

## STATEMENT OF FACTS

Your affiant, Vincent Veloz, is a Special Agent with United States Capitol Police. 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 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 are 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 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 after 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 the FBI has reviewed, after 2:00 p.m., but before the joint session of Congress resumed at 8:00 p.m., the defendants Thomas Robertson and Jacob Fracker were

photographed in the Capitol Building making an obscene statement in front of a statute of John Stark (Exhibit A). At the time they were photographed, the defendants were off-duty from their positions as police officers with the Rocky Mountain Police Department in Rocky Mount, Virginia.

In social media posts, Defendant Robertson is quoted as saying, “CNN and the Left are just mad because we actually attacked the government who is the problem and not some random small business ... The right IN ONE DAY took the f\*\*\*\*\* U.S. Capitol. Keep poking us.” He also stated that he was “proud” of the photo in an Instagram Post that was shared to Facebook, because he was “willing to put skin in the game” (Exhibit B).

A now-deleted Facebook post by Defendant Fracker containing the caption, “Lol to anyone who’s possibly concerned about the picture of me going around... Sorry I hate freedom? ...Not like I did anything illegal...y’all do what you feel you need to...” (Exhibit C).

In a statement to Newsweek, Defendant Robertson admitted that he and Defendant Fracker sent the photo to their police department colleagues, and after it was leaked to social media he reposted it on his own Facebook page. It has also been reported that Robertson stated that he broke no laws, did not know about the violence, and that he had been escorted “in” by the Capitol Police. Robertson made these claims notwithstanding his previous posts that he had “attacked the government” and “took the f\*\*\*\*\* Capitol.” Moreover, at that date and time, the United States Capitol was on lockdown and the defendants’ presence inside was without lawful authority.

Based on the foregoing, your affiant submits that there is probable cause to believe that Thomas Robertson and Jacob Fracker 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. 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 Thomas Robertson and Jacob Fracker violated 40 U.S.C. § 5104(e)(2)(D), which makes it a crime to willfully and knowingly 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.



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Vincent Veloz  
Special Agent  
United States Capitol Police

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 12<sup>th</sup> day of January 2021.

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Robin M. Meriweather  
U.S. MAGISTRATE JUDGE

Exhibit A



Exhibit B



Exhibit C

