

Case: 1:23-mj-00036
Assigned To : Upadhyaya, Moxila A.
Assign. Date : 2/16/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

I, [REDACTED], am a Federal Bureau of Investigation (FBI) Special Agent assigned to the Washington Field Office Joint Terrorism Task Force (JTTF). In my duties as a Special Agent, I investigate crimes committed by racially-motivated violent extremists and other domestic terrorism related matters. I have personally participated in procuring and executing arrest warrants of persons committing federal violations and search warrants involving the search and seizure of multiple types of evidence, to include electronic communications, digital devices, social media accounts, cell site data, and geolocation data. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As an FBI 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 hundreds of individuals inside the U.S. Capitol building without authority to be there.

ELIZALDE's Involvement in Events of January 6, 2021

The FBI first assessed that ELIZALDE participated in the Capitol Riot on January 6, 2021, through geolocation data. Specifically, geolocation data identified email address "XXXXXXXX@gmail.com" present and in the restricted area of the U.S. Capitol, as well as potentially inside the U.S. Capitol, on January 6, 2021, from approximately 1:22pm to 3:46pm. Through legal process, Google LLC identified the registered owner of the email address, XXXXXXXX@gmail.com, as "David Elizalde" with a phone number for an account that, according to subscriber records obtained by the FBI, is maintained by ELIZALDE.

On December 21, 2021, ELIZALDE was interviewed at the Naval Criminal Investigative Service (NCIS) office on Naval Station Rota, in Rota, Spain by NCIS Supervisory Special Agent 1 and FBI Supervisory Special Agent 2. ELIZALDE told the interviewing agents that on January 5, 2021, he traveled by himself via his private vehicle from Norfolk, Virginia, where he was stationed on the USS Harry Truman (CVN75), to Falls Church, Virginia where he stayed in a hotel. He stated that the purpose of his trip was to attend the political rally held on January 6, 2021. On the morning of January 6, 2021, ELIZALDE traveled from Falls Church, Virginia to Washington DC via the DC Metro. ELIZALDE stated he was wearing typical civilian clothes including jeans, tennis shoes, a dark colored t-shirt, and a black jacket.

At some point during the day on January 6, 2021, ELIZALDE stated he moved with the crowd towards the U.S. Capitol.¹ Although he did not notice any particular person or group leading the effort, he heard people in the crowd shouting things such as "let's go" and "this is our house." Upon walking towards the U.S. Capitol, ELIZALDE stated he observed people in the crowd physically fighting with police officers, climbing the walls of the U.S. Capitol, climbing scaffolding, and hanging flags. ELIZALDE stated that he walked around the scaffolding and found a set of stairs leading up to the U.S. Capitol, which were not blocked by barricades, that he walked up. Once at the top of the stairs, ELIZALDE stated he observed people in the crowd causing property damage and people waving flags. From there, he then followed a line of people who were entering the U.S. Capitol through open double doors. Once inside, ELIZALDE stated that there were several police officers just inside the entrance, which is where one of the officers told ELIZALDE to get out of the building, at which point he turned around and walked out. ELIZALDE estimated that he walked about eight or nine feet into the U.S. Capitol and was in

¹ All references herein to statements made by ELIZALDE are references to the sum and substance of information conveyed by ELIZALDE and are not intended as verbatim quotations unless specifically indicated.

the building for less than thirty seconds. Once ELIZALDE was back outside of the U.S. Capitol, he stated he stayed to observe the scene for a little while because he knew something historic was happening. ELIZALDE stated that at around 2:00 to 3:00 pm, he took the Metro back to Falls Church, which is where he remained the rest of the night.

On April 5, 2022, ELIZALDE was re-approached by NCIS Supervisory Special Agent 1 regarding his presence at the U.S. Capitol on January 6, 2021. Pursuant to a consensual search and seizure of ELIZALDE's cellphone, multiple pictures and videos were located on the device, including a video of an individual entering the U.S. Capitol on January 6, 2021. During this interview, ELIZALDE told the interviewing agents that he took all videos and photos discovered on this device of himself both outside and inside of the U.S. Capitol on January 6, 2021. Image 1 below is a photo from ELIZALDE's phone of ELIZALDE outside of the U.S. Capitol, appearing to have been taken by ELIZALDE himself. NCIS Supervisory Special Agent 1 has confirmed, based on his in-person observation of ELIZALDE, that ELIZALDE does appear to be the individual shown in Image 1.



Image 1

Image 2 below is a screen shot captured from the video recorded on ELIZALDE's phone of ELIZALDE entering the U.S. Capitol. From my experience investigating cases related to the Capitol Riot, I recognize the inside of the building as the U.S. Capitol.

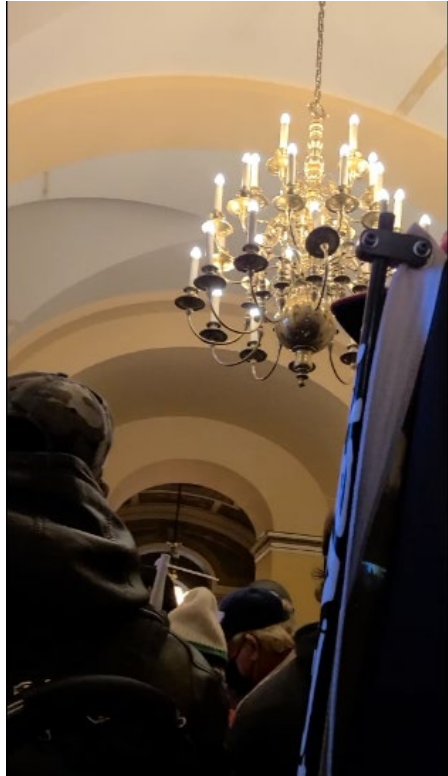


Image 2

As shown in Image 1 above, on January 6, 2021, ELIZALDE wore a black colored jacket, a black colored hat with what appears to be an American Flag on it, and he appeared to be holding a black and white flag in his hand. Additionally, after reviewing the aforementioned video found on ELIZALDE's phone and matching it up with surveillance video from the U.S. Capitol, I have identified an individual matching ELIZALDE's description, wearing a black colored jacket, a black colored hat with what appears to be an American Flag on it, and holding a flag in his hand, entering the U.S. Capitol at approximately 3:25 p.m. through the Senate Wing Door.

Image 3 below is a screen shot taken from the surveillance video (the timestamps on all screenshots below are in Universal Coordinated Time, which was five hours ahead of Eastern Standard Time on January 6, 2021). ELIZALDE is circled in red.



Image 3

I have compared videos found on ELIZALDE's phone with surveillance video featuring ELIZALDE and determined that the surveillance video appears to capture ELIZALDE entering and remaining inside the US Capitol.

The video taken from ELIZALDE's phone depicts a close-up image of an individual wearing a tan colored cowboy hat with a multicolored scarf around the individual's neck. In Image 3 from the surveillance footage above, an individual with that same description is seen in front of the individual that matches the description of ELIZALDE. A screen shot taken from the video on ELIZALDE's phone showing this individual, as well as a screen shot of the surveillance video with the individual matching the description (circled in yellow) are set forth below as Images 4 and 5. ELIZALDE is again, circled in red.



Image 4



Image 5

In the video taken from ELIZALDE's phone, a brief encounter with a uniformed police officer can be observed. In the surveillance footage, an individual that matches the description of ELIZALDE can be seen briefly interacting with the same uniformed police officer. A screen shot taken from the video off of ELIZALDE's phone showing this officer, as well as a screen shot of the surveillance footage showing ELIZALDE (circled in red) interacting with the officer (circled in blue) can be seen below.



Image 6



Image 7

Additionally, in the aforementioned interview of ELIZALDE conducted on December 21, 2022 by NCIS Supervisory Special Agent 1 and FBI Supervisory Special Agent 2, ELIZALDE stated that once inside the U.S. Capitol, he had an interaction with an officer who told him to get out of the building. This further corroborates that the video taken off of ELIZALDE's phone was taken by ELIZALDE and that the individual matching the description of ELIZALDE, who is circled in red, is in fact ELIZALDE.

At approximately 3:28 p.m., ELIZALDE is shown on the CCTV video exiting the building through the same Senate Wing Door that he originally entered from.

Based on the foregoing, your affiant submits that there is probable cause to believe that DAVID ELIZALDE 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 DAVID ELIZALDE violated 40 U.S.C. § 5104(e)(2)(D) and (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.


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 16TH day of February 2023.

THE HONORABLE MOXILA A. UPADHYAYA
UNITED STATES MAGISTRATE JUDGE