

STATEMENT OF FACTS

Your affiant, [REDACTED], is a Special Agent with the Federal Bureau of Investigation (FBI). 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 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 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 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 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 7, 2021, a witness (Witness 1) called the FBI National Threat Operations Center to report that CHRISTIAN CORTEZ stormed the U.S. Capitol the previous day. The FBI later interviewed Witness 1, and learned that Witness 1 knows CORTEZ from attending school together in League City, Texas. Witness 1 stated that it saw a video on national news in which it recognized CORTEZ at the Capitol wearing a red beanie, grey jacket, and a red t-shirt. Later, Witness 1 provided the FBI with a YouTube link to the video Witness 1 had previously used to identify CORTEZ at the Capitol.¹ Witness 1 also identified CORTEZ's Instagram username as "cortez_golden" and identified the associated profile picture as CORTEZ. A search of Texas Department of Motor Vehicle (DMV) records revealed a CHRISTIAN CORTEZ of Seabrook, Texas and an associated photograph. Your affiant has reviewed both the video and photograph Witness 1 provided and the Department of Motor Vehicle photograph—all three appear to be the same person.

The video—entitled "1/6/21 Capitol Stormed, Footage"—portrays a mob of rioters confronting a group of U.S. Capitol Police officers while trying to break into the Capitol through a set of large doors. At the beginning of the video, multiple rioters are attempting to break the doors by ramming a metal barricade against them and throwing various objects in the direction of the doors. Eventually, a group of U.S. Capitol Police officers arrive and repeatedly yell at the rioters to "get back!" The mob of rioters then begins chanting "Let us in!"

At about 2 minutes and 49 seconds into the video, law enforcement officers begin filing out of the Capitol with additional metal barricades, while other officers attempt to make a path through the rioters. At about 2 minutes and 52 seconds, CORTEZ is standing on the left side of the doors holding what appears to be a blue flag with "Trump" in white letters. He then breaches the line of rioters, steps in front of one of the officers, and appears to say something to that officer. Soon after, other rioters are seen grabbing the metal barricades and moving them while more officers begin streaming out of the Capitol. At about 3 minutes and 25 seconds, CORTEZ is now standing next to the left, open door while officers are attempting to move the rioters back and seal off the Capitol entrance. Figure One below depicts a screenshot of the video with CORTEZ circled in red.

¹ See <https://youtu.be/8CSKuCiJGp8?t=205> (last accessed on March 11, 2021).



Figure One

At about 4 minutes and 20 seconds into the video, a line of law enforcement officers retreat from the crowd and reenter the Capitol. As they do so, the rioters begin chanting “Traitor,” directed toward what appears to be the officers at the Capitol entrance. Approximately five law enforcement officers are standing in the entrance to the Capitol wearing gas masks and other protective gear. The officers begin spraying what appears to be OC Spray and fire-extinguisher retardant at the mob of rioters. One rioter is holding the right door open. At about 4 minutes and 40 seconds, a law enforcement officer begins trying to pull the doors closed, but rioters grab the doors from the outside and force them to remain open.

At about 4 minutes and 50 seconds into the video, CORTEZ can be heard off-screen, yelling “Fuck you! Oath breakers! Oath breakers! You’re a fuckin’ oath breaker!” Your affiant believes this to be CORTEZ, because he continues to yell as the camera pans toward him, and

the voice and tone are the same as the yelling heard immediately prior off-screen. At about 4 minutes and 55 seconds, the camera begins to show CORTEZ who is now standing in the middle of the path and facing the Capitol doors and officers. CORTEZ is screaming “Do it! We’re just standing here! [Unintelligible] fuckin a! We’re just standing here!” CORTEZ then slams on the ground the blue flag he is holding and takes a step toward the officers in the Capitol entrance. CORTEZ then appears to be sprayed in the face with OC spray, and he yells “Do it some fuckin’ more!” While yelling, CORTEZ takes another step toward officers and thrashes his arms downward, yelling again “Do it some fuckin’ more!” At this time, law enforcement officers begin spraying CORTEZ in the face with fire-extinguisher retardant. A screenshot of CORTEZ confronting and yelling at law enforcement is depicted below in Figure Two.



Figure Two

A second witness (Witness 2) submitted an online tip to the FBI and reported that BEN LAROCCA stormed the U.S. Capitol on January 6, 2021. The FBI later interviewed Witness 2, and learned that Witness 2 knows both LAROCCA and CORTEZ from attending school together in League City, Texas. Witness 2 provided the FBI a video from what Witness 2 knew to be LAROCCA's Instagram account with username "bentrue93."² The video shows a crowd of rioters pushing toward a line of law enforcement officers in what is clearly a hallway in the U.S. Capitol, and the rioters are chanting "Forward!" A temporary caption across the screen reads, "We got in" and then disappears. At about 19 seconds into the video, an individual that appears to be CORTEZ can be seen standing next to the individual holding the camera. This individual is wearing a red beanie, carrying a blue flag, and has similar facial hair to CORTEZ in the video Witness 1 provided, as seen in Figures One and Two above. Witness 2 was not sure if the individual at the 19-second mark was CORTEZ. The FBI also showed this video to Witness 1, who explained that it knew both CORTEZ and LAROCCA from attending school together. Witness 1 identified the individual in the red beanie at the 19-second mark as CORTEZ.

At about 26 seconds into the video provided by Witness 2, the individual holding the camera flips the view to himself. Both Witness 1 and Witness 2 identified this individual as LAROCCA, who is wearing what appears to be a red baseball cap, a dark-colored jacket, and a black strap draped across his shoulder. Witness 1 also identified the "bentrue93" Instagram username at the upper left of the video as belonging to LAROCCA. While in the Capitol, LAROCCA repeatedly chants "Our house!" in response to other rioters chanting "Whose house?" A search of Texas DMV records revealed a BENJAMIN LAROCCA of Pearland, Texas and an associated photograph. Your affiant has reviewed the video Witness 2 provided and the DMV photograph—both appear to be the same person.

A screenshot of the video Witness 2 provided is depicted below in Figures Three and Four. Figure Three shows LAROCCA at the bottom left standing in the Capitol, and the username "bentrue93" in the upper left circled in red. Figure Four depicts CORTEZ at the bottom of the screen, standing in the Capitol.

² A records search of the Texas Department of Motor Vehicles revealed that LAROCCA was born in the year 1993.



Figure Three

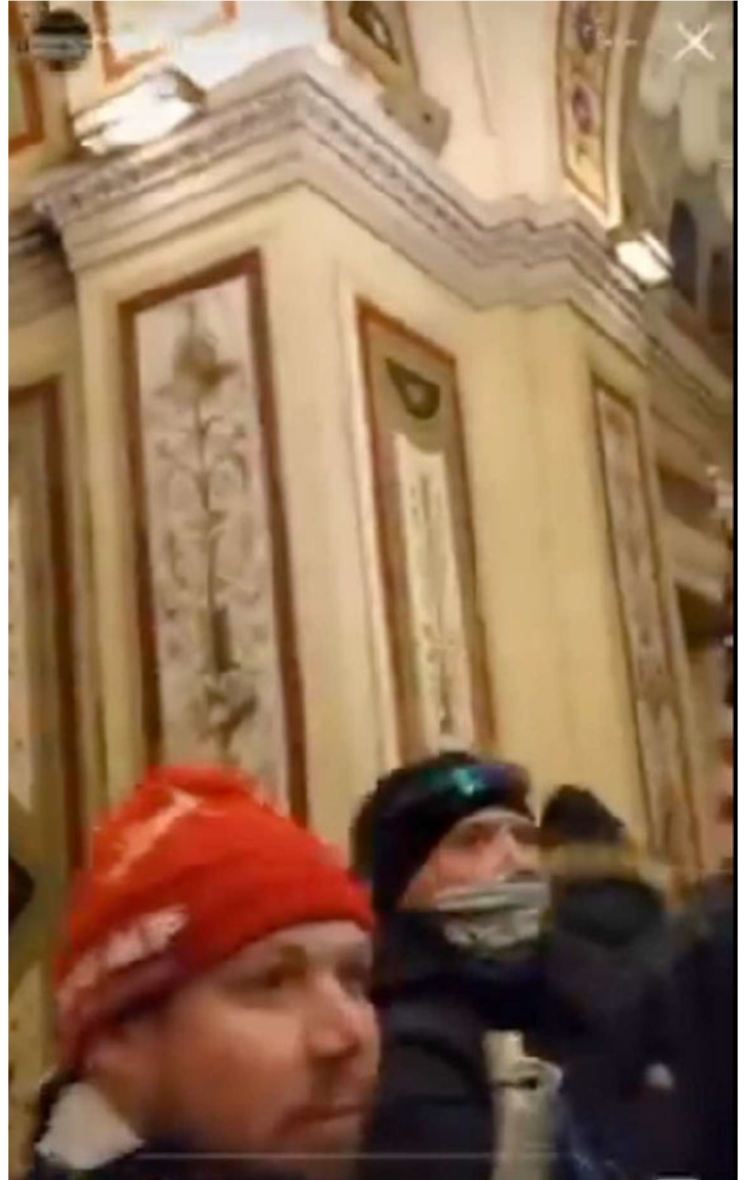


Figure Four

On January 20, 2021, BENJAMIN LAROCCA voluntarily interviewed with the FBI. LAROCCA explained that, on January 4, he and CHRISTIAN CORTEZ drove a rental car from Texas to Virginia, where they stayed at a hotel. On the morning of January 6, LAROCCA and CORTEZ drove two hours to Washington, D.C. He had not heard of any “stop the steal” protest, but said he traveled to Washington D.C. for a “march.” LAROCCA noted that he had a backpack on to collect and buy merchandise while in the city. Eventually, LAROCCA stated he and CORTEZ followed a crowd of people toward the Capitol and entered the Capitol through an open door. LAROCCA said there were no law enforcement officers at the door at the time he and CORTEZ entered. LAROCCA explained that he was “chilling” inside the Capitol and shouting “Our house!” After stating that he remained in the “tour area,” LAROCCA acknowledged that neither he nor CORTEZ had signed up for and were, in fact, not on a tour.

While inside, LAROCCA said he and CORTEZ were together the whole time and never separated.

LAROCCA admitted that his Instagram username is “benttrue93,” and that he had uploaded videos to the account from his cellular phone. The FBI then showed LAROCCA the Instagram video that Witness 2 had provided, depicted in Figures Three and Four above. LAROCCA identified himself as the individual yelling “Our house!” and identified CORTEZ as the individual wearing the red hat—matching the identifications provided by Witness 1 and Witness 2.

The FBI then showed LAROCCA the video Witness 1 had provided, depicted in Figures One and Two above. LAROCCA explained that he was standing in the crowd of rioters seen at the 39-second mark in the video. According to LAROCCA, rioters were trying to breach the Capitol door. LAROCCA explained that he had retreated down a handicap ramp and returned to the scene near the doors on a few occasions to avoid the mace and fire-extinguisher retardant. LAROCCA then identified CORTEZ at about the 5-minute mark as the individual screaming at law enforcement officers and receiving mace and fire-extinguisher retardant to the face, as detailed above.

LAROCCA then provided the FBI with a thumb drive that contained videos and pictures of his trip with CORTEZ to Washington, D.C. One video appears to be the same Instagram video that Witness 2 provided to the FBI. Another video appears to be LAROCCA’s point of view during the video that Witness 1 provided, showing the scene at the entrance to the Capitol.

Also on January 20, 2021, CHRISTIAN CORTEZ voluntarily interviewed with the FBI. CORTEZ explained that he and BENJAMIN LAROCCA rented a car and drove together from Texas to Virginia on January 4, 2021, where they stayed in a hotel in Richmond, Virginia. On January 6, CORTEZ stated that he was wearing a red hat, red shirt, and black jacket. That morning, he and LAROCCA drove from Virginia to Washington, D.C. for the rally with President Donald J. Trump. CORTEZ explained that, after President Trump made a statement about marching to the Capitol, he and LAROCCA traveled with a crowd of others to the Capitol.

When they got to the Capitol, CORTEZ explained, he did not see barricades, ropes, or officers. CORTEZ noted that he never pushed past any officers and that he tried to stop others from assaulting officers or vandalizing the Capitol. As he approached the Capitol, CORTEZ stated the he used a flight of exterior stairs and eventually entered an atrium.

The FBI showed CORTEZ the video Witness 2 provided, as seen above in Figures Three and Four. CORTEZ identified himself and LAROCCA in the video, standing inside the Capitol. Similarly, the FBI showed CORTEZ the video Witness 1 had provided, as seen in Figures One and Two. CORTEZ explained that the atrium seen in this video was the same atrium he remembered being in on January 6. CORTEZ acknowledged that rioters were trying to breach the door, and he expressed disagreement with the vandalism. CORTEZ then identified himself in the video at about the 5-minute mark, as the individual wearing the red hat and dark jacket, and carrying a “Trump Train” flag. CORTEZ stated he was standing on the side near the door trying to help the officers when he got sprayed with something. At this time, CORTEZ admitted,

he stepped in front of the doors and started yelling at the officers, including shouting “Oath breakers!” CORTEZ acknowledged that he had been sprayed by fire-extinguisher retardant as officers were trying to close the doors to the Capitol.

Based on the foregoing, your affiant believes both CHRISTIAN CORTEZ and BENJAMIN LAROCCA committed federal offenses on January 6, 2021.

Your affiant submits there is probable cause to believe CHRISTIAN CORTEZ violated 18 U.S.C. § 111(a), which makes it unlawful to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties. For purposes of section 111 of Title 18, United States Capitol Police Officers constitute persons designated in section 1114 of Title 18.

Your affiant additionally submits there is probable cause to believe CHRISTIAN CORTEZ violated 18 U.S.C. 231(a)(3), which makes it unlawful to commit or attempt to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function. For purposes of Section 231 of Title 18, a federally protected function means any function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof. This includes the Joint Session of Congress where the Senate and House count Electoral College votes.

Your affiant additionally submits there is probable cause to believe CHRISTIAN CORTEZ and BENJAMIN LAROCCA 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.

Your affiant additionally submits there is probable cause to believe CHRISTIAN CORTEZ and BENJAMIN LAROCCA 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.

Finally, your affiant submits there is probable cause to believe CHRISTIAN CORTEZ and BENJAMIN LAROCCA violated 40 U.S.C. § 5104(e)(2)(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; (E) obstruct, or impede passage through or within, the Grounds or any of the Capitol Buildings; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.


SPECIAL AGENT, FBI

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 12th day of March 2021.


Digitally signed by G.
Michael Harvey
Date: 2021.03.12 12:24:28
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G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE