

## STATEMENT OF FACTS

Your Affiant, [REDACTED], is a Special Agent with the Federal Bureau of Investigation (“FBI”) and has been since January 2021. In my duties as a Special Agent, I have gained training and experience in interviewing and interrogation techniques, arrest procedures, search warrant applications, the execution of searches and seizures, the exploitation of lawfully obtained evidence and data, and various other procedures. 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.

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. 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 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 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 Benjamin Silva***

In January 2021, the FBI received a tip that a video posted on Instagram featured a man exiting the Capitol and identifying himself as “Ben Silva” from Washington State. Subsequent investigation revealed that the individual is BENJAMIN SILVA (“SILVA”). Based on a review of that and other videos taken on January 6, 2021, SILVA was part of a group assault against law enforcement officers guarding the United States Capitol on January 6, 2021. Accordingly, there is probable cause to believe that on January 6, 2021, SILVA committed violations of 18 U.S.C. §§ 231(a) (civil disorder) and 1752(a)(1), (2) and (4) (various offenses on restricted buildings or grounds) and 40 U.S.C. §§ 5104(e)(2)(E) (impeding passage through Capitol grounds).

#### **A. Silva’s Activities at the U.S. Capitol on January 6, 2021**

In April 2021, the FBI watched a video (“Video 1”) that had been posted to YouTube on January 7, 2021. Your affiant has reviewed the video, which captures apparent attempts by members of the crowd to forcefully enter the Capitol building by overpowering police officers in the tunnel of the Capitol building’s Lower West Terrace Tunnel (“the tunnel”) on January 6, 2021. It was in this tunnel, on January 6, 2021, that a violent and physical battle for control over the entrance to the Capitol building continued for over two hours, during which time rioters repeatedly assaulted, threatened, pushed, and beat law enforcement officers.

Video 1 begins at the archway to the tunnel. Throughout the video, members of the crowd can be seen passing stolen police riot shields from the police line towards the rioters and throwing objects at police. Members of the crowd who appear to have been sprayed with a chemical irritant such as pepper spray are seen moving away from the police line and out of the tunnel.

Approximately 26 seconds into Video 1, an individual, later identified as SILVA, can be seen being pushed out of the tunnel with other members of the crowd. SILVA is wearing a black beanie and gray or tan hooded jacket (identified by a red circle in a still image from Video 1 below). Within the next 20 seconds, SILVA can be seen exiting the tunnel and his face is visible to the camera.

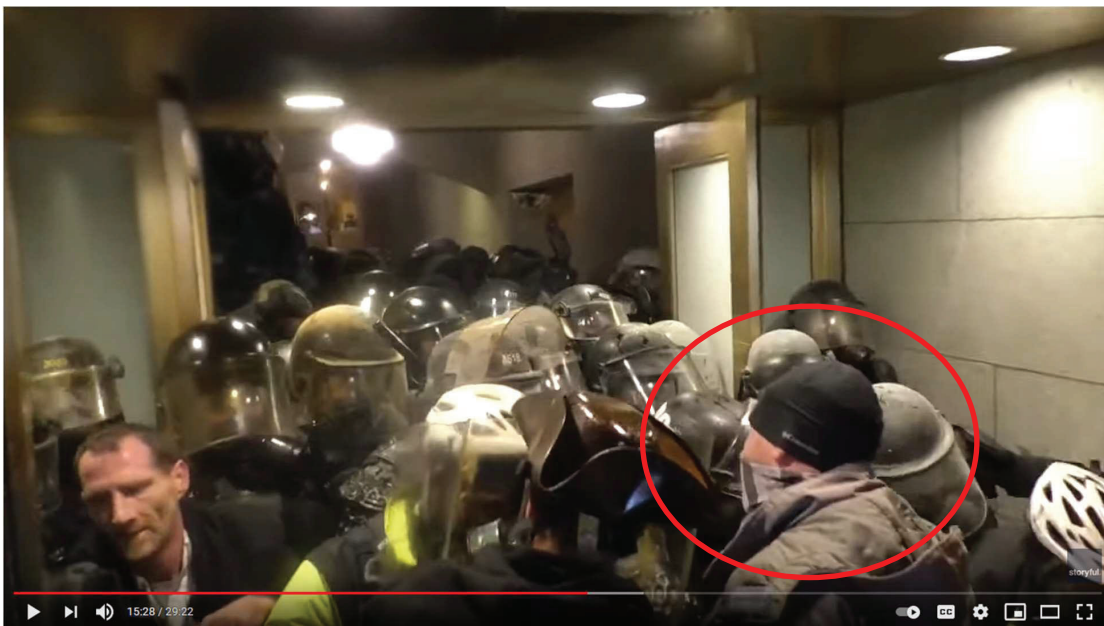
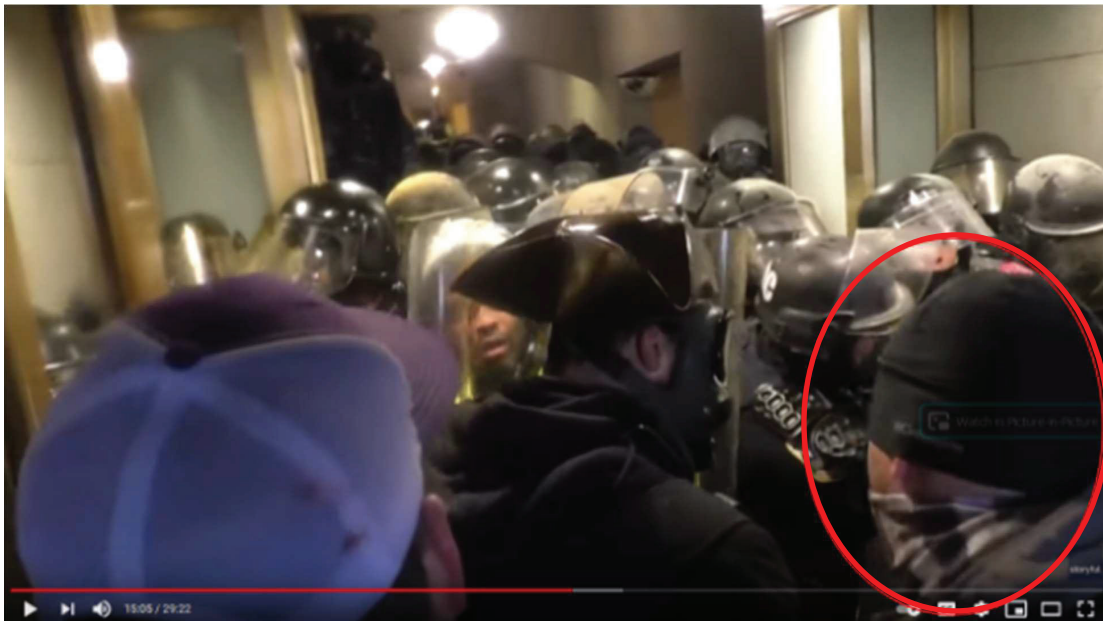


Between approximately three and five minutes into Video 1, the individual filming moves from the archway into the tunnel towards police officers. Chants of “Let us in” and “USA” can be heard. As the video continues, objects continue to be thrown at the officers and other individuals strike at officers with poles or batons. Officers can be seen spraying chemical irritants into the crowd and are heard shouting, “Back up,” while the crowd shouts, “Push.”

At approximately minute 11:16, someone in the crowd can be seen and heard yelling, “We need fresh people.” Another individual is then seen and heard yelling, “Get ready to push.” Members of the crowd push against officers in an apparent attempt to overpower the officers and

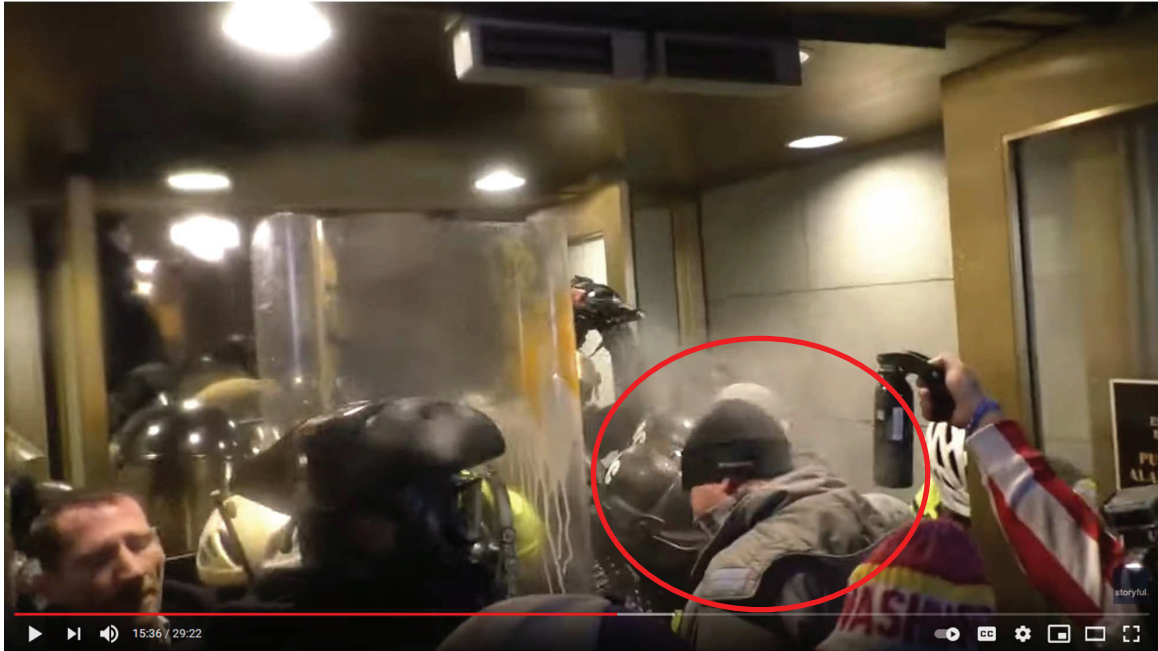
make their way further into the building. Members of the crowd spray officers with what appear to be chemical irritants.

Around minute 15:05, SILVA approaches officers. He is identifiable by his gray or tan hooded jacket, black beanie, gray and black neck gaiter, and brown or olive-green gloves. The following screenshots taken from Video 1, depict SILVA approaching officers and walking past a set of open doors where police are standing.





While next to the police line, SILVA appears to speak to an officer. Behind him, an individual in the crowd sprays officers with what I believe to be a chemical irritant. Officers in response also spray a chemical irritant. When this happens, SILVA puts his hands up and his head down.



Behind SILVA, someone can be heard yelling, “Make a shield wall,” as members of the crowd, using stolen police shields, form a barrier between police and themselves. At about minute 16:24, an officer again sprays a chemical irritant towards the crowd and seconds later SILVA extricates himself from his position and moves away from officers, presumably towards the tunnel entrance.

In March 2021, the FBI reviewed another open-source video (“Video 2”). In this video, a man named Andrew Jackson Morgan,<sup>1</sup> filmed himself and other protestors during the Capitol riot. This video appears to be the source of the video clip I watched from Instagram in which SILVA identified himself.

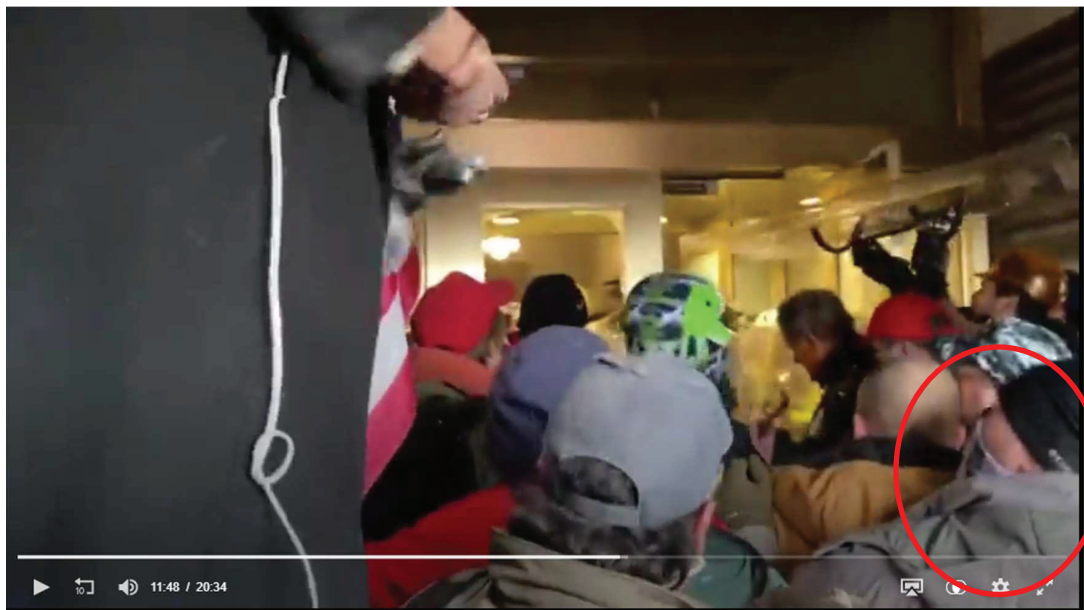
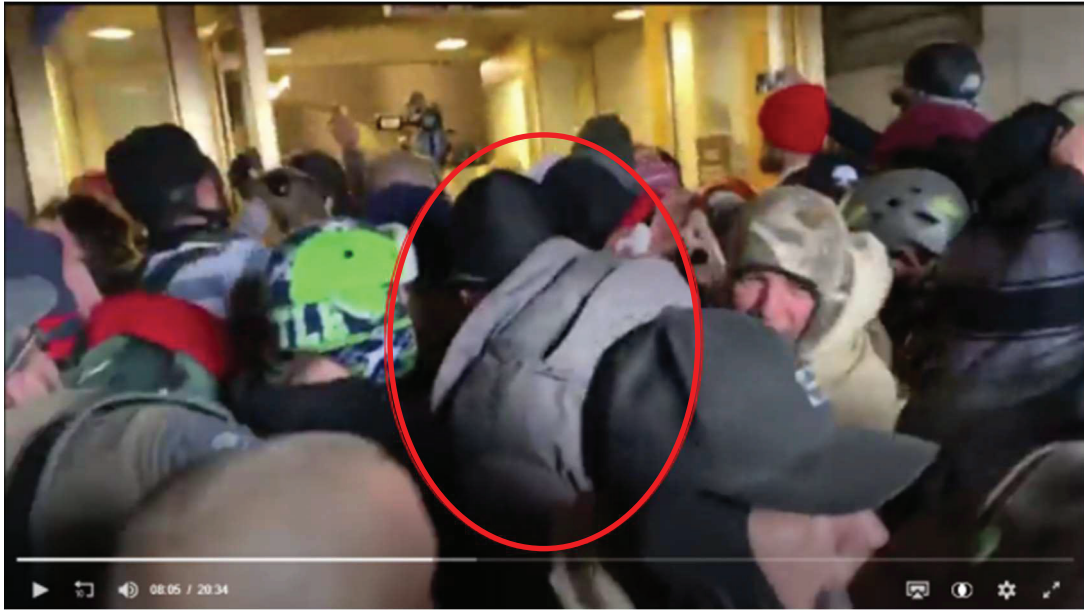
Approximately five minutes into Video 2, Morgan reaches the outside of the tunnel entrance at the West Terrace. Members of the crowd can be heard shouting, “Let us in.” At approximately minute 5:50, SILVA can be seen in the video just outside the entrance to the tunnel, wearing the gray or tan hooded jacket, black beanie, and gray and black neck gaiter.



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<sup>1</sup> Andrew Jackson Morgan has been charged for his participation in the events of January 6, 2021, in case number 21-cr-00313-TJK.

At about minute 6:55, SILVA enters the tunnel while members of the crowd can be heard yelling, “Push,” and, “Let’s go.” As SILVA enters, members of the crowd can be seen pushing towards the officers that are located further into the tunnel by a set of double doors. Yells of, “Heave,” and, “Push,” can be heard while members of the crowd push against officers. Officers can be seen spraying chemical irritants at the crowd, and shortly thereafter, members of the crowd move away from the officers.

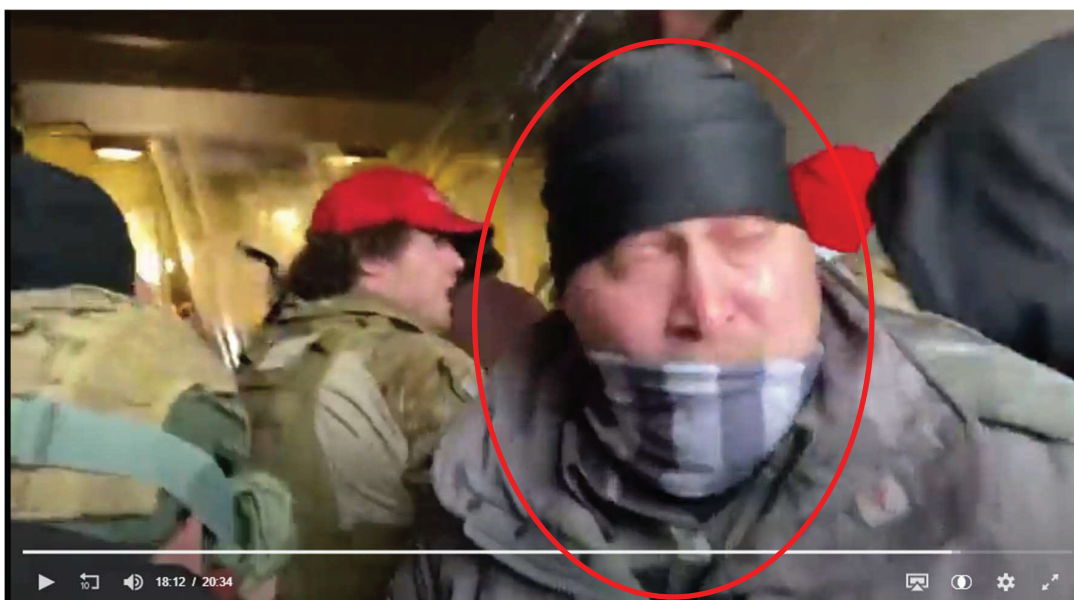




As Video 2 continues, someone can be heard yelling, “We need more people,” and chants of “USA” begin. The crowd pushes towards officers, individuals can be seen attempting to strike police with batons or poles, and objects are thrown at officers. Around minute 11:00, officers appear to attempt to close the double doors between them and the crowd. SILVA is intermittently visible in the video and works his way through the crowd towards police. Calls for fresh people can be heard around minute 12:56, and the crowd continues to push towards police. At about minute 16:30, SILVA can be seen approaching the police line.

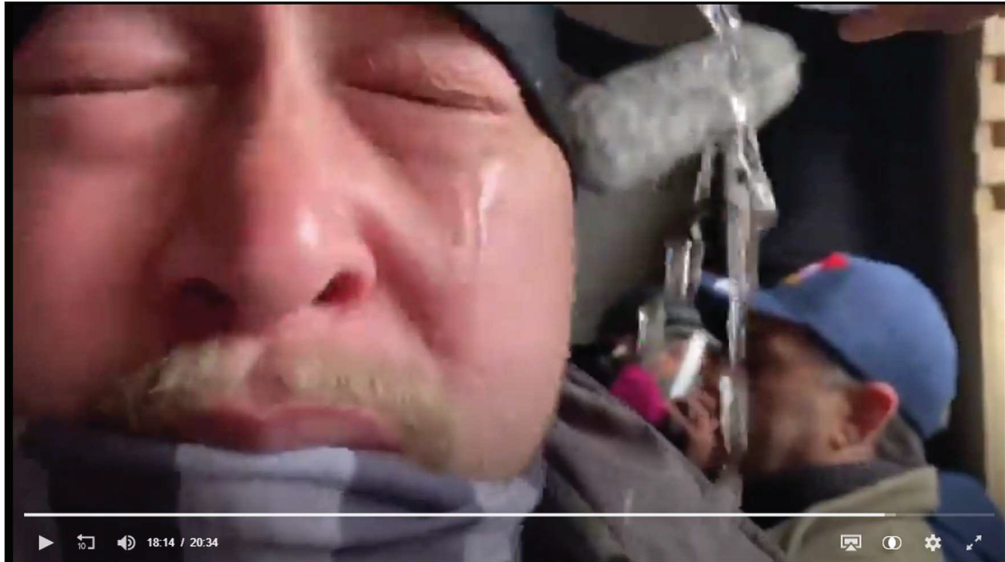


A short time later, around minute 18:09, SILVA can be seen moving away from officers towards the tunnel entrance. His eyes appear to be closed and tearing, a common reaction to being pepper sprayed.





As seen on Video 2, at approximately minute 18:14 SILVA stops by Morgan, who is located near the tunnel entrance. An unknown individual attempts to pour water on SILVA's eyes and face. Morgan asks SILVA, "What's your name? Where you from?" SILVA replies, "Ben Silva." Morgan then asks, "What state?" to which SILVA replies "Washington State." SILVA then appears to exit the tunnel.



In December 2022, I reviewed Body Worn Camera (BWC) footage of officers who were located in the West Terrace tunnel when SILVA approached the police line. MPD Sergeant J.P.'s BWC ("Video 3") captured SILVA appear in the tunnel at approximately 15:06:02 EST.



At approximately 15:06:35 EST, an officer can be seen placing his hand on SILVA's forearm/wrist as SILVA advances towards the police line.



At approximately 15:06:43 EST, a person in the crowd claims that the officers were not just doing their jobs and that he wasn't going to hurt any of them (officers). At approximately 15:06:51 EST, an officer pushes Silva away from the police line.



From approximately 15:07:10 EST through 15:07:32 EST, SILVA appears to push at the police line.



At approximately 15:07:33 EST, SILVA can be seen turning away from the police line and exiting the tunnel.



In May 2023, I reviewed additional open-source video footage (“Video 4”) that shows SILVA with his hand up against a police riot shield. For approximately 32 seconds, between 4:07 and 4:39 in Video 4, SILVA remains in front of the police line and against a police officer’s riot shield.



### **B. Identification of SILVA**

FBI reviewed approximately 11 Department of Licensing photos for “Benjamin Silva” located in Washington State, and was able to determine that BENJAMIN JOHN SILVA, from Clark County, was the individual featured in the above videos. This was due to physical similarities between SILVA and the individual in the video, as well as a process of elimination of the other “Benjamin Silva” candidates due to differences in physical features between them and the individual in the video.



In July 2021, pursuant to a search warrant issued in the Western District of Washington, FBI agents searched SILVA's residence and found what appears to be the jacket, gaiter, and beanie, worn by SILVA, as depicted in the above photos on January 6, 2021. See photos of items recovered below.



Also, in July 2021, a relative of SILVA ("Relative 1") was interviewed by the FBI. Relative 1 indicated that SILVA traveled to the United States Capitol with a friend. SILVA told Relative 1 that there were a lot of people and people were pushed into areas they may not have wanted to be in. Relative 1 provided that cell phone number 360-771-0206 belongs to SILVA.

According to phone records from Verizon Wireless, phone number (360) 771-0206 has been utilized by BENJAMIN SILVA since at least November of 2017. According to records obtained from Verizon Wireless, the phone associated with number (360) 771-0206 made or received phone calls on January 6, 2021. Furthermore, IP data provided by Verizon determined that the phone associated with number (360) 771-0206 connected to the internet several times on January 6, 2021. Using publicly available IP address geolocation tools, the FBI was able to resolve the IP address for these connections to Washington, D.C. multiple times and once to New York City, New York. According to records obtained through a search warrant which was served on Verizon Wireless, on January 6, 2021, in and around the time of the incident, the cellphone associated with (360) 771-0206 was not identified as having utilized a cell site consistent with providing service to a geographic area that includes the interior of the United States Capitol building.

### CONCLUSION

Based on the foregoing, your affiant submits there is probable cause to believe that BENJAMIN SILVA 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 Capitol Police’s protection of the Capitol and the United States Secret Service’s protection of the Vice President.

Your affiant further submits that there is probable cause to believe that SILVA 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; 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; 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 SILVA violated 40 U.S.C. § 5104(e)(2)(E), 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.



Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim.  
P. 4.1 by telephone, this 24 day of July 2023.

*kol*  

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ROBIN M. MERIWEATHER  
U.S. MAGISTRATE JUDGE