

STATEMENT OF FACTS

Your affiant, Robert DiGregorio is a Special Agent with the Federal Bureau of Investigation. I have served as a Special Agent with the FBI since July 2019. Since September 2020, I have been assigned to New York Office's Counter-terrorism Threat Response squad with the Joint Terrorism Task Force. In my duties as a Special Agent, I investigate criminal violations relating to various federal crimes. 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, 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 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, 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 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.

On January 12, 2021, an individual submitted an online tip to the FBI National Threat Operations Center (NTOC) via tips.fbi.gov. The tipster, hereinafter referred to as WITNESS 1, claimed to possess photographs posted to an unidentified Facebook group and a link for a video reported to show DOVID SCHWARTZBERG exiting the U.S. Capitol building on January 6, 2021. WITNESS 1 does not personally know SCHWARTZBERG and was told by another member of this group SCHWARTZBERG's name. WITNESS 1 does not wish to testify but indicated that he/she felt it was his/her duty to report the information.

On January 20, 2021, FBI Task Force Officer William Lenz interviewed WITNESS 1. WITNESS 1 advised SCHWARTZBERG was the individual depicted exiting the U.S. Capitol in the below-provided photograph.¹

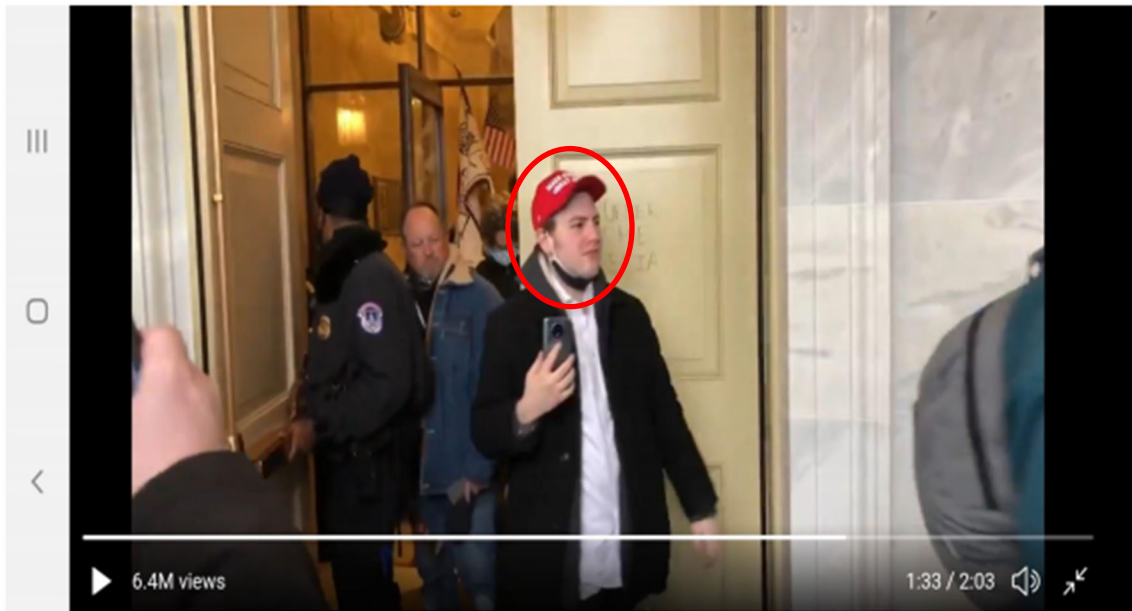


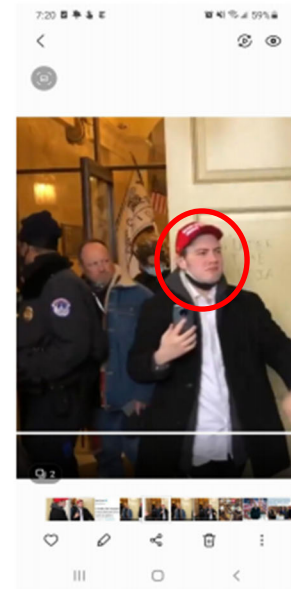
¹ The initial tip identified SCHWARTZBERG as DOVID SHWATSMAN. Agents believe that SCHWARTZBERG's name was mistyped into their system. When Officer Lenz spoke to WITNESS 1, he/she without hesitation identified SCHWARTZBERG as SCHWARTZBERG, however, he/she misspelled his name as SHWARTZBERG without a "c." Officer Lenz discovered the misspelling when he could not locate records for DOVID SHWARTZBERG, but was able to locate records and information and compare photographs from Witness 1's identification to public records, such as a driver's license photograph, as discussed below to positively identify DOVID SCHWARTZBERG.

WITNESS 1 provided the following additional photographs:



WITNESS 1 also provided the following photographs with SCHWARTZBERG encircled:





WITNESS 1 provided the following link for a video on Twitter depicting SCHWARTZBERG exiting the U.S. Capitol building:

<https://twitter.com/mattmiller757/status/1346944869588230144?s=20>. Your affiant has reviewed this video and, as described below, interviewed SCHWARTZBERG in person. The man depicted at 1:32 is consistent with the man your affiant interviewed named DOVID SCHWARTZBERG and identified by WITNESS 1.

Your affiant also has reviewed records from the New York State Department of Motor Vehicles for DOVID SCHWARTZBERG. Your affiant has compared the photograph assigned to SCHWARTZBERG by the New York State Department of Motor Vehicles to the photographs discussed above depicting a male exiting the U.S. Capitol and identified as DOVID SCHWARTZBERG by WITNESS 1. The two appear identical.

United States Capitol Police security cameras captured images of SCHWARTZBERG inside the U.S. Capitol building on January 6, 2021, during the Capitol Riot. Below are stills from the security cameras with SCHWARTZBERG encircled:





On March 11, 2021, your affiant and another agent with FBI interviewed SCHWARTZBERG regarding his activity at the U.S. Capitol on January 6, 2021. During the interview, SCHWARTZBERG was shown the digital evidence provided by WITNESS 1, some of which is included in this affidavit. SCHWARTZBERG confirmed he was the individual shown exiting the U.S. Capitol building on January 6, 2021. SCHWARTZBERG further admitted he wanted to “be where the action was” and willingly entered the U.S. Capitol through a broken window following his attendance at President Trump’s rally. SCHWARTZBERG stated that he did not break the window nor knew the identity of who broke the window. SCHWARTZBERG proceeded to show the interviewers several videos he recorded on his cell phone of the events inside and outside the U.S. Capitol building, including a TikTok video, which was posted to TikTok account @dovidsberg26 previously. That video depicted an individual inside the U.S. Capitol building on January 6, 2021, with the caption: “It was intense inside congress

today.” The same individual depicted in the TikTok video was also shown exiting the U.S. Capitol building in front of SCHWARTZBERG in the video provided by WITNESS 1. SCHWARTZBERG confirmed the TikTok account @dovidsberg26 belonged to him, but TikTok banned his account from service due to a violation of community guidelines following his posts at the U.S. Capitol on January 6, 2021. SCHWARTZBERG further explained that while he was inside the U.S. Capitol building, he took numerous photos and recorded numerous videos of events that occurred on January 6, 2021, on his cellular telephone. SCHWARTZBERG was able to provide several videos to your affiant over email, however, the number of videos that were present on the cell phone were too numerous to send via email. SCHWARTZBERG further explained that several of the videos on the cell phone depicted individuals doing “stupid things” and he did not want to incriminate anyone in the videos.²

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

² The FBI has reviewed the available information for SCHWARTZBERG’s cell phone number and Google email address in order to determine whether there was any evidence that devices associated with that cell phone number and email address were in the area of the U.S. Capitol Building on January 6, 2021. Agents did not locate SCHWARTZBERG’s cell phone number and Google email address in the available information.

Your affiant submits there is also probable cause to believe that SCHWARTZBERG 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.



Robert DiGregorio
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 16th day of April 2021.

ROBIN M. MERIWEATHER
U.S. MAGISTRATE JUDGE