

STATEMENT OF FACTS

Your affiant, John M. Mocello, has been employed as a Task Force Officer (TFO) by the Federal Bureau of Investigation (FBI) since 2015. Currently, I am assigned to the Washington Field Office, where I am tasked with investigating criminal activity in and around the Capitol grounds. As a TFO, 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 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 Michael R. 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 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, shortly 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 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.

Multiple tipsters have provided Snapchat videos to the FBI's National Threat Operations Center (NOTC). Snapchat is a mobile application (App) for Android and iOS (Apple) devices. One of the core concepts of the Snapchat app is that users can share pictures, videos, and messages with other Snapchat users. Content that users send is available to the recipient for only a short time before it becomes inaccessible, but recipients can save or screenshot that content using the recipient's device. Additionally, users can create Snapchat "stories," in which users can splice together photographs, videos, and messages into a one video that remains available for the user's friends to see for longer periods of time.

On January 11, 2021, for example, a witness submitted a recording of a Snapchat "story" that user GREG RUBENACKER had posted from his account. The witness stated that Snapchat user RUBENACKER had sent multiple Snapchat videos to the witness from inside the Capitol building on January 6, 2021. User RUBENACKER then posted some of those videos merged together in a "story" that other Snapchat users could see, including the witness. In an interview with the FBI, the witness explained that it watched the Snapchat story and knew the individual depicted throughout the videos to be GREG RUBENACKER of New York. The witness stated it had known RUBENACKER for multiple years and had attended school with RUBENACKER. Your affiant also searched the New York Department of Motor Vehicles and discovered a driver's license photograph for a GREG RUBENACKER. When shown the driver's license photograph, the witness stated that the photograph depicted the same GREG RUBENACKER it knew and had observed in the Snapchat story. Your affiant thus believes the individual in the Snapchat story described below is GREG RUBENACKER.

In the Snapchat "story," the username "GREG RUBENACKER" is clearly visible in the upper left corner of the screen. For about the first twenty-four seconds, the first video depicts a crowd of individuals with the Washington Monument visible in the background and the caption, "America is pissed." A screenshot of the video is below in Figure One, with a red oval around the username in the upper left corner.



Figure One

At about twenty-four seconds into the recording, the Snapchat story switches to the second video segment. In it, the user recording the video is following other rioters inside what appears to be the Capitol. The user making the recording can be heard saying, “Holy shit! This is history! We took the Capitol!” Your affiant believes the user recording the video is the individual who uttered these words, because the clarity and decibel of the words as compared to other sounds in the video indicate that the speaker is close enough to the camera to be the one recording.

At about thirty-eight seconds into the recording, the Snapchat story switches to the third video segment. Now, RUBENACKER shows his face while standing in what appears to be the Capitol Rotunda. RUBENACKER appears to be wearing a baseball cap with a red underbill, a winter jacket with a brown, fuzzy hood up over the baseball cap, and a blue and white surgical face mask. He also is sporting a dark-colored mustache and what appears to be a bleached long beard that is partially tucked into his jacket that is zipped up. RUBENACKER is smoking what appears to be a blue electronic cigarette or other similar vaping device. He inhales from the device and blows out smoke into the Rotunda on a number of occasions. Recording from below and pointing up showing his face and the Rotunda ceiling, RUBENACKER looks into the camera and says, “America, baby. What a time.” A screenshot of the video is below in Figure Two, again with the username highlighted in the upper left corner with a red oval.

Later, at about fifty seconds into the recording, the Snapchat story switches to the fourth and final installment. The video shows RUBENACKER sitting near a painting in the Capitol Rotunda and pans around to show the Capitol Rotunda and other rioters. RUBENACKER now has his brown hood down and is smoking what appears to be a marijuana cigarette (or “joint”). Early on, RUBENACKER looks into the camera and says, “Smoke out the Capitol, baby.” RUBENACKER then shows other individuals sitting near him and smoking in the Rotunda with a distinctive statue standing nearby. One of the other individuals then says “How many joints we have?” and can be seen counting the people around him smoking, including RUBENACKER who is holding his marijuana cigarette up in the air. RUBENACKER then immediately pans the camera back to himself and says “Hell yeah,” as he puts the cigarette back into his mouth, inhales, and exhales smoke into the Capitol Rotunda. A screenshot of this final video in the Snapchat story is below in Figure Three, again with the username highlighted in the upper left corner with a red oval.



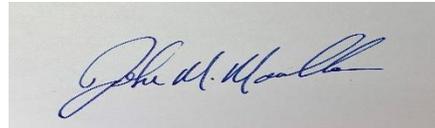
Figure Two



Figure Three

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



JOHN M. MOCELLO
TASK FORCE OFFICER, FBI

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
by telephone, this 27th day of January 2021.

ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE