

STATEMENT OF FACTS

Background

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 on the JTTF, I have accumulated investigative experience in several violations, including crimes against children, violent crime, and domestic terrorism. 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 U.S. 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 U.S. 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 U.S. 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 U.S. 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.

Identification of AOM 178

Since January 6, 2021, the FBI has been investigating those who were at the U.S. Capitol without authority and disrupted the official proceedings. During that investigation, the FBI requested information from the public regarding certain unidentified individuals who assaulted law enforcement and members of the news media at the U.S. Capitol on January 6, 2021. On or about January 28, 2021, the FBI posted on the internet the following two photos, labeling the individual as “Assault on Media (AOM) 178,” and seeking the public’s assistance in identifying the individual:

Images 1 and 2: AOM 178 (from FBI website):



The FBI has received various tips regarding the identification of “AOM 178,” which the FBI investigated. In August and September 2023, the FBI received information regarding the identification of “AOM 178” as an individual named David A. Marshall, Jr. (hereinafter MARSHALL), living in Alexandria, VA. FBI investigators conducted an interview of Confidential Witness 1 (CW-1), a former coworker of MARSHALL who is familiar with his appearance. On December 28, 2023, CW-1 was shown two images from the U.S. Capitol taken on January 6, 2021, Images 3 and 4, which are images of AOM 178; Image 4 is Image 3, with MARSHALL’s glasses digitally removed. CW-1 identified the individual in Images 3 and 4 as their former co-worker, MARSHALL.

Images 3 and 4 (Images shown to CW-1):



Additionally, on April 4, 2024, the FBI re-interviewed CW-1 and showed CW-1 Images 1 and 2 of AOM 178, above, as well as Image 5 below. CW-1 confirmed the individual in each of the photos was MARSHALL. In Image 5, CW-1 specifically identified the individual on the leftmost side as MARSHALL.

Image 5 (Image shown to CW-1):



FBI investigators obtained MARSHALL's Virginia driver's license photograph. The individual pictured in the driver's license photograph possesses similar physical characteristics as the individual depicted in the preceding images taken in and around the U.S. Capitol on January 6, 2021. The FBI also conducted physical surveillance at the residence on MARSHALL's Virginia driver's license in Alexandria, Virginia, in April 2024. Personnel conducting the surveillance noted that the individual who departed the residence matched the physical description of the individual shown in Images 3 and 4.

Since a national press release by law enforcement on January 28, 2021, the FBI has received approximately 16 tips regarding the identity of AOM 178. These tips identified several other individuals as the person depicted in AOM 178. Upon receiving the conflicting identifications, FBI analysts and law enforcement investigators queried among other things, the state driver's license information, criminal history convictions, and publicly available social media profiles of the individuals whose names were submitted as possibly being the person depicted in AOM 178. In many cases a law enforcement officer directly contacted the tipster for further information regarding the person depicted in AOM 178. After investigating the tips regarding the identity of AOM 178, FBI determined that these tips did not predicate further investigatory action because once the tips were compared to the known physical characteristics of AOM 178, the characteristics of the individuals did not correspond with the characteristics of AOM 178.

MARSHALL's Actions on January 6, 2021 at the U.S. Capitol

The FBI reviewed numerous videos from January 6, 2021, including closed-circuit television from the U.S. Capitol ("CCTV"), law enforcement body-worn camera ("BWC") footage, and open-source videos. MARSHALL is observed throughout the various videos. The clothing worn by MARSHALL, including a red hoodie, blue and grey puffy jacket, blue facemask, grey colored pants, a black backpack, and dark glasses, was consistent throughout the various images obtained.

MARSHALL stayed in the vicinity of the West Plaza from approximately 1:00 pm-2:27 pm on January 6, 2021. During this period, MARSHALL engaged in multiple assaults on law enforcement officers, as well as an assault on a member of the news media. During this period, MARSHALL assisted other rioters in possessing equipment/materials, as well as taking police officers' equipment himself.

MARSHALL helped rioters take possession of a ladder on the West Plaza, as shown in Image 6 below (MARSHALL is circled in blue):

Image 6: Still image from CCTV of the U.S. Capitol on January 6, 2021, with MARSHALL circled in blue



At approximately 1:11 pm, MARSHALL pushed and shoved law enforcement officers in the location of the West Plaza. A screen shots of the CCTV footage at 1:11 pm (<https://archive.org/details/ex-508.h-264>, timestamp 34 seconds) taken from open-source research are below (Images 7 and 8). MARSHALL is circled in blue in Image 7 and in yellow in Image 8.

Image 7 and 8: Still image from CCTV of the U.S. Capitol on January 6, 2021, with MARSHALL circled in blue and yellow:





Shortly after 1:11 p.m., MARSHALL picked up a yellow flag. MARSHALL then took an officer's baton and bag, as seen in Image 9 below, while still holding onto the yellow flag.

Image 9:



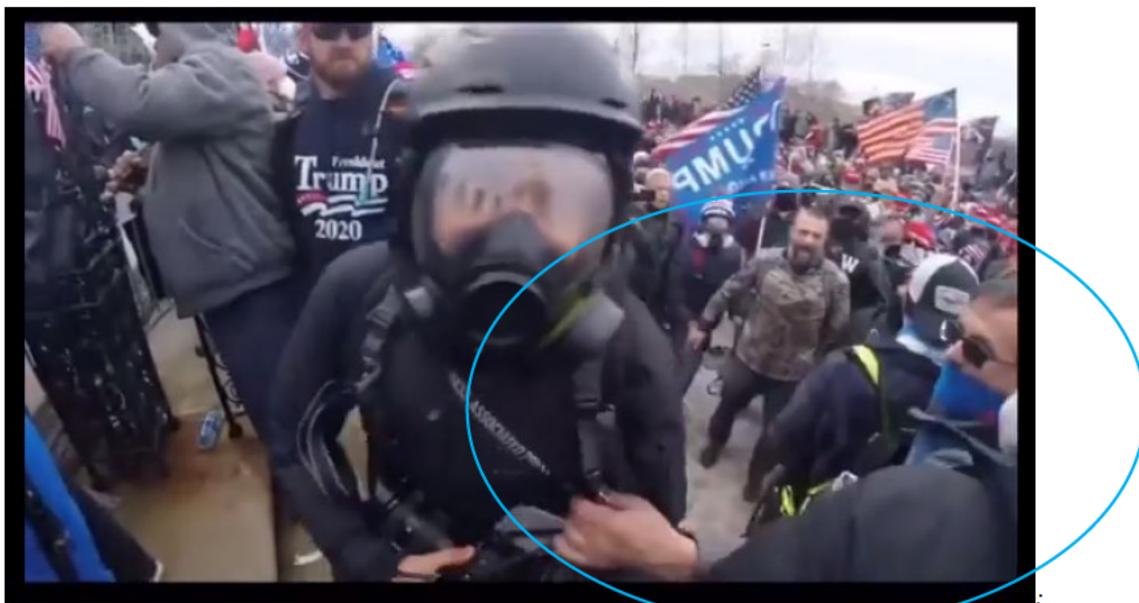
As seen throughout another open-source video, (<https://archive.org/download/vseRnzyxefozsY7Z/vseRnzyxefozsY7Z.mpeg4>), a chemical irritant was deployed multiple times by law enforcement officers and rioters. According to BWC footage, at approximately 1:16 pm, MARSHALL washed his eyes out with a water bottle, as seen in the screenshot below, Image 10, indicating MARSHALL was in the vicinity of the spray. Note that the yellow flag and bag can be seen on the ground next to MARSHALL in the below image. MARSHALL is circled in blue.

Image 10:



MARSHALL later assaulted a member of the news media, identified as J.M. In the screenshots below (Images 11A and B), MARSHALL grabbed J.M., yanked him down the stairs, and pushed and shoved him.

Image 11A and 11B: Still image from open source video of the U.S. Capitol on January 6, 2021, with MARSHALL circled in blue

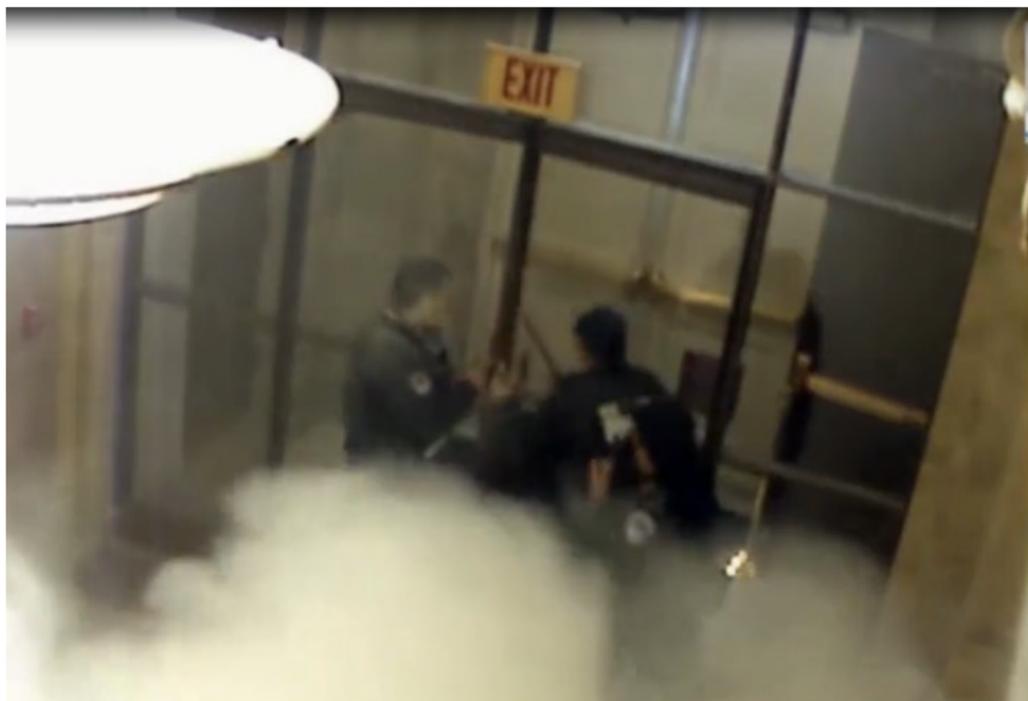




MARSHALL then left the West Plaza and went towards the Memorial Doors of the Capitol. At the doors, MARSHALL unsuccessfully attempted to place a first set of zip-ties on the door handles, then successfully zip tied the doors closed with a second set of zip ties. A few seconds later, officers tried to get out of those same doors, but were initially prevented from doing so by the zip-ties that MARSHALL placed there. Screen shots of this incident are below, Images 12A-12D. MARSHALL is circled in blue.

Image 12A, B, C, D: Still images from CCTV of the U.S. Capitol on January 6, 2021, with MARSHALL circled in blue







According to open-source research (<https://odysee.com/@vinceableworld:a/GoingIn:b> timestamp 0:25 – 1:00 and <https://www.youtube.com/watch?v=MVullQb-Lec&t=80s> timestamp 1:06 -1:19), MARSHALL engaged in multiple pushing/shoving instances with rioters and officers at the Columbus Doors of the U.S. Capitol, including an instance where MARSHALL attempted to punch an officer. Screen shots with MARSHALL circled in blue are below (Images 13A-13C):

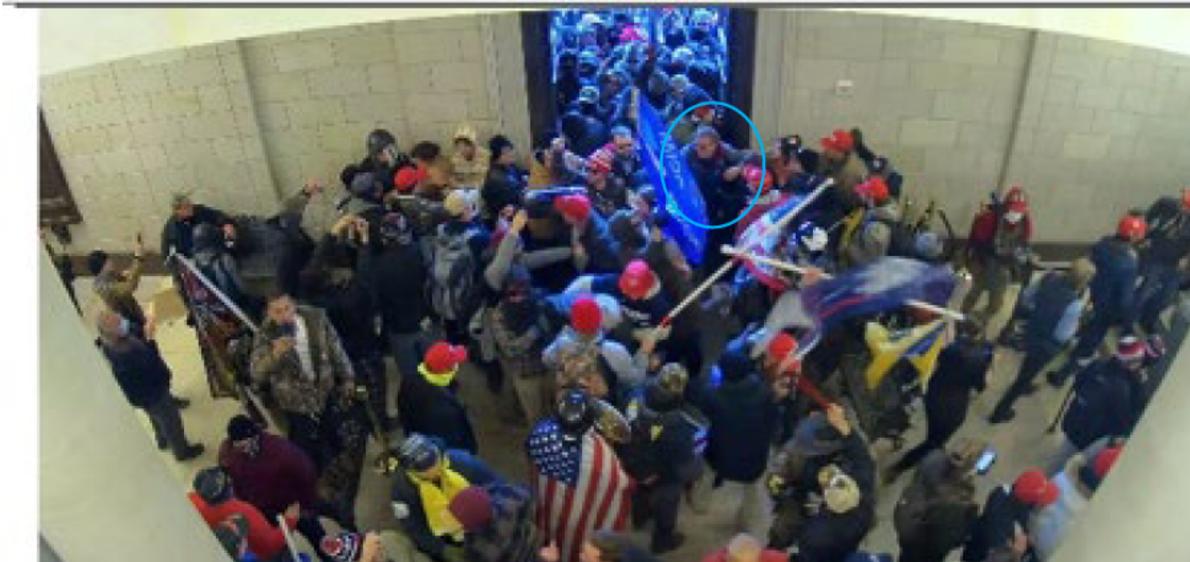
Image 13A, B, and C: Still image from open source video of the U.S. Capitol on January 6, 2021, with MARSHALL circled in blue





At approximately 2:40 pm MARSHALL entered the U.S. Capitol through the Columbus Doors. About that time, MARSHALL pushed officers, including one instance when an officer fell to the ground. Image 14 is a screenshot with of MARSHALL first entering the U.S. Capitol, circled in blue:

Image 14: Still image from CCTV of the U.S. Capitol on January 6, 2021, with MARSHALL circled in blue



At approximately 2:41 pm MARSHALL went up the Gallery Stairs of the U.S. Capitol. Image 15 is a screenshot of MARSHALL circled in blue:

Image 15: Still image from CCTV of the U.S. Capitol on January 6, 2021, with MARSHALL circled in blue



At approximately 2:43 pm, MARSHALL was in the Gallery Hallway, 3rd floor of the U.S. Capitol, headed towards the Senate Gallery.

A screen shot taken from Getty Images (<https://www.gettyimages.com/detail/news-photo/protesters-enter-the-senate-chamber-on-january-06-2021-in-news-photo/1294932412>) can be seen in Image 16 with MARSHALL in the Senate Gallery circled in blue.

Image 16: Still image from open-source media of the U.S. Capitol on January 6, 2021, with MARSHALL circled in blue



At approximately 2:51 pm, MARSHALL exited the Senate Carriage Door of the U.S. Capitol. MARSHALL was inside the U.S. Capitol for approximately 15 minutes.

Shortly following the events which occurred at the U.S. Capitol, law enforcement served a search warrant to United States telecommunication providers seeking cellular site and data records to a geographic area including the interior of the Capitol. Based on information provided, no data for the phone numbers known to be associated with MARSHALL was returned.

Based on the foregoing, your affiant submits that there is probable cause to believe that David A. Marshall, Jr. violated 18 U.S.C. § 1752(a)(1), (2), and (4) which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; (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; and (4) knowingly engage in any act of physical violence against any person or property in any restricted building or grounds; 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 A. Marshall, Jr. violated 40 U.S.C. § 5104(e)(2)(D), (F), 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; (F) willfully and knowingly engage in an act of physical violence in the Grounds or any of the Capitol Buildings; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.

Your affiant submits there is probable cause to believe that David A. Marshall, Jr. 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.

Your affiant submits that there is probable cause to believe that David A. Marshall, Jr. violated 18 U.S.C. § 111(a)(1), which makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in section 1114 of Title 18 while engaged in or on account of the performance of official duties, where such acts involve physical contact with the victim or the intent to commit another felony. Persons designated within section

1114 of Title 18 include federal officers such as USCP officers, and include any person assisting an officer or employee of the United States in the performance of their official duties.

Your affiant submits there is also probable cause to believe that David A. Marshall, Jr. violated 18 U.S.C. § 113(a)(4), which makes it unlawful, within the special and maritime jurisdiction of the United States, to commit an assault by striking, beating, or wounding, and aiding and abetting in such a crime. The U.S. Capitol and the U.S. Capitol grounds are federal property within the special maritime or territorial jurisdiction of the United States.



FEDERAL BUREAU OF
INVESTIGATION

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 30th day of April, 2024.

MOXILA A. UPADHYAYA
U.S. MAGISTRATE JUDGE