

Case: 1:23-mj-00214
Assigned To : Harvey, G. Michael
Assign. Date : 8/18/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, [REDACTED], is a Special Agent assigned to the FBI Charlotte Division Joint Terrorism Task Force (JTTF). In my duties as a special agent, I conduct both international and domestic terrorism investigations. 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, detection, investigation, or prosecution of a violation of Federal criminal laws.

The facts in this Affidavit come from my personal observations, my training and experience, and information obtained from other agents, witnesses, and agencies or is based on a review of various documents, records, and reports. Because this Affidavit is submitted for the limited purpose of establishing probable cause, it does not contain every fact known by me or the FBI. The dates and times listed in this Affidavit should be read as “on or about.”

Background: Events at the U.S. Capitol on January 6, 2021

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.

Facts Specific to BRETT ROTELLA

Based upon review of public video, closed circuit television (“CCTV”) footage and police body worn camera (“BWC”) footage depicting the events at the U.S. Capitol building and grounds on January 6, 2021, law enforcement identified an individual who confronted police officers, led other rioters in advancing toward retreating police, grabbed police riot shields and repeatedly pushed against police in an effort to gain entrance to the U.S. Capitol. The FBI subsequently posted a photograph of the individual at the U.S. Capitol under the name 82-AFO and requested help from the public to identify the individual. As set out in detail below, law enforcement has identified 82-AFO as BRETT ROTELLA (“ROTELLA”), also known as Brett Alan Ostrander, and there is probable cause to believe that on January 6, 2021, ROTELLA committed violations of 18 U.S.C. §§ 111(a)(1) (assaulting, resisting, or interfering with a law enforcement officer); 231(a)(3) (civil disorder), and 1752(a)(1) and (2) (unlawful entry and disorderly conduct on restricted buildings or grounds) and 40 U.S.C. § 5104(e)(2)(E) (impeding passage through the Capitol grounds or buildings).

A. 82-AFO’s Activities at the U.S. Capitol on January 6, 2021

According to BWC footage, 82-AFO was located on the West Plaza of the U.S. Capitol building on January 6, 2021 at approximately 2:24 p.m. Below is a still image from BWC depicting 82-AFO (circled in red) on the West Plaza:



As depicted above, 82-AFO was wearing a red skull cap, a black sleeveless puffy vest over a red sleeveless shirt, white or gray long shorts with a black stripe and black tennis shoes. 82-AFO also held a long pole with at least two flags affixed to it at various points during the day.

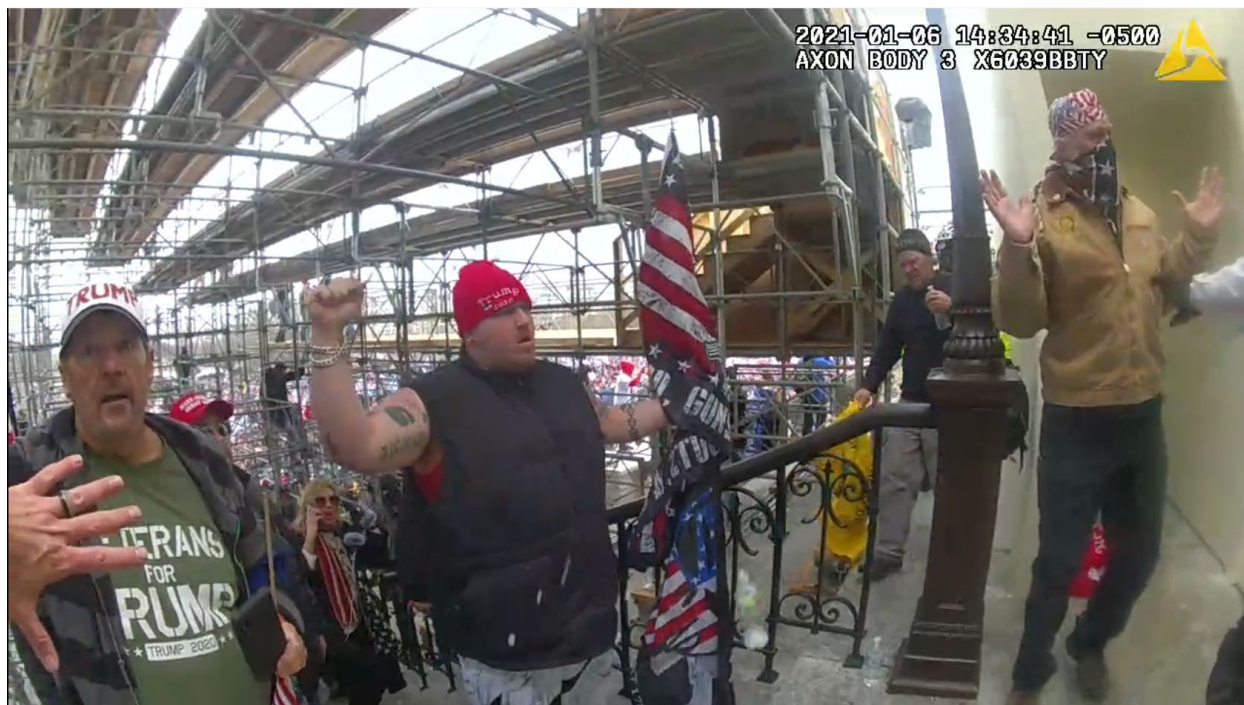
Approximately 2 minutes later, 82-AFO approached a metal police barricade, grabbed the barricade and pushed it in the direction a Metropolitan Police Department (“MPD”) officer, Officer D.T., and yelled “fuckin’ tear gas us, I didn’t do shit!” 82-AFO also yelled, “we just want things to be right” and “something has to happen or we’re all fucked!” Below is a still image from Officer D.T.’s BWC depicting 82-AFO immediately after he pushed the barricade toward Officer D.T.:



At approximately 2:33 p.m., the police line on the West Plaza fell and numerous police officers retreated away from the area. As the police near him retreated, 82-AFO led numerous other rioters in quickly following the police up the southwest stairs from the West Plaza. As 82-AFO led the group up the stairs, he periodically paused calling out “HOLD!” or holding up his fist to indicate to the group behind him to stop. Below is another still image from BWC showing 82-AFO directing other rioters to stay in place while the police retreat:



Below is another still image from BWC depicting 82-AFO holding his right arm up in a fist to indicate to the rioters behind him to stop while the police retreat:



After reaching the top of the stairs, 82-AFO led the rioters in turning left at the top of the stairs and around the corner where he again confronted police officers attempting to stop the crowd from breaching the building. Below is a still image of 82-AFO from BWC still at the front of a large crowd of rioters, again holding up his right hand in a fist to indicate to his followers that they should hold their place:



As the officers dispersed from the area, 82-AFO led the crowd of rioters toward the Inaugural Stage.. Below is a still image from BWC depicting 82-AFO leading a crowd of rioters toward the U.S. Capitol building:



At approximately 2:40 p.m., 82-AFO followed the police into a long hallway leading into the U.S. Capitol building on the Lower West Terrace referred to as “the tunnel.” As 82-AFO followed the police, a police officer fired rubber bullets at the ground near his feet in an attempt to stop his advance. 82-AFO then turned around and began to walk backward toward the police as the rubber bullets were fired at the ground near his feet. Below is a still image from CCTV depicting the police firing rubber bullets at 82-AFO as he continues to advance by walking backward into the tunnel:



The police then retreated into the tunnel. They shut and locked the first of two sets of double doors to the entrance of the U.S. Capitol building. 82-AFO stood outside those doors and stared in at the police line. Below is a still image from BWC depicting 82-AFO staring in at the police. He also appears to still be holding the flag pole in his left hand:

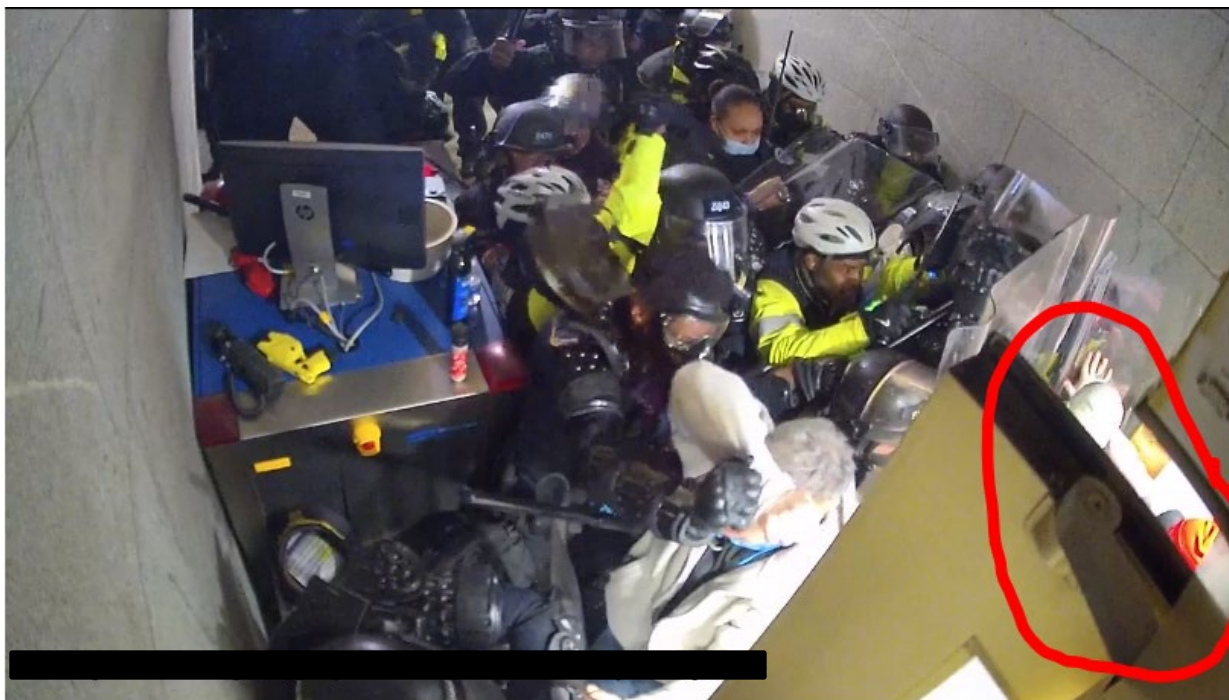


Moments later, the rioters smashed one of the panes of glass in the doors and opened the set of doors. They then approached the police line, which was established behind the second set of

doors. As depicted in the still image from BWC below, 82-AFO reached around and opened the door on the left and then was the second rioter to enter the tunnel:



Another rioter came through the doors and quickly began to physically fight the police. Soon, other rioters, including 82-AFO joined. For example, below is a still image from CCTV depicting 82-AFO (circled in red and recognizable by his orange/red skull cap, sleeveless shirt and black vest), with his right arm outstretched and pushing against the police shields:



At approximately 2:43 p.m., 82-AFO turned his back on the police line and pushed against the police officers while using his hand to help leverage his weight and push against the door frame. Below is a still image from BWC depicting 82-AFO pushing against the door frame to help him push harder against the police. The officers asked 82-AFO to let go of the door but he said, "I don't want her to get hurt." It appeared that at this time, 82-AFO may have been creating space for a smaller female near him:



Below is a still image from another video obtained during the investigation (“Video 1”) depicting 82-AFO pushing against the police from the angle of the mob.



Video 1 also indicates 82-AFO may have been at least partially protecting a small female near him for part of the time he was at the police line. However, the female moves away from the front line approximately two minutes into the video but 82-AFO remained at the police line. Video 1 shows that as he pushed, 82-AFO also briefly grabbed the edge of a police riot shield before releasing it and raising his hand in the air. Near the end of Video 1, 82-AFO stated, “Just go back please.”



After several minutes at the front of the police line, 82-AFO appeared to be sprayed with OC spray. Clamping his eyes shut, he felt his way out of the tunnel. Another public video (“Video 2”) depicts 82-AFO as he left the front of the police line:



According to CCTV footage, 82-AFO left the tunnel at approximately 2:55 p.m.



Approximately one hour later, 82-AFO was still located at the area near the tunnel. By this time, the police had successfully expelled the rioters from inside the tunnel but the mob was continuing to fight against the police from outside. 82-AFO was a member of a large crowd that was pushing in concerted fashion and calling out “heave ho” from outside the tunnel against the police line. Below is a still image of 82-AFO from a video obtained during the investigation (“Video 3”) depicting 82-AFO pushing along with the rest of the mob against the police at approximately 3:50 p.m.¹

¹ Video 3 does not have time stamps. The estimated time is based on a comparison between Video 3 and other videos that do include timestamps, like CCTV and BWC.



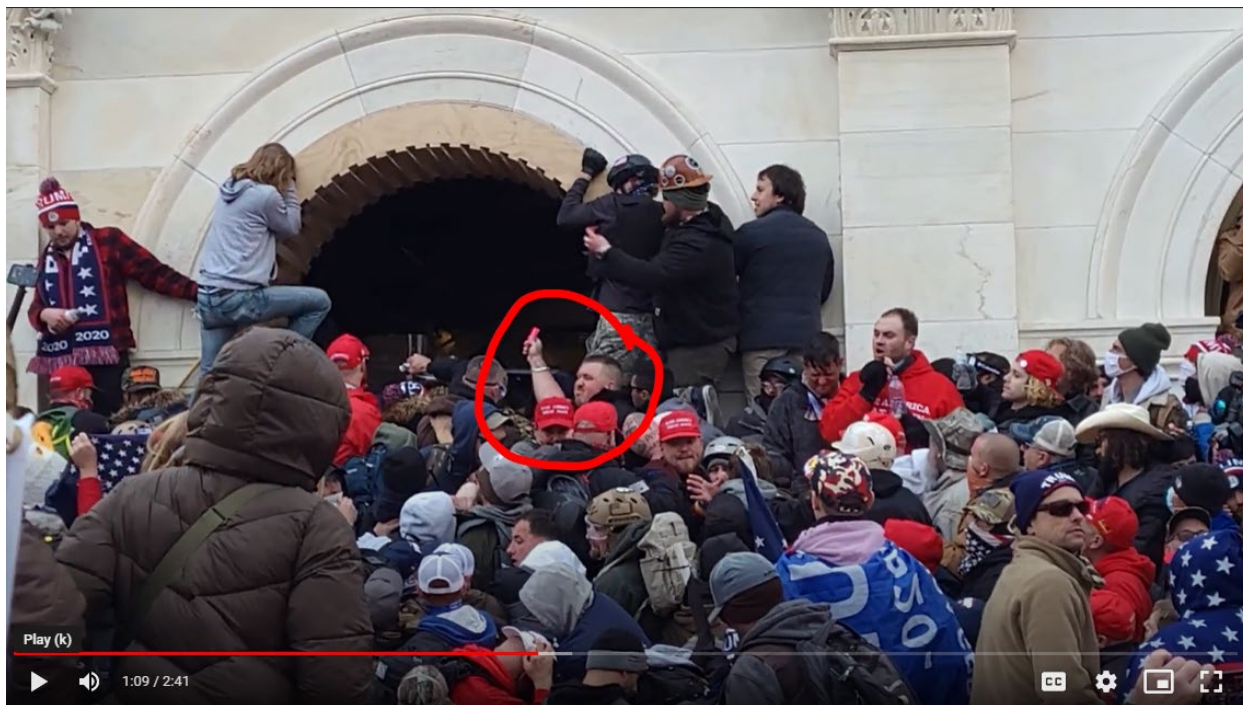
Approximately four minutes later, while still pushing with other members of the mob, 82-AFO extended his left hand in the air, extended his left index finger, then his middle finger, then his ring finger as if to count "1, 2, 3" and then pushed hard against the rioters in front of him. Below is a still image from Video 3 depicting 82-AFO counting the crowd down to direct a group push against the police



Another public video (“Video 4”) shows 82-AFO (in the yellow square) counting the crowd down from an angle directly behind him:



82-AFO then made his way through the dense crowd closer to the police line. Once he was at the police line, another rioter handed 82-AFO a pink tube-like object, possibly pepper spray. It appears that 82-AFO attempted to activate the pepper spray – perhaps as a test – but it did not spray. 82-AFO later dropped the item when a ladder was passed overhead. Below is a still image from another public video (“Video 5”) depicting 82-AFO with the pink item in his right hand:



Moments later, 82-AFO no longer had the pink item in his hand when he was passed a large orange ladder. 82-AFO grabbed the ladder and pushed it overhead toward the police line and into the mouth of the tunnel. Below is a still image from Video 5 depicting 82-AFO (circled in red) grabbing the ladder and handing it behind him:



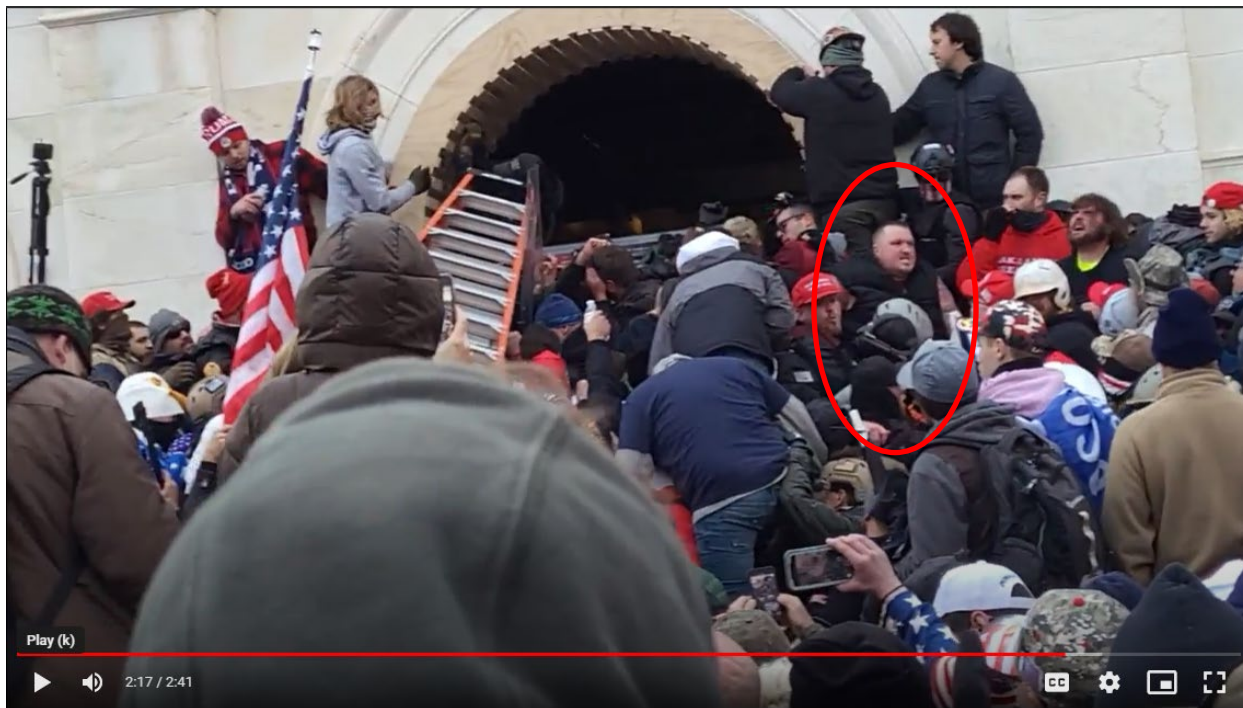
Below is a still image from CCTV depicting 82-AFO's arm (circled in red) as the ladder was being pushed in the tunnel at the police:



82-AFO pushed the entire length of the ladder back and into the tunnel. Below is a still image of 82-AFO (circled in red) from another video obtained during the investigation (“Video 6”) grabbing the end of the ladder and continuing to push it into the tunnel at the police:



After the ladder was pushed back out of the tunnel by the police, 82-AFO continued to push against other rioters near him in an effort to collectively push against and breach the police line in the tunnel. Below is a still image from Video 5 depicting 82-AFO (circled in red) pushing with his back to the tunnel as the ladder is being pushed back out into the crowd by the police:



B. Identification of 82-AFO as BRETT ROTELLA

FBI posted a photograph of 82-AFO to its website and asked members of the public for help in identifying him. Below is the photograph posted by the FBI of 82-AFO:



Following posting of the BOLO, law enforcement became aware that 82-AFO may be BRETT ROTELLA.² Based on a search of law enforcement and open-source databases, FBI identified a potential residence for ROTELLA in Kannapolis, North Carolina (“the Rotella Residence”). On or about July 27, 2023, FBI performed surveillance at the Rotella Residence. At approximately 4:15 p.m. that afternoon, a white male matching the description 82-AFO exited the residence with a woman and two minor children. The man, woman and children then got into a vehicle and left the Rotella Residence. FBI maintained physical surveillance of the vehicle and the occupants after it departed the Rotella Residence, including when the vehicle stopped at a nearby Aldi store and the occupants went inside. Below is a photograph of the white male who exited the Rotella Residence inside the Aldi store (minor children have been redacted):

² FBI received at least three [3] tips from the public that identified 82-AFO as someone other than BRETT ROTELLA. FBI was able to rule out these other tips by, among other things, conducting open source research, reviewing law enforcement databases and conducting interviews.



At approximately 6:09 p.m., the vehicle and its occupants returned to the Rotella Residence, and the man, woman, and children exited the vehicle and entered the residence.

Based on FBI's observations of the white male – including the above photograph - and a comparison with known photographs of BRETT ROTELLA, agents believe the white male to be ROTELLA. Further, based on a comparison between ROTELLA and images of 82-AFO from January 6, 2021, agents believe ROTELLA to be 82-AFO. Specifically, I compared the tattoo that appears on 82-AFO's left arm above his elbow and believe that it is the same tattoo on ROTELLA's left arm above his elbow. Specifically, below on the left is a zoomed in portion of the above photograph showing ROTELLA's left bicep and on the right is a zoomed in portion of ROTELLA's left bicep from the preceding photograph of ROTELLA leaving the LWT tunnel:



FBI also performed open source research and identified a potential phone number associated with ROTELLA: phone numbers (XXX) XXX-8126 (“Rotella Phone 1”). According to information obtained from Verizon Wireless pursuant to a search warrant, Rotella Phone 1 was identified as having utilized a cell site consistent with providing service to a geographic area that included the interior of the United States Capitol building on January 6, 2021. Specifically, Verizon records indicated that Rotella Phone 1 was present at or near the U.S. Capitol at least as early as approximately 2:41 p.m. ET. until approximately 4:10 p.m. ET.

Finally, according to a search of law enforcement databases, it appears that ROTELLA may have changed his name in or around 2020 to Brett Alan Ostrander. Specifically, FBI located a North Carolina driver’s license that was issued in September 2020 to a Brett Alan Ostrander. The driver’s license appears to depict ROTELLA and lists the Rotella Residence as his address.

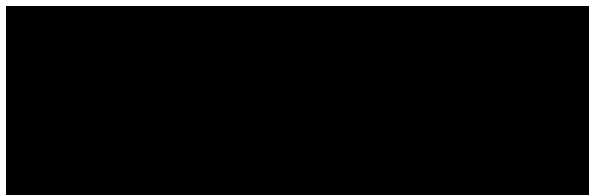
Based on the foregoing, your affiant submits that there is probable cause to believe that BRETT ROTELLA violated 18 U.S.C. 231(a)(3), which makes it unlawful to commit or attempt to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful 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 further submits there is probable cause to believe that ROTELLA violated 18 U.S.C. § 111(a)(1), which makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in 18 U.S.C. § 1114 as an officer or employee of the United States while engaged in or on account of the performance of official duties.

Furthermore, there is probable cause to believe that ROTELLA 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.

Your affiant submits there is also probable cause to believe that ROTELLA violated 40 U.S.C. § 5104(e)(2)(E) which makes it a crime to willfully and knowingly obstruct, or impede passage through or within, the Grounds or any of the Capitol Buildings.



Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
by telephone, this 18th day of August 2023.

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE