

UNITED STATES DISTRICT COURT
for the
District of Columbia

United States of America
v.
Gabriel Augustin Garcia

Date of Birth: XXXXXXXX

Defendant(s)

Case: 1:21-mj-00095
Assigned to: Judge Robin M. Meriweather
Assign Date: 1/17/2021
Description: COMPLAINT W/ARREST WARRANT

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 6, 2021 in the county of in the
in the District of Columbia, the defendant(s) violated:

Code Section

Offense Description

18 USC 231(a)(3), § 2(a) Certain Acts During Civil Disorder, Aiding and Abetting
18 USC 1752(a)(1)&(2) Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority
40 USC 5104(e)(2)(D)&(G) Violent Entry and Disorderly Conduct on Capitol Grounds

This criminal complaint is based on these facts:

See attached statement of facts.

Continued on the attached sheet.

Michael F. Biscardi (handwritten signature)

Complainant's signature

Michael F. Biscardi, Special Agent

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
by telephone.

Date: 01/17/2021

Robin M. Meriweather



Digitally signed by Robin M. Meriweather
Date: 2021.01.17 12:54:36 -05'00'

Judge's signature

City and state: Washington D.C.

Robin M. Meriweather, United States Magistrate Judge

Printed name and title

STATEMENT OF FACTS

Your affiant, Michael F. Biscardi, is employed as a Special Agent by the Federal Bureau of Investigation (“FBI”). Specifically, I am assigned to the Washington Field Office, where I am currently 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 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.

Based on information provided by Facebook, Facebook User ID (“UID”) 100000183142825 has a Facebook account under the name “GABRIEL GARCIA.” GARCIA uploaded to his Facebook account at least two “Facebook live” videos taken inside of the Capitol

building on January 6, 2021. Additionally, GARCIA uploaded at least one video before entering the Capitol building.

At 18:59:23 UTC, or 01:59pm¹, GARCIA uploaded to his Facebook account a video filmed outside of the Capitol building:

Author Gabriel Garcia (100000183142825)

Id 4201565269859536

Title

Description

Link /100000183142825/videos/4201565269859536/

Upload Ip 2600:387:c:5712::63

Facebook Legal Request

Uploaded 2021-01-06 18:59:23 UTC

Video



Linked Media File: linked_media/videos_4201565269859536.mp4

¹ Coordinated Universal Time (UTC) is the primary time standard by which the world regulates clocks and time. UTC is used in many internet and World Wide Web standards. Time zones around the world are expressed using positive or negative offsets from UTC. In the Eastern Time zone, where Washington, D.C. is located, the negative offset is five, or “UTC-05:00.”

In the video, GARCIA is walking east on Constitution Avenue towards the Capitol building with a large group of people.²

Approximately 20 minutes later, at 19:19:08 UTC, or 02:19pm, GARCIA uploaded to Facebook a video filmed from inside the Capitol building:

Author Gabriel Garcia (100000183142825)

Id 4201600689855994

Title

Description

Link /100000183142825/videos/4201600689855994/

Upload Ip 2600:387:c:5712::63

Uploaded 2021-01-06 19:19:08 UTC

Video



Linked Media File: linked_media/videos_4201600689855994.mp4

In this second video, GARCIA is in an area of the Capitol building that I recognize to be the Crypt. The video is approximately five and a half minutes long and depicts an aggressive confrontation

² Please note that, based on Facebook records, a similar video is uploaded at 20:38:54 UTC, or 03:38pm. Your affiant believes that the later upload is a duplicate video. Through the course of the investigation, it has been reported that reception around the Capitol around the time of the breach was poor due to strain on cell phone towers in the area. The first approximately two minutes of each video appears identical; they appear to capture the same individuals walking towards the Capitol building. The second video is approximately one minute longer. At approximately minute 2:36 in the video, GARCIA says, “you can’t stop all this. Look at this. No way.” It is clear from the second video that GARCIA is walking with a group towards the Capitol.

with U.S. Capitol Police officers, who are trying to prevent the crowd from advancing. Five seconds into the video, GARCIA turns the camera on himself:



GARCIA states, “We just went ahead and stormed the Capitol. It’s about to get ugly.” Around him, a large crowd chants, “Our house!”

GARCIA advances from the rear of the area to the front of the standoff, where members of the Capitol Police (“USCP officers”) are positioned in a line. Just as GARCIA approaches the line of USCP officers, an unidentified woman is yelling at an officer, “You’re not on our side!”

GARCIA continues his advance, shifting around and past individuals so that he is at the very front of the crowd and directly opposite the line of USCP officers. As he maneuvers to the front of the line, GARCIA joins the crowd’s chant of, “USA!”

At minute 1:34, a man tries to run through the line of USCP officers. The officers respond with force, which prompts GARCIA to shout, “You fucking traitors! You fucking traitors! Fuck you!” As the USCP officers try to maintain positive control of the man that just rushed the police line, GARCIA yells, “grab him!” seemingly instructing the individuals around him to retrieve the man from USCP officers. GARCIA is holding a large American flag, which he drops into the skirmish in an apparent attempt to assist the individuals who are struggling with the USCP officers.

USCP officers maintain control of the line, holding out their arms to keep the crowd from advancing. At least one USCP officer deploys an asp. GARCIA turns the camera on himself and offers tactical observations regarding the standoff.

GARCIA is extremely close to the USCP officers, so close that their names are clearly visible in the video. GARCIA yells at minute 2:09, “You ain’t stopping a million. You ain’t gonna

hold a million back today. Sorry. Ain't holding a million of us. And there's more!" As GARCIA yells at the line of USCP officers, at least one additional officer deploys an asp in response. GARCIA then yells, "USA! Storm this shit!" As GARCIA yells, the USCP officers take defensive stances, holding up their arms and asps to stop him from advancing.

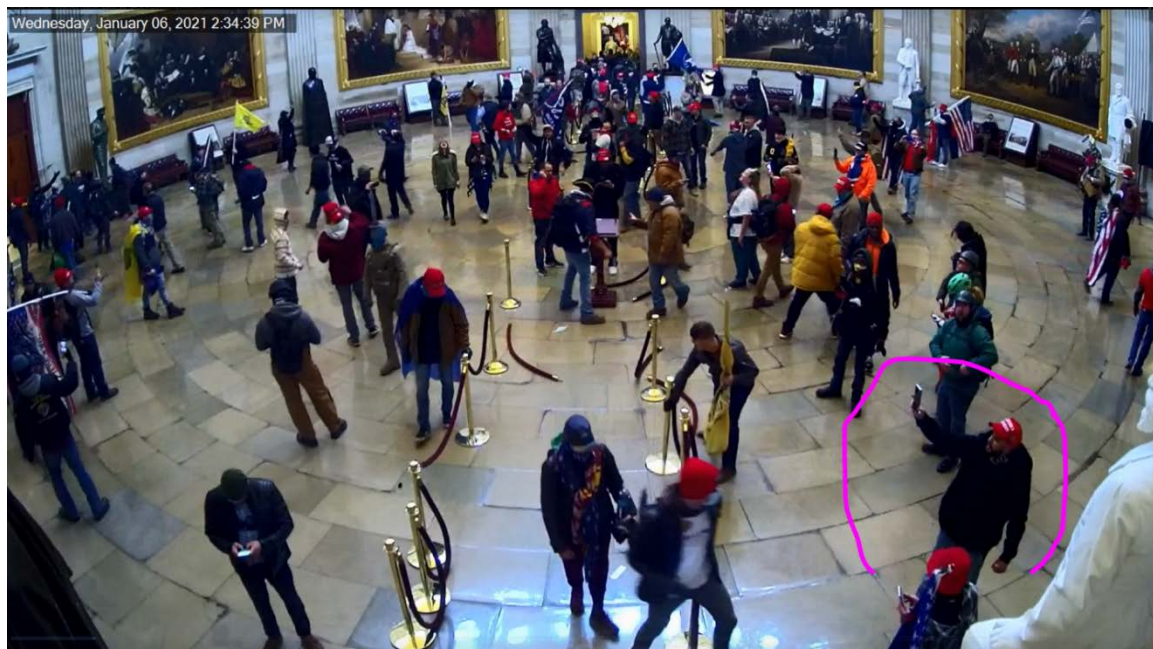
At minute 3:26, GARCIA, who is still in extremely close proximity to the USCP officer line again yells, "Fucking traitors!" He then joins the crowd chanting "Our house!" At minute 3:38, GARCIA states, "You ain't stopping a million of us." He then turns the camera to the crowd behind him and says, "Keep 'em coming. Keep 'em coming. Storm this shit." GARCIA chants with the crowd, "USA!"

Soon after, GARCIA stops chanting and begins speaking off camera with someone near him. At minute 4:28, GARCIA says, "do you want water?" Though unclear, GARCIA seems to be asking the person with whom he is speaking. GARCIA is so close to an officer that, as the camera shifts, the only images captured are those of the officer's chest and badge.

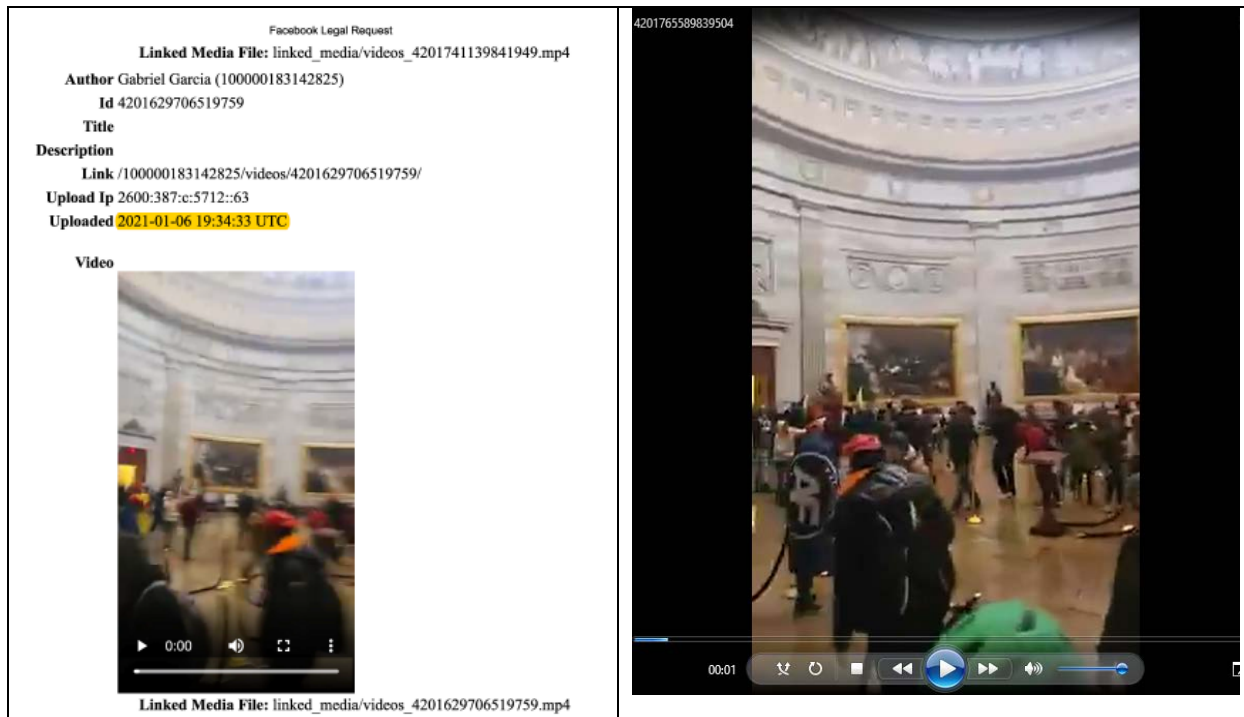
At minute 4:38, GARCIA says to someone, "They're doing their job, man. They're doing their job," seemingly referring to the USCP officers. At 5:03, GARCIA asks an officer, "How does it feel being a traitor to the country? How does it feel?"

GARCIA yells, "Back up! Hold the line!" Shortly thereafter, the crowd begins advancing, breaching the USCP officer line. GARCIA says, "Stop pushing." The last moments captured in the video are of the crowd rushing the USCP officers.

I have reviewed video footage of CCTV in the Capitol building for January 6, 2021, obtained from the Capitol Police. At the timestamp 2:34:39pm, a man I recognize as GARCIA is captured on the video. He is holding up a phone and appears to be recording a video. I have indicated where he is by circling him in the screen shot below:



At 19:34:33 UTC, or 02:34pm, GARCIA uploaded a video from the Rotunda of the Capitol building:



Approximately 35 seconds into the video, GARCIA says loudly, “Nancy come out and play.” As GARCIA continues to record, he shouts “whose house?” At minute 1:10, GARCIA again calls for “Nancy.” At the end of the video, GARCIA turns the camera on himself, and says, “Free Enrique”:³



³ This is an apparent reference to Enrique Tarrio, the Miami-based leader of the right-wing organization the “Proud Boys,” who was arrested in the District of Columbia on January 4, 2021.

At 4:24pm⁴, GARCIA uploaded yet another video from the Rotunda of the Capitol:

Videos
Author Gabriel Garcia (100000183142825)
Id 4201831519832911
Title
Description
Link /100000183142825/videos/4201831519832911/
Upload Ip 107.126.32.63
Uploaded 2021-01-06 21:24:33 UTC

Video



Linked Media File: linked_media/videos_4201831519832911.mp4

In this video, GARCIA provides a view of the Rotunda ceiling:



Your affiant reviewed biographical information received from Facebook and conducted other logical investigative queries to confirm pertinent identifiers for GARCIA, including date of

⁴ Similar to footnote 2, your affiant believes that this video was filmed when GARCIA was in the Capitol Rotunda at approximately 2:34pm, but was not successfully uploaded to Facebook until after GARCIA had better cell phone reception at 3:24pm.

birth and email address. Using that biographical information, as well as location information which indicated that GARCIA typically accesses his Facebook account from IP addresses that resolve to the Miami, Florida area, FBI personnel confirmed that GABRIEL GARCIA has a registered driver's license with the Florida Department of Motor Vehicles ("DMV").

Your affiant reviewed Facebook profile pictures associated with GARCIA's account, as well as the various social media postings on the account, and compared those photographs with GARCIA's DMV photo included below:



In addition to his facial features matching those of the individual in the Facebook videos referenced above, GARCIA's date of birth is identical to the one provided by Facebook for the owner of the account.

After GARCIA was identified, an FBI Task Force Officer in Miami saw Garcia in person and has positively identified GARCIA as the same bearded man in the Facebook Live videos uploaded to GARCIA's Facebook account.

Additionally, on January 8, 2021, the FBI received information from the public regarding a separate subject ("S-1"). S-1 uploaded to Facebook pictures of himself inside of the Capitol building on January 6, 2021. As FBI Agents reviewed the evidence related to that report, they discovered that S-1 posted a status on Facebook tagging GARCIA and calling him "El Capitan." The caption reads, "El Capitan doing his duty. Gabriel Garcia." Systems checks reveal that GARCIA is a former captain in the United States Army. GARCIA also uses the handle "Captain" as his display name on the social media platform Telegram. The Telegram account is associated with GARCIA's primary cellular telephone number.

Based on the foregoing, your affiant submits that there is probable cause to believe that GARCIA violated 18 U.S.C. § 231(a)(3) and 18 U.S.C. § 2(a), which make it unlawful 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, or aid, abet, counsel, command, or induce its commission. 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.

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 GARCIA violated 40 U.S.C. § 5104(e)(2)(D), (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; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.



MICHAEL F. BISCARDI
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 16th day of January 2021.

Robin M.
Meriweather

Digitally signed by
Robin M. Meriweather
Date: 2021.01.17
12:49:42 -05'00'

ROBIN M. MERIWEATHER
U.S. MAGISTRATE JUDGE