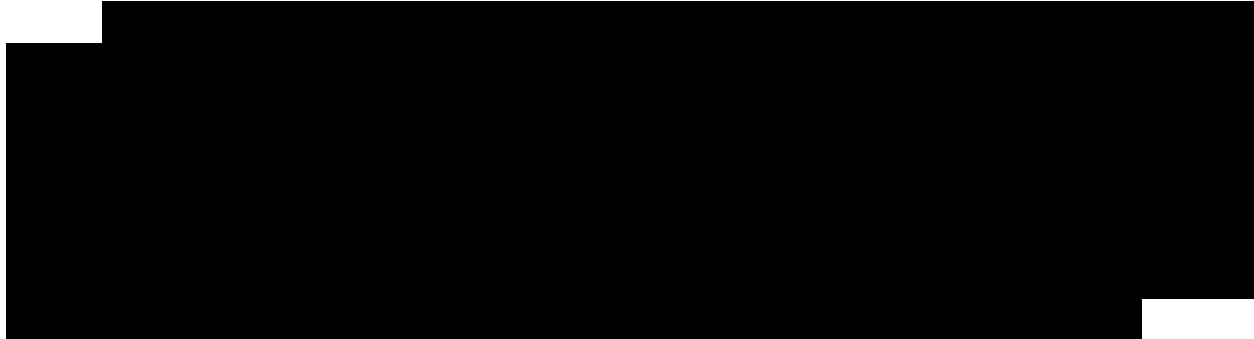


STATEMENT OF FACTS

Background



The United States Capitol (“Capitol”) building is secured 24 hours a day by U.S. Capitol Police (“USCP”). Restrictions around the Capitol include permanent and temporary security barriers and posts manned by USCP officers. Only authorized people with appropriate identification are allowed access inside the Capitol. On January 6, 2021, the exterior plaza of the Capitol was also closed to members of the public.

On January 6, 2021, a joint session of Congress convened at the 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 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 of Representatives and Senate members 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 Chambers.

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 Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the Capitol building, and USCP officers were present and attempting to keep the crowd away from the building and the proceedings underway inside.

While the certification proceedings were still underway, and the exterior doors and windows of the Capitol were locked or otherwise secured, USCP officers attempted to maintain order and keep the crowd from entering the Capitol. At around 2:00 p.m., individuals in the crowd forced entry into the Capitol building, including by breaking windows and assaulting members of USCP, as others in the group encouraged and assisted those acts.

Shortly after that, 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 when he was evacuated from the Senate Chambers until the sessions resumed.

During national news coverage of the events above, video footage that 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 Capitol building without authority to be there.

Identification of Barry Toth (“Toth”)

According to records obtained through a search warrant served on Google, a mobile device associated with [REDACTED] 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% of the time. In this case, Google location data showed that a device associated with [REDACTED] was within the U.S. Capitol from 2:22 p.m. to 2:50p.m., recording 8 individual location datapoints. Two of these points possessed a “maps display radius” within 100 feet, which encompassed an area that is entirely within the U.S. Capitol Building.

Legal process served on Google showed that this device associated with email address [REDACTED] belonged to Barry Toth (“Toth”). Toth’s date of birth was also included in the device’s associated data. Open-source information showed that Toth lived in [REDACTED]. FBI then requested and received information from the Secretary of State’s Office, including a driver’s license photo of Toth. This photo was compared against Capitol CCTV footage and open-source media footage from January 6, 2021, and appeared to match one of the rioters identified in the U.S. Capitol building that day.

On June 1, 2021, two FBI agents interviewed Toth at his house, and he admitted he had entered the Capitol building on January 6, 2021. Both agents confirmed that Toth was a visual match for the previously reviewed images and videos from the U.S. Capitol on January 6, 2021.

Review of Photos and Videos

FBI reviewed open-source media depicting the U.S. Capitol and its Grounds on January 6, 2021, in the form of pictures and videos available online. FBI also reviewed U.S. Capitol Police CCTV (“CCTV”) footage and footage recorded by other rioters on their personal devices on January 6, 2021. Several of these videos appeared to show Toth inside and outside the Capitol building that day. From these videos this affiant has made the following observations:

In an open-source video located at <https://archive.org/download/aH2wyDhT3Xa86LLEZ/aH2wyDhT3Xa86LLEZ.mpeg4>, an individual later identified as Toth is dressed in a camouflaged body armor vest with a red, white, and blue “I voted” sticker on the front, a blue hat with words “Trump 2020” in white writing, and a shirt or jacket with a gray torso, red and white checkered sleeves, and a red and white checkered hood. In the video, Toth says to the camera: “This is our country and we are taking it back. Hell or high water. I love you.” The crowd chants, “fight for Trump” in the background (Image 1).



Image 1, screen capture of open-source video

CCTV footage shows Toth enter the U.S. Capitol building at approximately 2:21 p.m., by climbing through a broken window next to the Senate Wing Door, where the Capitol building had been initially breached 8 minutes earlier (Image 2).



Image 2, screen capture of CCTV footage

In an open-source video taken inside the Capitol building, in the hallway just inside the Senate Wing Door, Toth can be seen walking South towards the Crypt, saying, “I just stormed the fucking Capitol” (Image 3). The video is located at <https://archive.org/details/2Nyw59bgjtrLh3edi>. CCTV footage shows Toth entering the Crypt at 2:23 p.m. and speaking into a red bullhorn. In the Crypt, Toth moved forward with a large crowd as they pushed past a line of police officers trying to stop them. Another open-source video depicts Toth in a hallway adjacent to the Crypt, telling another rioter, “we pushed that way then I saw a bunch of smoke.” The video is located at <https://www.dropbox.com/s/8ps9nmf3ycv49/InsideCapitol.mov?dl=0>.

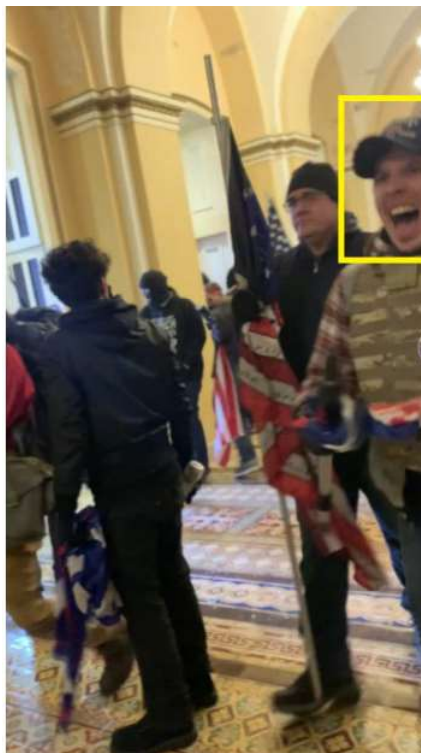


Image 3, screen capture of open-source video

Toth walked up a flight of stairs and entered the Rotunda, located one floor above the Crypt. CCTV footage then shows Toth at approximately 2:34 p.m., standing at the front of a large crowd that had gathered in a part of the Capitol known as the Statuary Hall Connector, situated between the Rotunda and the House Chamber (Image 4). Members of the crowd confronted a line of U.S. Capitol Police officers who were preventing the crowd from advancing towards the House Chamber. This is also documented in an open-source video located at <https://archive.org/details/CcWoDMZenyzdxzy5p>. In the video, Toth is seen telling one of the officers, "I'm with you."



Image 4, screen capture of CCTV footage

At approximately 2:36 p.m., the crowd pushed through the line of officers and approached the House Chamber Door, where members of Congress were sheltering inside. Several of the officers were caught in the crowd and trapped in the small vestibule just outside of the House Chamber Door. Open-source video footage shows Toth with this group near the door, addressing the crowd with a red bullhorn: “Everybody please listen to me, we need to remain calm. We made our point, let’s be peaceful.” However, the crowd continued to chant and bang on the doors.

Video footage from another rioter shows the crowd make room while the trapped officers leave. However, Toth remains. As the crowd chants, “break it down,” one individual begins to smash the glass panes of the House Chamber Door. Toth pushes to the front of the group with a fire extinguisher and stands just outside of the door. Observing, through the smashed-out glass, that the officers inside had drawn and pointed their service weapons at the door, Toth puts his hands up, steps away from the door, and tells the crowd, “they have guns” (Images 5-7).



Image 5, screen capture of rioter footage



Image 6, screen capture of rioter footage



Image 7, screen capture of rioter footage

Video footage from another rioter shows Toth remaining with the crowd near the door as other rioters berate the Officers through the broken glass panes of the door and direct threats at Members of Congress. At approximately 2:45 p.m., police used tear gas to clear the rioters away from the House Chamber Door. Toth exited the area and walked North into the Rotunda. From there, he entered the East Foyer, from which CCTV depicts Toth exiting the Capitol Building via the Rotunda Doors, at approximately 2:51 p.m., 30 minutes after he had first entered (Image 8).

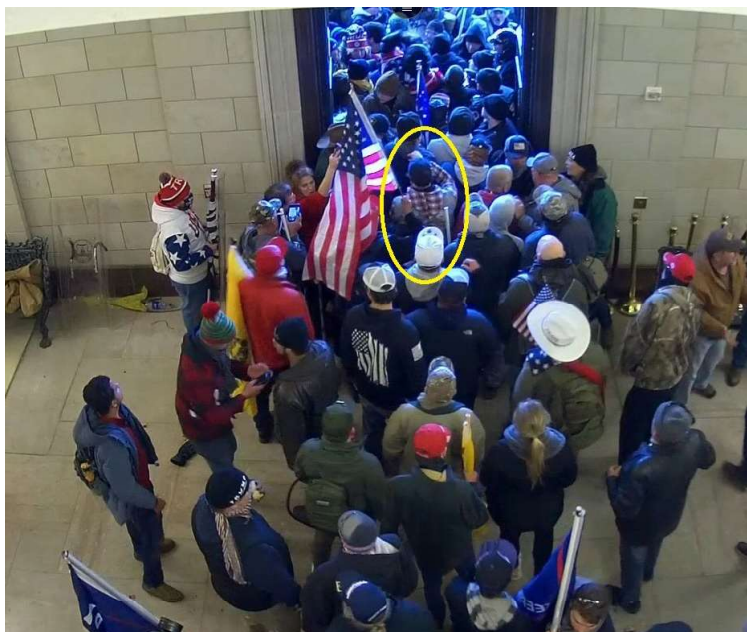


Image 8, screen capture of CCTV footage

Just outside the door, Toth climbed onto a column and used a red bullhorn to talk to the crowd. In a video located at <https://archive.org/details/CToL9RFDxQAEBE8WP>, Toth can be heard saying: “Everybody, I just stormed the fucking capitol building and helped kick down the chamber door. I got a gun pointed at my head, I’ve been tear gassed, and I am [unintelligible] up and I have the biggest fucking hard on in my goddamn life. I am proud of each and every single one of you. We showed these people this our [unintelligible]. Everybody, they’ve stopped the vote.” (Image 9) After this statement, Toth sings the National Anthem with the crowd.



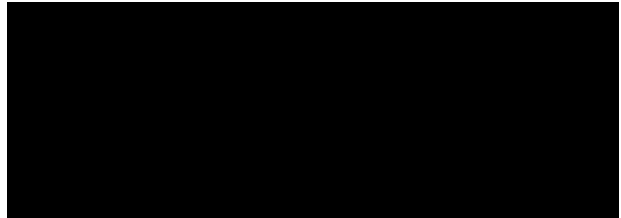
Image 9, screen capture of open-source video

Conclusion

Based on the foregoing, your affiant submits that there is probable cause to believe that Toth 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 Toth 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; (G) parade, demonstrate, or picket in any of the Capitol Buildings.

Finally, your affiant submits there is probable cause to believe that Toth violated 18 U.S.C. § 1512(c)(2), which makes it a crime to obstruct, influence, or impede any official proceeding, or attempt to do so. Under 18 U.S.C. § 1515, congressional proceedings are official proceedings.



Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 13th day of February 2024.

A handwritten signature in blue ink, appearing to read 'Zia M. Faruqui'.



Zia M.
Faruqui

HONORABLE ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE