

STATEMENT OF FACTS

Your affiant, [REDACTED], is a Special Agent with the Federal Bureau of Investigation (“FBI”), assigned to the Joint Terrorism Task Force (“JTTF”), based out of the Milwaukee Field Office. In my duties as a Special Agent, I investigate persons suspected of violating Federal Law in the State of Wisconsin and throughout the United States. I have gained experience conducting investigations through formal training and consultation with local, state, and federal law enforcement agencies as well as from law enforcement investigations themselves. I have assisted in multiple criminal investigations and participated in numerous search and arrest warrants related to such investigations. Prior to joining the FBI, I obtained a bachelor’s degree and a Juris Doctor degree.

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.

Background: Events at the U.S. Capitol on January 6, 2021

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 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.

Identification of Damian JOHNSTON

On or about September 18, 2023, the FBI received a tip identifying Damian JOHNSTON in images taken inside the U.S. Capitol building on January 6, 2021. In the initial tip, the tipster indicated that they personally knew JOHNSTON and his family.

The tipster was subsequently interviewed by an FBI Special Agent based out of North Dakota—where JOHNSTON was living at the time. During that interview, the tipster described the basis for the tip, which included seeing a video posted to JOHNSTON’s mother’s Facebook page which depicted JOHNSTON at or near the U.S. Capitol on January 6, 2021.

The FBI then obtained JOHNSTON’s driver’s license photograph from the North Dakota Department of Transportation. As part of my investigation, I reviewed closed circuit television (“CCTV”) footage taken from inside the Capitol and identified a person matching JOHNSTON’s appearance from his driver’s license photograph entering and remaining in the Capitol building on January 6, 2021. In the CCTV footage I reviewed, JOHNSTON is pictured wearing a black pea coat, blue jeans, a black hooded sweatshirt with red drawstrings and a red-lined hood, and red baseball cap with the presidential seal and the word “TRUMP” in red lettering on the front.

JOHNSTON’s Activities at the U.S. Capitol

On January 6, 2021, JOHNSTON attended the “Stop the Steal” rally at the Ellipse.



Image 1: Screenshot of third-party video, with JOHNSTON circled in yellow

At some point, JOHNSTON traveled from the rally to the U.S. Capitol, eventually reaching the Capitol's Upper West Terrace. From the Upper West Terrace, JOHNSTON entered the Capitol building through the Senate Wing Door at 3:08 p.m. At the time of JOHNSTON's entry, glass in the door was visibly cracked and nearby windows were shattered.

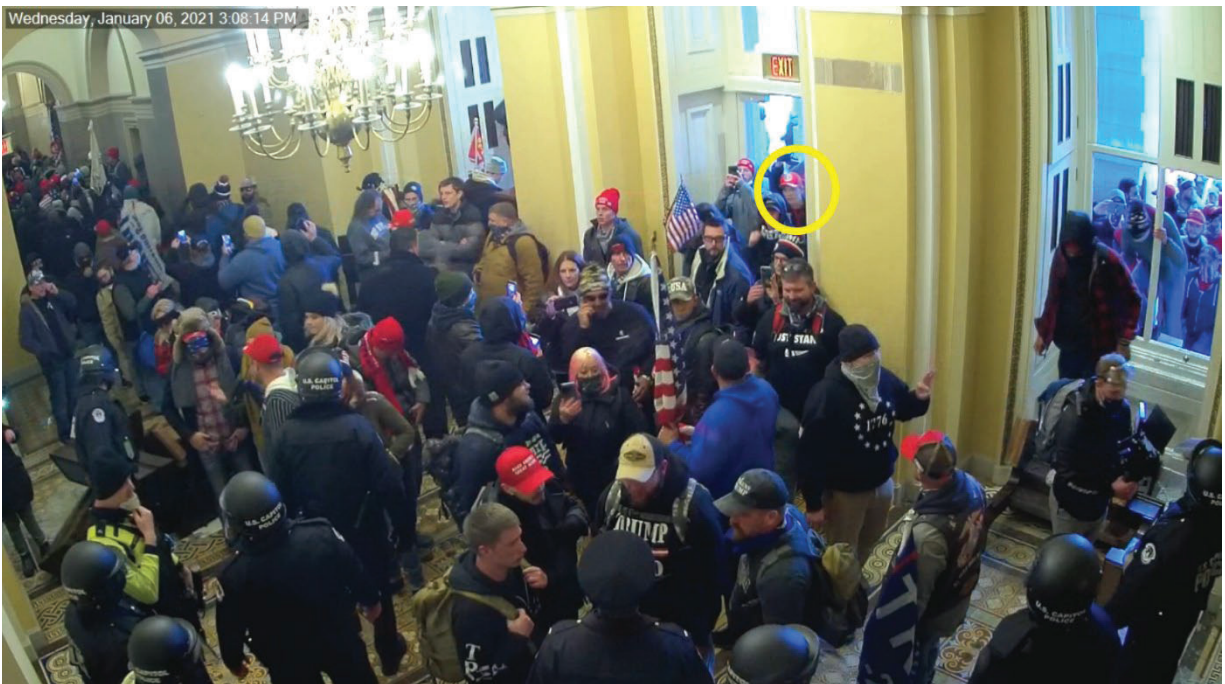


Image 2: Screenshot of Capitol CCTV, with JOHNSTON circled in yellow

Once inside, JOHNSTON walked in the direction of the area known as “the Crypt.”



Image 3: Screenshot of third-party video, with JOHNSTON circled in yellow

While in the Crypt, third-party video depicts JOHNSTON speaking into a small item, which appears to be a microphone, that he was holding in his hand.



Image 4: Screenshot of third-party video, with JOHNSTON circled in yellow

JOHNSTON also used his cellular phone to film or take photographs of his surroundings while in and near the Crypt.

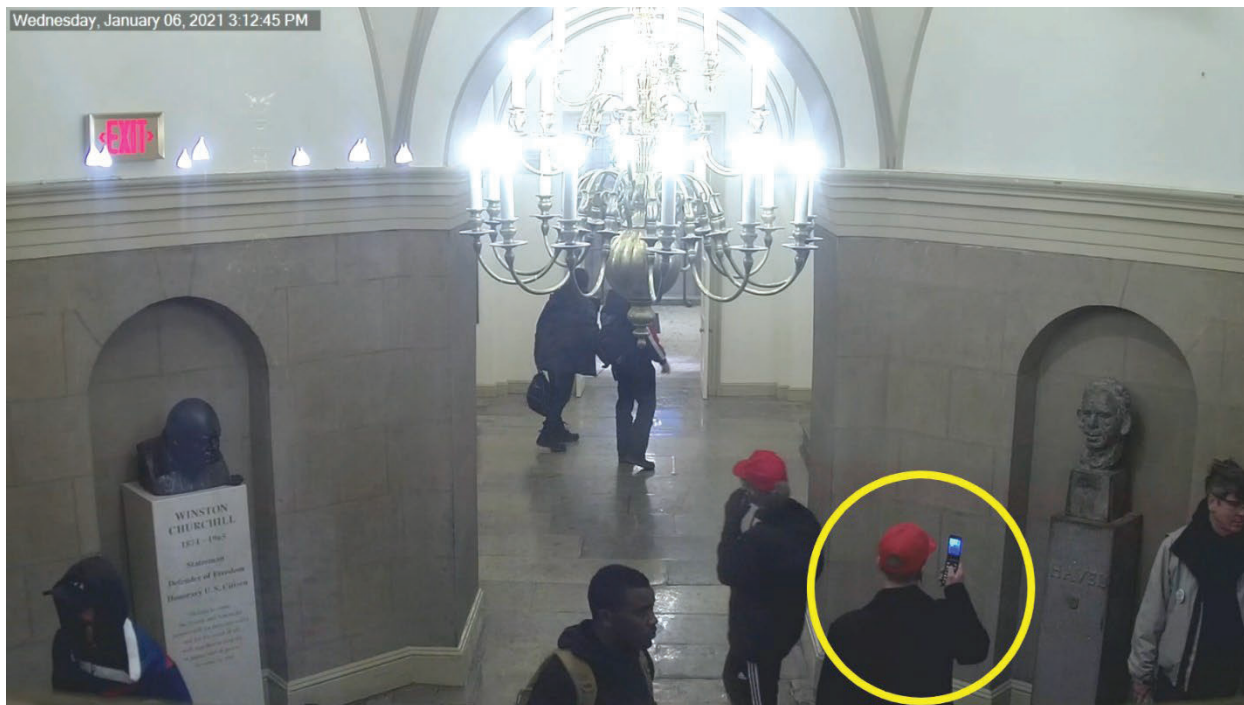


Image 5: Screenshot of Capitol CCTV, with JOHNSTON circled in yellow

At approximately 3:13 p.m., JOHNSTON walked south from the Crypt and entered the Hall of Columns. CCTV footage shows JOHNSTON walking past a large group of police officers gathered at the entrance to that hallway. This footage also depicts JOHNSTON, throughout his time in the Hall of Columns, speaking into the small item in his hand.

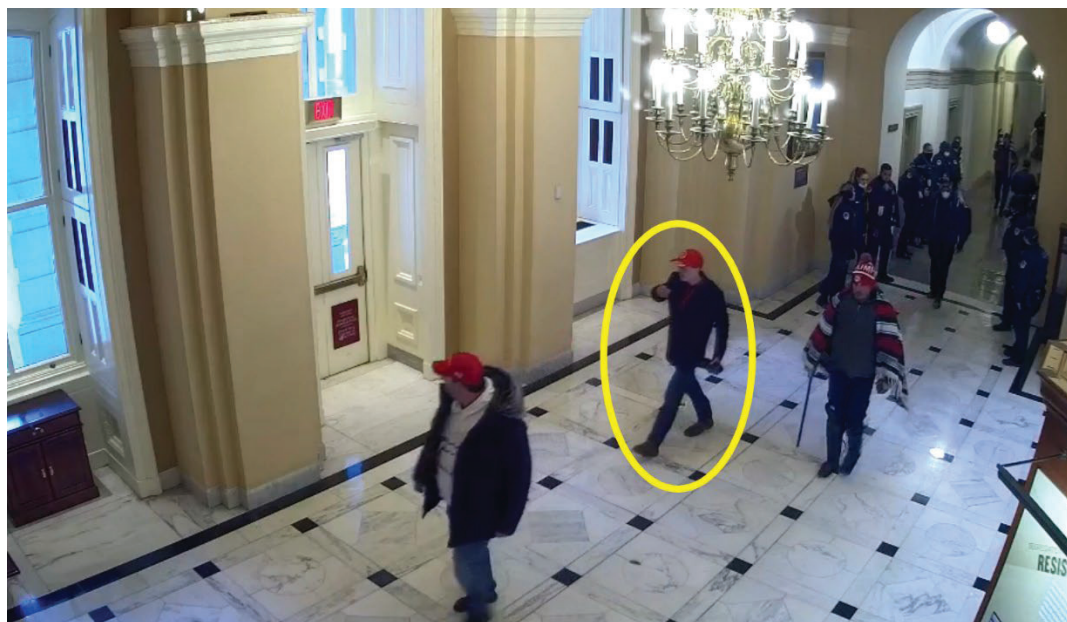


Image 6: Screenshot of Capitol CCTV, with JOHNSTON circled in yellow

JOHNSTON returned to an area just outside the Crypt at approximately 3:14 p.m. While there, CCTV footage shows JOHNSTON attempting to walk to another area of the building before being stopped by a USCP officer.

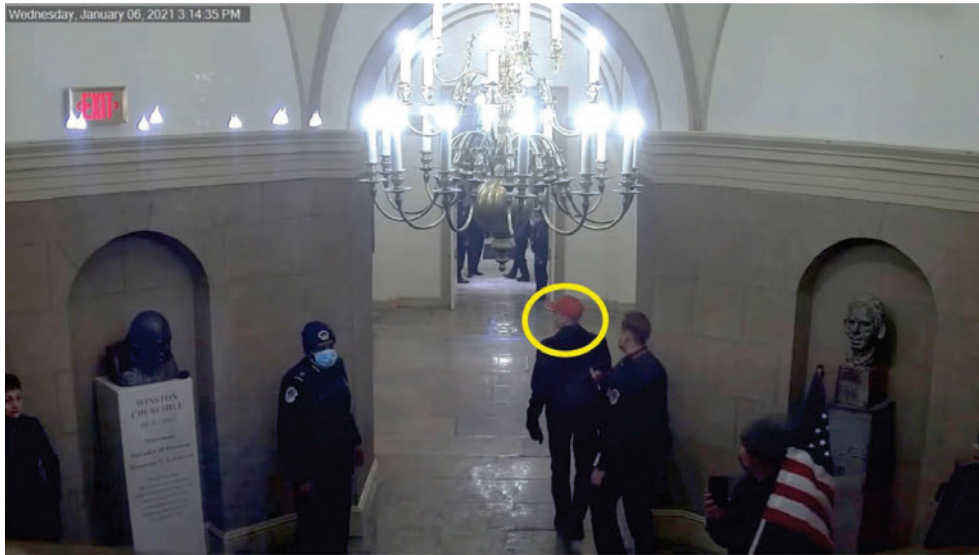


Image 7: Screenshot of Capitol CCTV, with JOHNSTON circled in yellow

The USCP officer is then seen pointing JOHNSTON in the direction of the Crypt. Based on my review of the video, it appears that the officer was likely pointing JOHNSTON to an exit. After this interaction, JOHNSTON walked through the Crypt and exited in the direction of the Senate Wing Door at approximately 3:15 p.m.



Image 8: Screenshot of Capitol CCTV, with JOHNSTON circled in yellow

JOHNSTON then exited the Capitol building through the Senate Wing Door at 3:17 p.m.

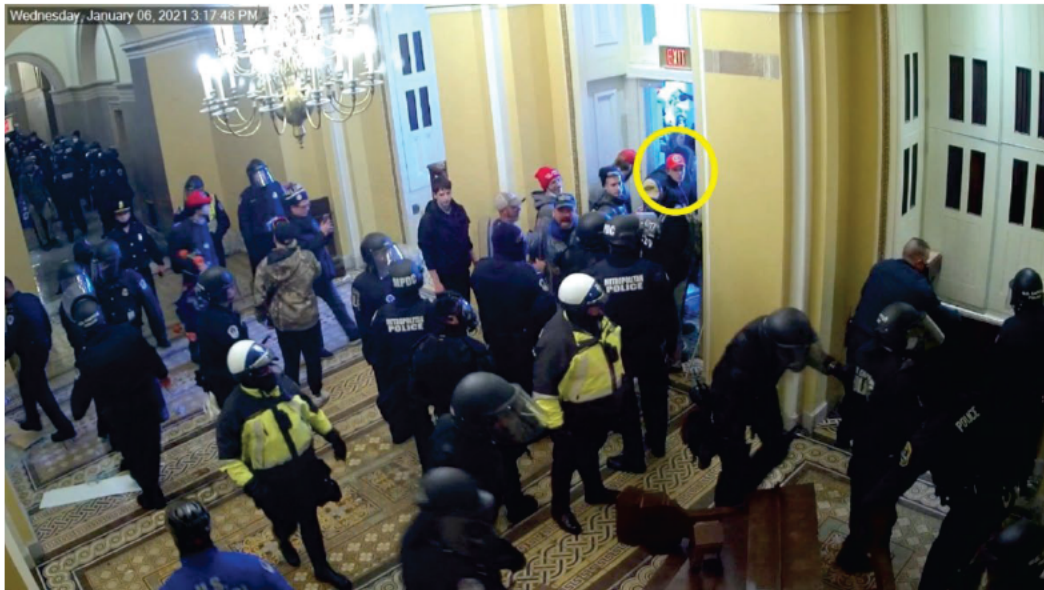


Image 9: Screenshot of Capitol CCTV footage, with JOHNSTON circled in yellow

In third-party video footage depicting JOHNSTON's exit from the Capitol building, a black earpiece is visible in his right ear.

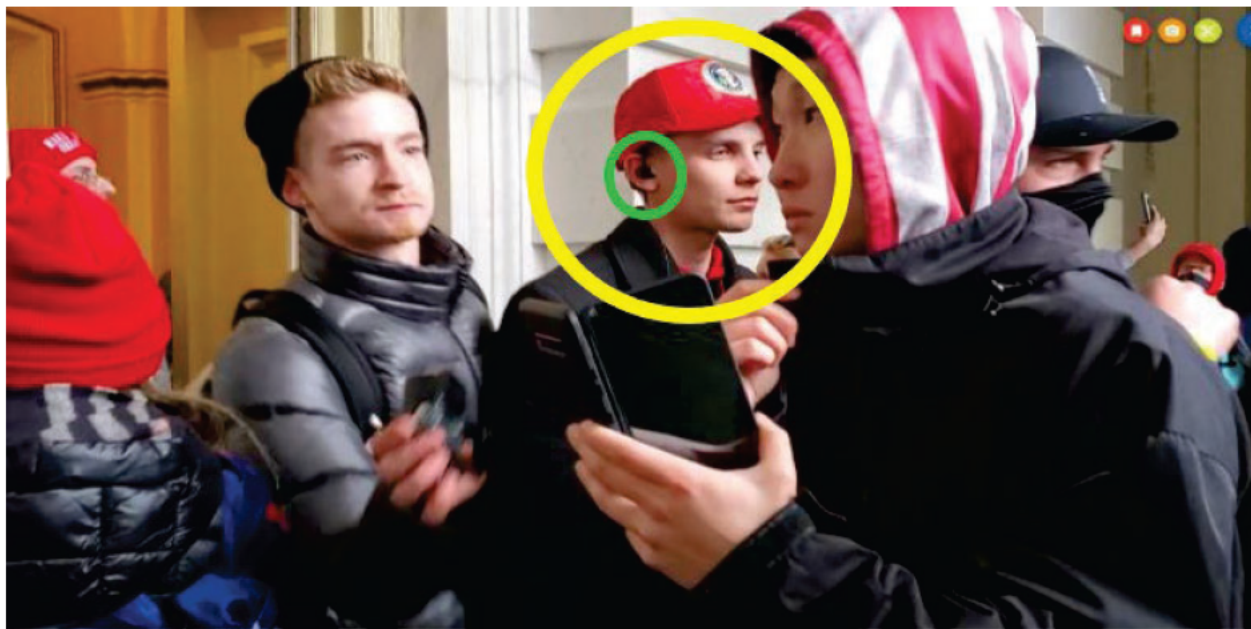
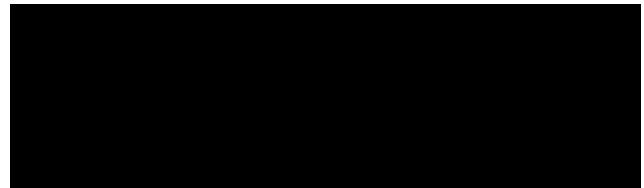


Image 10: Screenshot of third-party video, with JOHNSTON circled in yellow and earpiece circled in green

Probable Cause Conclusions

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



Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
by telephone, this 24 day of September 2024.

Honorable Zia M. Faruqi
U.S. MAGISTRATE JUDGE