

STATEMENT OF FACTS

Your affiant, Brendan Fogerty, is a Special Agent assigned to the Boston Federal Bureau of Investigation (“FBI”) Field Office, Providence Resident Agency. I have been a Special Agent with the Federal Bureau of Investigation (FBI) since 2014. In my duties as a special agent, I have been assigned to the Joint Terrorism Task Force of the Federal Bureau of Investigation’s Boston Division, Providence Residence Agency, since 2019. Prior to this, I had been assigned to the Violent Crime Task Force of the Federal Bureau of Investigation’s Boston Division since 2015. I have also received specialized training regarding investigative techniques, evidence collection, and evidence preservation. I have participated in criminal investigations relating to counterterrorism, specifically domestic terrorism. Through my training and experience, I am familiar with the strategy, tactics, methods, ideology and practices of domestic terrorism and anti-government extremists. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Special Agent with the FBI, I am authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of a violation 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 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.

Earlier this day, at approximately 1:00 p.m., a crowd of violent rioters assembled on the West Front of the United States Capitol. USCP formed a line of bike racks extending from the north end of the West Front to the south end to act as a barrier against the crowd. Officers were standing watch behind this line and fending off repeated attempts by the rioters to pull on the bike racks, either with their hands or with ropes and straps.

At approximately 2:00 p.m., some people in the crowd forced their way through, up, and over the barricades and law enforcement. The crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by USCP officers or other authorized security officials. At such time, the certification proceedings were still underway, and the exterior doors and windows of the United States Capitol were locked or otherwise secured. Members of law enforcement attempted to maintain order and keep the crowd from entering the United States Capitol.

At approximately 2:30 p.m., significant sections of the police line on and near the United States Capitol's Lower West Terrace broke as the rioters in the crowd swarmed and overwhelmed the law enforcement officers. Some of the rioters were able to penetrate the scaffolding, a position that gave them access to the stairs to the upper terraces where there are several key doors, including the doorway to the Lower West Terrace, also referred to as the "tunnel." Officers from the USCP and the Washington, D.C. Metropolitan Police Department (MPD) formed a police line in the tunnel blocking that entrance to the United States Capitol building and were repeatedly fending off assaults by some of the rioters. At approximately 2:42 p.m., rioters began entering the tunnel and ambushing the officers. The rioters broke the glass and forced the doors open. In response, the USCP and MPD officers formed a police line blocking that entrance to the U.S. Capitol building. From approximately 2:42 p.m. and on, numerous rioters were consistently attempting to breach the police line that formed in the tunnel. The rioters used various weapons, as well as the force of their bodies, in an attempt to overcome the officers. Many of the rioters assaulted MPD and USCP officers by hurling objects towards the officers, physically striking officers with batons and other blunt instruments, using lights to distract and disorient the officers, using electrical shock devices, crushing officers between the doors and walls of the confined space, and by deploying chemical sprays and fire extinguishers against the officers.

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.

FACTS SPECIFIC TO BERNARD JOSEPH SIRR

Based on an initial review of publicly available video footage, USCP surveillance footage, and body worn camera (“BWC”) footage of officers who responded to the United States Capitol on January 6, 2021, a tall, white male wearing a tan and black baseball cap with a snake on it, a blue neck gaiter, glasses, and a coat, who has been identified as BERNARD JOSEPH SIRR, as described below, can be seen repeatedly engaging in an assault against law enforcement officers guarding the United States Capitol.

A review of USCP surveillance footage, MPD BWC footage, and videos posted on YouTube revealed SIRR repeatedly engage in a violent assault against multiple law enforcement officers in the tunnel. The “tunnel” is a narrow point of entry on the Lower West Terrace of the Capitol, circled below:

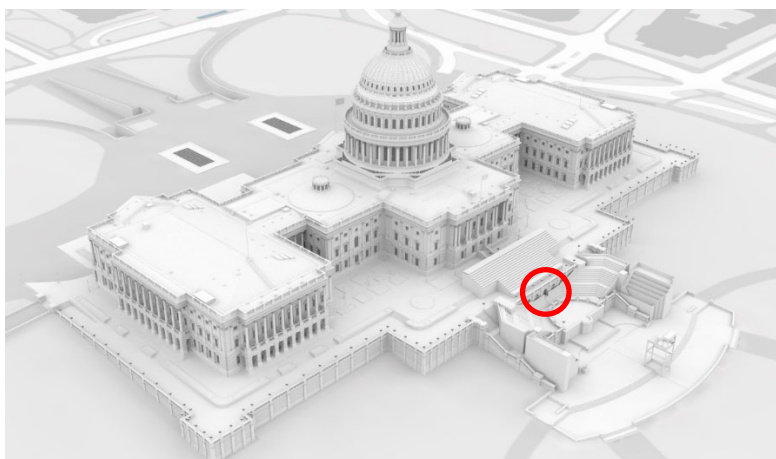


Figure 1

In a YouTube video that appears to be taken prior to the assault, SIRR can be observed marching with a group of other individuals in a “stack,” with his left hand on the shoulder of the person in front of him:



Figure 2

<https://www.youtube.com/watch?v=eA9JV7S45Cg&t=2235> at video mark 37:15

At approximately 3:08 p.m. on January 6, 2021, USCP surveillance footage captured SIRR entering the tunnel on the Lower West Terrace and making his way toward the front of the police line, as seen in Figures 3-5 below. At approximately 3:08:18 p.m., SIRR appears to be pushing against the police line that is just out of view of the camera:



Figure 3



Figure 4



Figure 5

Video footage posted to YouTube appears to directly correspond to the USCP surveillance footage, and shows SIRR's activities while at the front of the line of rioters inside the tunnel. During a video taken inside the tunnel from video mark 18:49 – 18:57, SIRR is at the front of the police line pushing against rioters who are assaulting police officers as seen in Figure 6:



Figure 6

https://www.youtube.com/watch?v=cJOgGsC0G9U&feature=youtu.be&has_verified=1

From approximately 19:19 -19:34 of the same video, SIRR is seen holding onto and pushing the individual in front of him in a brown shirt with long brown hair, later identified as Patrick McCaughey III¹, while McCaughey is pushing into the police line, as seen in Figure 7:



Figure 7

https://www.youtube.com/watch?v=cJOgGsC0G9U&feature=youtu.be&has_verified=1

¹ McCaughey has been charged in Case No. 1:21-CR-040.

From approximately 19:47 - 20:07 of the video, SIRR is seen pushing against the police line with his hand pressed against a police shield, as seen in Figure 8:



Figure 8

https://www.youtube.com/watch?v=cJOgGsC0G9U&feature=youtu.be&has_verified=1

From approximately 20:46 – 21:03 of the video, SIRR is seen with the group of rioters as they continue to assault members of law enforcement. During this portion of the video, the group of rioters can be heard chanting “heave! ho!” in unison as they move back and forth together as a team against the police. See Figure 9:



Figure 9

https://www.youtube.com/watch?v=cJOgGsC0G9U&feature=youtu.be&has_verified=1

At approximately 3:14 p.m., surveillance footage captures SIRR exiting the Lower West Terrace tunnel. Approximately one hour later, at 4:14 p.m., USCP surveillance footage shows SIRR reappear at the Lower West Terrace doorway pushing other rioters who appear to be pushing against the police, as seen in Figures 10 and 11:



Figure 10

Figure 11

A review of BWC footage belonging to Officer-1 revealed that at approximately 4:14:23 p.m., SIRR was observed near the front of the police line near the Lower West Terrace doorway pushing other rioters who appear to be pushing the police line, as seen in Figure 12:



Figure 12

Approximately 11 minutes later, SIRR was also seen on BWC footage belonging to Officer-2 as SIRR and other rioters were being pushed out of the tunnel. A review of open source material, including another video posted to YouTube at video mark 9:50, also captures SIRR being ejected from the tunnel:



Figure 13



Figure 14

https://www.youtube.com/watch?v=cRCEMN-lq_o&t=591

Additional open source material captured SIRR with his glasses off and gaiter pulled down in both video and photographs taken before and during the riot:



Figure 15

<https://www.youtube.com/watch?v=zEPk1B11wtE&t=208> at video mark 3:27



Figure 16

<https://www.fbi.gov/wanted/capitol-violence-images/249-c.png/view>

Following the January 6 attack, images of SIRR participating in the riot appeared on the internet. Based on the images, the FBI created a profile for SIRR as moniker “AFO-249.” The FBI posted images of SIRR to its website and to social media, including the image in Figure 16, to garner public assistance in identifying SIRR.

The FBI located known images of SIRR from SIRR’s 2018 U.S. passport application. Based on the similarity between SIRR and AFO-249, the FBI located a social media account associated with BERNARD SIRR. A review of the account revealed a photograph of SIRR posted in July 2020 wearing a wearing a tan and black baseball cap with a snake on it consistent with the hat worn by AFO-249 on January 6:



Figure 17

The FBI subsequently interviewed an individual (“Person-1”) who is familiar with SIRR and sees SIRR on a regular basis. Person-1 was shown pictures of AFO-249 and Person-1 identified the subject as being BERNARD SIRR.

The FBI was also able to confirm that SIRR was on leave from his place of employment from January 5-7, 2021.

Based on the foregoing, your affiant submits that there is probable cause to believe that BERNARD JOSEPH SIRR 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 submits that there is also probable cause to believe that SIRR violated 18 U.S.C. § 1752(a)(1) and (4), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; and (4) knowingly engages 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.

Your affiant submits there is also probable cause to believe that BERNARD JOSEPH SIRR violated 40 U.S.C. § 5104(e)(2) which makes it a crime to willfully and knowingly (E) obstruct, or impede passage through or within, the Grounds or any of the Capitol Buildings; and (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings.

Respectfully submitted,



Brendan C. Fogerty
Special Agent
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 22nd day of June 2022.

HONORABLE ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE