remained for less a minute before heading back to the Rotunda.



Image 3

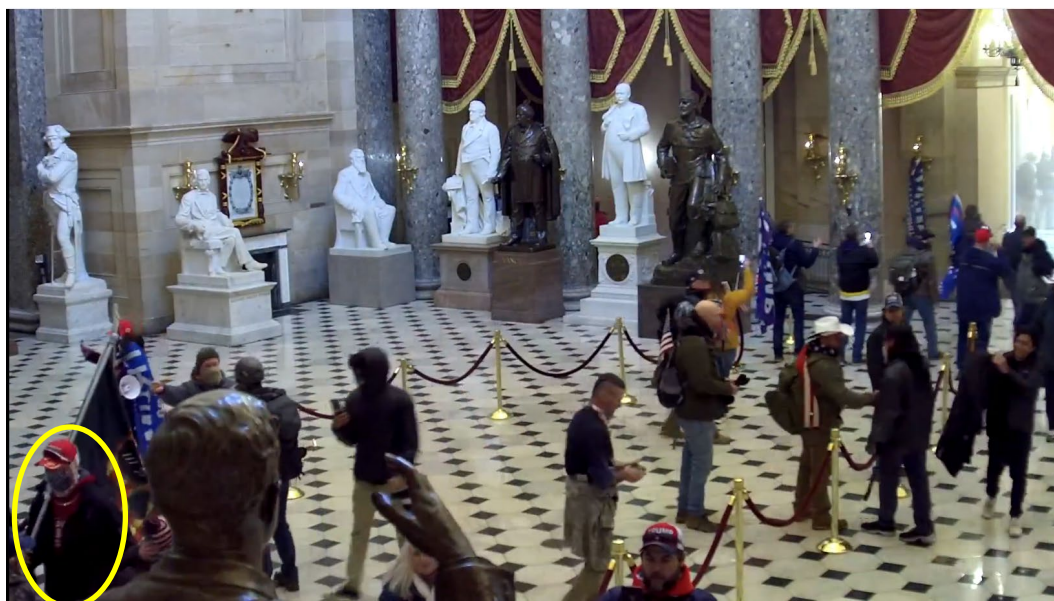


Image 4

HICKS is also captured while in the Rotunda on video obtained from another defendant, a screenshot from which is included below as Image 5. As depicted in the closeup shots of the same video in Images 6 and 7, HICKS appears to be carrying a black flag on a white flagpole. The flag appears to depict a skull with a stars-and-stripes pattern. The flag states in white lettering at the bottom, "We Are Everywhere." As depicted in other images of HICKS from January 6, 2021, the flag also appears to contain the word "III%" in one of the eye sockets of the skull. Based on my

training and experience and discussions with other agents of the FBI, I know that this term is associated with the “Three Percenters” movement which postures itself as citizens standing against a tyrannical government.² At this time, the FBI has not identified HICKS as having ties to any Three Percenter group.

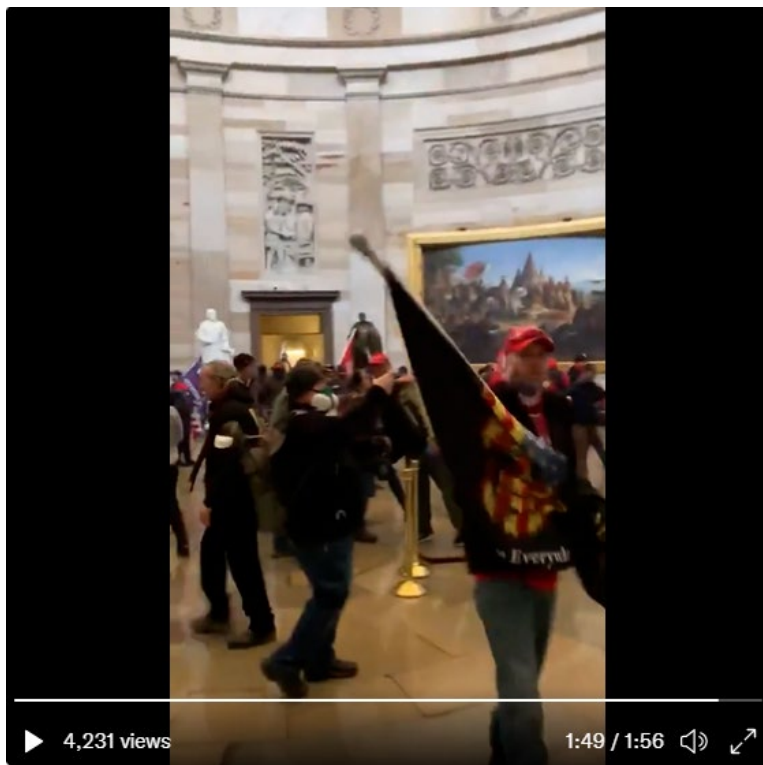


Image 5

² The three percenters (“III%ers” or “threepers”) movement is based on the factually inaccurate assumption that three percent of American colonists took up arms against the British during the American Revolution. While many independent or multi-state militia groups incorporate III% in their names, the term is not necessarily indicative of membership in a single overarching group. Instead, the term often represents the idea that a small force, which is armed and prepared, can overthrow a perceived tyrannical government. Three percenters often view parts of the United States Government as tyrannical.



Images 6 and 7

CCTV footage shows HICKS continued to walk around the Rotunda with his flag for several minutes. At approximately 2:49 p.m. ET, HICKS left the Rotunda through the North Entrance, which is captured in Image 8 below. From my training and experience with other January 6 investigations, I know that hallway leads to the Small Senate Rotunda and the Old Senate Chamber.



Image 8

About a minute later, at approximately 2:50 p.m. ET, HICKS reappears on Capitol CCTV in the Rotunda.



Image 9

HICKS appears to film the scene with his phone (Image 10), looks at his phone (Image 11), and also talks to other rioters.



Image 10



Image 11

CCTV footage shows at approximately 2:54 p.m. ET, HICKS left the East side of the Rotunda and walked towards the Rotunda doors through which he entered. HICKS slowly worked his way towards the exit (Image 12).

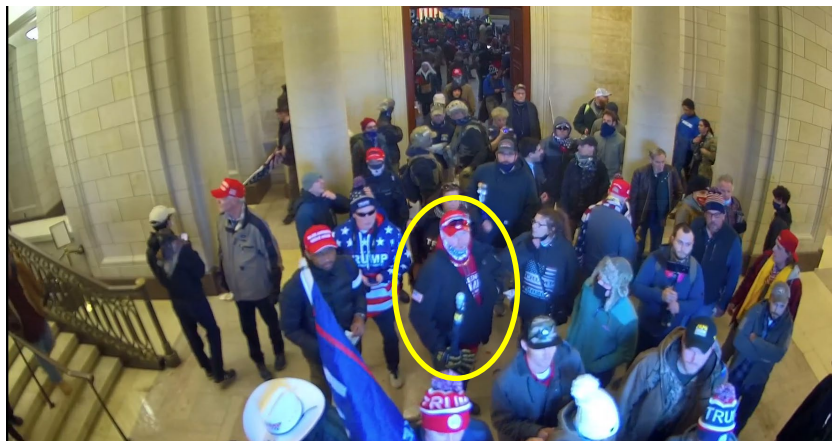


Image 12

At approximately 2:56 p.m., CCTV footage shows HICKS turned around and headed back into the Building (Image 13). HICKS then waited nearby, appearing to listen to another rioter and watching the entrance (Image 14).



Image 13



Image 14

CCTV footage shows HICKS then once again headed towards the Rotunda Doors. At approximately 2:58 p.m. ET, HICKS is observed exiting the US Capitol through the Rotunda Doors (see Image 15).



Image 15

After he left, according to CCTV footage, HICKS attempted to re-enter the Capitol. At approximately 3:27 p.m. ET, USCP and Metropolitan Police Department (“MPD”) officers struggled to expel rioters out of the Capitol through the Rotunda Door. HICKS is observed on CCTV the exterior of the Rotunda Doors. At approximately 3:29 pm, HICKS is observed trying to re-enter the Capitol through the crowd, adding his body weight to other protestors in order to prevent the officers from expelling the rioters (Image 16). HICKS appears to push for several seconds, until the officers successfully overcome and expel the rioters in the entrance. As the right half of the door is closed, HICKS—now on his own—then appears to back into the officers at the entrance, pushing against the officers with his back for less than two seconds. (see Image 17). HICKS then retreats away from the Capitol and disappears from view.



Image 16

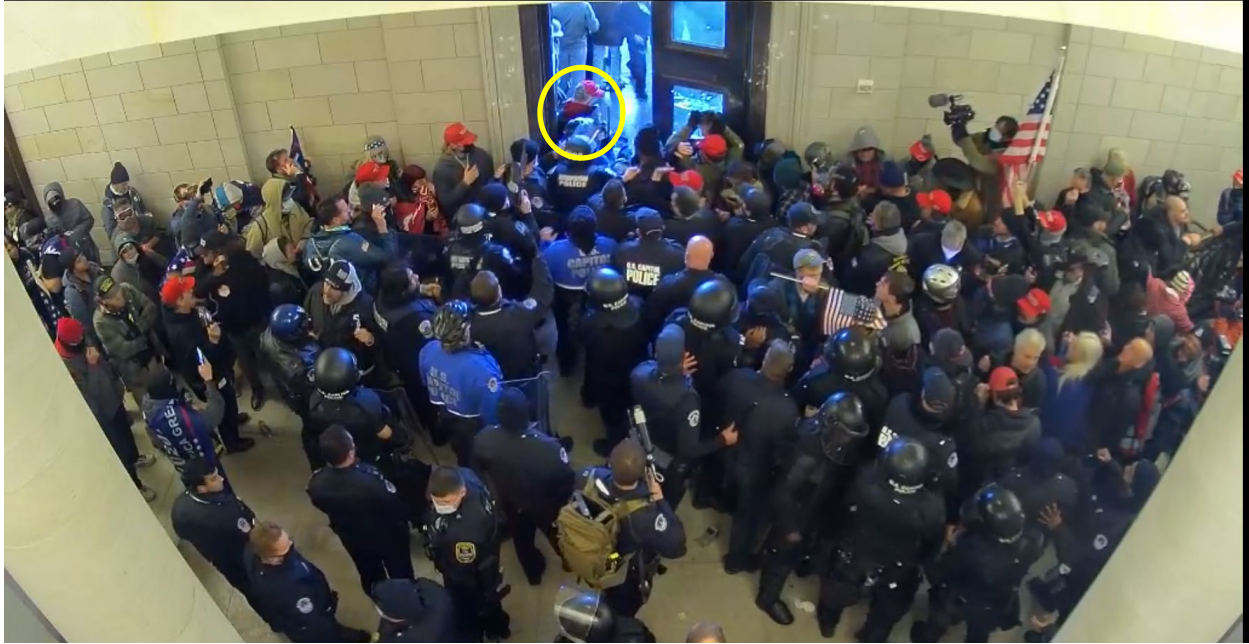


Image 17

Other videos capture the same incident from a different angle. One video, available at <https://www.youtube.com/watch?v=TJuhysJzbSA&>, shows HICKS dropping his shoulder and leaning his body weight into another rioter. A close-up image from that video is included below as Image 18, with HICKS circled in yellow.



Image 18 (approx. 3:42 of <https://www.youtube.com/watch?v=TJuhysJzbSA&>)

The same video shows that officers then appear to disperse other rioters at the door, with many individuals appearing cover their faces consistent with exposure to chemical irritants. The video also depicts puffs of white mist at the door, which is consistent with other footage showing an officer in the door deploying less-than-lethal munitions at the rioters. Immediately following this, at approximately 3:29:35 p.m. ET (based on cross-references to other videos), the video depicts HICKS bracing against the door, then backing towards the officers in an attempt to re-enter the building. The officers push him away, before HICKS is pulled out of the door by another police officer.

Another video shows this portion of the incident more clearly. Specifically, it shows HICKS pushing into the officer with his back while gripping his flag. Still images from that video are included below as Images 19 through 21.



Images 19 through 21

HICKS is also captured at this moment by body-worn camera footage of an MPD Officer who was at the door (“Officer-1”). A still image from Officer-1’s body-worn camera footage is included below as Image 22. HICKS is identifiable through his yellow gloves and the distinctive pattern on his flag.

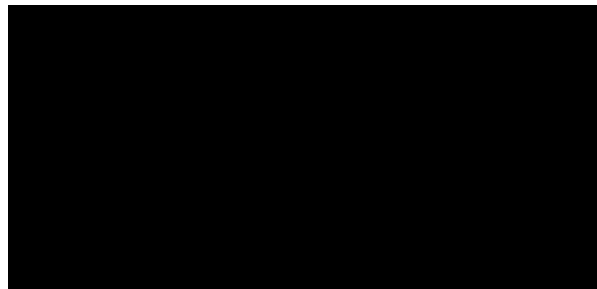


Image 22

Based on the foregoing, your affiant submits that there is probable cause to believe that HICKS 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.

Your affiant submits there is also probable cause to believe that HICKS violated 40 U.S.C. § 5104(e)(2)(D) and 40 U.S.C. § 5104(e)(2)(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.

Finally, your affiant submits there is probable cause to believe that HICKS violated 18 U.S.C. § 231(a)(3), which makes it unlawful to commit or attempt to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function. For purposes of Section 231 of Title 18, a federally protected function means 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. This includes the Joint Session of Congress where the Senate and House count Electoral College votes.



Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 25th day of August 2023.

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE