AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

District of Columbia

United States of America
v.
Joshua Wagner, (DOB: XXXXXXXXX)
Israel Tutrow, (DOB: XXXXXXXX)

Defendant(s)

Case: 1:21-mj-00162
Assigned to: Judge Faruqui, Zia M
Assign Date: 1/25/2021
Description: COMPLAINT W/ARREST WARRANT

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:

Code Section	*Offense Description*
18 U.S.C. § 1752(a)(1)-	Knowingly Entering or Remaining in any Restricted Building or Grounds
18 U.S.C. § 1752(a)(2)-	Disorderly Conduct Which Impedes the Conduct of Government Business
40 U.S.C. § 5104(e)(2)(D)-	Disruptive Conduct in the Capitol Buildings
40 U.S.C. § 5104(e)(2)(G)-	Parading, Demonstrating, or Picketing in the Capitol Buildings

This criminal complaint is based on these facts:

See attached statement of facts.

☒ Continued on the attached sheet.

Complainant's signature

Ryan V. Romack, Special Agent
Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone.

Date: 01/25/2021

2021.01.25 21:38:31 -05'00'

Judge's signature

City and state: Washington, D.C.

Zia M. Faruqui, U.S. Magistrate Judge
Printed name and title

Case: 1:21-mj-00162
Assigned to: Judge Faruqui, Zia M
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STATEMENT OF FACTS

On January 6, 2021, your affiant, Ryan V. Romack, was on duty and performing my official duties as a Special Agent with the Federal Bureau of Investigation and I am currently assigned to the Washington Field Office. 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 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.

During the course of the investigation, law enforcement has identified JOSHUA WAGNER and ISRAEL TUTROW as two of the individuals who unlawfully entered the U.S. Capitol on January 6, 2021, as detailed below. An image from inside the U.S. Capitol on January 6, 2021, now identified as WAGNER was featured as "#34" in a Be On the Look Out ("BOLO") issued by the FBI to assist in the identification of involved individuals and appears to show a male individual wearing glasses and a red beanie bearing "TRUMP" in white lettering (Figure 1). An image from the U.S. Capitol on January 6, 2021, now identified as TUTROW was shared widely on social media and appears to show a male individual with facial hair and distinctive facial tattoos wearing a black beanie that appears to bear "TRUMP" in white lettering exiting the U.S. Capitol (Figure 2). Video footage appearing to capture the same events shows TUTROW moving from inside to outside the U.S. Capitol as shown in Figure 2.

Figure 1

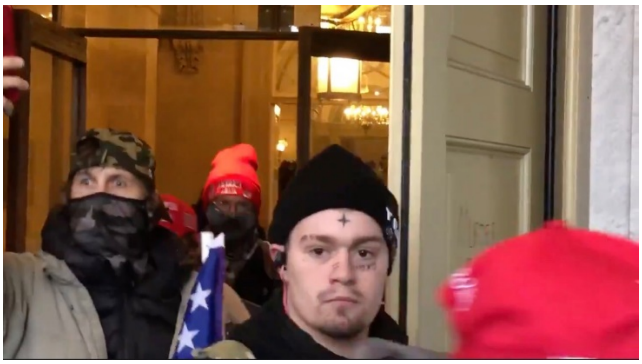

Figure 2

On January 9, 2021, through an attorney, WAGNER self-identified to law enforcement as the person depicted inside the U.S. Capitol on January 6, 2021, in image #34. During the course of the investigation, law enforcement received additional information confirming this self-identification and identifying TUTROW as the individual in Figure 2 and WAGNER'S associate. Specifically, law enforcement interviewed W-1, who went to high school with WAGNER and TUTROW and has continued contact with both since then. W-1 identified the individual shown in Figure 1 as WAGNER and the individual in Figure 2 as TUTROW. W-1 indicated that on January 6, 2021, at approximately 2:00 a.m., WAGNER picked up TUTROW in his car with the intent to drive from Indiana, where both reside, to go to Washington, D.C., to participate in the rally for President Trump that same day. W-1 stated that on January 6, 2021, he/she received messages from a Facebook account he/she uses to communicate with WAGNER indicating that WAGNER had been inside the U.S. Capitol. W-1 further stated that at around 3:00 p.m., he/she sent messages from a Facebook account he/she uses to communicate with TUTROW referencing a person being shot inside the Capitol. TUTROW then responded to W-1 with one video and two messages. W-1 advised that he/she could no longer access these materials, indicating that they were later unsent.

That afternoon, W-1 received further messages from TUTROW'S Facebook account, one at 4:00 p.m. asking for WAGNER'S phone number and one at 5:00 p.m., indicating the two had been reconnected. W-1 had further contact with both WAGNER and TUTROW. Around 9 p.m., TUTROW messaged W-1 indicating being sick with anxiety following the riot at the U.S. Capitol. After BOLO photo #34 was released by the FBI, WAGNER indicated to W-1 that he (WAGNER) was very scared and worried. W-1 does not know either individual to have an affiliation with hate groups, but is aware that WAGNER vehemently opposes Joseph Biden as President. W-1 believes that WAGNER asked TUTROW to attend the rally with him. To W-1's knowledge, they did not attend the rally with the intent to commit violence or cause a riot.

W-1 spoke to TUTROW regarding the trip to Washington, D.C., on January 6, 2021, and TUTROW acknowledged that WAGNER had driven him to D.C. to attend the rally.

Your affiant has reviewed information from multiple additional sources identifying WAGNER as the individual in #34 and TUTROW as the individual shown exiting the Capitol in Figure 2 above. These include W-2, who has met WAGNER on multiple occasions and identified him as #34 in the FBI BOLO, and W-3, who went to high school with TUTROW and identified him from a photograph posted to an individual's Facebook page, stating she recognized him by his facial tattoos. The below is the photograph used by W-3 to identify TUTROW (Figure 3).

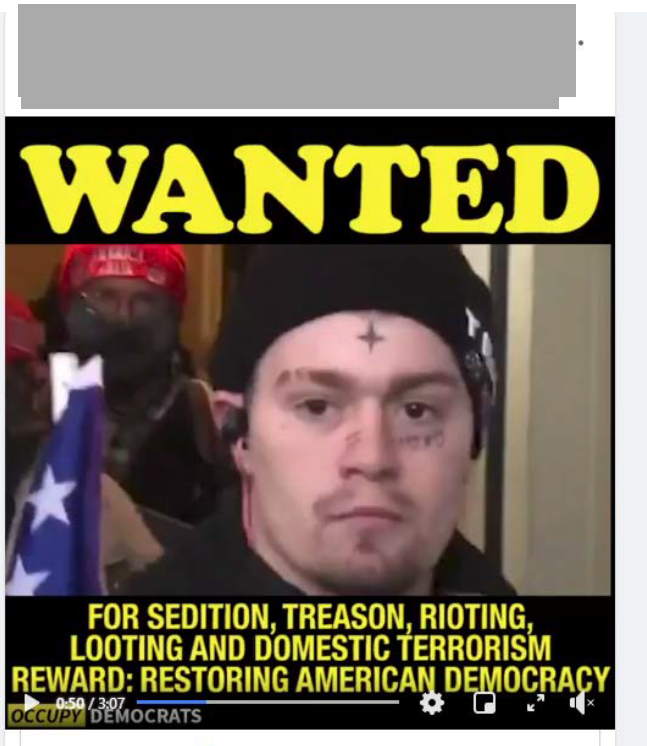

Figure 3

In addition to interviewing W-1, who was able to identify WAGNER and TUTROW based on his/her personal knowledge of both men, your affiant obtained a photograph of WAGNER from Indiana records. That photograph reflects unique features that are also observable in the individual inside the U.S. Capitol in Figure 1. A photograph of TUTROW was also located in a search of law

enforcement records and although the facial tattoos did not appear in the photograph, dated 2018, the other facial features were consistent with the photograph in Figure 2, and your affiant believes they show the same individual. Finally, law enforcement was able to access to the public page for the Facebook account associated with WAGNER and observed a profile picture consistent with the individual in Figures 1 and the law enforcement photograph, as well as posts regarding contesting the election and protesting in the District of Columbia, including one post dated December 24, 2020, stating, "Anyone going to D.C. on the 20th?"

Tips related to the FBI BOLOs continue to be received, and the FBI has received numerous leads that #34 may be someone other than WAGNER. However, no one else has self-identified as #34, and a number of these tips have been investigated and determined to be non-identifications. Given the evidence reviewed by your affiant, your affiant believes WAGNER is the individual depicted in photograph #34 described above.

Based on the foregoing, your affiant submits that there is probable cause to believe that WAGNER and TUTROW violated 18 U.S.C. § 1752(a)(1) 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 attempt or conspire 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 WAGNER and TUTROW 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.

Special Agent, Ryan V. Romack, FBI

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 25th day of January 2021.

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ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE