

STATEMENT OF FACTS

1. Your affiant, Joseph Butta, is a Special Agent with the Department of Homeland Security, Federal Protective Service and a Task Force Officer assigned to the Federal Bureau of Investigation Joint Terrorism Task Force in the Buffalo Field Office. I am assisting in the investigation and prosecution of events which occurred at the U.S. Capitol on January 6, 2021.

2. 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.

3. 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 Pence was present and presiding, first in the joint session, and then in the Senate chamber.

4. As the proceedings continued in both the House and the Senate, and with Vice President 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.

5. 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.

6. 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 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.

7. 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.

8. In late January 2021, a comparison of photographs by the FBI Washington Field Office revealed a potential match between a photograph taken on the grounds of the U.S. Capitol building on January 6, 2021 (Photograph 1 below) and a booking photograph from a prior arrest of William MICHAEL SYWAK (Photograph 2 below).



Photograph 1

Photograph 2

9. On January 27, 2021, MICHAEL SYWAK was interviewed by the FBI. MICHAEL SYWAK stated that he and his son, William JASON SYWAK, traveled together to the U.S. Capitol on January 5, 2021 to see the protests on January 6, 2021. MICHAEL SYWAK admitted to being at the Capitol on January 6, 2021, but denied going inside the building. After arriving at the Capitol, MICHAEL SYWAK stated he and his son JASON SYWAK walked around the Capitol grounds but were separated. MICHAEL SYWAK stated that his cell phone battery died, and he was unable to call his son to locate him. MICHAEL SYWAK stated his son did not go inside the Capitol or take part in any violent acts.

10. MICHAEL SYWAK was shown Photograph 1 and was asked if it was him. SYWAK stated “yeah, that’s me.” MICHAEL SYWAK stated that he was surprised his hair looked so neat because he wore a black beanie hat while he was at the Capitol.

11. On February 8, 2021, your affiant reviewed footage from a YouTube video obtained by the FBI depicting various protest activities at the Capitol on January 6, 2021. The video is approximately 5 minutes and 29 seconds in length and was reviewed in its entirety. The video shows an individual resembling MICHAEL SYWAK wearing a dark jacket and a light-colored hood exiting a doorway manned by U.S. Capitol Police Officers. A screenshot from this video is shown below (Photograph 3).



Photograph 3

12. This video appears to be the source of Photograph 1, which MICHAEL SYWAK identified as a photograph of himself. That is clear from a comparison of a cropped version of Photograph 3 and Photograph 1, demonstrated below:



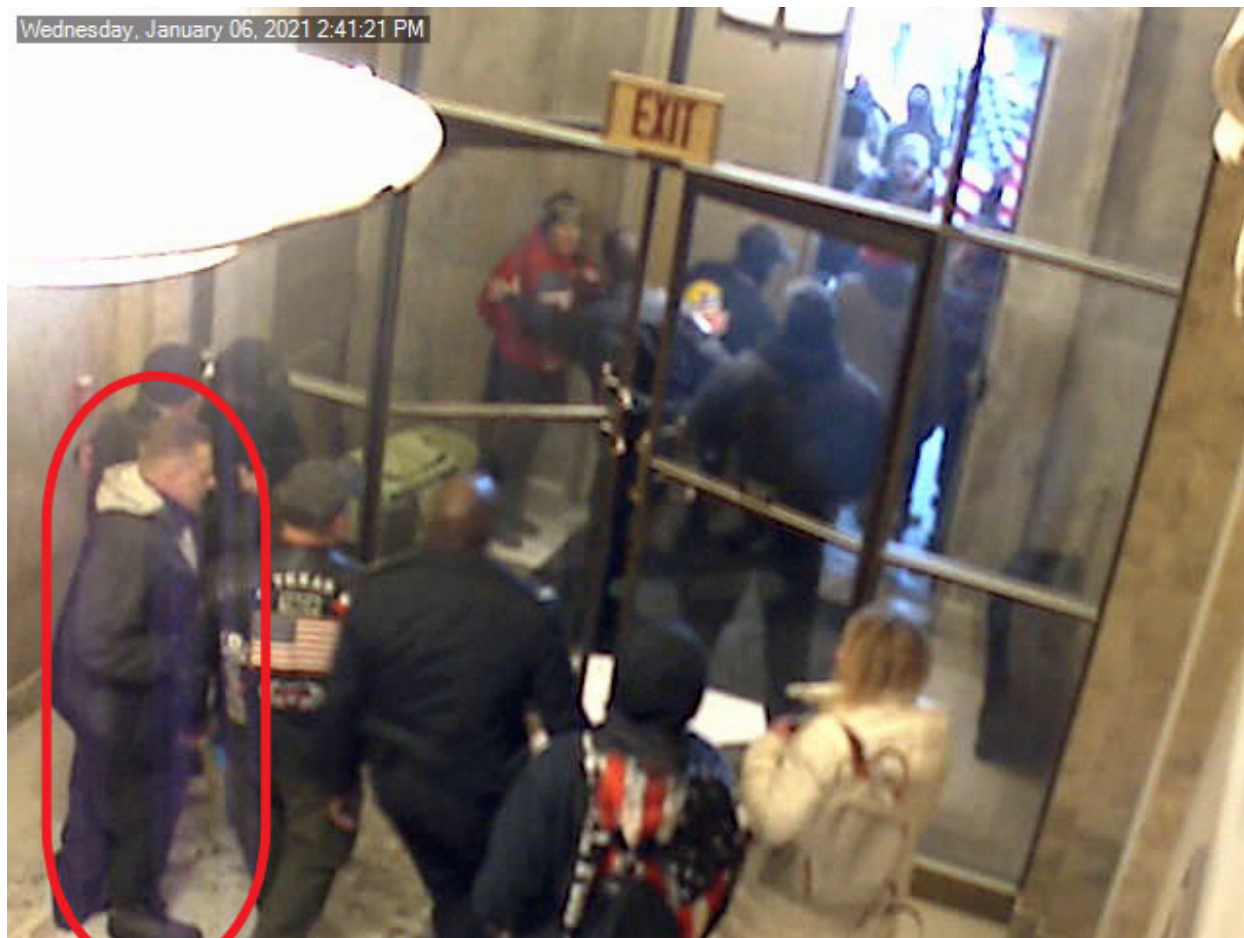
Cropped version of Photograph 3

Photograph 1

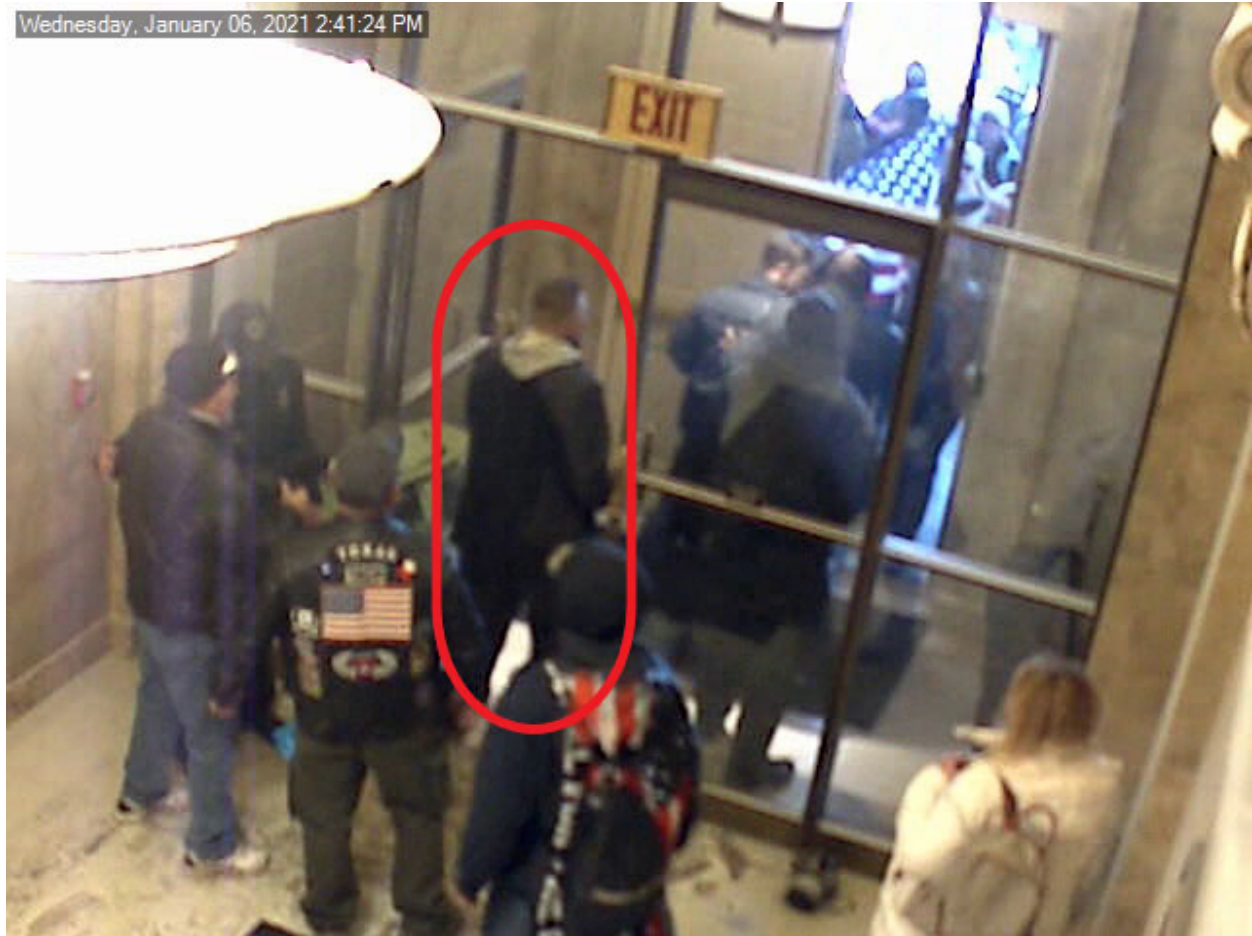
13. In the YouTube video from which Photograph 3 was taken, at one point there is a door number visible above the brown wooden door over MICHAEL SYWAK's right shoulder in Photograph 3. The U.S. Capitol Police confirmed, based on that room number, that the double white doors pictured in Photograph 3 is the Memorial Door entrance to the U.S. Capitol.

14. On February 25, 2021, your affiant reviewed Closed Circuit Television (CCTV) footage of an individual exiting the U.S. Capitol building at the Memorial Door at 2:41 p.m. EST. Photographs 4 and 5 below come from that CCTV footage. I believe the individual circled in red in those three photographs is MICHAEL SYWAK. That belief is based on the fact that MICHAEL

SYWAK exited this door that afternoon; that the individual is wearing a dark jacket and light-colored hood and has a haircut and appearance that matches that of MICHAEL SYWAK in Photograph 3; and that the individual in the CCTV footage is escorted out of the door by U.S. Capitol police officers, just as MICHAEL SYWAK is in the YouTube video from which Photograph 3 apparently came.



Photograph 4



Photograph 5

15. As noted above, when MICHAEL SYWAK was interviewed on January 27, 2021, he stated that his son JASON SYWAK had traveled to the U.S. Capitol building with him on January 6, 2021, but claimed that his son had not entered the Capitol building or engaged in any violence.

16. According to records obtained through a search warrant served on Google, a mobile device associated with *****98@gmail.com was present at the U.S. Capitol on January 6, 2021. Google estimates device location using sources including GPS data and information about nearby Wi-Fi access points and Bluetooth beacons. This location data varies in its accuracy, depending on the source(s) of the data. As a result, Google assigns a “maps display radius” for each location data point. Thus, where Google estimates that its location data is accurate to within 10 meters, Google assigns a “maps display radius” of 10 meters to the location data point. Finally, Google reports that its “maps display radius” reflects the actual location of the covered device approximately 68% of the time.

17. In this case, Google location data shows that the mobile device associated with *****98@gmail.com was within the U.S. Capitol at the locations shown in Figure 1 (at the locations reflected by each darker blue circle), below, with the “maps display radius” reflected in Figure 1 (in a lighter blue ring around each darker blue circle). As illustrated in Figure 1, the

listed locations encompass areas that are entirely within the U.S. Capitol Building between approximately 2:13 p.m. and 3:20 p.m. EST on January 6, 2021, with the exception of two location data points, which were nonetheless entirely within areas of the U.S. Capitol Grounds which were restricted on January 6, 2021.

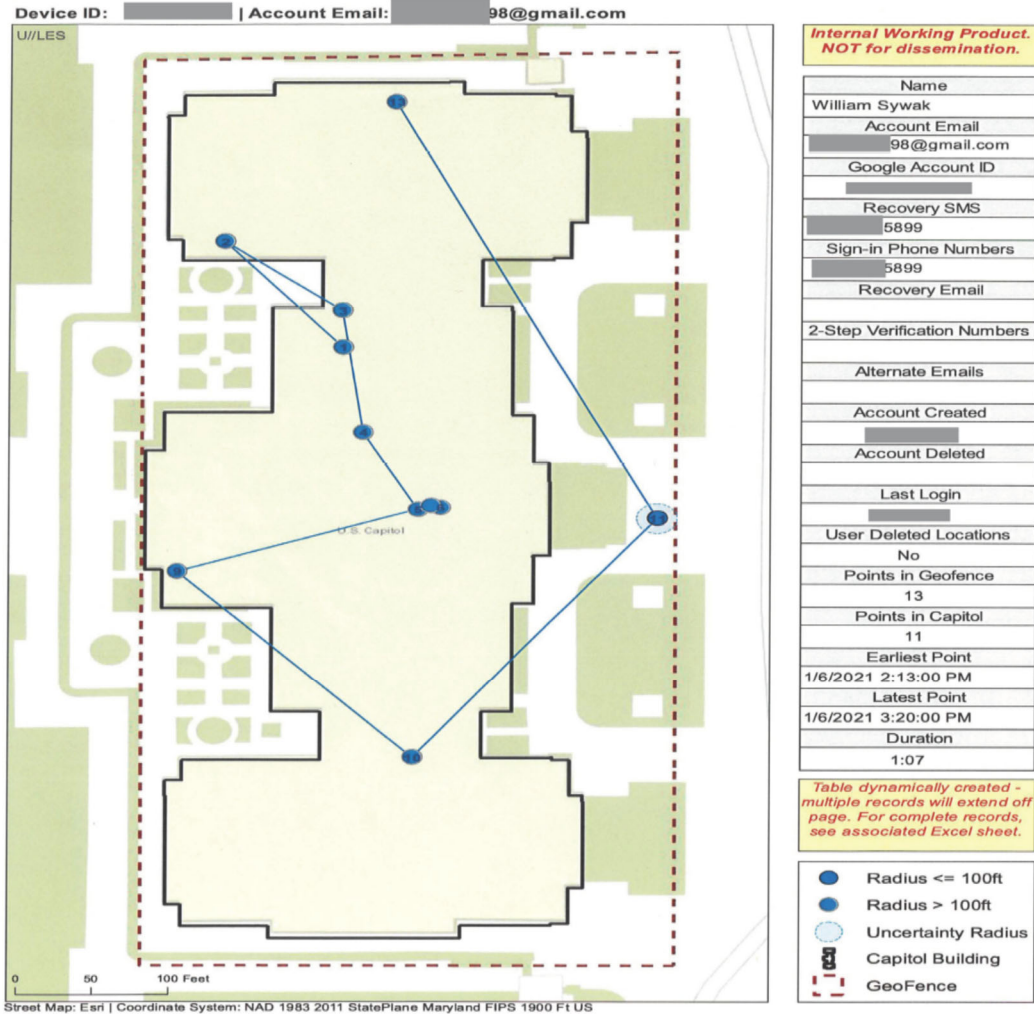


Figure 1

18. The FBI has reviewed the available information for *****98@gmail.com to determine whether there was any evidence that devices associated with that email address could have lawfully been inside the U.S. Capitol Building on January 6, 2021. The information for *****98@gmail.com did not match any information for persons lawfully within the Capitol. Accordingly, I believe that the individual possessing this device was not authorized to be within the U.S. Capitol Building on January 6, 2021.

19. Records provided by Google indicate that that *****98@gmail.com Google account was subscribed to by “William Sywak.” The account was created on November 11, 2016, with an account recovery and sign-in phone number of ***-***-5899.

20. Records from Verizon Wireless indicate that the ***-***-5899 phone number is subscribed to by “N.M.” at an address in Arcade, NY. Several weeks ago, William JASON SYWAK was seen departing that address in a vehicle registered to him in the early morning.

21. N.M.’s public Facebook page states that she and “Billy Sywak” are in a relationship. Her Facebook page shows a photo of her and a male kneeling next to each other with a dog. I believe that male to be William JASON SYWAK, MICHAEL SYWAK’s son, based on a comparison of that photograph to JASON SYWAK’s New York Department of Motor Vehicles photograph. Based on a review of the Facebook page, I believe “Billy Sywak” is William JASON SYWAK. A screenshot from N.M.’s Facebook page is shown below.



Photograph 6

22. I have reviewed Washington, D.C. Metropolitan Police Department bodycam video obtained by the FBI. The video contains footage of an individual on the grounds of the U.S. Capitol Building whom I believe to be JASON SYWAK. I have attached two screenshots from this video below; the person whom I believe to be JASON SYWAK is circled in red. JASON SYWAK is wearing a black hooded sweatshirt under a gray jacket and dark pants, and is holding a cellphone in his right hand. In Photograph 8, a gray neck gaiter or face covering is visible under his chin.



Photograph 7



Photograph 8

23. On March 2, 2021, your affiant reviewed surveillance footage of two individuals entering the U.S. Capitol at 2:18 p.m. EST. I believe the first individual, pictured in photos 9 and 10 wearing a dark beanie hat, light-colored hood, dark jacket, dark pants, and carrying a cell phone, to be MICHAEL SYWAK. This individual appears to be wearing a black beanie beneath a gray hood. As noted above, MICHAEL SYWAK told the FBI that he wore a black beanie on January 6, 2021.

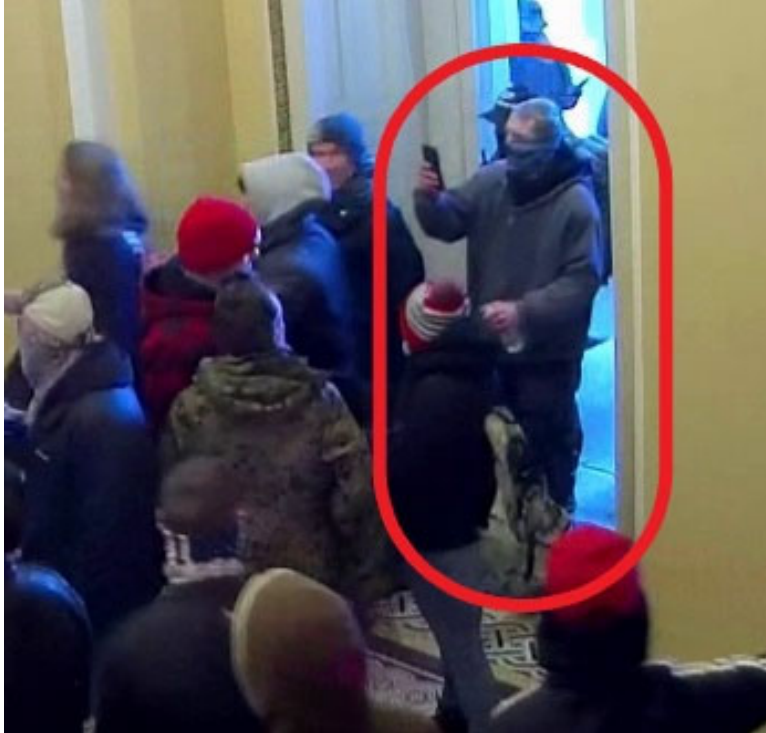


Photograph 9



Photograph 10

24. Moments after MICHAEL SYWAK enters, an individual I believe to be JASON SYWAK appears in the doorway. In photographs 11, 12, and 13 below, JASON SYWAK is wearing, as he was in Photographs 7 and 8, a gray jacket over a black hooded sweatshirt and a gray face covering, and dark pants; he is carrying a water bottle in his left hand and holding up a cell phone in his right hand. After JASON SYWAK enters the Capitol (Photograph 11), he walks up to and locks arms with the individual identified as MICHAEL SYWAK, JASON SYWAK's father (Photograph 12). JASON SYWAK and his father MICHAEL SYWAK then proceed down a hallway as JASON SYWAK appears to be recording a video with his cell phone (Photograph 13).



Photograph 11



Photograph 12



Photograph 13

25. Based on the foregoing, your affiant submits that there is probable cause to believe that MICHAEL SYWAK and JASON SYWAK each 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. As noted above, both MICHAEL SYWAK and JASON SYWAK were within a posted, cordoned off, or otherwise restricted area of a building or grounds where the Vice President was temporarily visiting on January 6, 2021.

26. Your affiant submits there is also probable cause to believe that MICHAEL SYWAK and JASON SYWAK each 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. As noted above, both MICHAEL SYWAK and JASON SYWAK were within “the Grounds or in any of the Capitol buildings” on January 6, 2021.



Task Force Officer Joseph Butta
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
by telephone, this 7th day of May, 2021.

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE