

STATEMENT OF FACTS

Your affiant, [REDACTED], is a Special Agent with the Federal Bureau of Investigation (FBI) assigned to the domestic terrorism squad. In my duties as a Special Agent, I have investigated numerous violent crimes and other domestic terror cases. 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, detention, investigation, or prosecution of a violation 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, S.E., 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. 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 KYLE KUMER

Based upon review of public video, closed circuit television (“CCTV”) footage and police body worn camera (“BWC”) footage depicting the events at the U.S. Capitol building and grounds on January 6, 2021, law enforcement identified an individual who worked, over the course of approximately 25 minutes, to push repeatedly with other rioters against the police who were defending an entrance to the U.S. Capitol. The FBI subsequently posted a photograph of the individual at the U.S. Capitol under the name BOLO 126 and requested help from the public to identify the individual. As set out in detail below, law enforcement has identified BOLO 126 as KYLE KUMER (“KUMER”) and there is probable cause to believe that on January 6, 2021, KUMER committed violations of 18 U.S.C. §§ 231(a) (civil disorder), and 1752(a)(1) and (2) (unlawful entry and disorderly conduct on restricted buildings or grounds) and 40 U.S.C. §§ 5104(e)(2)(E) (impeding passage through the Capitol grounds or buildings).

A. BOLO 126’s Activities at the U.S. Capitol on January 6, 2021

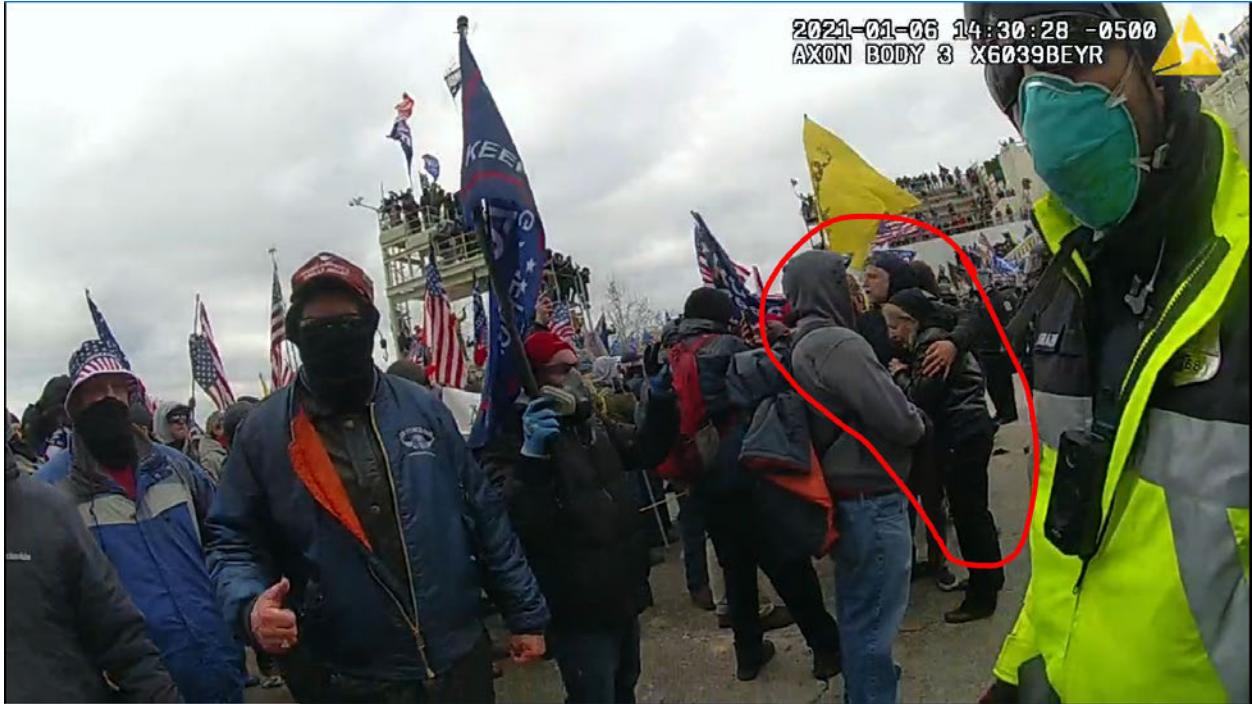
In January 2021, FBI reviewed CCTV and other video footage from January 6, 2021, to identify individuals involved in illegal activity to include assaulting federal police officers (AFO). During this review, an unidentified male was observed on the front lines of rioters in front of law enforcement on the Lower West Terrace (“LWT”) entryway, known as “the tunnel”. The individual appeared to push in a concerted effort with other rioters against the police defending the entrance to the U.S. Capitol multiple times over the course of approximately 25 minutes.

Photographs of the individual were posted to the FBI’s website as BOLO 126. Below is the photograph of BOLO 126 posted to FBI’s tip website:



Based on a review of body-worn camera (“BWC”) footage from officers present at the U.S. Capitol on January 6, 2021, BOLO 126 was located on the west front of the U.S. Capitol at approximately 2:30 p.m. Below are still images from BWC depicting BOLO 126 standing on the west front of the U.S. Capitol while embracing another individual, whom law enforcement believes to be his mother:

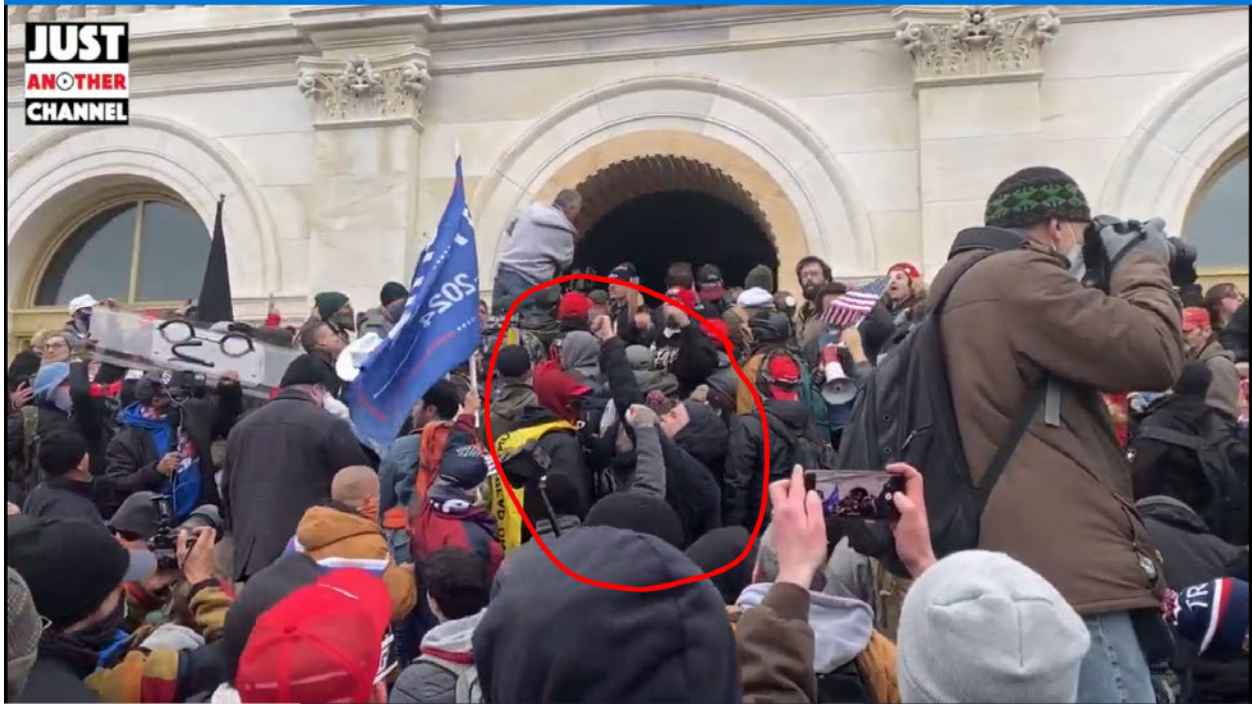




Approximately twenty minutes later, a public video (“Video 1”) depicts BOLO 126 near the entrance to the tunnel.¹ In the below still image from Video 1, BOLO 126 is depicted as he

¹ Video 1 does not have a time stamp. The time of the events depicted in Video 1 is estimated based on my review of other video that does include time stamps, including CCTV footage and BWC footage.

raised his fist in the air and chanted along with the crowd, “OUR HOUSE! WHOSE HOUSE?! OUR HOUSE!”:

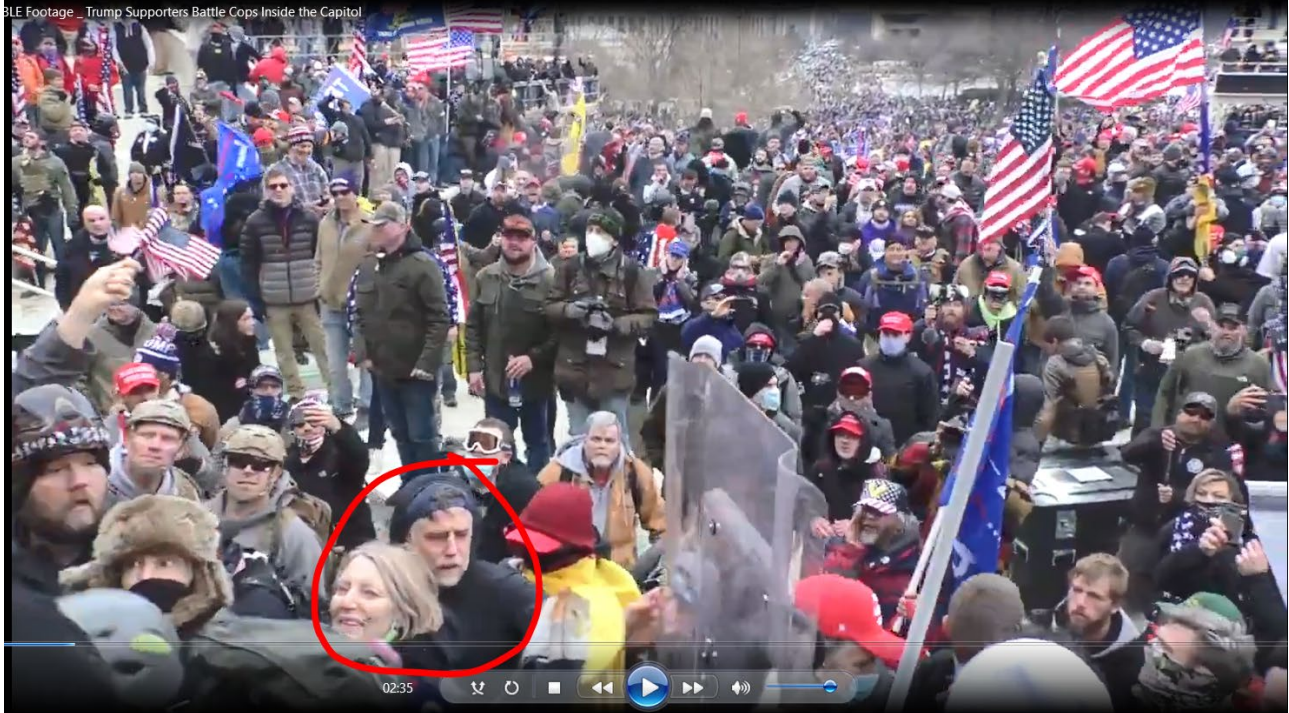


A video recorded by another rioter (“Video 2”) depicts BOLO 126 as he walked up the steps toward the entrance to the tunnel. As BOLO 126 walked toward the tunnel, other members

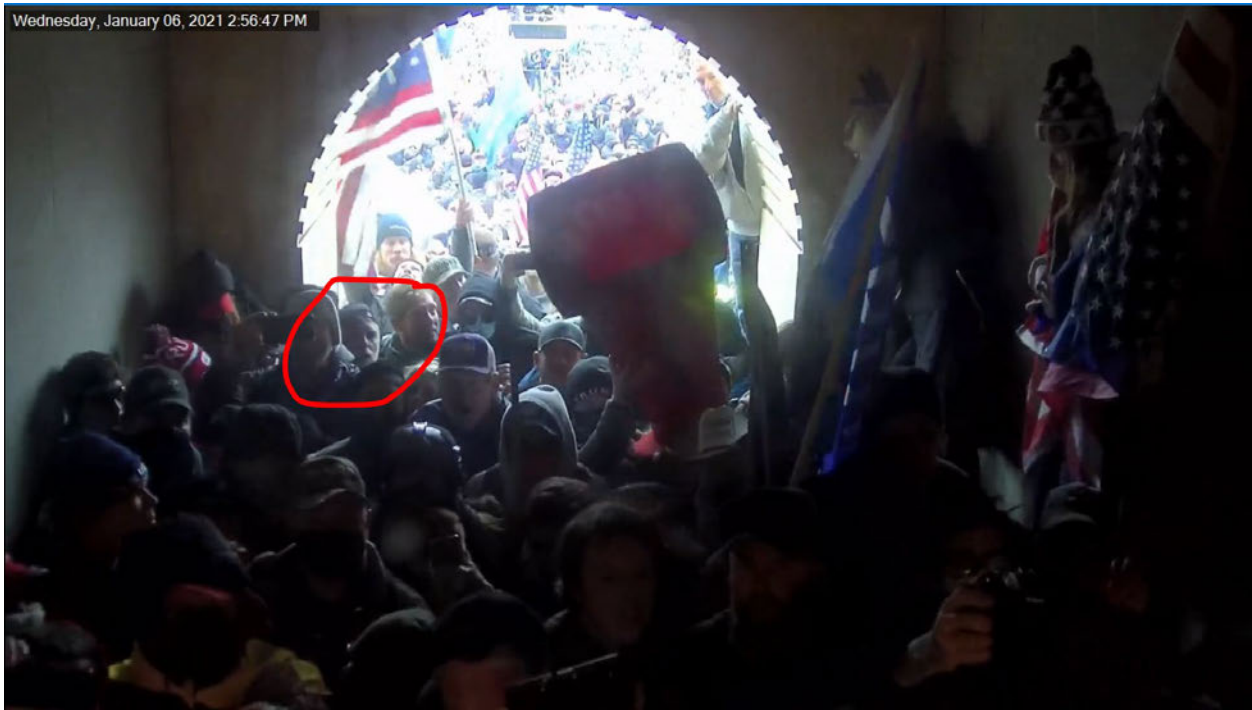
of the crowd called out, "PATRIOTS!" and "DOORS ARE OPEN! WHO HAS BODY ARMOR?!" Below is a still image of BOLO 126 from Video 2:



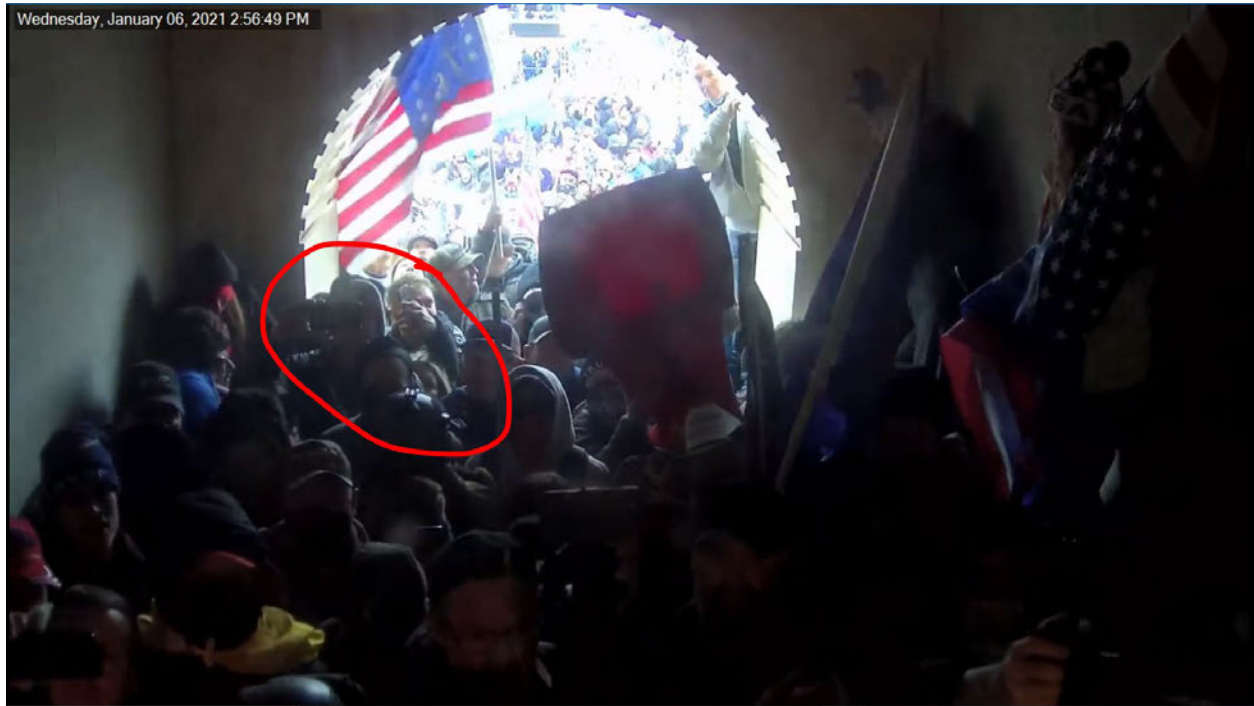
As BOLO 126 approached the entrance to the tunnel, he reached out and passed a stolen police riot shield back into the crowd. Below is a still image from another public video (“Video 3”) depicting BOLO 126 reaching for the riot shield:



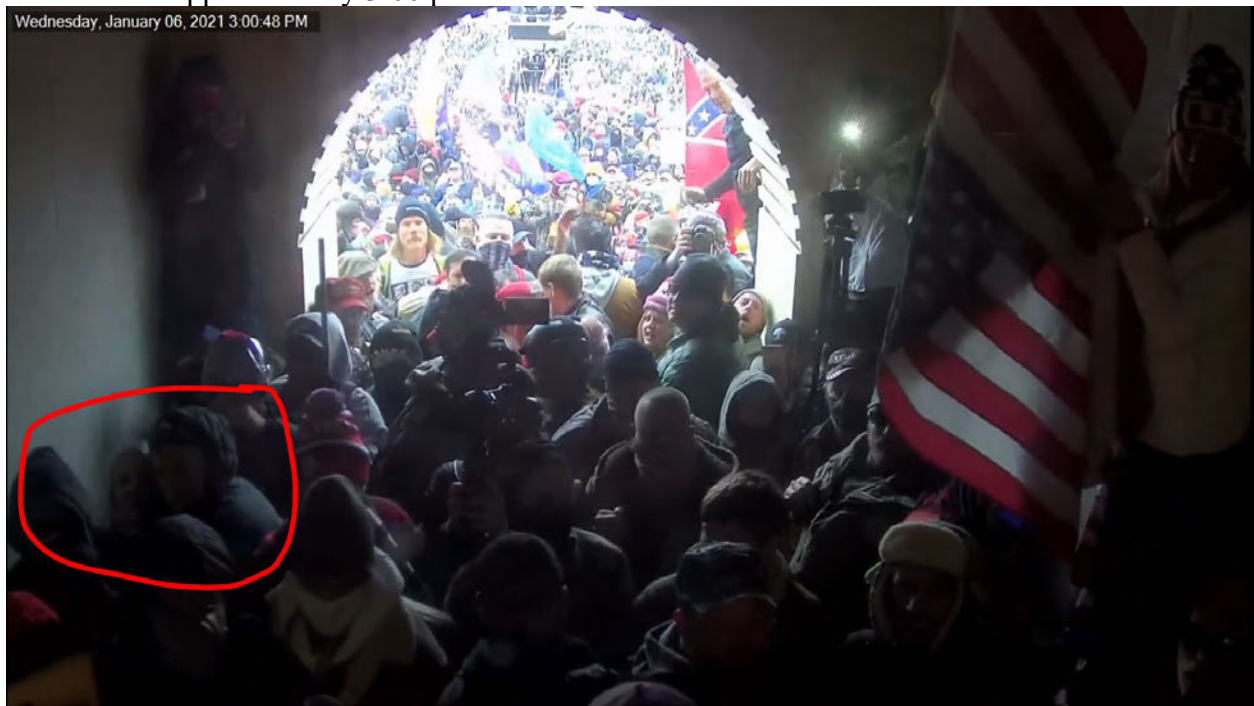
According to CCTV footage, BOLO 126 entered the tunnel at approximately 2:56 p.m. Below is a still image from CCTV footage showing BOLO 126’s entrance into the tunnel:



Shortly after entering the tunnel, BOLO 126 raised his phone and took a photograph or video of the crowd in the tunnel:



Based on a review of CCTV footage, it appears that BOLO 126's mother entered the tunnel with BOLO 126. While in the tunnel, BOLO 126 appeared to shield his mother from the crowd using his body. Below is a still image showing BOLO 126 shielding his mother against the side of the tunnel at approximately 3:00 p.m.:



However, despite a number of opportunities to leave the tunnel, BOLO 126 and his mother remained. Below is a still image from CCTV depicting BOLO 126 and his mother in the tunnel at approximately 3:03 p.m. when there was space and opportunity to exit the tunnel:



At approximately 3:04 p.m., the crowd in the tunnel began to push in a concerted effort against the police line. BOLO 126 participated in the push effort by turning his back to the police line and pushing against the rioters between him and the police line to aid in the group effort to

push against the police . Below is a still image from Video 1 which shows BOLO 126 pushing against other rioters and yelling:



According to CCTV footage, BOLO 126 remained in the tunnel, periodically pushing against other rioters who were pushing against the police for a number of minutes. Below is a still image of CCTV depicting BOLO 126 turned with his back towards the police line and pushing against - and in concert with - other rioters at approximately 3:08 p.m.:



Video 1 shows BOLO 126 at approximately the same time as the CCTV image above from the opposite direction, as he pushes against the rioters. As depicted in Video 1, BOLO 126's mother was in front of him, facing the wall of the tunnel as BOLO 126 pushed against other rioters and yelled animatedly, "LET'S GO! C'MON! LET'S GO!" Below is a still image from Video 1 depicting BOLO 126 forcefully pushing against other rioters:



At approximately 3:10 p.m., rioters were being moved out of the tunnel by police officers but BOLO 126 and his mother remained. At approximately 3:12 p.m., the rioters in the tunnel began another concerted push effort against the police and BOLO 126 joined that effort again and

pushed against other rioters who pushed against the police line. Below is a still image from CCTV footage depicting BOLO 126 pushing against other rioters who pushed against the police line:



Video 3 also depicts BOLO 126 at approximately this time. Below is a still image from Video 3 showing BOLO 126 using his back to push against other rioters who were pushing against the police line:



At approximately 3:14 p.m., BOLO 126 was still in the tunnel and took a photograph of the police line. Below is a still image from CCTV footage showing BOLO 126 taking a photograph:



At approximately 3:15 p.m., many of the rioters left the tunnel leaving space for BOLO 126 and his mother to exit. However, BOLO 126 remained in the tunnel and pulled his mother closer to the police line:



At 3:16 p.m., the rioters in the tunnel conducted another coordinated push against the police and BOLO 126, again with his back turned to the police line, pushed against other rioters who pushed against the police:



BWC footage shows that BOLO 126 and his mother were among the last rioters to leave when police cleared the tunnel at approximately 3:20 p.m. Below is a still image from BWC

showing police officers as they tried to move BOLO 126 and his mother – two of the last rioters in the tunnel - out:



At approximately 3:19 p.m., a Metropolitan Police Department Officer (Officer M.F.) was dragged into the crowd by members of the mob. BOLO 126 remained near the entrance to the tunnel at this time and as Officer M.F. made his way back to his fellow officers, BOLO 126 put his arms around Officer M.F. as depicted in the still image from BWC below:



A few minutes later, BOLO 126, who was still at the entrance to the tunnel near the police line, was struck in the face with a U.S. Capitol police riot shield as another rioter attempted to rip

it out of the hands of a nearby police officer. BOLO 126 grabbed the shield before the rioter successfully pulled it away from the officer and into the crowd.

B. Identification of BOLO 126 as KYLE KUMER

Following January 6, 2021, FBI received two tips identifying BOLO 126 as KYLE KUMER.² Specifically, law enforcement received a tip from an individual “Tipster 1” who stated that BOLO 126 is Kansas City resident KYLE KUMER. Tipster 1 stated that s/he is related to KUMER. Law enforcement subsequently conducted an interview with Tipster 1 who further stated that s/he heard from a family member that KUMER attended the rally with KUMER’s mother. Tipster 1 also stated that KUMER posted photographs and video from the U.S. Capitol on his Facebook page but took them down a few days later. Tipster 1 provided law enforcement with screenshots that s/he took from KUMER’s Facebook, as well as a video. The Facebook posts discussed KUMER’s experience at the U.S. Capitol and the video depicted the Lower West Terrace.

The FBI also received information from another individual “Tipster 2” regarding KYLE KUMER. Tipster 2 told law enforcement that s/he is acquaintances with KUMER. Tipster 2 was scheduled to see KUMER on January 6 but KUMER did not appear. Tipster 2 later learned that KUMER did not appear because KUMER was at the U.S. Capitol. Tipster 2 told law enforcement that s/he saw a photo of KUMER at the U.S. Capitol on January 6, 2021, posted to an Instagram account belonging to a photographer. Law enforcement showed Tipster 2 a photograph of BOLO 126 and Tipster 2 confirmed that the individual depicted was KYLE KUMER.

On or about November 17, 2021, law enforcement conducted an interview with KUMER at his residence in Kansas City, Missouri (“the Kumer Residence”). During the interview, in summary, KUMER admitted to being at the U.S. Capitol on January 6, 2021 and showed law enforcement a number of videos and photographs taken on his iPhone. KUMER admitted to entering the tunnel and to pushing the crowd with his back while in the tunnel. KUMER claimed he was pushing against the crowd to protect his elderly mother from injury. KUMER stated he brought his elderly mother to the tunnel to fully experience the moment. KUMER denied entering the U.S. Capitol building.

Based on agents’ observations of the physical appearance of KUMER during the interview, agents identified KUMER as BOLO 126.

Conclusion

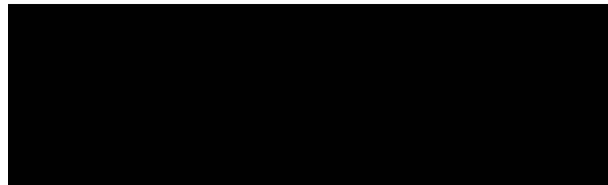
² The FBI received other tips from the public that identified BOLO 126 as someone other than KYLE KUMER. Specifically, the FBI received at least five other tips from members of the public identifying BOLO 126 as someone other than KUMER. FBI investigated and ruled out these tips by, among other things, conducting open source research, searching law enforcement databases and/or conducting interviews.

Based on the foregoing, your affiant submits there is probable cause to believe that KYLE KUMER 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 also submits that there is probable cause to believe that KUMER violated 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.

Finally, your affiant submits there is also probable cause to believe that KUMER violated 40 U.S.C. §§ 5104(e)(2)(E), which makes it a crime to willfully and knowingly obstruct, or impede passage through or within, the Grounds or any of the Capitol Buildings.

Respectfully submitted,



Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 21st day of June, 2023.

HONORABLE G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE