

### STATEMENT OF FACTS

On January 6, 2021, your affiant, Gary Battista, was on duty and performing my official duties as a Special Agent. Specifically, I am assigned to the FBI New York Joint Terrorism Task Force (JTTF), tasked with investigating criminal activity in and around the Capitol grounds. 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. 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 are 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, 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.

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. Based upon our investigation, I submit that there is probable cause to believe that JUSTIN MCAULIFFE (DOB 9/05/1981) was among the individuals who invaded the U.S. Capitol building during the events summarized above.

In the days following the riot, the FBI received tips through the FBI Tip Line and elsewhere from multiple individuals alleging that MCAULIFFE posted content to his Facebook page indicating that he entered the U.S. Capitol along with other rioters on January 6, 2021.

For example, on or about January 10, 2021, an individual contacted the FBI by phone and informed law enforcement that he/she had been friends with MCAULIFFE (“Witness-1”).

Witness-1 provided his/her first and last name and contact information. During this phone call and a separate conversation several days later, Witness-1 stated in sum and substance and in part that: (1) he/she has known MCAULIFFE for approximately five years; (2) they initially saw each other frequently, but later saw each other several times per year; (3) they were “friends” on Facebook for part of that time until Witness-1 “unfriended” MCAULIFFE<sup>1</sup>; and (4) Witness-1 continued to periodically check MCAULIFFE’s public Facebook posts.

Witness-1 also provided to the FBI the phone number associated with the SUBJECT PHONE as MCAULIFFE’s telephone number. Witness-1 stated that he/she knows MCAULIFFE’s telephone number because they have sent each other text messages. On or about January 13, 2021, the FBI conducted open source research to link social media accounts with the call number associated with the SUBJECT PHONE. The FBI located a Telegram<sup>2</sup> account associated with the subject’s call number with the display name “Justin McAuliffe” and a photograph of MCAULIFFE, which is described and presented below, inside an office at the Capitol.

Witness-1 additionally emailed photographs to the FBI of what Witness-1 represented to be, and appears to be, screenshots that Witness-1 took of MCAULIFFE’s Facebook page showing MCAULIFFE at the U.S. Capitol on January 6, 2021. I know from a public search of Facebook that MCAULIFFE deleted his Facebook account following the U.S. Capitol riots.

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<sup>1</sup> Witness-1 stated that he/she was offended by MCAULIFFE’s Facebook postings claiming that Covid-19 was a hoax, particularly after Witness-1 and his/her family contracted Covid-19.

<sup>2</sup> Telegram is an end-to-end encrypted messaging software available for download to a smartphone, similar to the messaging application WhatsApp.

For example, one photograph, below, depicts MCAULIFFE outside the U.S. Capitol with a crowd of other persons:



Witness-1 also gave the FBI MCAULIFFE's residential address, which is in Bellmore, New York. Law enforcement then reviewed MCAULIFFE's New York State DMV driver's license. Based on an examination of MCAULIFFE's driver's license, I believe that the individual depicted in the above photograph with glasses and a blue and red hat is MCAULIFFE.

On or about January 14, 2021, I observed a public article on the online website “Slate,” dated January 7, 2021, about the U.S. Capitol riots. The article contained the below photograph of the same individual, that is, MCAULIFFE. MCAULIFFE and another individual appear to be in a member of Congress’s office along with a Trump flag. MCAULIFFE, who is on the right side of the photograph, has a smartphone in his hand. MCAULIFFE’s profile picture in his Telegram account is a cropped version of the photograph below:



Additional members of the public reached out to the FBI Tip Line with information pertaining to MCAULIFFE. For example, on or about January 8, 2021, an individual contacted the FBI and provided his/her first and last name and contact information (“Witness-2”). Witness-2 provided at least two photographs, which he/she represented to be snapshots from

MCAULIFFE's Facebook. The first photograph, below, appears to be of MCAULIFFE's smartphone settings showing that he had access to the Wi-Fi at the U.S. Senate, indicating that he was close to or inside the Senate offices:



The second photograph provided by Witness-2, below, shows MCAULIFFE having a conversation over Facebook with another individual. In one message, MCAULIFFE states: “yeah I was in one of the offices. Some people were smoking a joint in the room, lol. Cops came

in and weee like. Okay guys really? They didn't even ask us to leave right away. They let us sit down and hang out and relax.”



Based on the foregoing, your affiant submits that there is probable cause to believe that MCAULIFFE (DOB 9/05/1981) 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. 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.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'GCB', is centered on a light blue rectangular background.

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GARY C. BATTISTA  
FEDERAL BUREAU OF INVESTIGATION

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 20th day of January 2021.

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ROBIN M. MERIWEATHER,  
U.S. MAGISTRATE JUDGE