

Case: 1:23-mj-00043
Assigned To : Upadhyaya, Moxila A.
Assign. Date : 2/22/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

I, Rakesha Darden, am a Special Agent with the Federal Bureau of Investigation assigned to the Norfolk Field Office Joint Terrorism Task Force (JTTF). In my duties as a Special Agent, I investigate crimes committed by Racially Motivated Violent Extremists (RMVE), Anti-Government Violent Extremists (AGVE), and other Domestic Terrorism related matters. I have participated in procuring and executing arrest warrants of persons committing federal violations and search warrants involving the search and seizure of multiple types of evidence to include electronic communications, digital devices, social media accounts, cell cite data, and geo-location data. Currently, I am tasked with, among other duties, investigating criminal activity in and around the Capitol grounds on January 6, 2021. As an FBI 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 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, 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.

On June 18, 2021, the FBI received a tip from a confidential human source (CS-1) that indicated JEFFREY ETTER (ETTER) of Portsmouth, Virginia was one of the individuals who illegally entered the U.S. Capitol on January 6, 2021. CS-1's tip included a news article dated May 29, 2020, from WAVY.com, entitled "Portsmouth gym continues to operate despite police intervention."¹ In the article, ETTER is listed as the co-founder of the gym CrossFit Slice in Portsmouth, Virginia. The article reported that ETTER and the other co-founder of the gym were continuing to hold indoor gym classes despite contrary local ordinance restrictions resulting from the COVID-19 pandemic. The article included a video depicting an individual identified as ETTER.



Below is a side-by-side comparison of a photo of ETTER from a Facebook group page for CrossFit Slice² with a screenshot of an individual assessed as ETTER from an open-source video depicting rioters inside the U.S. Capitol Crypt.³ Both images appear to depict ETTER wearing the same pair of distinctive shoes:

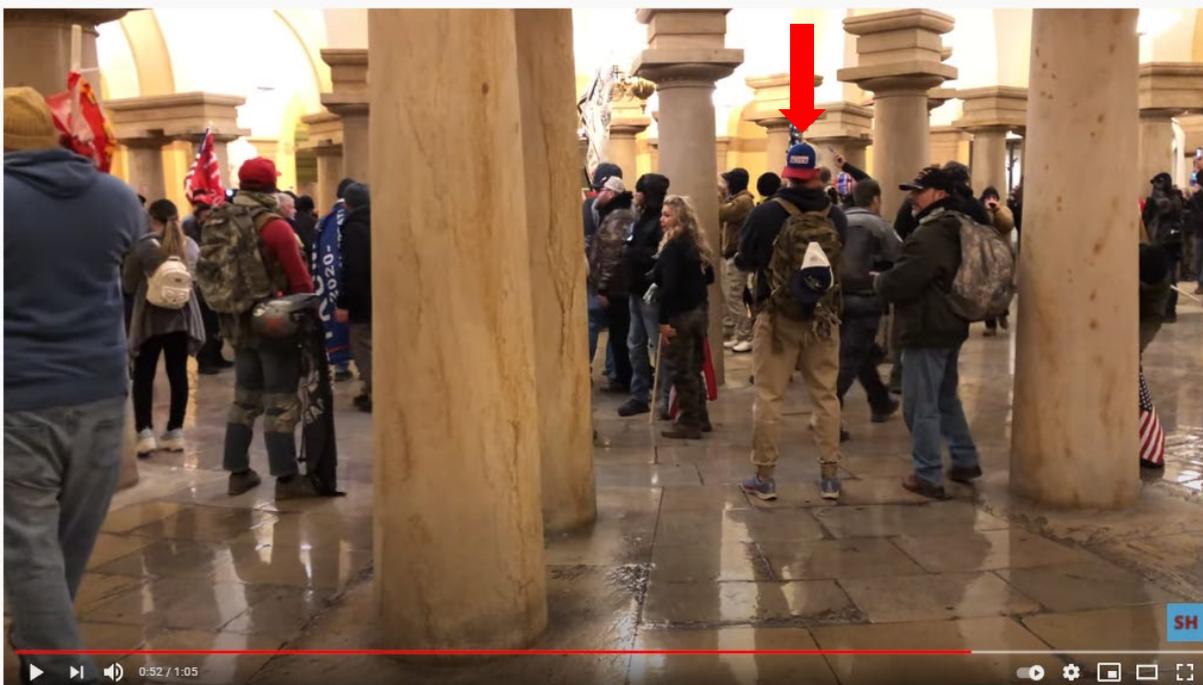
¹ <https://www.wavy.com/news/local-news/portsmouth/portsmouth-gym-continues-to-operate-despite-police-intervention/>

² <https://www.facebook.com/crossfitslice/photos/552649438670019>

³ <https://www.youtube.com/watch?v=3ZnUvABWGN8> at timestamp 0:38



The FBI reviewed the above media and determined the YouTube video of the individual assessed as ETTER was obtained via Parler data. The FBI reviewed the Parler video data and determined that the video was timestamped at approximately 3:09 p.m. EST. In the video, ETTER speaks with an unknown subject (UNSUB), who is standing to ETTER's right. ETTER is wearing (1) a pair of red and blue/gray sneakers; (2) a red, white, and blue baseball cap worn backwards; and (3) a camouflage backpack:



Parler video C6CA3XcX087g

51 views · Jun 16, 2021

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Parler video C6CA3XcX087g inside the Capitol

 Notice [Age-restricted video \(requested by uploader\)](#)

According to records obtained through a search warrant served on Verizon on August 2, 2021, the phone number XXX-XXX-0165 was identified as having utilized multiple cell sites consistent with providing service to a geographic area that includes the interior of the United States Capitol building on January 6, 2021. ETTER was also verified as the subscriber/ account owner of phone number XXX-XXX-0165, according to the Verizon search warrant.

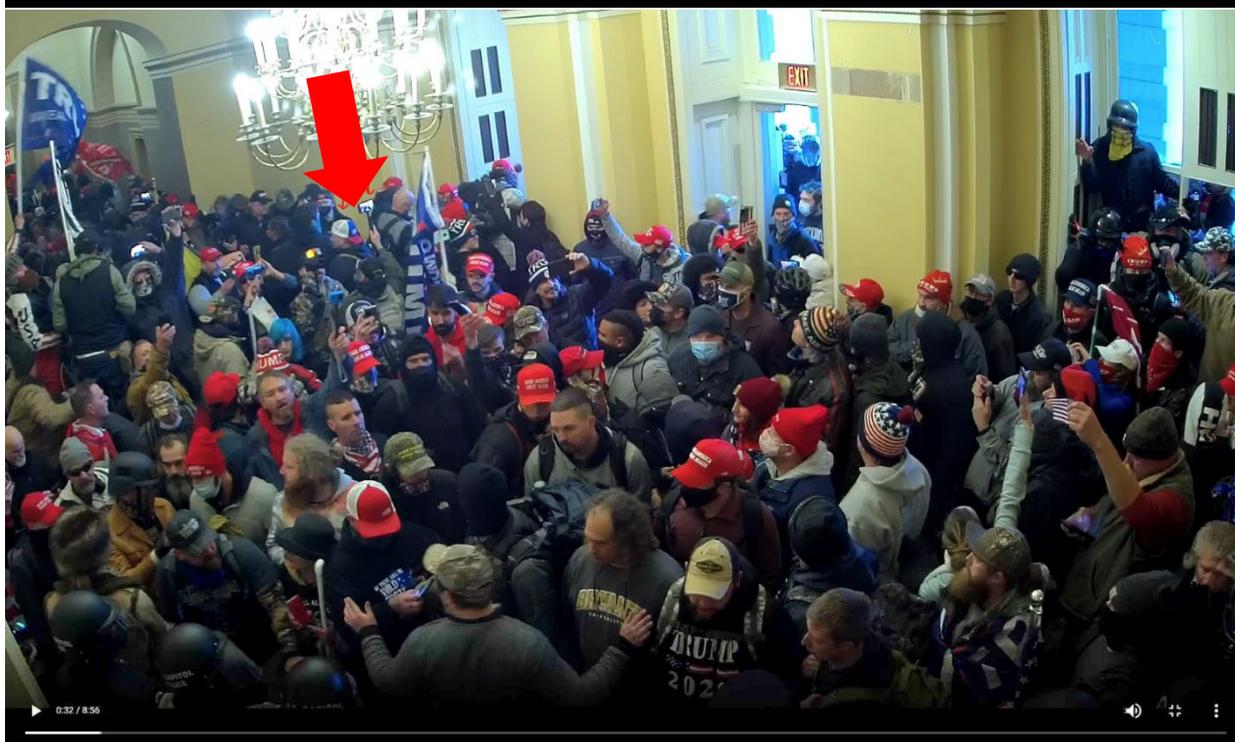
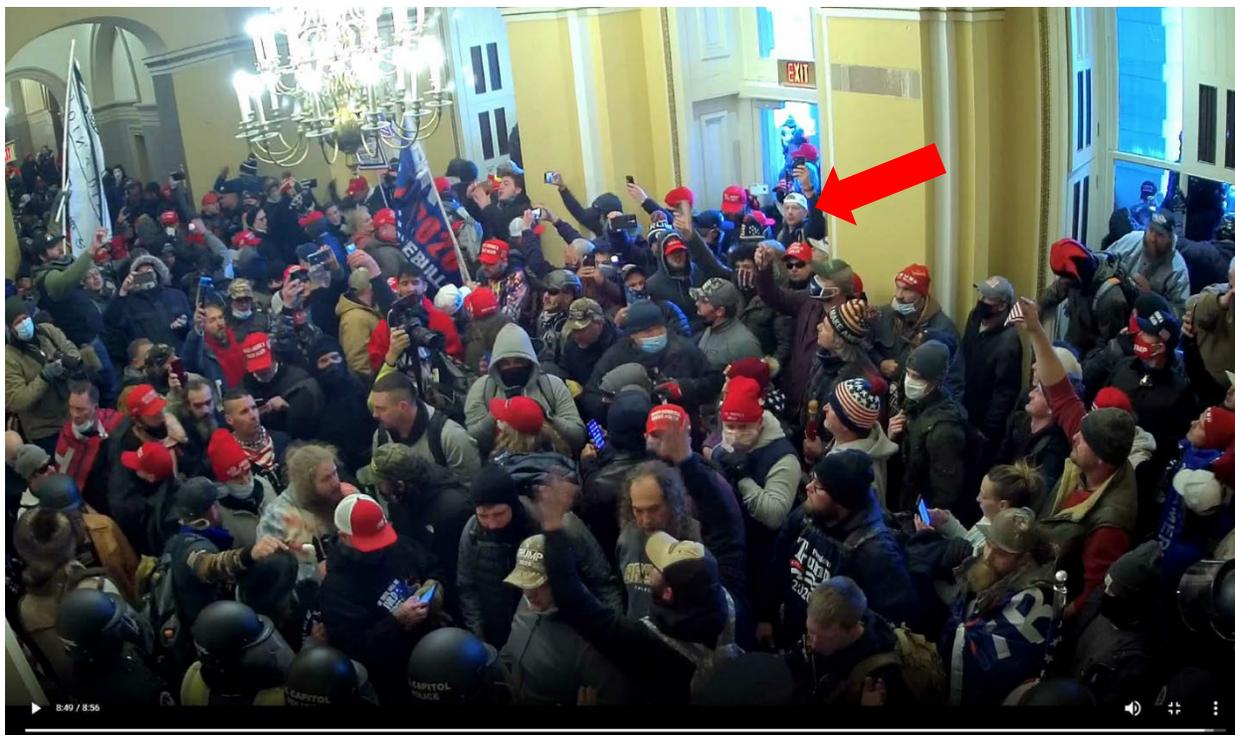
Further FBI investigation revealed that the individual assessed as ETTER appeared in multiple clips of Metropolitan Police Department (MPD) body-worn camera and CCTV footage from around and inside the U.S. Capitol on January 6, 2021. In this footage, ETTER can be seen wearing the same distinctive shoes, hat, and backpack as is shown on his person in the Parler video, as well as walking with an individual whose appearance is consistent with the UNSUB from the Parler video. ETTER and the UNSUB are depicted in MPD footage at the northwest exterior of the Capitol around 2:49 p.m. EST and near the Senate Wing Doors around 2:54 p.m. EST. In this footage, ETTER is loudly screaming profanity and obscenities, while facing the MPD Officers, pointing his finger, and in one instance walking toward the MPD officers in a threatening like manner, yelling “chill the fuck out,” “hey guy calm the fuck down,” “pushing a fucking old man,” “you, you should be fucking ashamed of yourself,” and “I got you what’s your

fucking name.” At one point, ETTER shouts to the crowd, “inside, hey they said go inside,” while holding his hands up motioning for the crowd to go inside the Capitol. ETTER is also observed attempting to approach the MPD Officers yelling “She’s ready to fuckin hit somebody, go ahead hit me then... you wanna hit somebody ...”, before he’s pulled back by an individual standing next to him.

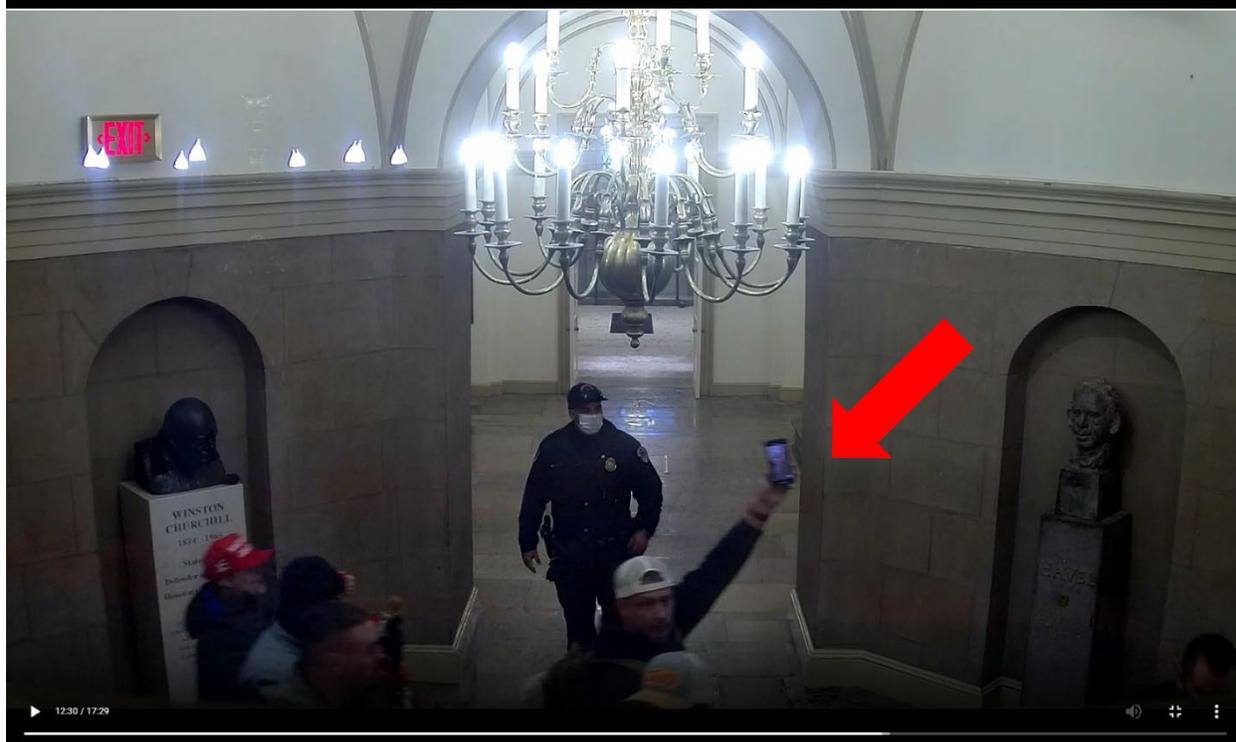
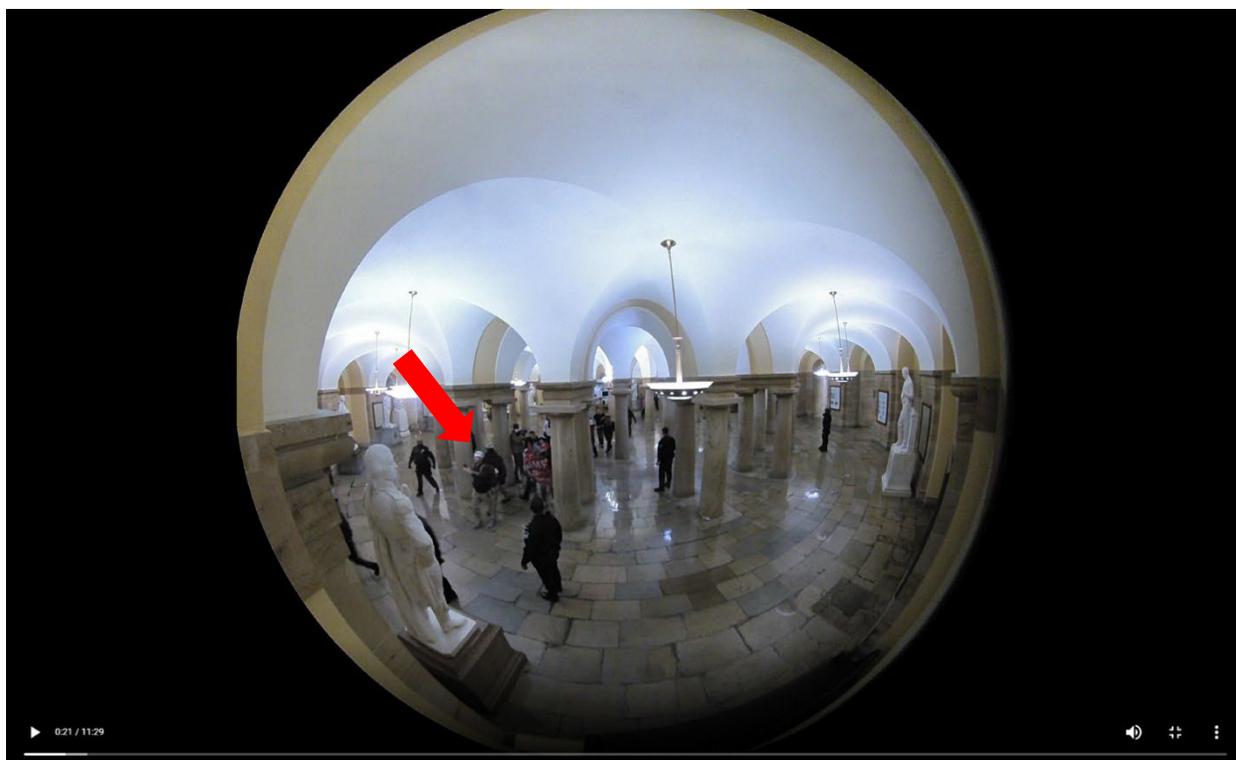


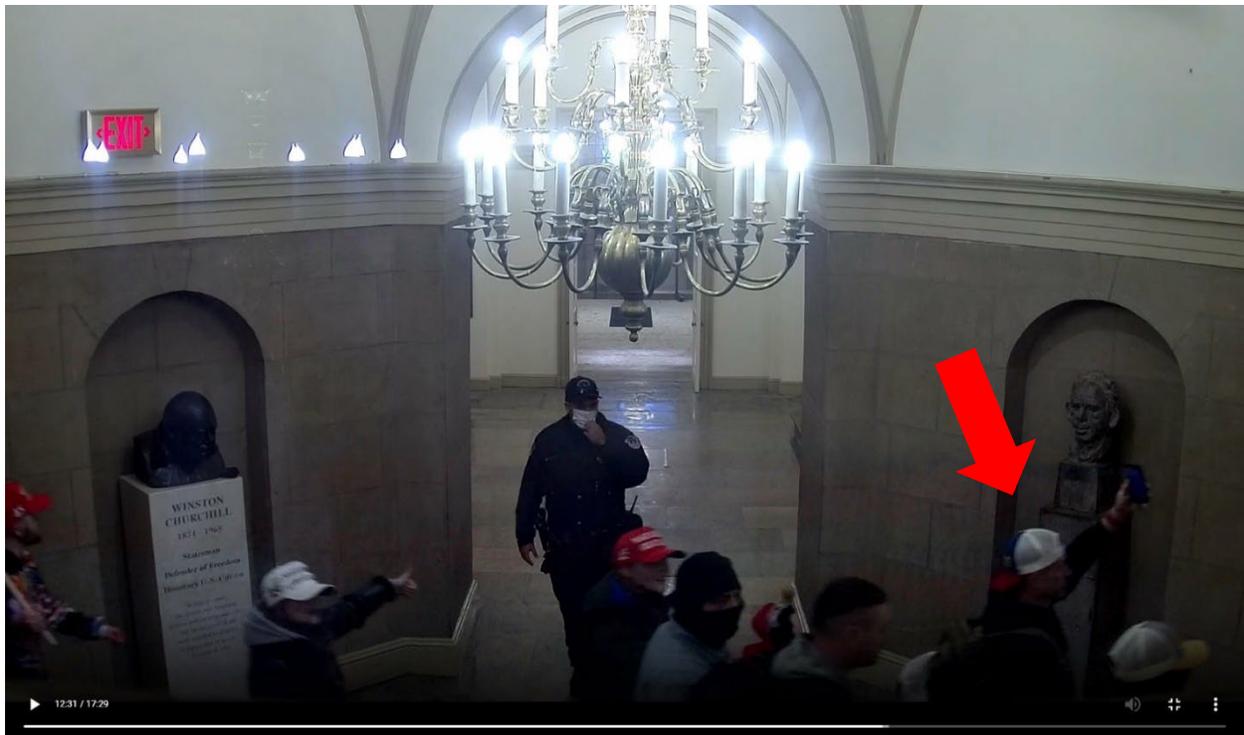


ETTER and the UNSUB are also depicted on U.S. Capitol CCTV footage entering the U.S. Capitol building through the First Floor Northwest Senate Wing Door at approximately 2:56pm EST. The individual assessed as ETTER and the UNSUB are both holding up cell phones—likely filming—as they enter the U.S. Capitol building:

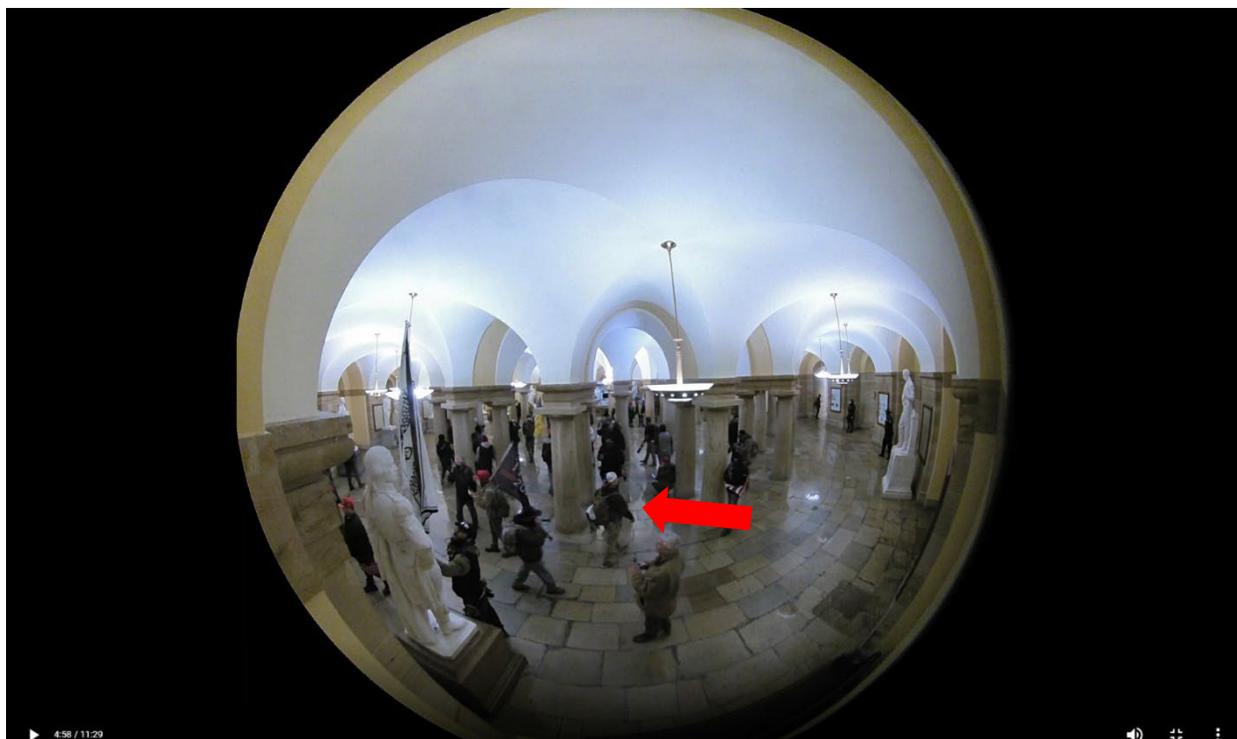


At approximately 2:59 p.m. EST, the individual assessed as ETTER is depicted on CCTV walking through the Capitol Crypt. ETTER is shown holding up a cell phone, likely filming his passage:

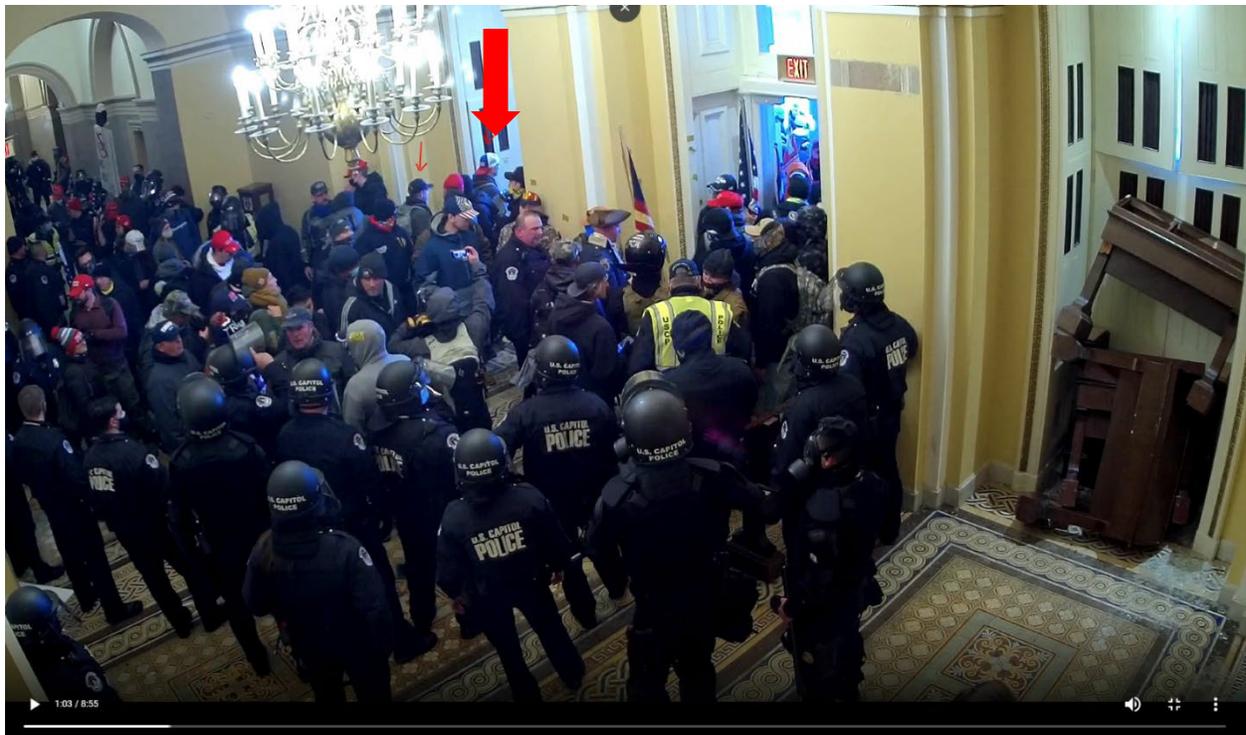




At approximately 3:05 p.m. EST, the individual assessed as ETTER can be seen reentering the Crypt with the UNSUB:



At approximately 3:32 p.m. EST, ETTER and the UNSUB appear near the First Floor Northwest Senate Wing Door in the presence of a large group of U.S. Capitol Police Officers before exiting the U.S. Capitol Building through a window. ETTER and the UNSUB were in the U.S. Capitol building for approximately 33 minutes.



At approximately 4:23 p.m. EST, ETTER and the UNSUB appear on MPD footage walking away from the Senate Wing Doors:



Around 4:31 p.m. EST, ETTER and the UNSUB are depicted from multiple vantage points at the northwest exterior of the Capitol building as law enforcement officers move the crowd away from the building's perimeter. In the footage, ETTER, turns to the MPD Officers and loudly yells "what the fuck is wrong with you." While standing directly in front of a MPD Officer

ETTER yells, “you like this?”, “we can’t even fuckin’ move... shameful, shameful.” ETTER is further observed with his hands in the air and pointing to the MPD Officers yelling “ You are the aggressors, you are the aggressors.”



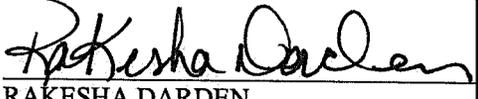
On March 25, 2022, the FBI interviewed one of ETTER's neighbors (Witness #1). Witness #1 stated that they knew ETTER. Witness #1 was shown two separate photos, reproduced below: a headshot photo and a screenshot of ETTER from MPD body-worn camera footage taken at the U.S. Capitol on January 6, 2021.



Witness #1 identified the individual in both photos as JEFFREY ETTER.

Based on the foregoing, your affiant submits that there is probable cause to believe that JEFFREY ETTER 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; 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 JEFFREY ETTER violated 40 U.S.C. § 5104(e)(2)(D), and (e)(2)(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.


RAKESHA DARDEN
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 22nd day of February 2023.

HONORABLE MOXILA A. UPADHYAYA
U.S. MAGISTRATE JUDGE