

STATEMENT OF FACTS

Your affiant, Erik Potrafka, is a Special Agent with the Federal Bureau of Investigation, currently assigned to a squad which investigates violent crime and threats. Prior to becoming a Special Agent with the FBI, I was a Special Agent with the United States Secret Service. Prior to that, I was a police officer with the Glendale Heights, Illinois, Police Department for approximately nine and a half years and was also a detective for approximately five years. I have received training in general law enforcement and federal investigations. As part of my duties, I have investigated bank robberies, kidnapping, and other crimes of violence. 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 a violation of Federal criminal laws.

Background

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 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, 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 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.

Conduct of Mark Ponder on January 6, 2021

During the course of the Capitol riot on January 6, 2021, many rioters were armed with makeshift weapons including bats, poles, pepper spray, sticks, zip ties, as well as bulletproof vests and anti-tear gas masks. At approximately 2:30 p.m., a group of violent rioters climbed onto the Inauguration Stage located on the Lower West Terrace of the U.S. Capitol Building.

At that time, a group of U.S. Capitol Police (“USCP”) and Metropolitan Police Department (“MPD”) officers, were stationed on and around the Lower West Terrace in an attempt to control the increasingly agitated and violent crowd. The USCP and MPD police officers were in uniform and clearly identified as officers. Multiple members of the crowd began to verbally challenge the officers and to physically confront the group of officers as the officers attempted to restrain and disperse the crowd.

An individual, later identified as MARK PONDER (“PONDER”), is captured on both open-source video and MPD Body Worn Camera (“BWC”) video on and around the Lower West Terrace on January 6, 2021. PONDER is first captured on the BWC of MPD Officer #1 at approximately 2:30 p.m. In that video, PONDER can be seen wearing blue jeans, an unzipped green jacket with the hood over his head, black shoes, and a beige sweater. The beige sweater, which is visible underneath the jacket, has three distinctive horizontal stripes across the chest, with the top two stripes being thicker and the bottom stripe being thinner. The top two horizontal stripes are separated in the center by a vertical zipper.

In the BWC video of Officer #1, PONDER can be seen on the Lower West Terrace between approximately 2:30 and 2:32 p.m. BWC video of a second officer who was working on the Lower West Terrace at the same time, Officer #2, also captures PONDER between 2:30 and 2:32 p.m. The BWC video of Officer #2 records the same timeframe as that of Officer #1, but from a different perspective than the video of Officer #1. During this timeframe, PONDER moves in and out of the camera views of Officers #1 and #2.

In the BWC of Officer #1, PONDER can be seen holding a long thin pole at approximately 2:31 p.m. and wielding that pole in an aggressive manner as officers attempt to control the crowd. The corresponding video of Officer #2 at approximately 2:31 p.m. shows PONDER running toward a line of officers with the long thin pole, then attacking a uniformed officer by striking that officer with the pole. The unknown officer defends himself by raising a round, clear riot shield in front of his face. As PONDER strikes the round shield with the pole, the pole appears to break

and the top portion of the pole flies to the side. The screenshot below from the BWC of Officer #2 captures PONDER striking the officer with the round shield at approximately 2:31 p.m.:



PONDER then turns and runs back into the crowd. As he approaches the crowd, he appears to bend down and attempt to pick something up.

Moments later, shortly before 2:32 p.m. PONDER reemerges from the crowd holding another long pole. This second pole appears to be thicker than the first pole and is colored with red, white, and blue stripes. The BWC video of Officer #1 shows PONDER running toward a group of officers and using the red-white-blue pole to strike at the officers in the group. The corresponding BWC video of Officer #2, recorded shortly before 2:32 p.m., shows a front view of PONDER rushing toward the group of officers – which included Officer #2 – and striking at the group of known and unknown officers. One officer standing at the front of that group uses a clear, rectangular riot shield to protect himself from PONDER's blows.



Open-source video also captures portions of PONDER's movements between 2:30 and 2:32 p.m. In a video posted by "Just Another Channel," located at <https://banned.video/watch?id=5ff73a601669d333f2b27315> (last visited on March 3, 2021), PONDER is captured at minute 45:45 using the red-white-blue pole to strike at the group of officers, including the officer at the front of that group who is protecting himself with the clear, rectangular riot shield. Based upon the location and the other individuals filmed in that open-source video, the above-referenced portion of the video appears to have been recorded simultaneously with the BWC of Officer #1 and Officer #2.



PONDER is next video recorded on the BWC of MPD Officer #3 at approximately 2:47 p.m., still wearing the blue jeans, unzipped green jacket, black shoes, and the distinctive beige sweater with three horizontal stripes. At this point, he also appears to be wearing a green baseball-cap style hat, with the hood of his jacket draping down his back. Around that timeframe, the violent and aggressive crowd began to confront law enforcement on the Upper West Terrace area of the U.S. Capitol Building. Members of the crowd were armed with various weapons and multiple individuals were observed assaulting law enforcement in the area.

In the BWC of MPD Officer #3, PONDER is armed with a long pole with red, white, and blue stripes. The pole appears to be similar to the pole that PONDER wielded in the BWC videos of Officers #1 and #2 fifteen minutes earlier. At approximate 2:47 p.m., PONDER begins aggressively striking the ground with the pole as other rioters verbally and physically confront the

officers protecting that area. PONDER then begins removing his green jacket and, shortly before 2:48 p.m., drops the jacket to the ground and emerges from the crowd without the jacket. The distinctive beige sweater with stripes is fully visible at that point. PONDER continues to strike the ground with the pole, as is captured in the two screenshots of Officer #3's BWC below:



At 2:49 p.m., the line of MPD officers begins to advance in an attempt to disperse the crowd. As the officers advance on the crowd, they dispense Oleoresin Capsicum (OC) spray toward the crowd. The BWC video of Officer #3 shows PONDER alternatively running toward the officers, then running away from the officers, all while swinging and striking at the officers with the red-white-blue pole. As PONDER swings the pole in the direction of the officers, he struck Officer #3 once in the left shoulder. The screenshot below, taken from the BWC of Officer #3, shows PONDER swinging the red-white-blue pole at the group of officers.



After being struck by PONDER, several officers, including Officer #3, physically tackled PONDER to the ground to effectuate an arrest. During the physical takedown, Officer #3's BWC was deactivated and did not capture any further interaction with PONDER.

Open-source video also captures the moments leading up to PONDER being physically taken to the ground on January 6, 2021. Beginning at minute 10:40 in a video posted by S.C.N.R. at <https://www.youtube.com/watch?t=746&v=8Vh8wPeo6Jk&feature=youtu.be> (last visited on March 3, 2021), an individual dressed in a green jacket consistent with PONDER'S jacket walks through the crowd striking the red-white-blue pole on the ground. At minute 11:50, the camera captures PONDER'S face as he stands in his beige sweater striking the ground with the pole. A voice can be heard in the background saying "You gonna have to kill me today. You gonna have to kill me." It is not clear whether the voice belongs to PONDER or to another rioter. As the video continues, PONDER is again captured at approximately minute 12:25 being taken to the ground by a group of officers. The screenshots below are taken from the video just prior to and during the takedown of PONDER.





Identification of Mark Ponder on January 6, 2021

After being physically taken to the ground and detained on the Upper West Terrace, MPD Officer #4 began the process of arresting and transporting PONDER from the Capitol Grounds. However, due to the chaotic nature of the day, the arrest was not completed on January 6, 2021. At approximately 3:15 p.m., PONDER was released without charges by MPD Officers #3 and #4 because a transport vehicle was unable to reach the Capitol Grounds and because the officers were ordered to respond back to the riot to assist with crowd control.

Between the time of PONDER'S detention at approximately 2:49 p.m. and the time of his release at approximately 3:15 p.m., MPD Officer #4 interacted with PONDER and captured those interactions on his BWC. At multiple points during that interaction, the BWC video of Officer #4 captures PONDER'S face and clothing, including the beige sweater with distinctive stripes. Immediately after detaining PONDER, officers ask him to provide his name. PONDER, however, initially refuses to provide his name, telling officers "You will find out when I get locked up." As officers escort PONDER from the Capitol Grounds, he repeatedly shouts "Hold the line!" and "Do not give up!" to the crowd of rioters as he walks past.

At approximately 3:03 p.m., officers begin a search incident to arrest of PONDER and Officer #3 recovers a wallet from PONDER'S person. The search is captured on the BWC of Officer #4. It is not captured on the BWC of Officer #3, because the BWC of Officer #3 was disabled in the takedown of PONDER. After recovering the wallet, Officer #3 removes several identification cards from the wallet and asks, "Mark Ponder, is that your name?" PONDER does not respond and, instead, looks away from Officer #3. The officers then begin referring to him as "Mr. Ponder" and continue to do so without any objection until PONDER's release.

While still holding the wallet and identification cards, Officer #3 asks PONDER to confirm his date of birth, which he refuses to do. The officers then explain that if they cannot verify his name, they will have to book him as “John Doe.” PONDER responds by saying “You’ve already got my name.” After a continued back-and-forth over verifying PONDER’s name, PONDER verbally provides his date of birth as “8-4-XX” [August 4, XXX]. He also confirms that he had previously been arrested in the District of Columbia. The officers are then able to confirm that the person they placed under arrest was PONDER. The screenshot below depicts Officer #3 reviewing the identification cards taken from PONDER’s person on January 6, 2021.



While the officers are standing with PONDER waiting for transport, PONDER verbally engages with other nearby rioters saying “I will say this. When our country is being attacked with, like we are, we have a right to fight...that is what the Second Amendment was built on.” Eventually, the officers learn that transport will not be arriving for PONDER and that they are needed for continued crowd control. At that point, they inform PONDER that he will be released, but that he needs to provide additional information about himself. PONDER then provides his address as “2018 14th Street, SE,” which he says is near Good Hope Road. A check of law enforcement databases confirmed that this address was previously associated with PONDER.

During that same conversation, PONDER also lectured the officers who arrested him, saying:

You know, deep in your heart, you know...that your fathers, your grandfathers, they fought for this freedom in which people are giving away. The thing is, at some point you are going to have to choose and make up your mind what side you are going to take...that’s what we fighting for because they are stealing that right...and its blatant, everybody can see it.

PONDER is then escorted out of the barricade area of the Capitol Grounds and officers inform him that he is not permitted to return. PONDER then exits the barricaded area with one arm held high in the air, while other rioters cheer him on.

Your Affiant conducted a MPD search of the name MARK PONDER with a date of birth of [REDACTED], and located a picture for PONDER and a MPD PDID number of [REDACTED]. After comparing the PDID photograph to the images from BWC from January 6, 2021, your Affiant confirmed MARK PONDER as the individual placed under arrest and released on that date.

A review of additional BWC footage indicates that PONDER later returned to the Capitol Grounds on January 6, 2021, after being released by Officers #3 and #4. At approximately 5:06 p.m., PONDER is visible in the BWC of Officer #5 on the Inauguration Stage, almost two hours after his initial release. PONDER ultimately left the stage area after tear gas was deployed on the crowd on the Inauguration Stage.

On February 18, 2021, Your Affiant met with Officer #3 and showed three (3) separate photographs obtained from the BWC capturing PONDER on January 6, 2021. Officer #3 identified PONDER in each picture as the subject who assaulted him, and who Officer #3 arrested. Officer #3 identified the subject as MARK PONDER, due to having identified him on January 6, 2021.

CONCLUSION

Based on the foregoing, your affiant submits that there is probable cause to believe PONDER violated:


(1) **18 U.S.C. § 111(a)(1) and (b)**, which makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in section 1114 of title 18 while engaged in or on account of the performance of official duties, while using a deadly or dangerous weapon. Persons designated within section 1114 include any person assisting an officer or employee of the United States in the performance of their official duties and where the acts in violation of this section involve physical contact with the victim and the intent to commit another felony.

(2) **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.

(3) **18 U.S.C. § 1752(a)(1), (2), and (4)** which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do so; 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; (4) knowingly engage in any act of physical violence against any person or property in any restricted building or grounds; 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.

(4) **40 U.S.C. § 5104(e)(2)(D) and (F)**, which makes it a crime to willfully and knowingly 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; (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings.

(5) **18 U.S.C. § 1512(c)(2) and 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.


Erik Potrafka
Federal Bureau of Investigation

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.

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE