

STATEMENT OF FACTS

On January 6, 2021, your affiant, [REDACTED], was on duty and performing my official duties as a Special Agent with the Federal Bureau of Investigation (“FBI”). As a Special Agent with the Federal Bureau of Investigation, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of violations 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 are 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 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.

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 or about January 7, 2021, an individual (“Witness-1 or W-1”) contacted law enforcement and stated that ROBERT **BALLESTEROS** (DOB XX/XX/1993) of Mahopac, New York, posted a video on his Instagram (robbyb45) which appears to have been recorded inside the Capitol building. Witness-1 provided this Instagram video to law enforcement. That video included the Instagram Account’s profile page, which is depicted below:



During the Instagram video, an individual states, “Look at this. We broke into the Capitol building” as others in the crowd scream, “Our house.” Below are screenshots from the video. W-1 identified the individual wearing the black mask in the screenshot on the left below as **BALLESTEROS**. W-1 told FBI agents that W-1 had known **BALLESTEROS** for years and knew **BALLESTEROS** to be the user of the Instagram profile “robbyb45.” Your affiant went to the Instagram page identified by W-1 and observed several photographs that were publicly viewable of **BALLESTEROS** on the Instagram page that appear to be of the same person depicted in the video inside the Capitol. Your affiant also searched open source databases and obtained a New York driver’s license photograph of **BALLESTEROS** (DOB XX/XX/1993). The person depicted inside the Capitol appears to be consistent with the individual depicted in the driver’s license photograph, although the hair color is different.



Your affiant obtained records from Instagram for the social media account described above. In a review of those records, your affiant observed a conversation on January 7, 2021, between **ROBERT BALLESTEROS** and another individual (hereinafter U-1) in which **BALLESTEROS** discussed his participation in the unlawful entry into the Capitol on January 6, 2021. A portion of that conversation is included below:

U-1: "Did u deadass go to Washington?"
BALLESTEROS: "Ofc"
U-1: "U storm the building"
BALLESTEROS: "Put my foot in that door" "Made my stand"
U-1: "Where's the video" "If it ain't on video it's cap"
BALLESTEROS: "Took it down"
U-1: "Lemme see u ain't save it"
BALLESTEROS: "Yea I got u"
U-1: "Bruh who u go wit"
BALLESTEROS: "Couple My boys idk if u know em"
U-1: "I'm guessing d byrd"
BALLESTEROS: "Nah d bird is a liberal" "Some lady was killed" "I got the video of that too"
U-1: "Yooo lemme see those in person"
BALLESTEROS: "She was shot for nothing" "Literally" "Lol some kid told me he tipped off the hotline" "Of the video" "Fag"

Your affiant also observed a conversation on January 6, 2021 – January 7, 2021 between ROBERT **BALLESTEROS** and another individual (hereinafter U-2) in which **BALLESTEROS** discussed his participation in the unlawful entry into the Capitol on January 6, 2021.

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


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 20th day of January 2021.


ROBIN M. MERIWEATHER
U.S. MAGISTRATE JUDGE