

UNITED STATES DISTRICT COURT
for the
District of Columbia

United States of America)
v.)
Benjamin Martin, (DOB: [REDACTED]) Case No.
)
)
)
)
)
)

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 6, 2021 in the county of _____ in the _____
in the District of Columbia, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. § 1752(a)(1) - Entering and Remaining in a Restricted Building or Grounds;	
18 U.S.C. § 1752(a)(2) - Disorderly and Disruptive Conduct in a Restricted Building or Grounds;	
40 U.S.C. § 5104(e)(2)(D) - Disorderly Conduct in a Capitol Building;	
40 U.S.C. § 5104(e)(2)(G) - Parading, Demonstrating, or Picketing in a Capitol Building;	
18 U.S.C. § 231(a)(3) - Obstructing Law Enforcement During Civil Disorder;	
18 U.S.C. § 1512(c)(2) - Obstructing or Impeding an Official Proceeding.	

This criminal complaint is based on these facts:

See attached statement of facts.

☒ Continued on the attached sheet.

[REDACTED]
Complainant's signature

[REDACTED] Special Agent

Printed name and title

[REDACTED]


Digitally
signed by G.
Michael Harvey

Judge's signature

Date: 08/06/2021

City and state: Washington, D.C.

G. Michael Harvey, U.S. Magistrate Judge

Printed name and title

STATEMENT OF FACTS

Your affiant, [REDACTED] is a Special Agent with the Federal Bureau of Investigation (FBI) assigned to the Sacramento Field Office. 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 violations of Federal criminal laws.

Background – 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 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 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 and Conduct of Benjamin Martin

On or about January 7, 2021, the FBI National Threat Operations Center received a tip from a tipster who said that Benjamin Martin of Madera, California had been involved in the January 6, 2021 break-in at the U.S. Capitol Building. The tipster provided a date of birth, cellular telephone number, and home telephone number for Martin. The tipster said Martin was wearing a red MAGA hat and a black puffer jacket. The tipster stated he/she saw a video from the Capitol riot on ABC 30 news in which news in which he/she saw Martin get pepper sprayed, retreat towards the camera, showing his face and then returned to continue to press into the building. The tipster provided a screenshot from ABC "World News Tonight" with a red circle around the person identified as Martin:



Based on a search of open source information and law enforcement databases, your affiants identified a BENJAMIN J. MARTIN (MARTIN) living in Madera, California with the same identifiers as those provided by the tipster.

In subsequent interviews of the tipster, he/she stated that he/she had known MARTIN since high school but they had not spoken in a long time. The tipster stated that MARTIN had become increasingly political in his views on Facebook and as a result, the tipster decided to no longer follow MARTIN on Facebook. The tipster said that his/her significant other did still follow MARTIN on Facebook to keep an eye on him and saw a video prior to January 6, 2021, in which MARTIN indicated he would be in Washington D.C. on January 6, 2021. The tipster said that

he/she was unable to find the video again after the initial news report on January 6, 2021, but he/she had seen an additional video on the news with MARTIN with a group at the D.C. airport shouting at Senator Lindsay Graham. During his/her interview with agents, the tipster pulled his/her phone out to look at Facebook and verified that the videos on MARTIN’s Facebook page, as of January 11, 2021, were the same videos he/she saw on MARTIN’s Facebook page on January 6, 2021.¹

On or about January 11, 2021, an online open source search was conducted for information associated with MARTIN which revealed a news article by GV Wire, dated January 8, 2021, titled, “Local Trump Supporters at Capitol Riots, Part of ‘Traitor’ Graham Confrontation” in which MARTIN, identified as “Clovis real estate agent Ben Martin,”² was interviewed regarding his experiences and participation with the events in Washington D.C. on January 6, 2021. An excerpt from the article indicated that MARTIN was in Washington D.C. on January 6, 2021, participated in the protests, and entered the U.S. Capitol building. The section of the article pertaining to MARTIN entering the U.S. Capitol stated:

Clovis real estate agent Ben Martin told GV Wire that he was actually inside the U.S. Capitol on Wednesday during the riots — although he didn’t intend to enter the building.

Martin says there were no barriers along the perimeter of the Capitol, on what he believed to be the north side. He went up toward the side of the building when he saw the unrest happening.

“There were people trying to break into the building and I was trying to calm everyone down and to get it to be a little bit peaceful and say, ‘Hey, guys, you know, we can be here and we don’t need to act out,’ ” Martin said. “There were some inciters who were throwing like — Trumpers don’t throw rocks at buildings. Trumpers don’t try to break windows or break doors.”

Martin says “other groups” were the ones breaking in. He attempted to put himself physically between the mob and the police.

“I was trying to negotiate with both sides to de-escalate the issue,” Martin said. “I was literally in the middle of the front door when the herd behind me — there were thousands of them. All this weight of people starts moving you in a direction, I couldn’t control the direction of anything at that point,” Martin said.

¹ As explained below, at least part of MARTIN’s Facebook account is publicly available. It is unknown whether the tipster used his/her significant other’s Facebook account to look at MARTIN’s account, or whether he/she accessed the portions that are publicly available.

² MARTIN was known to be a real estate agent who has worked in the Fresno/Clovis region of California.

Once inside, Martin said that he continued to urge people to leave. He believed he was about 10 to 15 feet inside the building before peacefully walking out, avoiding the pepper spray.

“This is way too out of control. I’m one person and I can’t help anymore,” Martin said.³

On or about January 15, 2021, MARTIN was interviewed by phone by agents from FBI Sacramento. During the interview, MARTIN stated that he was in Washington D.C. on January 6, 2021, with his father and attended the Donald Trump rally. MARTIN said that after the rally he walked his father back to his hotel to take a nap and then proceeded to run to the United States Capitol building. MARTIN said that he arrived at the U.S. Capitol at 1:45 PM, and the stairs at the front had too many people on them, so he made his way to what he believed to be the north side of the Capitol building. MARTIN saw individuals there scaling the wall with ropes and said that he did not understand why they were doing this, because they could have walked around and used a ramp. MARTIN said he walked in front of a door to the U.S. Capitol and stood in between the police and the protesters. MARTIN said he was attempting to calm everyone down. MARTIN said he felt it was foolish for him to think he could resist so many people pushing him forward and decided to leave that location and watched the “protest” continue from the Capitol grounds. Martin said that he took two photos of the back of people’s heads near a door on the North side of Capitol. Martin later sent the following two photos to the agents via text message:



³ Available at <https://gvwire.com/2021/01/08/local-trump-supporters-at-capitol-riots-part-of-traitor-graham-confrontation/> last visited July 27, 2021.

A search warrant of the MARTIN Facebook account identified by the tipster revealed that the account was registered as “benjamin.martin.90410.” A review of the account further revealed communications between MARTIN and a Facebook account associated with R.T. Based on a different investigation, R.T. is known to the FBI to have advocated for violence in the lead-up to January 6, organized others to travel to D.C. for January 6 (some of whom participated in the riot at the U.S. Capitol), and to have participated himself in the riot at the U.S. Capitol on January 6. MARTIN’s account contained communications occurring on January 3, 2021, between R.T. and MARTIN through Facebook Messenger in which MARTIN and R.T. discussed traveling to Washington D.C. for January 6, 2021. In the communications, R.T. invited MARTIN to join a Telegram chat for “a group of 200+ California patriots that are going to DC Jan 6,” which MARTIN accepted and joined. On January 6, 2021, MARTIN sent four messages to R.T. that stated, “we need to meet”, “I just spoke to Peggy Hall she said we need to meet”, and “I am in DC as we”, “well” [sic].

Through Facebook, MARTIN messaged four photos from January 6, 2021. Two were the same at the photos that MARTIN provided to the FBI (included above). The other two appear to be of MARTIN:



MARTIN also shared with other Facebook users two videos that appear to be footage of the outside of a door on the North side of Capitol. The second video appeared to be taken shortly after the first video ended. In the second video, MARTIN appears to be holding open a door to the

U.S. Capitol. A law enforcement officer can be seen hitting MARTIN's hand with what appears to be a baton to get him to release the door. After his hand is struck, MARTIN and the officer struggle over the door. MARTIN appears to be trying to keep the door open while the officer attempts to close it. The door is closed and the video then spins around to capture the crowd around the door. One screenshot from each video is included below:



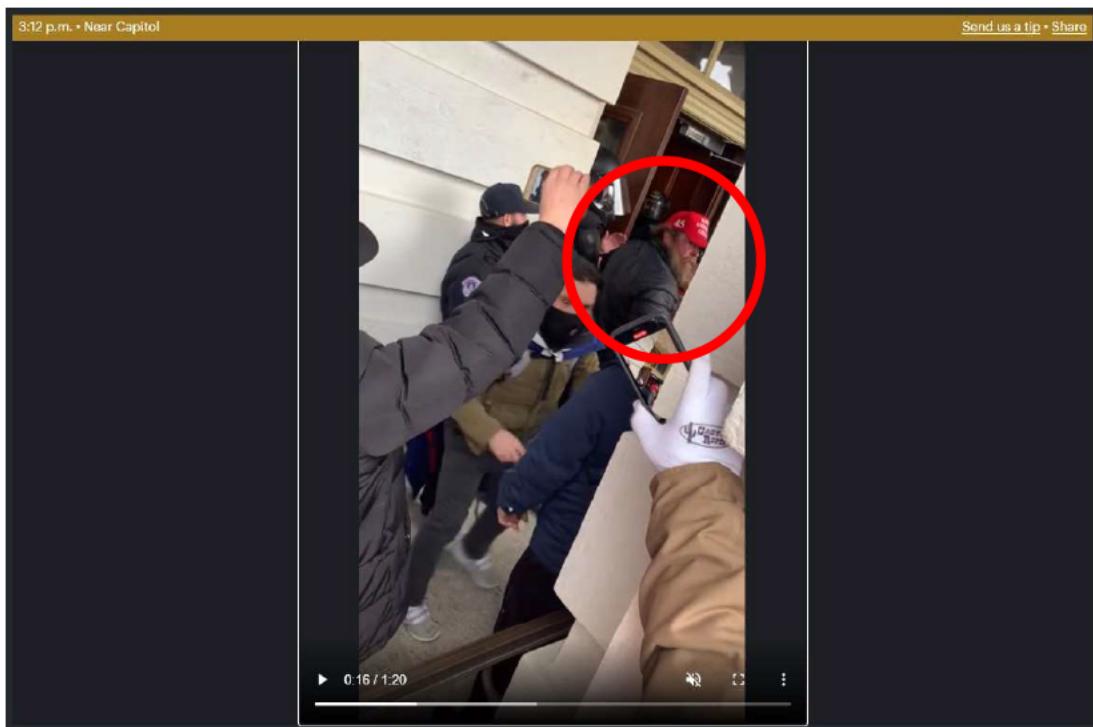
FBI Sacramento identified a publicly available video on YouTube.com posted on January 7, 2021, by YouTube user Dominic Zimmerman, titled, "Washington D.C. Capitol Hill Jan. 6 2021" which captures MARTIN at the U.S. Capitol on January 6, 2021. The video appears to be a montage of different scenes from that day. One scene shows MARTIN on U.S. Capitol grounds speaking to law enforcement officers and, among other statements, MARTIN can be observed holding a cell phone and stating words to the effect of, "You guys are not doing your job. You swore an oath. You're bound by your word. Move out of the way and let us in. Move out of the way and let us in." The next scene shows MARTIN and others open a door to the U.S. Capitol in between two USCP officers and proceed to enter the U.S. Capitol with others:



FBI Sacramento also reviewed closed circuit television (CCTV) footage from inside the U.S Capitol building on January 6, 2021. A camera inside the U.S. Capitol above a door on the north side of the U.S. Capitol facing south captures the ingress and egress of individuals through the door. During review of the CCTV footage, agents identified a person who appears to be MARTIN walking into the U.S. Capitol at approximately 3:10 P.M. MARTIN is observed with a beard, wearing a dark colored puffer jacket, dark colored pants and a red hat (consistent with the clothing in the images above). MARTIN appears to speak to a law enforcement officer, but the CCTV has no sound. About two minutes after MARTIN enters the building, law enforcement officers form a human barrier and push MARTIN and the other individuals present back out through the same door. Images from the CCTV are below:



FBI Sacramento also reviewed footage taken from the riot in Washington D.C. on January 6, 2021, that was posted to Projects.propublica.org under an article titled, “What Parler Saw During the Attack on the Capitol.” Agents identified a person who appears to be MARTIN near a door on the north side of the U.S. Capitol, wearing a dark colored puffer jacket and red hat with “45” written on the side in white numbers. Standing just outside the threshold to the door, the footage shows MARTIN holding his phone in his right hand while holding a door to the U.S. Capitol open with his left hand. At approximately 0:16 in the video, MARTIN is hit in the head with a chair which was thrown from behind him. After the chair hits MARTIN, he looks behind him and his face is visible to the camera. See the screenshot, below. MARTIN continues to hold the door open until what appeared to be chemical irritant is fired from inside the U.S. Capitol. The time label on the video indicates 3:12 P.M., suggesting that the events occurred shortly after the CCTV footage of MARTIN entering and exiting the building, described above.



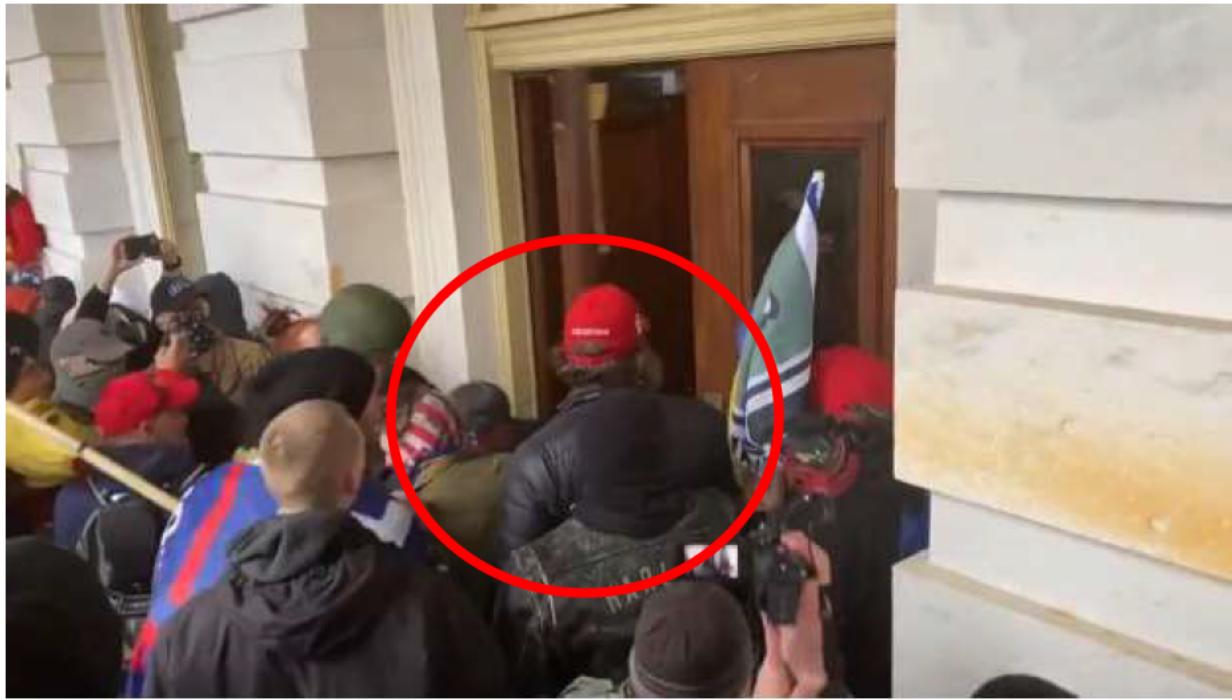
FBI Sacramento further identified publicly available videos on Twitter taken on January 6, 2021, that capture MARTIN at the U.S. Capitol on January 6, 2021. One video posted on January 6, 2021 by @realJamesKlug shows MARTIN standing outside doors at the U.S. Capitol as they are pried open by others in the crowd. Law enforcement attempts unsuccessfully to close the door from the inside. A law enforcement officer is then seen with a weapon protruding from behind an inner door:





Another video posted on January 6, 2021, by Twitter account @j12doz appears to show a different angle from the videos posted to Twitter by @realJamesKlug in which MARTIN is present in the crowd as doors to the U.S. Capitol are pried open.





Still another video posted to Twitter by Twitter account @realJamesKlug shows law enforcement officers exiting the doors while simultaneously spraying a chemical irritant into the crowd. MARTIN appears to be sprayed by the officers (MARTIN circled in red below):



Criminal Charges

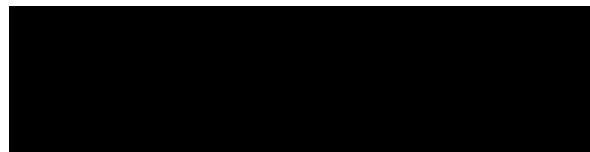
Based on the foregoing, your affiant submits that there is probable cause to believe that BENJAMIN MARTIN violated 18 U.S.C. § 1752(a)(1) and (2), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do;

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 BENJAMIN MARTIN 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.

Your affiant submits there is probable cause to believe that BENJAMIN MARTIN 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.

Finally, your affiant submits there is probable cause to believe that BENJAMIN MARTIN 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 6th day of August 2021.

A handwritten signature of Michael Harvey in black ink.

Digitally signed by G.
Michael Harvey
Date: 2021.08.06
11:08:25 -04'00'

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE