

STATEMENT OF FACTS

Your affiant, [REDACTED], is a Federal Bureau of Investigation (“FBI”) Special Agent assigned to the Joint Terrorism Task Force since June 2020. In my duties as a Special Agent, I investigate, among other things, criminal cases relating to domestic terrorism. 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 records obtained through a search warrant served on Google, a mobile device associated with the email address cXXXXXX@gmail.com was present at the U.S. Capitol on January 6, 2021. Google estimates device location using sources including GPS data and information about nearby Wi-Fi access points and Bluetooth beacons. This location data varies in its accuracy, depending on the source(s) of the data. As a result, Google assigns a “maps display radius” for each location data point. Thus, where Google estimates that its location data is accurate to within 10 meters, Google assigns a “maps display radius” of 10 meters to the location data point. Finally, Google reports that its “maps display radius” reflects the actual location of the covered device approximately 68 percent of the time. In this case, Google location data shows that a device associated with cXXXXXX@gmail.com was within the U.S. Capitol from approximately 2:30:10 p.m. to 3:29:18 p.m. Google records show that the “map display radius” for this location data include data points that encompass an area that is partially or entirely within the U.S. Capitol building.

Records obtained from Google also revealed that the phone number associated with rgw cXXXXXX@gmail.com account is XXX-XXX-2446 (the “2446 Number”). Based on records obtained from T-Mobile pursuant to a subpoena, your affiant learned that the 2446 Number is registered to David Brian Howard (“HOWARD”) of Frisco, Texas. On or about August 12, 2021, your affiant contacted and spoke with HOWARD using the 2446 Number. On or about August 13 and 17, 2021, HOWARD called your affiant using the 2446 Number.

Based on the above, the FBI’s Dallas Field Office opened an investigation of HOWARD. Video identified from U.S. Capitol Police CCTV surveillance footage, open-source video footage, and information provided by confidential human sources place a man matching HOWARD’s appearance inside and around the U.S. Capitol building on January 6, 2021. In all photographs and videos, HOWARD is wearing a grey hooded sweatshirt underneath a black jacket, black earmuffs, and a red baseball cap. At times, HOWARD is also wearing a white respirator face mask and carrying a drawstring bag.

On January 6, 2021, open-source video confirmed that HOWARD, in the yellow circle in the images below, attended the former President’s “Stop the Steal” rally at the Ellipse. As shown in Image 1 below, HOWARD was at the rally standing on top of a chair and using his cell phone.



Image 1

At approximately 2:37 p.m. EST, CCTV surveillance footage captured HOWARD within restricted grounds on the Upper West Terrace of the U.S. Capitol.



Image 2

Around the same time, open-source video showed HOWARD near the same location on the Upper West Terrace of the Capitol. Moments earlier, tear gas was deployed outside the Senate Wing Doors and in HOWARD's vicinity.



Image 3

A few minutes later, rioters breached the Senate Parliamentary Door at 2:42 p.m. EST. Law enforcement officers attempted to stop the rioters but were overrun. After putting on a white respirator face mask, HOWARD can be seen outside the Senate Parliamentary Door around this time, as shown in Image 4 below, a screenshot from open-source video. That video depicts the chaos on the Upper West Terrace at that time, including several rioters ascending the side of the Capitol building using suspended scaffolding.

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Image 4

About twenty minutes later, at 3:01 p.m. EST, CCTV surveillance footage showed HOWARD entering the Capitol building through the Senate Wing Doors. By that time, the windowpanes in the Senate Wing Doors had been smashed and open-source video demonstrates that an alarm can be heard blaring. HOWARD took out his cell phone and appeared to take a video or photos as depicted in Image 5 below.

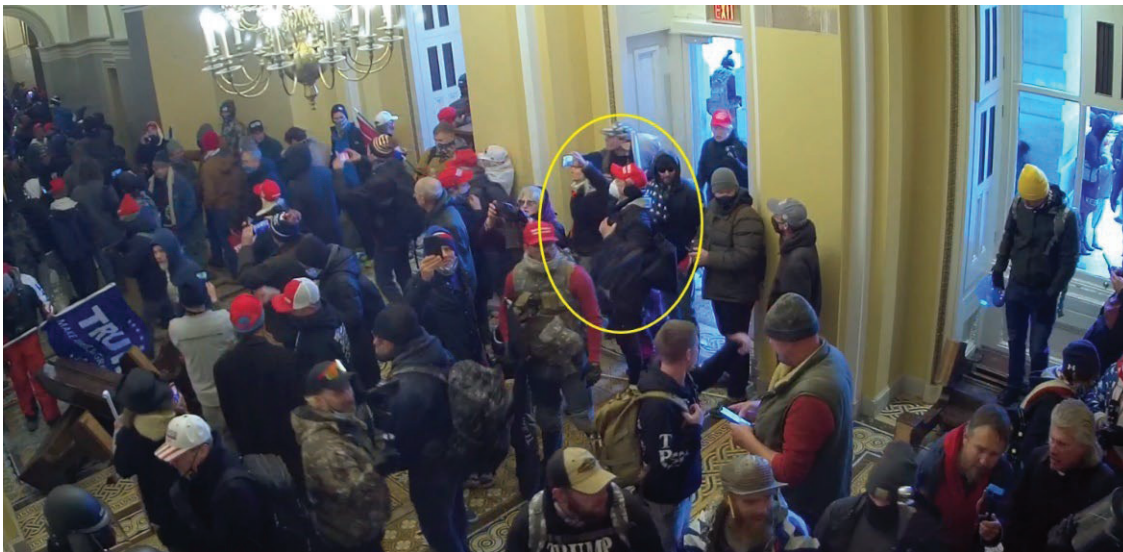


Image 5

HOWARD continued to use his cell phone to take video or photos inside the Capitol building, as shown in Image 6 below. In doing so, HOWARD approached a line of U.S. Capitol Police officers in riot gear guarding the north end of the corridor.

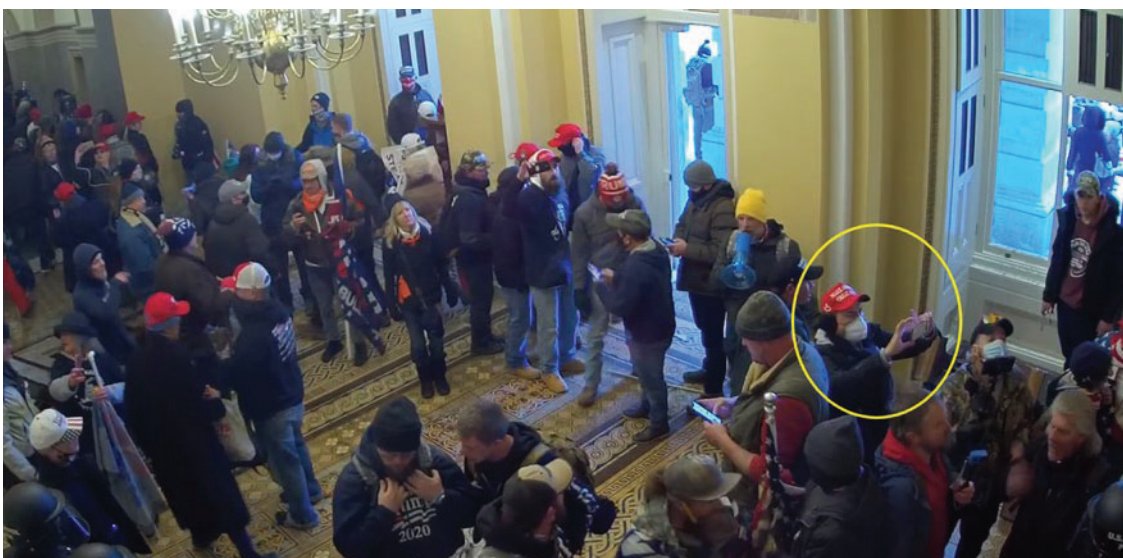


Image 6

About 30 seconds later, HOWARD turned in the opposite direction and walked south down the corridor, as depicted in Image 7 below. He continued to hold his cell phone above his head and appeared to take video or photos inside the Capitol building.

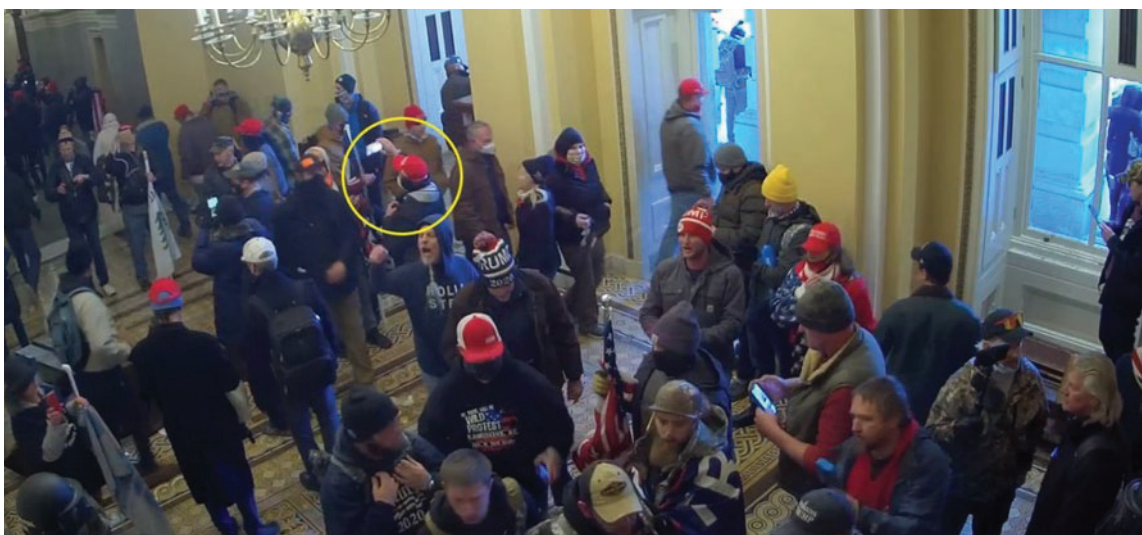


Image 7

A few minutes later, at 3:05 p.m. EST, CCTV surveillance captured HOWARD exiting the Capitol through the Senate Wing Doors, the same doors through which he entered. He still appeared to be using his cell phone to take video or photos, as shown in Image 8 below.



Image 8

Two minutes later, at 3:07 p.m. EST, CCTV surveillance captured HOWARD entering the Capitol a second time through the Senate Wing Doors, as shown in Image 9 below.



Image 9

Approximately 20 seconds later, HOWARD retraced his steps and walked down the corridor, further into the Capitol building. He again took out his cell phone and appeared to take video or photos.



Image 10

After walking down the corridor, CCTV surveillance footage depicted HOWARD entering the Crypt of the U.S. Capitol at approximately 3:08 p.m. EST. He continued to use his phone to take video and can be seen carrying his drawstring bag in his hand.



Image 11

For the next minute, CCTV surveillance footage showed HOWARD wandering around the Crypt. At one point, HOWARD approached several police officers and appeared to be still using his phone to take video, as shown in Image 12 below. He then turned around and headed back towards the door through which he entered. He exited the Crypt at 3:09 p.m. EST.



Image 12

At 3:12 p.m. EST, HOWARD reappeared walking down the corridor towards the Senate Wing Doors, as depicted below in Image 13 below. He still has his cell phone in hand before exiting the U.S. Capitol building at 3:13 p.m. EST. Altogether, HOWARD was inside the U.S. Capitol for approximately ten minutes.



Image 13

Around the same time, open-source video showed HOWARD near the Senate Wing Doors before he exited the U.S. Capitol building. As shown in Image 14, HOWARD briefly lowered his face mask to talk to another rioter while an alarm can be heard sounding.

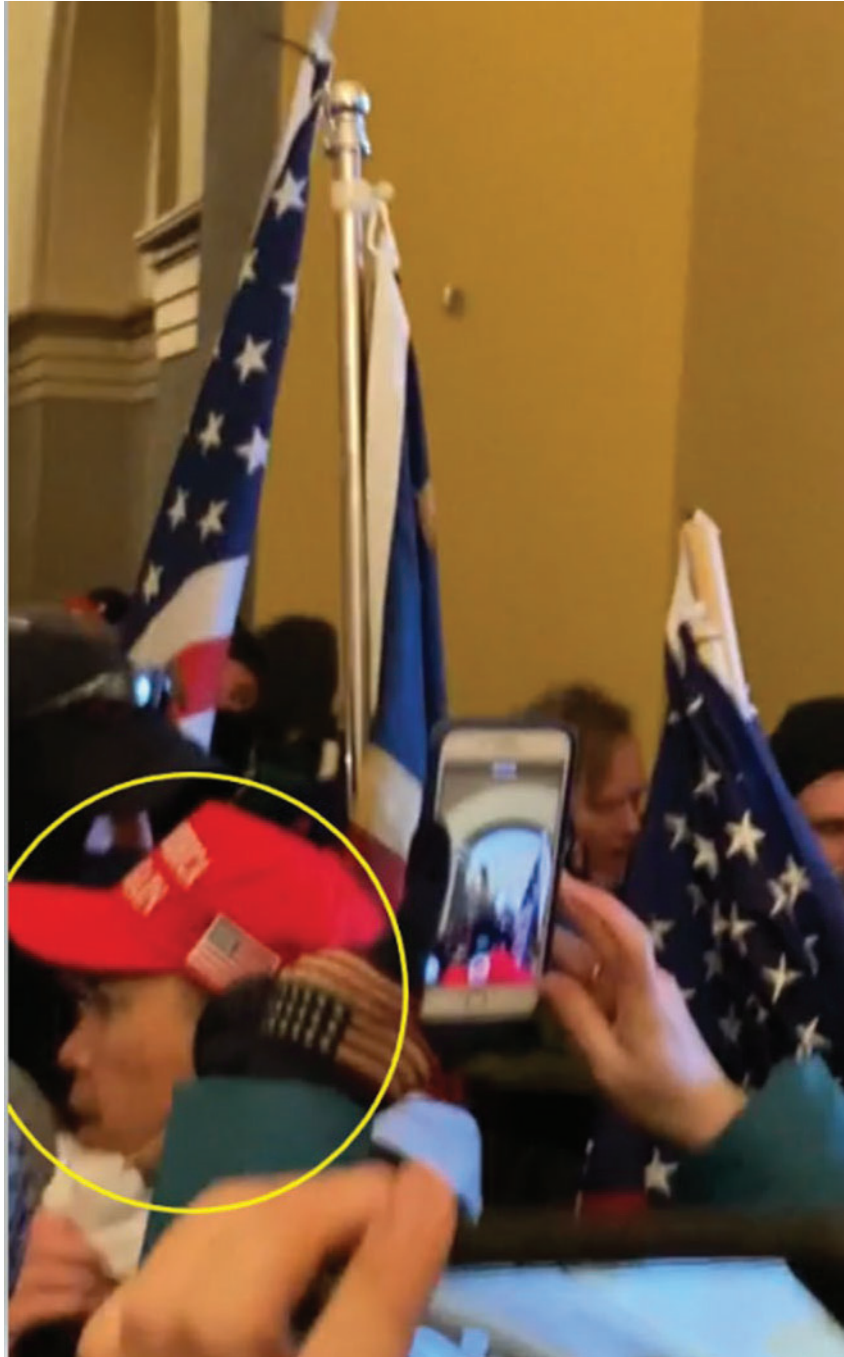


Image 14



On or about October 18, 2023, an acquaintance of HOWARD was provided with a photograph of HOWARD at the U.S. Capitol on January 6, 2021. The acquaintance positively identified HOWARD. Although the acquaintance did not remember HOWARD's full name at first, he remembered HOWARD's full name after your affiant told him that his first name is "David." Additionally, through my own investigation, including reviewing HOWARD's driver's license photo, HOWARD appears to be the same person in photographs above and other video footage collected on January 6, 2021.

Based on the foregoing, your affiant submits that there is probable cause to believe that HOWARD 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 so; 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. 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 HOWARD violated 40 U.S.C. § 5104(e)(2), 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.


Special Agent
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 17th January 2024.



MOXILA A. UPADHYAYA
U.S. MAGISTRATE JUDGE