

STATEMENT OF FACTS

Your affiant, [REDACTED], is a special agent of the Federal Bureau of Investigation (“FBI”) assigned to Memphis Field Office-Nashville Resident Agency. In my duties as a special agent, I investigate domestic terrorism violations and other threats of violent crime. 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 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 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, 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.

Identification of NICHOLAS WALDON SMOTHERMAN

As part of the FBI investigation into the attack on the United States Capitol, the FBI located video and still images of multiple individuals that were associated with attacks on federal officers. The individuals in these images were designated as Assault on Federal Officer (“AFO”) cases. Each individual AFO subject was identified by a specific number and at least one image.

Your affiant and other investigators were assigned the investigation of a subject identified by the FBI as AFO-364. As discussed in more detail below, the individual identified as AFO-364 assaulted a Washington, D.C. Metropolitan Police Department (“MPD”) sergeant on the West Plaza of the U.S. Capitol on January 6, 2021. The FBI posted numerous photographs of AFO-364 on its website to seek information about the individual’s identity. A few of the photographs posted on the FBI’s website are included below. (See Figures 1–3). As discussed below, AFO-364 has subsequently been identified as NICHOLAS WALDON SMOTHERMAN.



Figure 1



Figure 2



Figure 3

I and other investigators have reviewed video footage from various sources of events that took place on January 6, 2021, which document SMOTHERMAN’s actions that day. In numerous videos and photos from January 6, 2021, SMOTHERMAN is seen wearing a green jacket, blue jeans, a black hoodie, gray-and-white sneakers, and a green bulletproof vest, and carrying a gray and black backpack.

In August 2023, the FBI received an anonymous tip identifying AFO-364 as NICHOLAS WALDON SMOTHERMAN of Mount Juliet, Tennessee.¹

¹ The FBI received a separate tip that identified another individual as AFO-364. That tip was investigated and determined to be unfounded.

An FBI task force officer subsequently interviewed an associate of SMOTHERMAN's who positively identified SMOTHERMAN from Figure 4 below:



Figure 4

SMOTHERMAN's Conduct on January 6, 2021

I and other investigators reviewed video footage from the exterior of the U.S. Capitol to locate SMOTHERMAN. SMOTHERMAN was observed in the restricted exterior area of the U.S. Capitol, specifically in the West Front area of the U.S. Capitol. SMOTHERMAN joined rioters in an effort to break through a line of bike racks that officers had set up on the West Front. Between approximately 2:28 p.m. and 2:30 p.m., SMOTHERMAN was observed in MPD body-worn camera (“BWC”) footage on the Upper West Plaza of the U.S. Capitol resisting law enforcement officers’ commands and assaulting MPD Sergeant B.G., as shown in Figures 5–16 below.

At approximately 2:28:43 p.m., Sergeant B.G.’s BWC captured SMOTHERMAN standing in front of the bike racks and the manned police line at the southwest side of the Upper West Plaza, as shown in Figure 5 (SMOTHERMAN in the red box).



Figure 5: Video of SMOTHERMAN from Sergeant B.G.'s body-worn camera

At approximately 2:28:45 p.m., a group of rioters began pulling the bike racks, and BWC captured SMOTHERMAN next to the group moving toward Sergeant B.G., as shown in Figures 6 and 7 below (SMOTHERMAN in the red box; Sergeant B.G. in the yellow box).



Figure 6: Video of SMOTHERMAN from Sergeant B.G.'s body-worn camera



Figure 7: Video of SMOTHERMAN from Sergeant B.G.'s body-worn camera

At approximately 2:28:49 p.m., Sergeant B.G.'s BWC captured Sergeant B.G. and other unidentified officers commanding the rioters to move back while rioters pulled the bike racks to the ground. SMOTHERMAN appeared to move toward the manned police line, as shown in Figure 8 below.

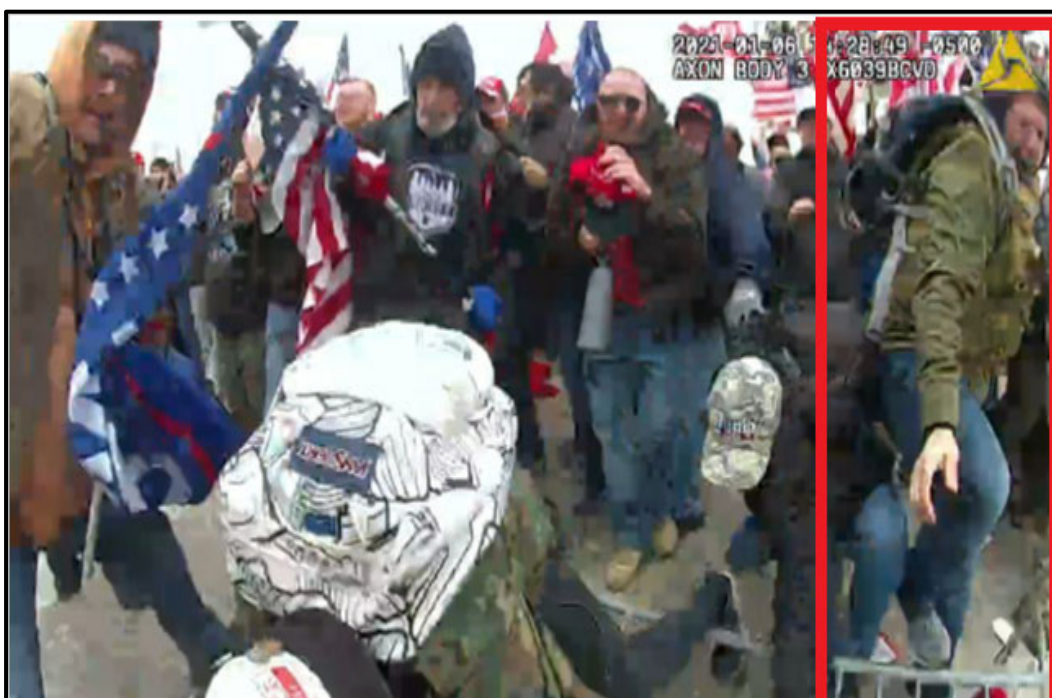


Figure 8: Video of SMOTHERMAN from Sergeant B.G.'s body-worn camera

At approximately 2:28:54 p.m., Sergeant B.G.'s BWC captured SMOTHERMAN's interaction with officers after being pushed by Sergeant B.G.'s baton, as shown in Figure 9 and 10 below.



Figure 9: Video of SMOTHERMAN from Sergeant B.G.'s body-worn camera



Figure 10: Video of SMOTHERMAN from Sergeant B.G.'s body-worn camera

At approximately 2:28:58 p.m., after Sergeant B.G. again attempted to push SMOTHERMAN back using his baton, SMOTHERMAN stood upright and yelled “hit me with it again” at Sergeant B.G, as shown in Figure 11 below. When Sergeant B.G. again attempted to push SMOTHERMAN back, SMOTHERMAN grabbed Sergeant B.G.’s baton and attempted to pull the baton away from Sergeant B.G., as shown in Figures 11–15 below. As he attempted to pull Sergeant B.G.’s baton away, SMOTHERMAN yelled “I’ll fucking take this” and “come out here bitch.”



Figure 11: Video of SMOTHERMAN from Sergeant B.G.’s body-worn camera



Figure 12: Video of SMOTHERMAN from Sergeant B.G.'s body-worn camera

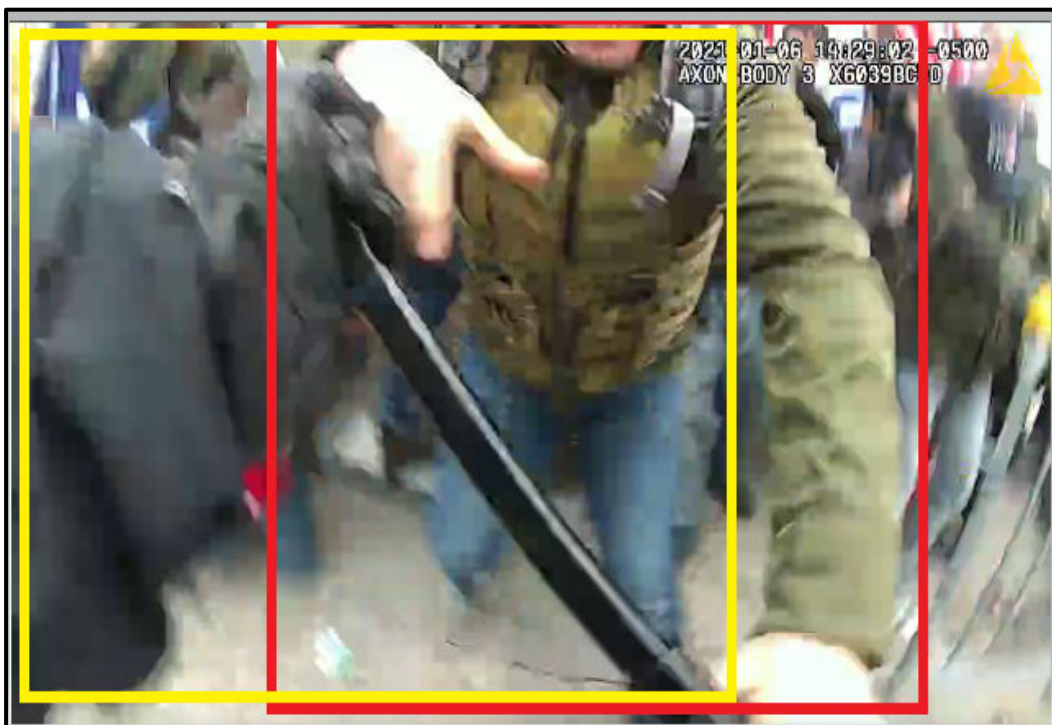


Figure 13: Video of SMOTHERMAN from Sergeant B.G.'s body-worn camera



Figure 14: Video of SMOTHERMAN from Sergeant B.G.'s body-worn camera



Figure 15: Video of SMOTHERMAN from Sergeant B.G.'s body-worn camera

Sergeant B.G. managed to prevent SMOTHERMAN from taking his baton. SMOTHERMAN then stood up and looked at a group of law enforcement officers who were in front of him, as shown in Figure 16 below. An officer in the group deployed pepper spray against SMOTHERMAN, who in response turned around and walked back into the crowd of rioters.



Figure 16: Video of SMOTHERMAN from Sergeant B.G.'s body-worn camera

U.S. Capitol closed-circuit television ("Capitol CCTV") also captured video of SMOTHERMAN assaulting Sergeant B.G. and resisting officers, as shown below in Figure 17 (Capitol CCTV from 2:28:57 p.m.) and Figure 18 (Capitol CCTV from 2:28:59 p.m.). The Capitol CCTV shows that SMOTHERMAN's assault of Sergeant B.G. took place while the large crowd of rioters on the West Front breached the police line.



Figure 17: Capitol CCTV showing SMOTHERMAN assaulting Sergeant B.G.



Figure 18: Capitol CCTV showing SMOTHERMAN assaulting Sergeant B.G.

Open-source video shows the incident from a different vantage point, as shown in Figure 19 below.



Figure 19: Open-source video showing SMOTHERMAN assaulting Sergeant B.G.

After rioters overran the police line on the Upper West Plaza, police officers retreated to the Lower West Terrace. Some officers entered the U.S. Capitol building through the Lower West Terrace Door. A large crowd of rioters then gathered in and around the entrance to the Lower West Terrace Door, sometimes referred to as “the tunnel.” In the tunnel, rioters assaulted officers and attempted to enter the U.S. Capitol building.

Capitol CCTV shows SMOTHERMAN entering the tunnel at approximately 2:56 p.m., as shown in Figure 20 below.



Figure 20: Capitol CCTV of SMOTHERMAN entering the tunnel

SMOTHERMAN exited the tunnel at approximately 2:58 p.m. and positioned himself near the north side of the entrance to the tunnel, as shown in Figure 21 from Capitol CCTV below.



Figure 21: Capitol CCTV of SMOTHERMAN near the tunnel

Open-source videos from January 6, 2021, also show SMOTHERMAN positioned near the entrance to the tunnel, as shown in Figures 22 and 23 below.



Figure 22: Capitol CCTV of SMOTHERMAN near the tunnel

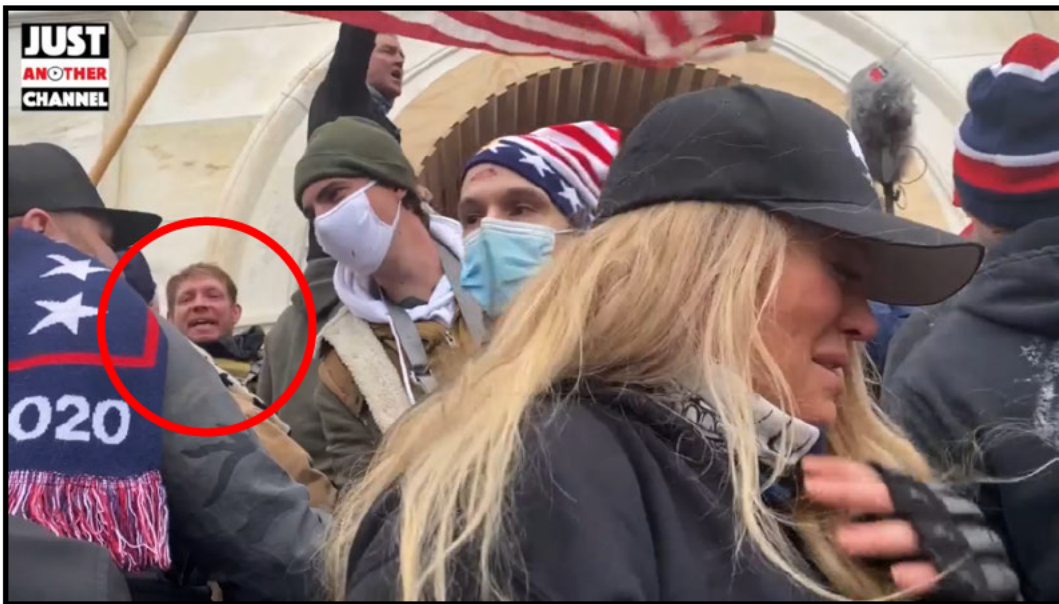


Figure 23: Capitol CCTV of SMOTHERMAN near the tunnel

Offenses Committed by SMOTHERMAN

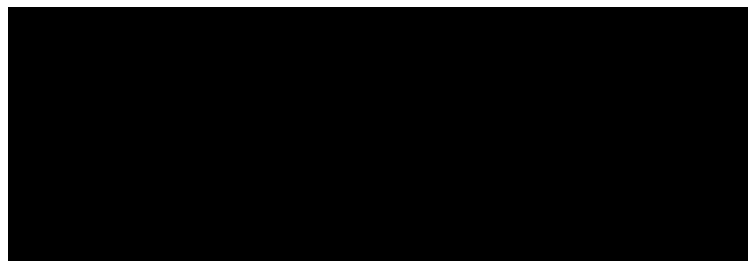
Based on the foregoing, your affiant submits that there is probable cause to believe that SMOTHERMAN violated 18 U.S.C. § 1752(a)(1), (2), and (4) which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do so; and (2) knowingly, and with 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; (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 SMOTHERMAN violated 40 U.S.C. § 5104(e)(2)(D) and (F), 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 (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings.

Your affiant submits there is probable cause to believe that SMOTHERMAN 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 Secret Service’s protection of the Vice President and his family and the Capitol Police’s protection of the U.S. Capitol.

Your affiant submits that there is probable cause to believe that SMOTHERMAN violated 18 U.S.C. § 111(a)(1), which makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in section 1114 of Title 18 while engaged in or on account of the performance of official duties, where such acts involve physical contact with the victim or the intent to commit another felony. Persons designated within section 1114 of Title 18 include federal officers such as USCP officers, and include any person assisting an officer or employee of the United States in the performance of their official duties.



Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 24th day of July 2024.

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE