

## STATEMENT OF FACTS

Your affiant, [REDACTED] is a Special Agent assigned to the Federal Bureau of Investigation (FBI) and is assigned to the Joint Terrorism Task Force in the New York Office, Long Island Resident Agency. 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 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 U.S. Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the U.S. House of Representatives and the U.S. Senate were meeting in separate chambers of the 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.

Following the January 6, 2021, assault on the U.S. Capitol, the FBI located evidence of an individual who attempted to disarm a D.C. Metropolitan Police Department (MPD) Officer by grabbing his baton and attempting to wrestle it from the officer's hands. Based on review of Body Worn Camera (BWC) footage from multiple officers, a crowd was fighting with police on the West front. The crowd was attempting to break through the perimeter that the police were securing. During the struggle between the police and the crowd, at approximately 2:28 pm, an individual emerged and grabbed at the baton of an MPD officer in an attempt to take the weapon from the officer. BWC footage shows that the MPD officer fought intensely and successfully to keep his baton in his possession. BWC footage shows that the individual who assaulted this MPD officer is a middle-aged white male wearing off-white pants, a brown cargo type jacket, brown leather gloves, and a white earpiece. Excerpts and close-ups from this BWC footage are shown below:





The BWC footage also shows the same individual taking a step back from the officers and then pushing the metal bike rack fencing, which was used to secure the perimeter of the Capitol, (and which was marked as property of the police) into the nearby officers who were attempting to keep the perimeter secure.



In an effort to identify the man described above, the FBI released a “Be on the Lookout” (BOLO) photograph to the public, seeking information that might lead to his identification. Below is a photograph released by the FBI, in which the individual was labeled as BOLO 294:



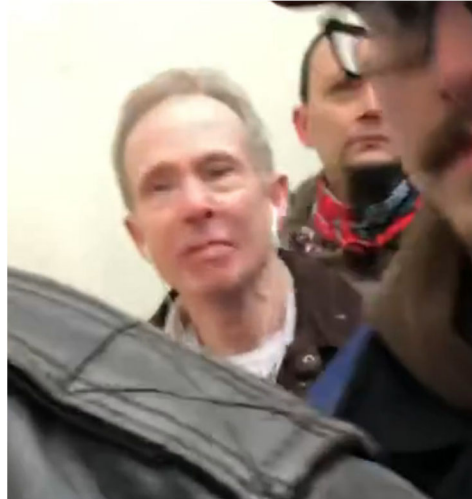
Photograph #294 - AFO J

Users of the Twitter account @SeditionHunters, which is one of a series of civilian Twitter accounts that crowdsource and share information to help identify FBI BOLOs from the Capitol riot, began using the hashtag #midwhitecrisis to organize the information related to BOLO #294, as shown below:



Around July, 8, 2021, the FBI received an online tip identifying BOLO #294 as John O’Kelly. The tipster stated he/she used open source photo ID software to search the FBI BOLO pictures and identified O’Kelly as a likely match to BOLO #294. Following this tip, the FBI reviewed New York Department of Motor Vehicles (DMV) photos of John O’Kelly, and used facial recognition software to compare O’Kelly’s DMV photos to footage taken at the U.S. Capitol on January 6, 2021. Facial recognition software indicated that O’Kelly’s DMV photo matched a

second video taken at the U.S. Capitol on January 6, 2021 by an unknown individual filming with what appears to be a cellular telephone. John O’Kelly appears in this video near the temporary stage and scaffold structures that were constructed at the Capitol for the Presidential Inauguration, shown below.



Another photograph found on an open source website [gettyimages.com](https://www.gettyimages.com), shown below, shows O’Kelly at the front of the crowd outside of the Capitol building:



In addition, I have reviewed video posted online to the website [archive.org](https://archive.org) which shows the crowd breaking through the perimeter and fighting with the police officers. O’Kelly can be

seen moving forward with the crowd, and the video shows footage from a rear angle of O’Kelly grabbing the MPD Police Officer’s baton.



The FBI located photos of O’Kelly on publicly-available websites, including the photograph below (located at <https://www.lawyerscommitteefor9-11inquiry.org/lawyers-9-11-anniversary-event-september-2020/>). Based on my comparison of the photograph below, O’Kelly’s DMV records, and the photos and videos described above, I believe the individual who assaulted MPD officers on January 6, 2021 is in fact John O’Kelly.



In a further attempt to identify O’Kelly, the FBI conducted a third party interview with a longtime friend of the O’Kelly family who knows John O’Kelly personally. The interviewee reviewed the photos of FBI BOLO #294 from January 6, 2021, and identified the individual as John O’Kelly. The interviewee provided the FBI with the cell phone numbers for O’Kelly’s wife and son.

According to T-Mobile records, the two phone numbers provided by the interviewee are registered to John O’Kelly as part of a 4 Line plan. Based on a review of public databases, it appears the third line is associated with O’Kelly’s daughter. The fourth line is assigned cell phone number XXX-XXX-1720. For reasons described next, I believe the line ending in 1720 is the cell phone number utilized by John O’Kelly.

T-Mobile call records show that on January 5, 2021, the number ending in 1720 communicated with the cell phone number XXX-XXX-9835, which is registered to an individual named Michael of Babylon, New York. Twitter posts associated with #Midwhitecrisis include a photograph of O’Kelly outdoors on January 6, 2021, with a man in a black coat and hat who I believe, based on my comparison of the photo to other known pictures of Michael, is the same Michael found in O’Kelly’s January 5, 2021 call records. In addition, a video located on publicly-available websites shows O’Kelly and the same man, believed Michael, marching toward the Capitol building on January 6, 2021. This information about O’Kelly’s companion on January 6, 2021, provides further confirmation that O’Kelly is the user of the cell phone number XXX-XXX-1720 and is the individual described above and identified by the interviewee.

According to records from the Residence Inn Arlington Ballston hotel in Arlington, Virginia, outside of Washington D.C. and approximately seven miles from the U.S. Capitol building, John O’Kelly had a reservation at the hotel for January 5, 2021.

Finally, on approximately July 1, 2022, and again on October 5 and October 7, 2022, FBI agents went to the last known residence address for John O’Kelly according to DMV records. On each of these occasions, agents identified an individual believed to be O’Kelly at the home. Based on their observations and review of the footage and photographs from January 6, 2021, the surveillance agent who saw O’Kelly believes that he is the same individual described above who assaulted an MPD officer at the U.S. Capitol.

Based on the foregoing, your affiant submits that there is probable cause to believe that John O’Kelly 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. This definition under Section 1114 is further extended to any person assisting such a federal officer or employee in the performance of his or her duties or on account of that assistance. USCP officers are Federal law enforcement officers, and MPD officers were assisting them in protecting the Capitol and the Members of Congress on January 6, 2021.

Your affiant also submits there is probable cause to believe that John O’Kelly 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 that there is probable cause to believe that John O’Kelly 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 so; (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 engage 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.



Finally, your affiant submits there is also probable cause to believe that John O’Kelly violated 40 U.S.C. § 5104(e)(2)(F), which makes it a crime to willfully and knowingly engage in an act of physical violence in 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 17<sup>th</sup> day of October 2022.

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ROBIN M. MERIWEATHER  
U.S. MAGISTRATE JUDGE