

STATEMENT OF FACTS

Your affiant, Alex Nogueiras, Jr., is a Special Agent with the Federal Bureau of Investigation (FBI). 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. Currently, I am tasked with investigating criminal activity in and around the United States Capitol (the Capitol) grounds on January 6, 2021.

The U.S. Capitol is secured twenty-four hours a day by U.S. Capitol Police (USCP). Restrictions around the Capitol include permanent and temporary security barriers and posts manned by USCP. Only authorized people with appropriate identification are allowed access inside the Capitol. On January 6, 2021, the exterior plaza of the Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the 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 Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on Tuesday, November 3, 2020. The joint session began at approximately 1:00 PM. Shortly thereafter, by approximately 1:30 PM, 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 Pence present and presiding over the Senate, a large crowd gathered outside the Capitol. As noted above, temporary barricades and permanent barricades were in place around the exterior of the Capitol. USCP 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 Capitol were locked or otherwise secured. Members of the USCP attempted to maintain order and to keep the crowd from entering the Capitol. However, around 2:00 PM, individuals in the crowd forced entry into the Capitol. Some members of the crowd gained access and entry to the Capitol by breaking windows and assaulting members of the USCP. Others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 PM, members of the House of Representatives and 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

PM. Vice President Pence remained in the 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 Capitol without authority to be there. One of the individuals who was inside the Capitol without authority to be there is the defendant—**Timothy Earl O'MALLEY**.

Since January 6, 2021, the FBI has been investigating and identifying those who were inside of the Capitol without authority and disrupted the proceedings. On or about January 8, 2021, a confidential informant (CI-1) called the FBI's national tip line, stating that they had information that the defendant had gone inside the Capitol on January 6, 2021. The source of the information was a video that the defendant recorded inside the Capitol that the defendant had allegedly showed to a family member of CI-1. CI-1 indicated that they had not personally seen the recording. CI-1 further indicated that the defendant had previously identified himself as a Proud Boy.¹

Three days later, on or about January 9, 2021, an FBI agent spoke to CI-1 on the phone. CI-1 indicated that since submitting the tip, they had seen the video, and that in the video one could hear a voice that CI-1 identified as the defendant's stating in sum and substance: TAKE OUR HOUSE BACK. CI-1 clarified that they could not confirm that the video was taken inside of the Capitol, but that it appeared to have been taken on or near the Capitol's stairs.

On or about January 15, 2021, the FBI spoke with a second confidential informant (CI-2) who stated that they had received text and media messages from the defendant on or about January 7, 2021. CI-2 stated that in general, the defendant had communicated to CI-2 that he was proud of being at the protest and that he believed in what he was doing.

On or about January 15, 2021, the FBI also had a non-custodial, in-person interview with the defendant, **Timothy Earl O'MALLEY**. The defendant is a sixty-three-year-old male from Fort Walton Beach, Florida.

¹ Proud Boys is an organization with multiple U.S. chapters and potential activity in other Western countries. The group describes itself as a “pro-Western fraternal organization for men who refuse to apologize for creating the modern world; aka Western Chauvinists.” Proud Boys members routinely attend rallies, protests, and other First Amendment-protected events where they sometimes engage in violence against individuals whom they perceive as threats to their values. The group has an initiation process for new members, who often wear yellow and black polo shirts or other apparel adorned with the Proud Boys logo to events.

The defendant claimed that he drove his truck from Florida to Washington, D.C., specifically to attend what he called the rally on January 6, 2021. At an unknown time—but prior to attack on the Capitol—the defendant took at least two selfie style photographs showing an individual wearing a metallic red Rawlings Vapor softball batting helmet with a face guard. On each side of the helmet are what appear to be large red stickers with white lettering stating: TRUMP IS MY PRESIDENT. The defendant explained his biggest fear was Antifa throwing things. The defendant further stated that he heard that Antifa had sacks of concrete rocks.



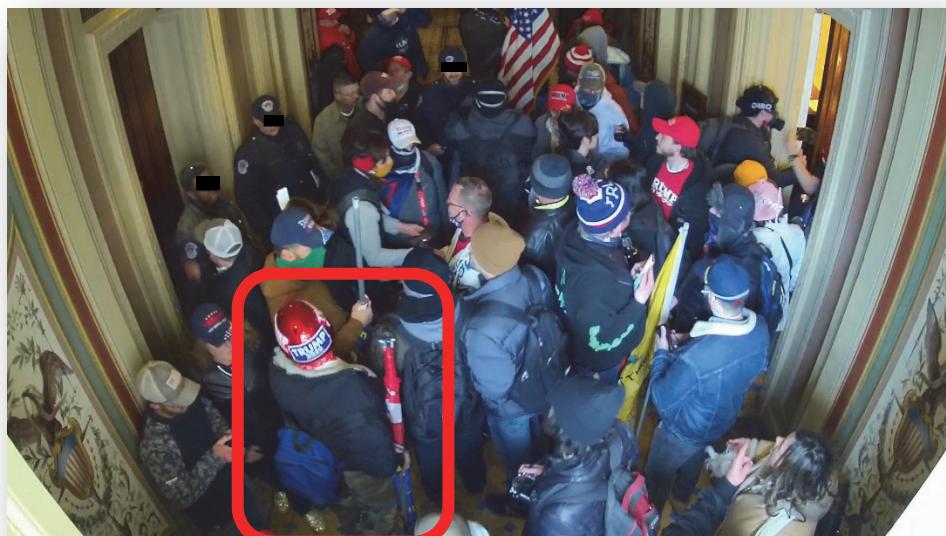
IMAGES 1, 2: Two photographs the defendant took of himself wearing the same helmet that he wore when he entered into and remained inside of the Capitol without permission or authority on January 6, 2021. There are stickers on each side of the helmet that appear to state: TRUMP IS MY PRESIDENT.

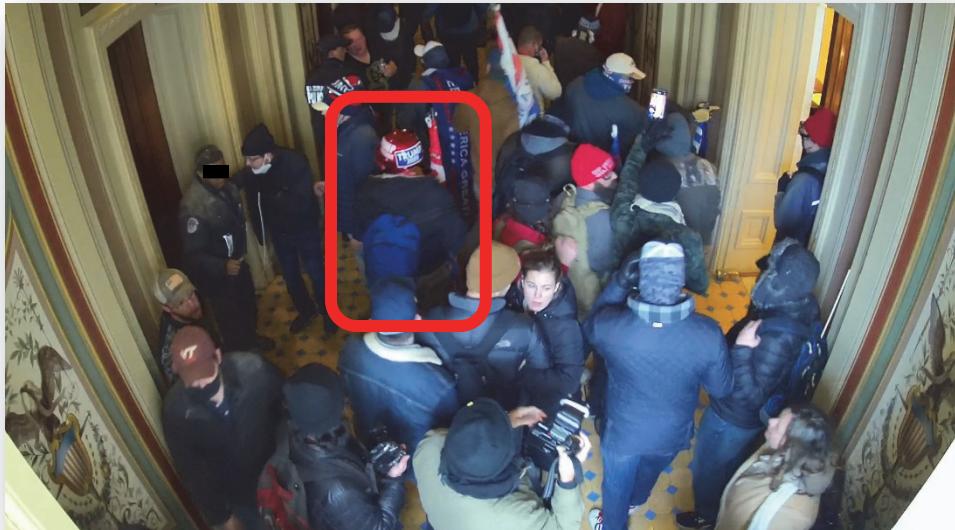
The defendant went on to claim that he traveled alone, did not bring any weapons, and did not meet up with anyone. The defendant further stated that he walked to the Capitol with a large crowd. When asked how he would describe the scene at the Capitol, the defendant stated in sum and substance: MAYHEM.

While in the vicinity of the Capitol, but before he went inside, the defendant claimed to have heard several small explosions, but no shooting. The defendant described the movement of the crowd as herd-like and recalled seeing other protestors climbing through windows and walking through open doors. The defendant further stated that he felt as though he was pushed or herded into the building—a claim that appears inconsistent with available CCTV footage from the Capitol—and subsequently moved into a room where he recalled seeing a chandelier.

Once inside, the defendant recalled that the group he was with encountered law enforcement officers, telling them in sum and substance that they did not want to hurt the officers, but they did want to walk around the Capitol. The defendant explicitly recalled law enforcement attempting to keep rioters from going up the stairs. As discussed below, the defendant can be seen going up a set of stairs near the Senate Chamber.

The defendant recalled taking some pictures while in the Capitol but claims to have deleted those pictures because he was not proud of what had happened. The defendant compared the incitement of the rioters to what happens to a crowd at a football game. As part of the FBI's review of CCTV from the Capitol on January 6, 2021, I have seen several videos and screenshots from those videos that appear to show the defendant in various locations of the Capitol, including the following screenshots.

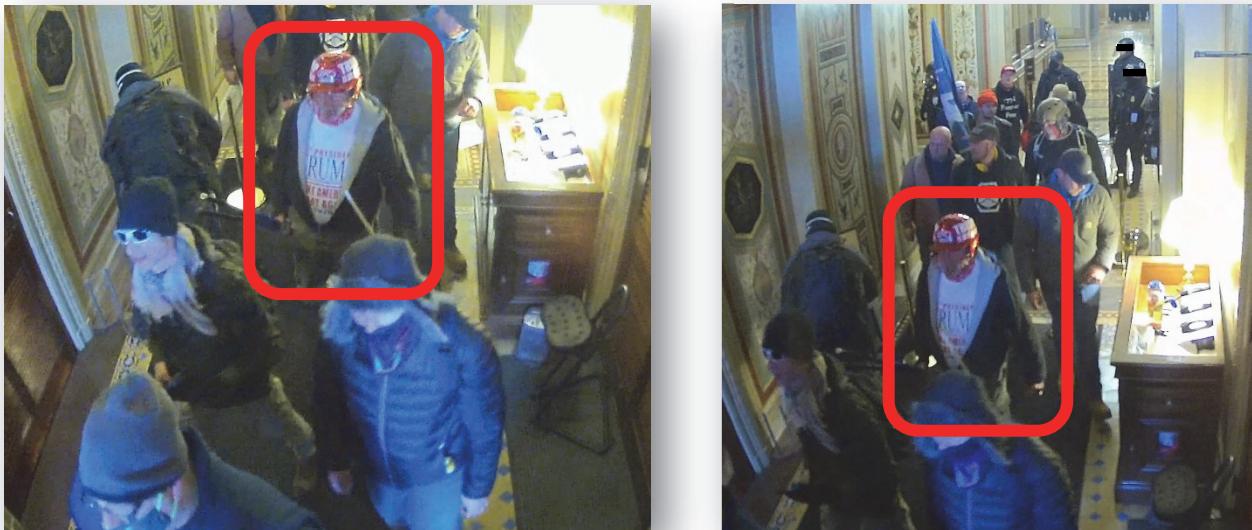




IMAGES 3, 4, 5: Three screenshots taken from Capitol CCTV show the defendant entering the Capitol at a location known as the Parliamentarian door. Contrary to the defendant's claim that he was herded by the crowd into the Capitol, the defendant continues moving into the Capitol, even as others are moving in the opposite direction.



IMAGES 6, 7: The defendant appears via CCTV in The Brumidi Corridors in a hallway on the northern edge of the Senate Wing of the Capitol. The defendant—in his metallic red helmet adorned with stickers—is seen at the front of the crowd, pointing a finger at a LEO.

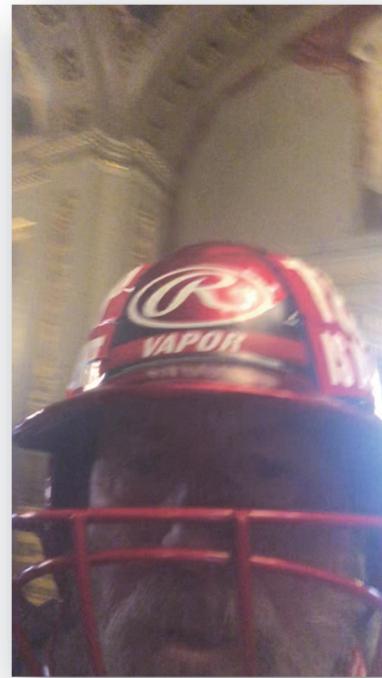


IMAGES 8, 9: The defendant is seen via CCTV walking through The Brumidi Corridors of the Capitol, past a security station.



IMAGES 10, 11: The defendant is seen via CCTV walking up a staircase that leads to the second floor of the Capitol and the Senate Chamber. The defendant is seen walking past Phineas Staunton's painting of Henry Clay in the U.S. Senate (1866) and past a security desk.

Pursuant to a warrant, the FBI seized and searched the defendant's phone. In addition to IMAGES 1 and 2 (supra), the FBI found videos in which the defendant appears to be filming himself inside what your affiant identifies as the Capitol and the immediate vicinity of the Capitol.



IMAGES 12, 13, 14: Screenshots taken from a video that was found on the defendant's phone and that the defendant claims to have filmed of himself. Based on the unique and elaborate decorations seen in the defendant's video and an image found on the website of the Architect of the Capitol (IMAGE 15 below), the setting for this video appears to be room S213, the Senate Reception Room.



IMAGE 15: An image from the Architect of the Capitol's website (https://www.senate.gov/artandhistory/art/common/generic/Room_History_S213.htm) showing the Senate Reception Room. The defendant appears to have filmed a video of himself while inside S213. While inside this room, the defendant stated in sum and substance: WE TOOK THE CAPITOL. WE'RE MOVING ON TO OTHER FLOORS NOW. WHOO! OUR HOUSE!

The video from which IMAGES 12, 13, and 14 were taken (VIDEO 1) was filmed selfie-style in what appears to be the Senate Reception Room (S213), the defendant can be heard stating in sum and substance: WE TOOK THE CAPITOL. WE'RE MOVING ON TO OTHER FLOORS NOW. WHOO! OUR HOUSE!

In another video (VIDEO 2) that appears to have been filmed outside the Capitol, the defendant did not show his face until the end, but the voice in VIDEO 2 is the same as the voice in VIDEO 1. In VIDEO 2 the defendant states in sum and substance: OUR HOUSE! TAKE IT BACK, IT'S OUR HOUSE!

In another video (VIDEO 3) that also appears to have been filmed outside the Capitol, the defendant again did not show his face, but the voice in VIDEO 3 is the same as the voice in VIDEO 1. In VIDEO 3 the defendant states in sum and substance: THEY TRIED TO TRAP US INSIDE. BUT WE FOUGHT OUR WAY, ALL THE WAY IN THERE. AND WE FOUGHT OUR WAY BACK OUT, AND THEY TRIED TO TRAP US. WE'RE OUTSIDE. WE SWARMED THE CAPITOL, THOUGH. HOT DAMN, LEADING THE CHARGE. GETTIN' IT ON.²

The FBI Task Force Officer who was present at the non-custodial interview with the defendant has viewed the referenced photos, screenshots and videos and believes that the individual seen therein is the defendant—**Timothy Earl O'MALLEY**.



IMAGES 1, 14, 8 (cropped): A side-by-side comparison of IMAGE 1—a selfie-style photo taken from the defendant's phone of an individual wearing a red batting helmet with Trump stickers visible; IMAGE 14—a screenshot from VIDEO 1, a video that was also taken from the defendant's phone and appears to show the defendant inside the Senate Reception Room; and a cropped version of IMAGE 8—a screenshot from Capitol CCTV that shows the defendant in the Capitol's Brumidi Corridors.

² All three videos were found on a phone that the defendant identified as his phone. The defendant claimed to have recorded the videos. The metadata from the videos corroborate that VIDEOS 1, 2, and 3 were filmed at a date and time that is consistent with the attack on the Capitol.

Accordingly, your affiant submits there is probable cause to believe that **Timothy Earl O'MALLEY** violated 18 U.S.C. §§ 1752(a)(1) and (2), which make 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 18 U.S.C. § 1752, 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 **Timothy Earl O'MALLEY** violated 40 U.S.C. §§ 5104(e)(2)(D), and (G) which make 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 Alex Nogueiras, Jr.
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 28th day of June 2021.

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE