

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	MAGISTRATE NO.
	:	
v.	:	VIOLATIONS:
	:	18 U.S.C. § 1752(a)(1) & (2), (Restricted
JAMES BREHENY,	:	Building or Grounds)
	:	
Defendant.	:	40 U.S.C. §§ 5104 (e)(2)(D) & (G)
	:	(Violent Entry or Disorderly Conduct)
	:	
	:	18 U.S.C. § 1512(c)(1) & (2)
	:	(Impeded an Official Proceeding)
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	:	
	:	
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AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

1. I, Michael J. Van Gorder, am a Special Agent with the Federal Bureau of Investigation ("FBI") Newark Joint Terrorism Task Force ("JTTF"). I have been a Special Agent with the FBI for approximately 5 years. I have experience with investigations and legal process involving criminal violations, cyber intrusions, evidence collection, evidence review, and matters of national security. As part of my training in investigations of federal crimes, I have received training in, among other things, surveillance, the execution of search warrants, and debriefings of informants.

2. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents, witnesses, and agencies. This affidavit

is intended to show merely that there is sufficient probable cause for the requested warrant. It does not set forth all of my knowledge, or the knowledge of others, about this matter.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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, including the defendant at issue below.

***Prior to the Riots, BREHENY Planned and Coordinated for the “Show” on January 6,
2021***

9. JAMES BREHENY is a member of the Oath Keepers. The Oath Keepers are a large but loosely organized collection of individuals, some of whom are associated with militias. Some members of the Oath Keepers believe that the federal government has been coopted by a cabal of elites actively trying to strip American citizens of their rights. Though the Oath Keepers will accept anyone as members, they explicitly focus on recruiting current and former military, law enforcement, and first-responder personnel. The organization’s name alludes to the oath sworn by

members of the military and police to defend the Constitution “from all enemies, foreign and domestic.” According to the website for the New Jersey Oath Keepers chapter, BREHENY was listed as the Bergen County Coordinator. The Oath Keepers are led by PERSON ONE.

10. On December 14, 2020, in response to the November 2020 Presidential election, PERSON ONE published on the Oath Keepers’ website a letter titled, “Open letter to President Trump: You Must Use Insurrection Act to ‘Stop the Steal’ and Defeat the Coup.” Citing “well-orchestrated mass vote fraud” resulting in the “install[ation]” by “Communist Chinese and their domestic enemy allies” of “illegitimate puppet, Joe Biden,” PERSON ONE implored President Trump to:

[A]ct NOW as a wartime President, pursuant to your oath to defend the Constitution, which is very similar to the oath all of us veterans swore. We are already in a fight. It’s better to wage it with you as Commander-in-Chief than to have you comply with a fraudulent election, leave office, and leave the White House in the hands of illegitimate usurpers and Chinese puppets. Please don’t do it. Do NOT concede, and do NOT wait until January 20, 2021. Strike now.

11. PERSON ONE further warned: “If you fail to act while you are still in office, we the people will have to fight a bloody civil war and revolution against these two illegitimate Communist Chinese puppets, and their illegitimate regime.” PERSON ONE ultimately requested in this letter that President Trump “[i]ssue a Presidential Proclamation, directly invoking the Insurrection Act, declaring an insurrection, rebellion, and coup to be in effect by domestic enemies of the U.S. Constitution and traitors who are in collusion with and/or acting as agents of a foreign enemy (specifically Communist China, but also other known or unknown foreign enemies) and to call up the militia (including the National Guard, us veterans, and patriotic Americans of military age) and US military to suppress the insurrection.”

12. On December 21, 2020, BREHENY invited PERSON ONE, the leader of the Oath Keepers, to a leadership meeting of “multiple patriot groups” from the Mid-Atlantic states that was to take place in Quarryville, Pennsylvania on January 3, 2021. BREHENY forwarded PERSON ONE a message describing the purpose of the meeting, which was to prepare for a January 6 rally in Washington, DC.¹ The message stated, “This will be the day we get our comms on point with multiple other patriot groups, share rally points etc. This one is important and I believe this is our last chance to organize before the show. This meeting will be for leaders only.” In inviting PERSON ONE to this meeting, BREHENY cautioned, “No cell phones. Need to be Faraday bag prior to site.”²

***Person One Adds BREHENY to an Encrypted Messaging Chat of Other Oath Keepers
on January 6.***

13. On the morning of January 6, Person One added BREHENY to a group chat titled “DC Op: Jan 6 21” on Signal, an encrypted messaging application, and referred to him by the alias “Seamus.”³ Person One stated, “Added ‘Seamus’ who is coming in with a team from NJ, and who also has contacts with several militia leaders coming in.” Numerous individuals affiliated with the

¹ In a previous affidavit on April 15, 2021 (“IN THE MATTER OF THE SEARCH OF INFORMATION ASSOCIATED WITH ONE ACCOUNT STORED AT PREMISES CONTROLLED BY FACEBOOK, INC. PURSUANT TO 18 U.S.C. 2703 FOR INVESTIGATION OF VIOLATION OF 18 U.S.C. § 1512(c)(2) AND OTHER STATUTES”) before the court in this matter, the government incorrectly stated that BREHENY texted Person One that BREHENY had rented a building for this meeting. Upon further review however, BREHENY appears to have forwarded a message from a third party to Person One where the third party, rather than BREHENY, stated that IT had rented the building.

² Your affiant is aware that “Faraday Bags” are security containers for electronic devices that are typically used to block remote wiping, observation, or alteration of electronic devices.

³ As described below, agents seized and searched BREHENY’s cell phone on January 20, 2021. Although the name of the chat group, “DC Op: Jan 6 21,” was visible on the phone extraction, the contents of the chat had been deleted. Signal chats can be deleted remotely or by the user of the phone.

Oath Keepers who have been alleged to have participated in the riots participated in this chat and have been indicted in US v. Caldwell et al, 21-cr-28-APM.

After the Riots, BREHENY Admits to Law Enforcement that He Entered the Capitol

During the Riots

14. Following the riots of January 6, 2021, law enforcement officers attempted to interview BREHENY. On January 14, 2021, BREHENY met with law enforcement officers and told them that he traveled to Washington, D.C. on January 6, 2021 via car and train to attend the rally. BREHENY further stated that during the protest at the U.S. Capitol Building, he made his way to the top of the U.S. Capitol steps on the Supreme Court side. BREHENY said that he did not see who opened the U.S. Capitol doors, nor how those doors were opened, but once they opened people on the steps of the U.S. Capitol rushed for the doors and pushed each other to enter the building. BREHENY admitted to law enforcement that he entered the U.S. Capitol, but claimed he did not willfully enter and was pushed inside by the surge of people entering the building. BREHENY told law enforcement that he walked approximately 25 feet inside the U.S. Capitol and was inside for two to three minutes. BREHENY said that he did not engage in any violence either outside of or inside the U.S. Capitol, and claimed he did not know that he was not allowed inside the Capitol because none of the police officers he encountered told him to stop.

15. Nonetheless, BREHENY stated that once inside, he took one photograph of the dome with his cellular telephone. BREHENY also stated that he sent this photograph to one individual, though he declined to identify the recipient. BREHENY claimed to have since deleted the photograph and declined to provide a consent search of his cellular telephone. BREHENY also stated that he did not post the photograph to any social media sites, but nonetheless admitted

that he deleted his Facebook account shortly after the riot took place. BREHENY told law enforcement that his phone number was XXX-XXX-6546.

Evidence from BREHENY's Phone Confirms that He Participated in the Capitol Riots

16. On January 20, 2021, FBI Newark executed a federal search warrant on BREHENY and seized his cellular telephone ("device"), identified as an Apple iPhone SE, telephone number XXX-XXX-6546.

17. Multiple photos that appeared to be from January 6, 2021 were obtained pursuant to the search warrant executed on BREHENY'S cellular telephone. In these photos, BREHENY wore a navy blue jacket, black hood, a baseball hat with a red and white design on the brim, which appeared to be consistent with an American flag, glasses, a blue facemask, and what appeared to be an ear-piece for a radio. The photos listed below were located in messages that BREHENY sent to other individuals and were not located on the camera roll in the phone itself.

18. Your affiant located what appeared to be a “selfie” taken by BREHENY himself on January 6, 2021 just outside the East Rotunda doors of the U.S. Capitol:



19. Your affiant also located a photo from inside the Capitol Rotunda that appeared to have been taken during the riots of January 6, 2021:



*Video Evidence Rebuts BREHENY's Claim that He Did Not Willfully Enter the
Capitol*

20. Based on the photos seized from BREHENY's phone, your affiant endeavored to confirm that BREHENY did in fact enter the Capitol during the riots. Your affiant was able to identify BREHENY both on videos taken by members of the public as well as closed circuit television from the U.S. Capitol based on his attire (blue jacket, hat with a red and white striped

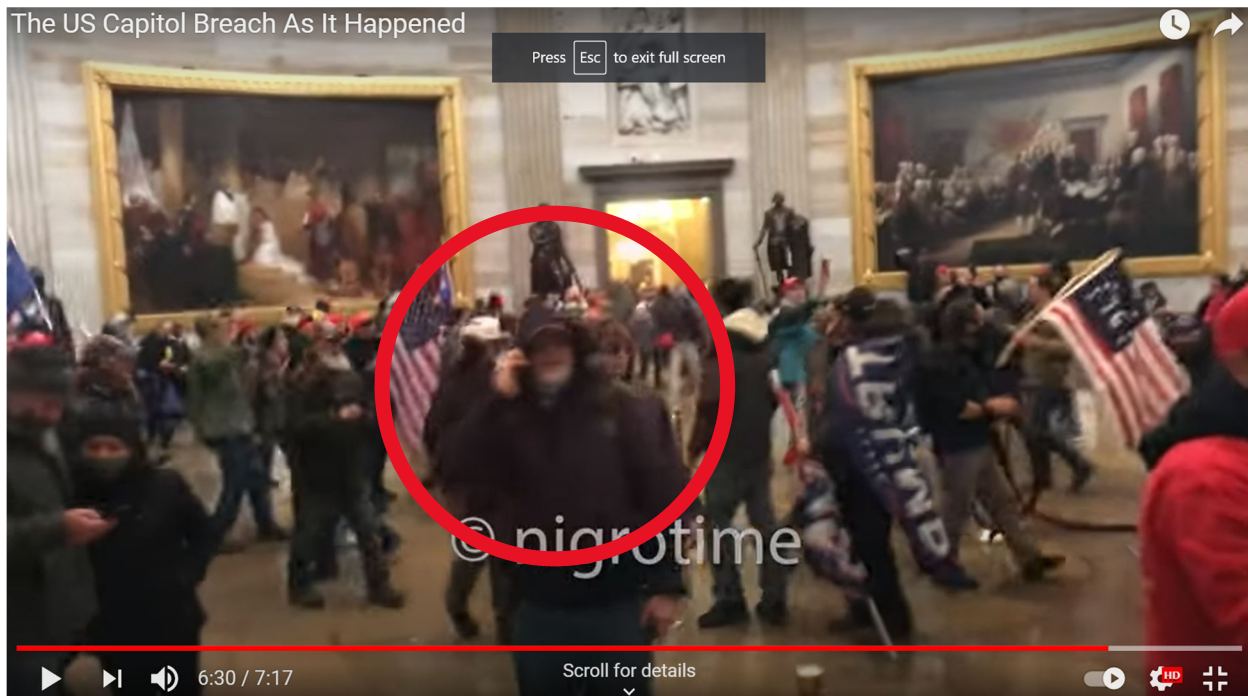
brim), accessories (backpack with a large vertical item protruding upward) and general physical appearance (glasses and white beard) depicted in the following screenshots.⁴

21. Your affiant reviewed publicly available video footage of the riots at the East doors of the Capitol: <https://www.youtube.com/watch?reload=9&app=desktop&v=MVullQb-Lec>. The video shows rioters violently assaulting police officers with flag poles, projectiles and chemical irritants. The video also shows rioters disarming at least one law enforcement officer by stealing his shield as the mob shouted, “Get their shields! Get their shields!” Your affiant located BREHENY in the video in close proximity to the ongoing violence. BREHENY can be seen at the 3:24 minute mark in the screen shot below:



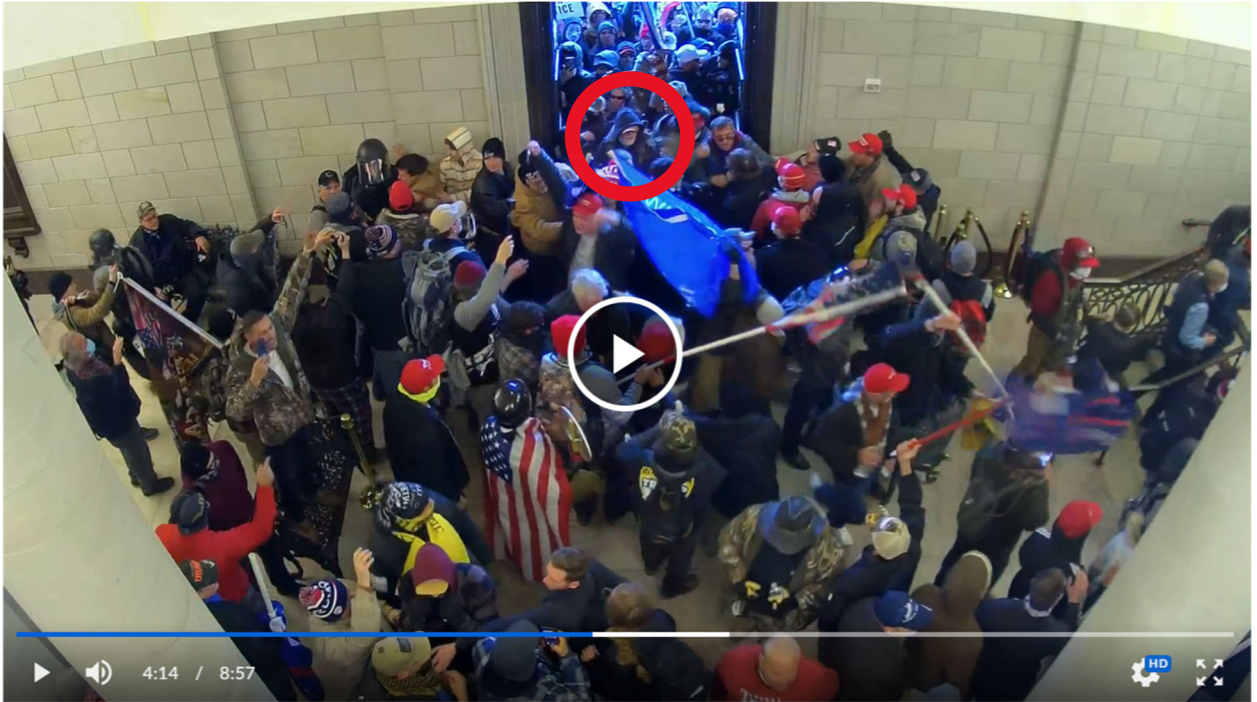
⁴Initial data provided by T-Mobile, the provider who services BREHENY’s phone number XXX-XXX-6546, in response to a search warrant, did not confirm the phone’s location inside the Capitol on January 6, 2021, but law enforcement has not yet received all of the data from T-Mobile that is responsive to the search warrant.

22. Once the rioters breached the doors, loud alarm bells sounded. BREHENY is visible in the video starting at the 6:25 minute mark and in the screen shot below:

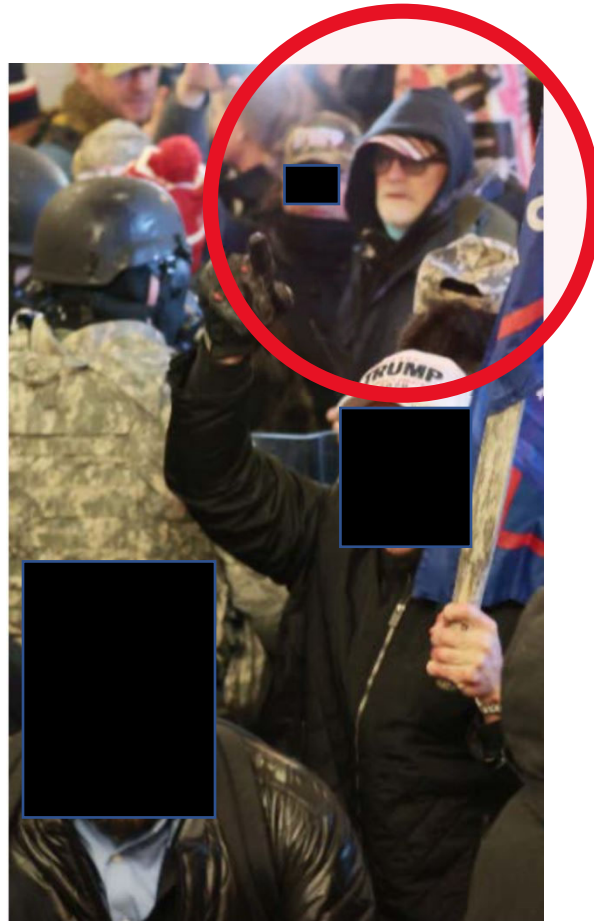


23. By examining this publicly available video, your affiant was able to determine that certain statements that BREHENY made during the interview were false. Rioters gained entry to the East doors of the U.S. Capitol via a violent and sustained assault against law enforcement officers, which included protestors assaulting officers with flagpoles, projectiles and chemical irritants. Once rioters were successful in breaching the doors, loud alarms bells sounded. Given the ongoing violence and emergency alarms that were sounding at the time, it is unreasonable that any individual entering the building could believe that he had a lawful right to enter.

24. Your affiant was also able to identify BREHENY on the closed circuit video as he entered the Capitol. He entered willfully and was not pushed into the Capitol, as he claimed in his interview:



25. Your affiant also located BREHENY in an open source photograph, which was taken from inside the East Lobby of the Capitol:



BREHENY Sent Messages Admitting that He Breached the Capitol

26. The physical search of BREHENY's phone revealed text messages between BREHENY and his associates regarding the events of January 6, 2021 at the Capitol building. BREHENY sent numerous messages to contacts where he bragged about gaining entry to the Capitol, as well as his interest in subsequently avoiding detection by law enforcement. These messages included:

- a. "I breached the Capital door!"
- b. "We breached the door Baby."
- c. "Made it in Brother".
- d. "Made it in."

e. "Yup. Made it in [laughing emoji]".

f. [In response to a statement from a contact about how BREHENY will be sought-after:] "Yes I heard".

g. "I got in".

h. "Made it in!" "Capital".

i. "I have to clear chats".

27. In one of the text message conversations in response to BREHENY'S pictures of the Capitol, the associate advised BREHENY, "Don't post it on FB," to which BREHENY responded, "Nope." "FB" is common shorthand for "Facebook."

28. In another text message conversation, an associate advised BREHENY of the following: "They're going through social media looking at pictures to try to identify and prosecute anyone in the Capitol building".

29. On January 8, 2021, an associate sent a message via Signal and advised BREHENY to "Delete all pictures, messages and get a new phone. Praying for you brother."

Law Enforcement Identifies BREHENY's Social Media Account

30. Facebook account user name "SEAMUS EVERS," was identified on BREHENY'S cellular device. Your affiant believes that "Seamus Evers" is an alias for BREHENY, because: (i) messages from the device reference BREHENY utilizing Facebook, (ii) BREHENY appeared to be the sole user of the cellular phone, (iii) there were no other Facebook accounts located on the phone, and (iv) as noted above in Paragraph 13, Person One referred to BREHENY by the name "Seamus," and noted that "Seamus" was traveling from New Jersey, in the DC Op Signal chat.

BREHENY Deleted his Social Media Account to Avoid Detection

31. On April 16, 2021, FBI Newark executed a federal search warrant for BREHENY'S Facebook account user name SEAMUS EVERS.

32. A review of the search warrant return from Facebook revealed that the account was deactivated on January 8, 2021 and was previously associated with BREHENY'S cellular telephone number. Agents located multiple pictures of BREHENY in the account.

33. Your affiant observed content that BREHENY had transmitted via Facebook, which included the photos referenced above that BREHENY took during the riots, which confirm his unlawful entry into the Capitol, as well as statements where BREHENY admitted to being inside the Capitol during the riots.

In Regard to the Riots, BREHENY Stated That All "Legal Means" Had Been Exhausted and that He Intends to "Replace" the Government

34. BREHENY posted the following statement to Facebook on January 6, 2021 at 23:54:48 UTC in response to a conversation about the January 6 riots: "Mixed. People need to stand up and fight we are losing by unfair tactics and misrepresentation sooner or later this had to happen. They refuse to hear the cases that would allow our voices to be heard. So what other option do you have? We exhausted all legal channels. They refuse to investigate any of crimes or voter issues. Therefore the Government has become tyrannical. The People's Duty is to replace that Government with one they agree with. I'm all ears. What's our options???" BREHENY also posted, "We weren't burning down the city. We wanted access to the Capital to watch the vote and have our voices heard. They put barricades up. It's our house not theirs. They are only our representatives minor guards or kings or queens so we have a right to access to the building."

Probable Cause Exists to Arrest BREHENY

35. Based on the foregoing, your affiant submits that there is probable cause to believe that JAMES BREHENY 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.

36. Your affiant submits there is also probable cause to believe that JAMES BREHENY violated 40 U.S.C. § 5104(e)(2)(D) and § 5104(e)(2)(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.

37. Based on the foregoing, your affiant submits that there is probable cause to believe that JAMES BREHENY violated 18, United States Code, Section 1512(c)(1)), which makes it a crime to , corruptly alter, destroy, mutilate, and conceal a record, document, and other object, and

attempted to do so, with the intent to impair its integrity and availability for use in an official proceeding, that is, the FBI investigation and the grand jury investigation into the attack on the Capitol on January 6, 2021.

38. Based on the foregoing, your affiant submits that there is probable cause to believe that JAMES BREHENY violated 18, United States Code, Section 1512(c)(2)), which makes it a crime to attempt corruptly obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, by entering and remaining in the United States Capitol without authority and committing an act of civil disorder and engaging in disorderly and disruptive conduct.



SPECIAL AGENT MICHAEL VAN GORDER
FEDERAL BUREAU OF INVESTIGATION

Subscribed and sworn pursuant to Fed. R. Crim. P. 4.1 and 41(d)(3), by telephone, this 18th day of May 2021.

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE