

STATEMENT OF FACTS

Your affiant, [REDACTED] Special Agent with the Federal Bureau of Investigation (“FBI”), is one of the agents assigned to an ongoing investigation of riots and civil disorder that occurred on January 6, 2021, in and around the United States Capitol grounds by the FBI, United States Capitol Police (“USCP”), Metropolitan Police Department (“MPD”) and other law enforcement agencies. I am presently assigned to the FBI’s Louisville Division, Joint Terrorism Task Force. As a Special Agent with the FBI, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of violations of Federal criminal laws.

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 after 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.

On Thursday, January 7, 2021, a tipster, who will be referred to as T-1, called the FBI's National Threat Operations Center (NTOC) to report information about individuals who participated in the riot at the U.S. Capitol. T-1 identified Michael Sparks (charged elsewhere, *see* D.D.C. Case No. 21-CR-87-TJK) as being the first individual to climb through a broken window into the U.S. Capitol building on January 6, 2021—that is, the very first rioter to breach the U.S. Capitol building. T-1 also knew that Sparks traveled to Washington, DC with co-workers from the Elizabethtown, KY area, including JOSEPH HOWE. (The agent who documented the tip and later interview incorrectly spelled the name “Howell,” but he will be referred to throughout using his true name HOWE).

The next day, an FBI agent interviewed T-1 by telephone. T-1 explained that T-1 is an acquaintance of HOWE and overheard HOWE discuss plans with Sparks to travel to Washington, D.C. on January 6, 2021 to attend the pro-Trump rally. T-1 heard Sparks tell HOWE, “This time we are going to shut it down.” After the incidents at the U.S. Capitol on January 6, 2021, HOWE's wife, who is also a co-worker of HOWE and Sparks, had a video of her husband being pepper sprayed at the U.S. Capitol.

On January 12, 2021, an FBI agent interviewed T-1 again. The agent provided T-1 with photographs of individuals inside the U.S. Capitol on January 6, 2021 to review, including a photograph of an unknown individual the agent believed at the time might be HOWE (though it was later determined that this photograph showed a different individual wearing similar clothing, including goggles and a dark beanie hat, but was not in fact HOWE). T-1 indicated that the man in the photograph “looks like Joe Howe.” T-1 knew that HOWE sent photographs and videos of himself inside the U.S. Capitol to his wife, including one after being pepper sprayed.

On March 22, 2021, an FBI agent interviewed a witness, referred to as W-1. W-1 told the FBI that he traveled to Washington, DC with Sparks, HOWE, and others who worked at the same company in Elizabethtown, KY, in a vehicle rented by Sparks. Upon arriving near the U.S. Capitol on January 6, 2021, W-1 was separated from HOWE based on the large size of the crowd.

On April 2, 2021, an FBI agent interviewed a second witness, referred to as W-2. W-2 told the FBI that he traveled to Washington, DC with Sparks, HOWE, W-1, and others who worked at the same company in Elizabethtown, KY. W-2 identified HOWE's driver's license photograph as the person with whom he traveled. Upon arriving near the U.S. Capitol on January 6, 2021, W-2 was separated from HOWE based on the large size of the crowd.

On April 12, 2021, an FBI agent interviewed HOWE in a voluntary interview. HOWE confirmed that he traveled with a number of co-workers, including Sparks, W-1, and W-2, to Washington, DC to participate in the January 6, 2021 protests at or near the U.S. Capitol. HOWE told interviewers that when the group arrived at the U.S. Capitol, the exterior barricade was already knocked down. Upon moving with the crowd up a set of stairs, HOWE reported he was separated from the rest of his group. He remained near the rear of the crowd but was affected by tear gas that the wind blew into his eyes.

HOWE reported that in an attempt to find the others from his group, HOWE walked up to the U.S. Capitol and looked through broken windows, but never went inside. He walked around the outside of the building to the opposite side, but never found his traveling companions. He could not recall taking any pictures or videos when he was near the building. He then left the area to return to a rally point the group established earlier that day.

More than a year later, in July 2022, upon reviewing publicly-available video footage of the events of January 6, 2021, the FBI identified a video taken on the National Mall on January 6, 2021 that showed Sparks, W-1, W-2, HOWE, and others walking toward the U.S. Capitol.¹ In the video, excerpted below, HOWE is wearing a camouflage jacket, a dark blue hat with white writing, blue jeans, dark gloves, brown shoes, and a black backpack.



In the video, Sparks and HOWE are together, and both are captured speaking to the camera operator (“CO”). Of note, HOWE made the following comments starting at approximately 20:00 into the video while walking toward the U.S. Capitol:

HOWE: We’re getting in that building.

CO: We’re not getting in that building.

HOWE: We’re getting in it.

¹ The video, titled “The first arrest” was viewed on September 2, 2022 at <https://archive.org/details/8JbnTHEErXwJwkvkQ>. The data included at this website included information that the video was originally posted at <https://youtube.com/watch?v=5IEJtMMZ2VQ>. As of September 2, 2022, that link was no longer available.

CO: You think we're getting in that building?

HOWE: We're getting in it.

CO: You think so?

HOWE: Oh yeah.

Unknown Male ("UM"): Tell you what, you go. We'll follow you.

HOWE: We're getting in it.

UM: [Unintelligible]

HOWE: We're getting in it.

At that point, another individual, who based on my review of the video and my knowledge of Sparks' voice I believe was Sparks, chimed in:

Sparks: All it's gonna take is one person go. The rest is following.

HOWE: Let it go south in there.

Sparks then entered the camera's frame and spoke directly to the camera operator. Sparks offered the following:

Sparks: Let me give you a live prediction.

CO: Oh, hold on.

Sparks: Live prediction. Mike Sparks from Kentucky. What's getting ready to happen within the next five hours... Vice President Pence is going to deem you President Trump four more years of the presidency. That's gonna happen here within five hours. [UI]

CO: So how's that gonna happen?

Sparks: It's gonna happen because, with all the fraudulent voting that's going on, they're going to prove that here in a minute, inside the court.

UM: They better. They better prove it. If they don't, we're gonna [UI].

Sparks: Yeah, they've got the proof. They got proof that Obama... with the Italian people, it's going down.

...

Sparks: Vice President's duty today is to uphold the Constitution. If he does his job today, if he does his job today, he does the right thing by the Constitution, Trump's our President four more years.

CO: Well, if Mike Pence doesn't support Trump, his political career is over.

Sparks: Right.

CO: Cause Trump will be the kingmaker when it comes to all future elections in the short run.

Sparks: [UI]

CO: Every Republican will be primaried out that Trump fights against.

Sparks made similar comments on Facebook in the days before and after January 6, claiming that Trump would be President for four more years. In a comment on January 2, 2021, Sparks stated, “The votes were stolen . You will have time to fight for what you believe in . As for me I believe in the constitution so I’ll die fir it [sic]. Trump is my president[.]” In a comment on January 3, 2021, Sparks added, “It’s time to drag them out of Congress . It’s tyranny[.]” During his exchange with the camera operator on January 6, 2021, Sparks can be seen wearing a camouflage colored hat, black jacket, black gloves with white lines, carrying an orange backpack, as shown below. Based on the fit of his jacket and other images I have reviewed of Sparks that afternoon, it appears he is wearing a bulky vest underneath his jacket consistent with the appearance of body armor—much like HOWE who is seen in later footage from January 6, 2021, wearing a body armor-style vest underneath his outer jacket.



I have identified HOWE in other publicly available videos in addition to the one described above. In one video, which was once available online under a watermark reading “Insurgence USA,” HOWE and Sparks can be seen standing together on the Northwest steps, which were

covered at the time by a large scaffolding structure. The stairs lead to the Upper West Terrace and the first-floor entrances to the building itself. A line of USCP officers were attempting to hold back the crowd at the middle-level landing, where the scaffolding structure ended before the second flight of stairs. The police were successful for a period of time, in part because they had bike rack barriers to help block the crowd from moving through. But the rioters in that area were working to take the bike racks away and force through that police line. HOWE was at the front of this group of rioters, just at the bike rack barricade.

Rioters near HOWE—and possibly HOWE himself (identified in the screenshot below with a red arrow)—can be seen wresting a segment of bike rack fencing away from the officers and passing it back into the crowd below them.



The police struggled for control of the bike rack as the rioters pulled it back into the crowd, and some officers used their batons to try to deflect the rioters and keep them away from the now-exposed entry to the stair landing. A few minutes later, HOWE can be seen in the Insurgence USA video pulling out a collapsible ASP baton that appears to be the same model used by the Capitol Police.



While HOWE was in the scaffolding structure on the Northwest steps, he was wearing protective eye goggles and a gas mask. Others in the crowd can be heard commenting about the atmosphere being “spicy,” which I believe indicates pepper spray could be felt in the air around them. At one point, a rioter standing on the scaffolding just above HOWE’s head sprayed what appears to be a chemical agent into the line of police officers, shown in the screenshot below. HOWE can be seen just below that person, holding on to the scaffolding structure. A few seconds after this, it appears HOWE retracted the police baton and stored it in his pocket, as shown in the screenshot above on the right.



In the screenshot below, excerpted from video available at <https://archive.org/details/KtYvJ6HGyge2jWHmd>, Sparks and HOWE can be seen together, at the front of the mob just past the former police line that had been forced back. In the screenshots below, Sparks is identified with a yellow arrow and HOWE is identified with a red arrow:





Moments later, the crowd forced the USCP police line apart, and they broke through to access the remaining steps. HOWE ran up the stairway on a ledge on the right-hand side, next to the temporary inauguration structure.

As he ran up the stairs, USCP security footage from CCTV shows that at approximately 2:09 pm, HOWE pushed a Capitol police officer who was attempting to block the crowd—and HOWE—from progressing up the stairs. The officer appeared to stumble forward when HOWE pushed, and turned toward HOWE as he did so. HOWE paused. HOWE can be seen with the police baton in his hand, and he also appears to be holding what I believe, based on my comparison with other video footage, is a peaked police cap with a gold badge, as shown in the fourth CCTV screenshot below as well as the fifth screenshot below (taken from publicly-available third party footage capturing approximately the same time from a different angle).





At the top of this flight of stairs, the crowd was stopped by another USCP police line at the top of the Northwest steps. This police line was the very last line of defense blocking access to the Upper West Terrace and the Senate Wing Door. HOWE was among the first to arrive there. HOWE's gloved hand can be seen grasping the bike rack fencing the police were attempting to use to stop the crowd (shown with red arrow) and his gas mask and goggles can be clearly seen.



The mob shoved the bike rack fencing out of the way and forced the USCP officers to retreat. HOWE can be seen making his way directly to the building's entrance.

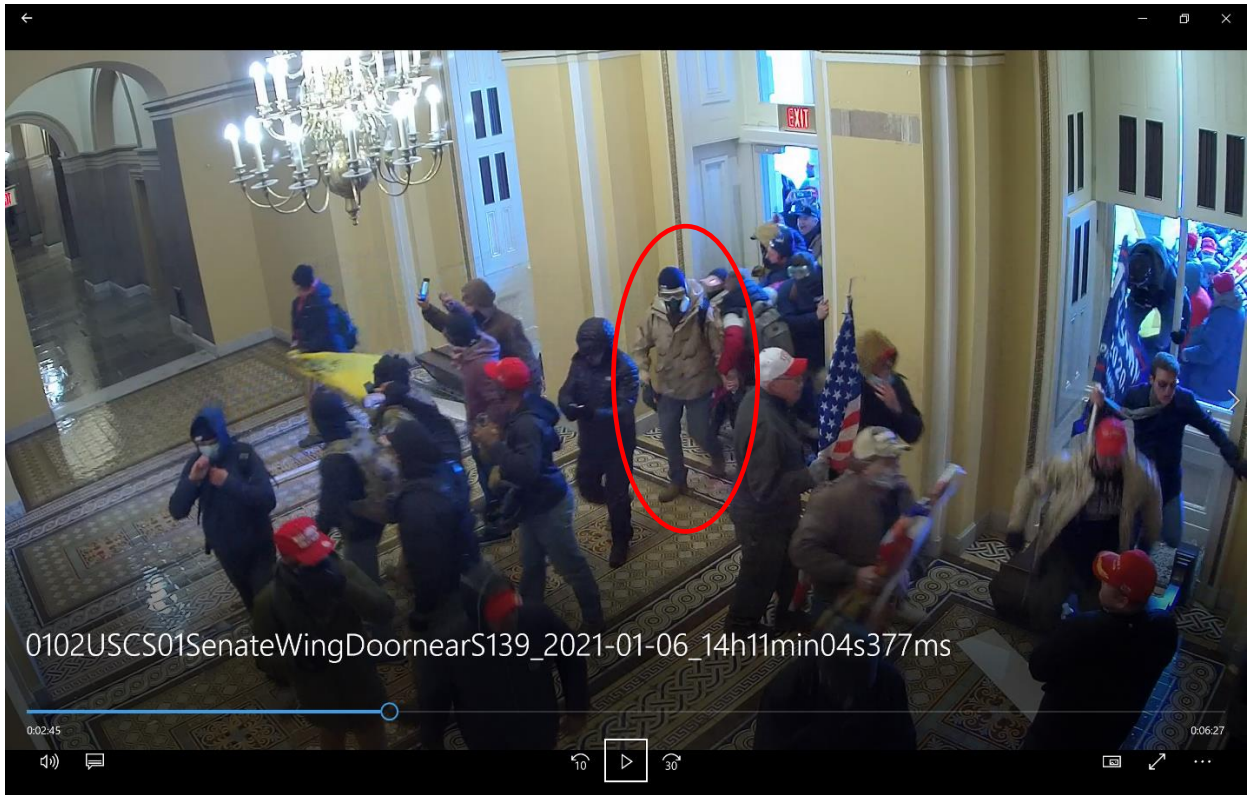
In another video available online, with footage from just a few moments later, I have identified HOWE, still wearing the same goggles and gas mask, kicking the Senate Wing Door of the building, at nearly the exact time the building was first breached by rioters and nearly the exact time Sparks became the first rioter to enter by jumping through the window just a few feet to the

right of this door.²



Investigators also conducted a review of closed-circuit television (CCTV) footage from the U.S. Capitol on January 6, 2021. At approximately 2:13 pm, HOWE, wearing the same clothing identified in the video above, including goggles and gas mask, is seen entering the U.S. Capitol through the Senate Wing Door. Just before he enters, the Senate Wing Door had been kicked open by other rioters who entered through the same broken window that Sparks jumped through seconds earlier. According to the Architect of the Capitol, the Senate Wing Door was damaged, and the glass and hardware had to be replaced. The cost to repair the door and replace the glass and hardware was \$7,260.

² The video was viewed on September 2, 2022 at <https://projects.propublica.org/parler-capitol-videos/?id=Z53KwQnRVQtM>. The video was original posted on the website Parler.



U.S. Capitol CCTV footage shows that HOWE exits the camera toward the north end of the building, but returns to the same area near the Senate Wing Door at approximately 2:15 pm. HOWE then proceeds south and enters the Crypt at approximately 2:16 pm. In the Crypt, HOWE verbally engaged with police officers that were attempting to restrict the movement of the crowd. In this footage, HOWE can also be seen using a phone in a manner consistent with taking photos and/or videos of the area.



At approximately 2:21 pm, HOWE removed his hat, coat, and gas mask. Under the coat, HOWE was wearing a red shirt with what appeared to be camouflage colored body armor, as seen in this close-up screenshot:



HOWE then moved with the crowd through the Crypt toward the Memorial Door where he is seen on camera at approximately 2:27 pm, with his goggles on his head. HOWE again engaged with law enforcement as part of the crowd and appears to yell toward others in the crowd.



After pushing forward through the law enforcement line, HOWE re-enters the camera at approximately 2:29 pm and steps to the side to pour water on his eyes and wipe his face with a towel, indicative of an encounter with pepper spray or tear gas.



HOWE then moved back to the Crypt at approximately 2:35 pm. HOWE is again seen using his phone to take photos and/or videos of the area.



HOWE then exited the Crypt through the East Crypt Lobby at approximately 2:38 pm. I have not located HOWE in any CCTV footage after around 2:38 pm.

On October 24, 2022, FBI agents, including myself, approached HOWE for a second voluntary interview, which took place at his workplace. During the interview, HOWE identified himself in photographs and video still frames at the U.S. Capitol, and confirmed that he is the individual shown in the photographs above, wearing a light camo patterned jacket. HOWE acknowledged wearing tactical gear including goggles and a facemask. When agents showed HOWE images of him under the Northwest scaffolding, HOWE acknowledged that he was holding an ASP baton and that he did not bring the baton with him to the Capitol, but he reported that he could not remember how he acquired it. HOWE also acknowledged that he picked up a police hat, though he claimed to have put it down later that same day. HOWE terminated the interview after noting, in essence, I know I'm in trouble here and I know where this is going.

Also on October 24, 2022, pursuant to a search warrant issued in the Western District of Kentucky, FBI agents searched HOWE's home. Agents located and seized the light brown camo jacket, Trump beanie, black backpack, and camo colored plate carrier vest HOWE was seen wearing at the U.S. Capitol.

Based on the foregoing, I respectfully submit that there is probable cause to believe that Joseph L. HOWE violated 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, or to aid and abet another in doing so. Under 18 U.S.C. § 1515, congressional proceedings are official proceedings.

In addition, I submit that there is probable cause to believe that HOWE 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 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 interstate commerce or the conduct or performance of any federally protected function.

For purposes of Section 231, the term "civil disorder" means any public disturbance involving acts of violence by assemblages of three or more persons which causes an immediate danger of, or results in damage or injury to property or person of any other individual. See 18 U.S.C. § 232(1). 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 of employee thereof. This includes the Joint Session of Congress where the Senate and House count Electoral College votes. See 18 U.S.C. § 232(3).

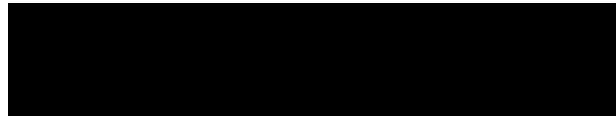
I submit that there is probable cause to believe that HOWE violated 18 U.S.C. § 111(a), which makes it a crime to assault, resist, oppose, impede, intimidate, or interfere with a Federal law enforcement officer, as designated in Section 1114 of Title 18, while engaged in or on account of the performance of official duties, or on account of those duties. Section 1114 specifically lists USCP officers as Federal law enforcement officers.

I further submit there is probable cause to believe that HOWE violated 18 U.S.C. §§ 1361 and 2, by willfully injuring or depredating of any property of the United States, or attempting to do so, or aiding and abetting in the commission of those acts, and the damage or attempted damage to such property exceeds \$1,000.

In addition, I submit that there is probable cause to believe that HOWE violated 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; (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; and (4) knowingly engage in any act of physical violence against any person or property in any restricted building or grounds.

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.

I further submit that there is probable cause to believe that Joseph L. HOWE violated 40 U.S.C. § 5104(e)(2)(D), (F), and (G), which makes 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; (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.



Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 26th day of October 2022.

MOXILA A. UPADHYAYA
U.S. MAGISTRATE JUDGE