
Printed name and title

STATEMENT OF FACTS

Your affiant, Richard Migliara, is a special agent assigned to the Federal Bureau of Investigation ("FBI"). In my duties as a special agent, I was assigned to the FBI's Washington Field Office, where I have served on a drug and violent crime squad. 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.

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 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 Michael R. 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 Michael R. 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.

Facts Specific to Andrew Alan Hernandez

The FBI has identified Andrew Alan Hernandez (referred herein as “Hernandez”), based on FBI interviews, information obtained from open sources, and an investigation, as having made his way inside the U.S. Capitol on January 6, 2021. Hernandez is a resident of California.

On January 19, 2021, the FBI interviewed (via telephone) a manager (“Witness No. 1”) at Hernandez’s former employer (“Company No. 1”). Witness No. 1 is familiar with Hernandez due to his employment with Company No. 1. Witness No. 1 told the FBI agent that Company No. 1’s public information office had received a complaint from the public about an employee, later identified as Hernandez, participating in the U.S. Capitol riots on January 6, 2021. The employee (Hernandez) was identified because he was wearing the company shirt and hat in a picture that was on the cover of the New York Times magazine. Witness No. 1 told the agent that he had identified Hernandez from the photograph published by the New York Times Magazine that shows Hernandez wearing a shirt and hat bearing the company’s name and logo. After being confronted by the company’s management, Witness No. 1 told the FBI agent that Hernandez was subsequently terminated from Company No. 1 for misrepresenting the company in illegal activities. Below is a photograph from the New York Times Magazine from inside the U.S. Capitol on January 6, 2021, with Hernandez circled.



The FBI has confirmed that the New York Times photograph by Erin Scaff, shown above, was published by the NY Times on or about January 14, 2021.

Your affiant reviewed a copy of a driver's license photograph of Andrew Alan Hernandez. Your affiant confirmed that the person depicted in Hernandez's driver's license photograph bears a strong resemblance to the individual depicted in the photograph from the New York Times and in security camera footage from inside the U.S. Capitol, in which an individual appearing to be Hernandez can be seen entering the Capitol with a group of rioters who are violently pushing their way into the building. A still image from the security camera video is below, with Hernandez circled. In the video from the U.S. Capitol, Hernandez can be seen shouting, but what he is saying is inaudible.



In the below photograph obtained from Getty Images that your affiant has examined, Hernandez (circled) is shown carrying a flag with a GoPro camera zip-tied to the flag pole. Your affiant knows from his training and experience that Go-Pro cameras are digital devices that allow users to record video and photographs and store that data on memory cards.



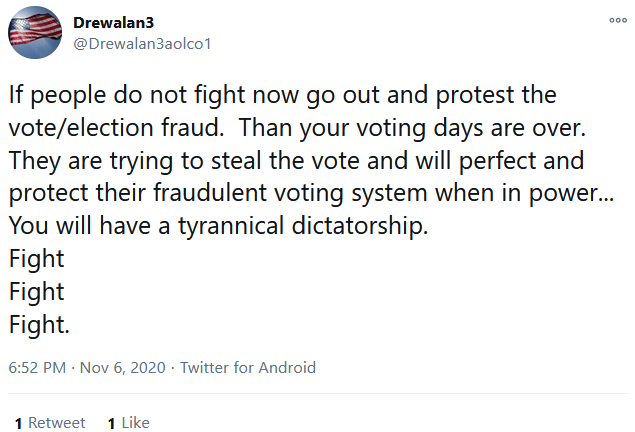
FBI social media analysts found several social media accounts which are either believed to be associated with Hernandez (YouTube) or have been confirmed that Hernandez is the subscriber (Twitter) and which were publically available. A review of the accounts suggests that Hernandez adheres to multiple ideologies including: Q-Anon, health and science related conspiracies, financial conspiracies, and various conspiracies associated to US political figures. Below, in Post No. 1, is a post from one of the accounts, which has a photograph of a burning Q over a United States seal. “Q” is a letter/symbol that has been associated with Q-Anon, a movement which adheres to various conspiracy theories involving alleged government corruption.

Post No. 1



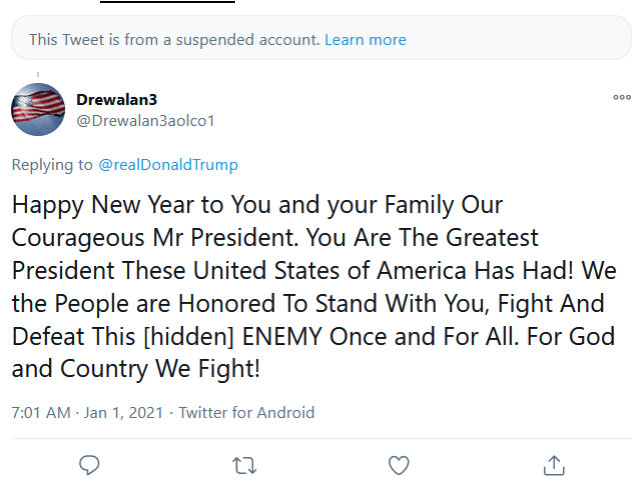
Another post dated November 6, 2020, from one of Hernandez’s social medical accounts states, “If people do not fight now go out and protest the vote/election fraud. Than your voting days are over. They are trying to steal the vote and will perfect and protect their fraudulent voting system when in power. . . You will have a tyrannical dictatorship. Fight Fight Fight[.]”

Post No. 2



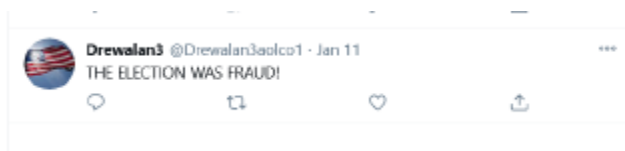
In a third post from one of Hernandez’s accounts, on January 1, 2021, states, “Happy New Year to You and your Family Courageous Mr. President. You are the Greatest President These United States of American Has Had! We the People are Honored to Stand with You, Fight and Defeat this [hidden] ENEMY Once and For All. For God and Country We Fight!”

Post No. 3



As shown below, on or about January 11, 2021, one of Hernandez’s accounts had the following tweet, “THE ELECTION WAS FRAUD!”

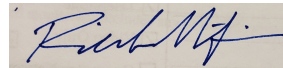
Post No. 4



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

Finally, your affiant submits there is probable cause to believe that Andrew Alan Hernandez 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.



Special Agent Richard Migliara
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 23rd day of February 2021.




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ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE