

STATEMENT OF FACTS

I, Charles Butcher, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent with the Federal Bureau of Investigation and have been since February of 2015. I am presently assigned to the Washington Field Office's International Corruption Squad, where I responsible for investigating Antitrust, Foreign Corrupt Practices Act, and Kleptocracy violations. I was previously assigned to the FBI's Miami Field Office, where I was responsible for investigating health care fraud and a host of other violations of federal law.

2. I have received over 800 hours of formal training at the FBI Academy in Quantico, VA. Through the FBI Academy and continuing education, I have received extensive training in criminal case management, investigative techniques, computer technology, digital device handling, evidence collection, social media exploitation, cellular data analysis, and the execution of search and seizure warrants, among other things.

3. This affidavit is intended to show only that there is sufficient probable cause for the requested criminal complaint and does not set forth all of my knowledge about this matter.

4. I make this affidavit in support of a criminal complaint charging DAVID MISH ("MISH") with violating 18 U.S.C. § 1752(a)(1) and (2), as well as 40 U.S.C. § 5104(e)(2)(D), U.S.C. § 5104(e)(2)(E), and U.S.C. § 5104(e)(2)(G) as set forth below.

PROBABLE CAUSE

5. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., 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 are allowed access inside the U.S. Capitol.

6. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public.

7. 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.

8. 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. The crowd included many people who expressly objected to the conduct of the proceedings to certify

the vote count of the Electoral College of the 2020 Presidential Election, and who expressly stated that their purpose was to stop or disrupt those proceedings.

9. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and past officers of the U.S. Capitol Police, including by engaging in assaultive and abusive conduct towards officers of the U.S. Capitol Police who were lawfully attempting to block access to the U.S. Capitol. The crowd then advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by U.S. Capitol Police Officers or other authorized security officials.

10. At such time, the certification proceedings, specifically, the proceedings in the House and Senate to address the objection, 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 after 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.

11. 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, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the U.S. Capitol, including the danger posed by individuals who

had entered the U.S. Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 pm after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

12. On approximately January 7, 2021, David Mish contacted the Washington, D.C. Metropolitan Police Department (“MPD”) stating that he had information to provide about the fatal shooting of Ashli Babbitt, who was shot inside the U.S. Capitol during the civil unrest. On January 8, 2020, Detective John Hendrick of the MPD contacted MISH by phone and recorded the ensuing conversation regarding the Babbitt shooting. MISH stated that he, together with several others, had entered the United States Capitol on January 6, 2021. MISH asked “[b]ecause I entered the Capitol Building are you guys gonna take me to jail? I didn’t break anything. . . . I went in, yes.” Detective Hendrick clarified with MISH that his sole investigatory focus was on the shooting and that he was not involved in investigating MISH’s actions inside the United States Capitol. Detective Hendrick explained that investigation of demonstrators’ actions inside was being handled by other agencies and that he could not say whether or not MISH would be arrested. MISH subsequently stated that “I came up the stairs where the scaffolding was. Um, I was with a group of guys. . . . [E]verybody was yelling ‘breach the building.’”

13. Based upon my knowledge of the investigation and review of video footage of the civil unrest in the United States Capitol, I believe that MISH was present at the door leading to what is known as the Speaker’s Lobby.

14. In his interview with Detective Hendrick, MISH stated that a group of several

individuals went into a bathroom adjacent to the Speaker's Lobby and he objected when one of the group broke a mirror, stating, "we're trying to get to the politicians because we wanna voice our . . . we wanna voice to 'em." MISH described Babbitt saying to the officer who was at the doorway, "Just open the door. They're not gonna stop," or words to that effect, referring to the crowd gathered at the doorway. MISH further stated that he had used his cell phone to record some of the activity that occurred within the United States Capitol. MISH told the detective, "from my video you can tell that I was one of the, I was the first group of people to hit that doorway," referring again to the locked doorway leading to the Speaker's Lobby that the rioters were attempting to breach. MISH stated he would provide the video footage to MPD Detective Hendrick and subsequently e-mailed a link to a Google Drive folder. To date, neither MPD nor the FBI has been able to access the content of the link.

15. During national news coverage of the civil unrest described above, video footage that appeared to be captured on mobile devices of persons present on the scene depicted scores of individuals inside the United States Capitol without authority to be there. Based upon the description MISH provided to MPD Detective Hendrick, and MISH's driver license photo, agents reviewed publicly available videos from a number of sources including Youtube, and located videos that confirmed MISH's presence in the United States Capitol in the area adjacent to the Speaker's Lobby. MISH described his clothing as a "black sweater . . . blue jeans . . . blue lives matter with a . . . United States flag on the hat and the hat is blue." These clothing items and MISH's face were identifiable on video footage. Some still shots showing MISH in the video reviewed by your affiant are below, with MISH indicated by a red oval.





16. Based on the foregoing, your affiant submits that there is probable cause to believe that MISH 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. 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.

17. Your affiant submits there is also probable cause to believe that MISH violated 40 U.S.C. §§ 5104(e)(2)(D), § 5104(e)(2)(E), and § 5104(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; (E) obstruct, or impede passage through or within, the Grounds or any of the Capitol Buildings; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.

CONCLUSION

18. I submit that this affidavit supports probable cause for a warrant to arrest MISH, for violating 18 U.S.C. § 1752(a)(1) and (2), as well as 40 U.S.C. § 5104(e)(2)(D), U.S.C. § 5104(e)(2)(E), and U.S.C. § 5104(e)(2)(G).

Respectfully submitted,



Charles Butcher
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 15th day of January 2021.

Zia M. Faruqui
UNITED STATES MAGISTRATE JUDGE