

UNITED STATES DISTRICT COURT

for the

District of Columbia

United States of America

v.

DEREK NOFTSGER, (11/14/1976)

THOMAS HODO, (01/26/1977)

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)

Case: 1:24-mj-00251

Assigned to: Judge Faruqui, Zia M.

Assign Date: 8/14/2024

Description: COMPLAINT W/ ARREST WARRANT

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 6, 2021 in the county of in the
in the District of Columbia, the defendant(s) violated:

Code Section

Offense Description

DEREK NOFTSGER

- 18 U.S.C. § 231(a)(3)- Civil Disorder,
18 U.S.C. § 111(a)(1) and (b)- Assaulting, Resisting, or Impeding, Certain Officers Using a Dangerous Weapon,
18 U.S.C. § 1752(a)(1)-Entering and Remaining in a Restricted Building or Grounds,
18 U.S.C. § 1752(a)(2)- Disorderly and Disruptive Conduct in a Restricted Building or Grounds,
18 U.S.C. § 1752(a)(4)- Engaging in Physical Violence in a Restricted Building or Grounds,
40 U.S.C. § 5104(e)(2)(D)-Disorderly Conduct in a Capitol Building,
40 U.S.C. § 5104(e)(2)(F)-Act of Physical Violence in the Capitol Grounds or Buildings.

THOMAS HODO

- 18 U.S.C. § 231(a)(3)-Civil Disorder,
18 U.S.C. § 1752(a)(1)-Entering and Remaining in a Restricted Building or Grounds,
18 U.S.C. § 1752(a)(2)- Disorderly and Disruptive Conduct in a Restricted Building or Grounds,
40 U.S.C. § 5104(e)(2)(D)-Disorderly Conduct in a Capitol Building.

This criminal complaint is based on these facts:

See attached statement of facts.

Continued on the attached sheet.

[Handwritten signature of Kenna M. Gonzales]

Complainant's signature

Kenna M. Gonzales, Special Agent

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
by telephone.

Date: 08/14/2024

Zia M. Faruqui

Digitally signed by Zia M. Faruqui
Date: 2024.08.14 17:34:45 -04'00'

Judge's signature

City and state: Washington, D.C.

Zia M. Faruqui, U.S. Magistrate Judge

Printed name and title

STATEMENT OF FACTS

Your affiant, Kenna Gonzales, is a special agent with the Federal Bureau of Investigation assigned to the Seattle Field Office. 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 THOMAS HODO and DEREK NOFTSGER

Your affiant was assigned the investigation of a subject identified by the FBI as AFO-339. As discussed in more detail below, the individual identified as AFO-339 assaulted a Washington, D.C. Metropolitan Police Department (“MPD”) officer on the West Plaza of the U.S. Capitol on January 6, 2021. The FBI posted numerous photographs of AFO-339 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-339 has subsequently been identified as DEREK NOFTSGER.



Figure 1



Figure 2



Figure 3

As shown in Figures 1–3 above, AFO-339 wore a black jacket, a light gray hoodie sweatshirt, and blue jeans while on Capitol grounds on January 6, 2021. In some photos and videos, AFO-339 was also seen wearing a red hat, blue gloves, goggles, and a gray respirator or gas mask.

As discussed below, videos from U.S. Capitol closed-circuit television (“Capitol CCTV”), MPD body-worn camera (“BWC”), and videos and photos obtained from third parties showed that throughout the day of January 6, 2021, AFO-339 was in the company of the individual identified by the FBI as AFO-421. The FBI posted numerous photographs of AFO-421 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 4–5). As discussed below, AFO-421 has subsequently been identified as THOMAS HODO.



Figure 4



Figure 5

As shown in Figures 4 and 5 above, AFO-421 was wearing white sneakers, blue jeans, a black jacket, dark-colored gloves, a red hat, dark sunglasses or goggles, and a pink-and-gray respirator or gas mask.

In January 2021, a former coworker provided a tip to the FBI identifying THOMAS HODO as being present at the U.S. Capitol on January 6, 2021. In the tip, the former coworker stated that HODO posted live video from the U.S. Capitol during the riot, as well as posted other videos from Washington, D.C. on January 5 through 7, 2021. During a subsequent interview, the individual identified HODO in photos of AFO-421 (Figures 6–8), which were publicly available on the Sedition Hunters website. The individual also stated that HODO had lived in the state of Washington.



Figure 6

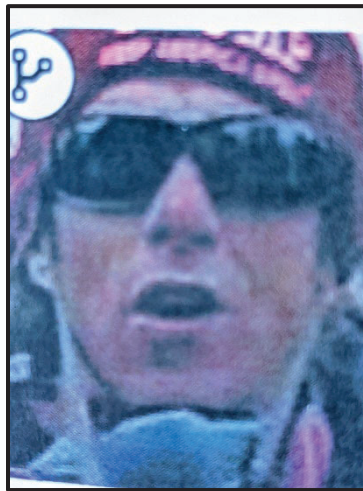


Figure 7

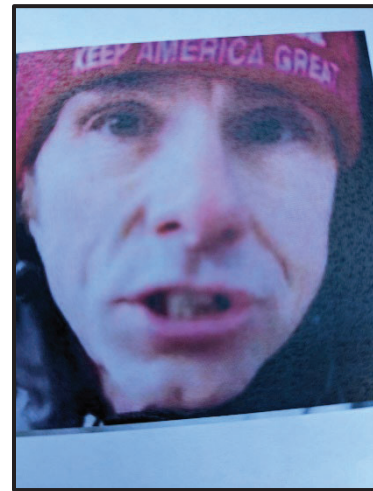


Figure 8

Following the interview of HODO's former coworker, the FBI identified a publicly available Facebook page that appeared to belong to HODO. The FBI subsequently obtained records from Meta for the Facebook page, which included subscriber information showing the page belonged to "Tom Hodo." In addition, the records obtained from Meta included pictures and videos appearing to show HODO in Washington, D.C. from January 5 through 7, and at the U.S. Capitol on January 6, 2021.

According to the records obtained from Meta, on January 5, 2021, HODO posted photos on Facebook that showed him with AFO-339 and made multiple posts in which he referred to

AFO-339 as “Derek.” One photo, posted to HODO’s Facebook on January 5, shows HODO and AFO-339 (Figure 9). HODO wrote in a Facebook comment, in relevant part, “We should be on all kinds of new [sic] stations we were carrying my buddy Derek’s Great Grandpa’s world war flag.” In a photo posted on January 7, 2021, obtained from HODO’s Facebook, HODO and AFO-339 are seen holding a large American flag near the Lincoln Memorial (Figure 10). In a Facebook message, HODO wrote “Bro that’s my good friends [sic] Great Grandpa’s World War 1 flag it was his casket flag that he had pass [sic] down to Derek’s Grandpa and Derek’s Grandpa gave it to us to take on the trip to DC.”



Figure 9



Figure 10

In an open-source video, shown in Figure 11 below, AFO-339 is seen in the area of the Lincoln Memorial, wearing the same clothing as shown in Figure 10 above. In the video, AFO-339 is asked his name and responds “Derek.”



Figure 11

According to records obtained from Airline 1, HODO flew from Seattle, Washington to Baltimore-Washington International Airport on January 4, 2021, using a reservation that also included a ticket for DEREK NOFTSGER. According to records obtained from Airline 2, HODO flew from Baltimore-Washington International Airport to Seattle on January 7, 2021, also using a reservation that included a ticket for NOFTSGER. Public records searches indicated that NOFTSGER also resided in Washington.

According to records obtained through a search warrant served on Google, a mobile device associated with derekanoftsger@gmail.com was present on U.S. Capitol grounds on January 6, 2021. Records provided by Google revealed that the mobile device associated with derekanoftsger@gmail.com belonged to a Google account registered in the name of “Derek Noftsger.” The Google account also lists a recovery SMS phone number that matches XXX-XXX-5666. Subscriber information provided by Verizon Wireless shows that phone number as being associated with “Derek HRD,” and public records show that phone number as being associated with NOFTSGER.¹

Accordingly, there is probable cause to believe that AFO-339 is DEREK NOFTSGER and that AFO-421 is THOMAS HODO.

¹ The unredacted phone number and email address associated with NOFTSGER are known to your affiant.

NOFTSGER and HODO's Statements Prior to January 6, 2021

According to the Airline 1 records referenced above, NOFTSGER and HODO arrived in the greater Washington, D.C. area during the evening of January 4, 2021.

According to records obtained from Meta, on January 5, 2021, HODO posted a photo on Facebook that appeared to show him standing near the Grant Memorial, which is located west of the U.S. Capitol. In the photo, the U.S. Capitol building is visible, along with bike rack barriers and an "Area Closed" sign, as shown in Figure 12 below.



Figure 12: Photo of HODO (red) on January 5, 2021

In another Facebook post from January 5, 2021, HODO wrote: “antifa just threatened [a U.S. Senator’s] family. Showed up at there [sic] door. This is going to get real. And Biden said there is not a group called antifa, it’s just an idea. He cannot become our president.”

In an open-source video that appears to show the east side of the U.S. Capitol grounds on January 5, 2021, NOFTSGER and HODO are seen holding a flag that NOFTSGER says belonged to his great grandfather, as shown in Figure 13 below. The flag appears worn and has certain distinct tear marks. In the video, NOFTSGER says “It’s my time, my duty, and if I have to lay down my life in D.C. in the two days, then that’s exactly what I’m gonna do.”



Figure 13: NOFTSGER (yellow) and HODO (red) on January 5, 2021

NOFTSGER and HODO's Conduct on January 6, 2021

After the January 6, 2021 riot that occurred at the U.S. Capitol, photos of individuals who were present on the grounds of the U.S. Capitol, as well as inside the Capitol building, were made publicly available. Numerous publicly available videos show NOFTSGER and HODO on U.S. Capitol grounds on January 6, 2021.

In an open-source video, NOFTSGER and HODO are seen standing near a line of U.S. Capitol Police ("USCP") and MPD officers on the West Plaza of the U.S. Capitol. In the video, as shown in Figure 14 below, NOFTSGER appears to put a gas mask on.



Figure 14: NOFTSGER (yellow) on the West Plaza putting on a gas mask

In MPD body-worn camera from Officer TG, HODO is also seen with a gas mask, as shown in Figure 15 below from approximately 1:36 p.m. In the video, HODO is close to the police line on the West Plaza.



Figure 15: HODO (red) on the West Plaza with a gas mask

At approximately 1:37 p.m., other rioters attempted to pull away a bike rack away from the police line. As shown in Figure 16 from Officer TG's BWC below, HODO aided the rioters in pulling the bike rack.



Figure 16: HODO (red) aiding other rioters pulling a bike rack away from police

Open-source video shows the same scene from another angle, as shown in Figure 17 below. This angle shows that NOFTSGER was standing nearby appearing to watch HODO's conduct.



Figure 17: HODO (red) aiding rioters pulling a bike rack as NOFTSGER (yellow) watched

Approximately one minute later, the same open-source video shows HODO walking over to NOFTSGER and appearing to help place NOFTSGER's flag in NOFTSGER's backpack. HODO then appears to take an item from NOFTSGER's bag and throws the item in the direction of the police line, as shown in Figure 18.



Figure 18: HODO (red) throwing an item toward officers

At approximately 1:42 p.m., roughly six minutes after throwing an item in the direction of officers, HODO again approached the police line and began to speak using a megaphone, as shown in Figure 19 below from MPD BWC footage. In part, HODO stated "it is our constitutional duty, we have to stand up to a tyrannical government, we are not supposed to secede to a tyrannical

government,” then went on to claim that he supported the police, before proclaiming that “every treasonous traitor will be hung . . . we will take our country back.” After handing off the megaphone to another rioter, he looked at the officers on the police line and said “you guys are a fucking disgrace.”



Figure 19: HODO (red) with the megaphone

At approximately 2:26 p.m., multiple rioters began to push against the police line near NOFTSGER and HODO. Law enforcement officers on the police line pushed the rioters back. In response, NOFTSGER picked up a USCP riot shield from the ground and faced toward MPD Officer GL, as shown in Figure 20 from Officer GL’s BWC below.



Figure 20: NOFTSGER (yellow) holding a riot shield

When officers pushed back a rioter near NOFTSGER, he lifted the riot shield above his head with both hands and threw it the officers, as shown in Figures 21 through 23 below from Officer GL's BWC.



Figure 21: NOFTSGER (yellow) throwing a riot shield at MPD officers



Figure 22: NOFTSGER (yellow) throwing a riot shield at MPD officers



Figure 23: NOFTSGER (yellow) throwing a riot shield at MPD officers

Seconds after NOFTSGER threw the riot shield at officers, BWC of MPD Officer BB showed HODO picking up an object that appears to be a can of pepper spray or OC spray off the ground, inspecting the can, then pointing the can at Officer BB and other officers on the police line, as shown in Figures 24 through 26 from Officer BB's body-worn camera.



Figure 24: HODO (red) picking up an object that appears to be a can of pepper spray while next to NOFTSGER (yellow)

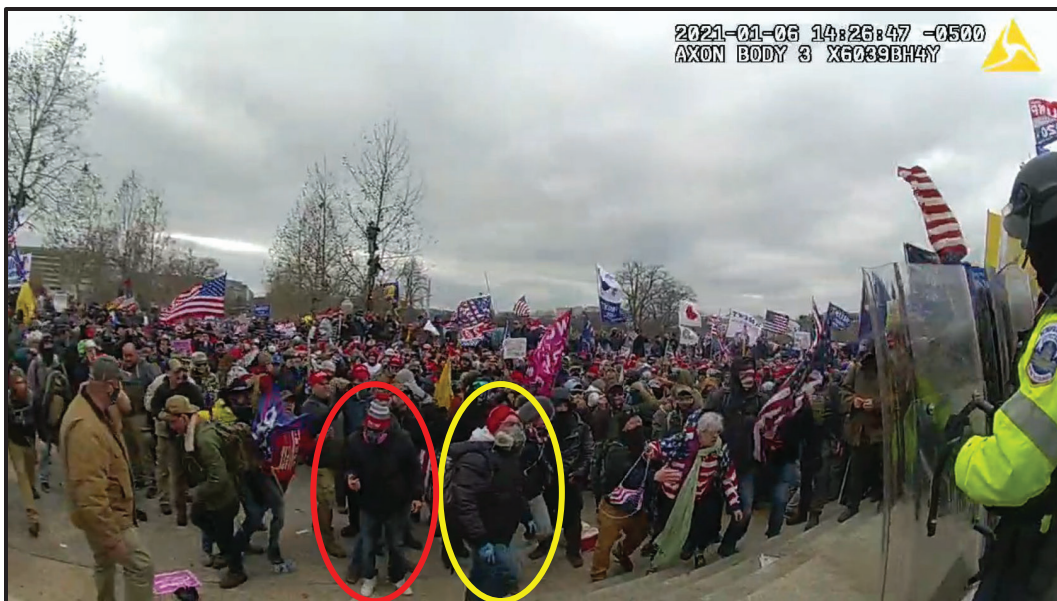


Figure 25: HODO (red) inspecting the can; NOFTSGER (yellow) near the police line

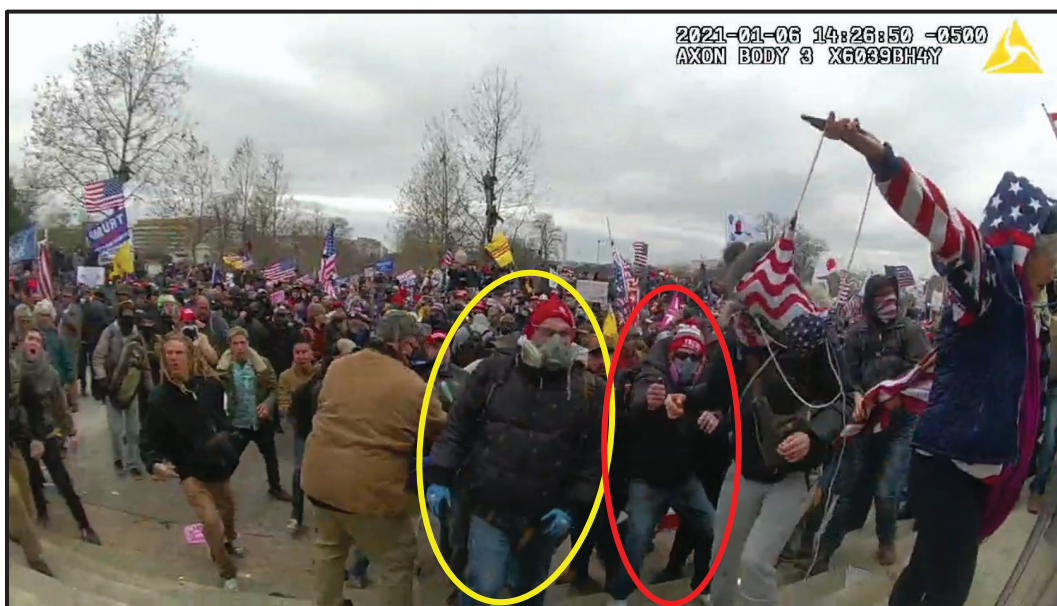


Figure 26: HODO (red) pointing the can at Officer BB and other officers; NOFTSGER (yellow)

In an open-source video showing approximately the same time as Figures 24–26 above, after HODO points the pepper spray can at Officer BB, he then appears to point the can a second time at other officers further to Officer’s BB’s right. As shown in Figure 27 below, HODO appears to have his thumb on the can in a manner consistent with trying to deploy the spray, however, it does not appear that any spray was deployed. After being unsuccessful in his attempt to spray the officers, HODO appears to throw the can in the direction of the officers, as shown in Figure 28.

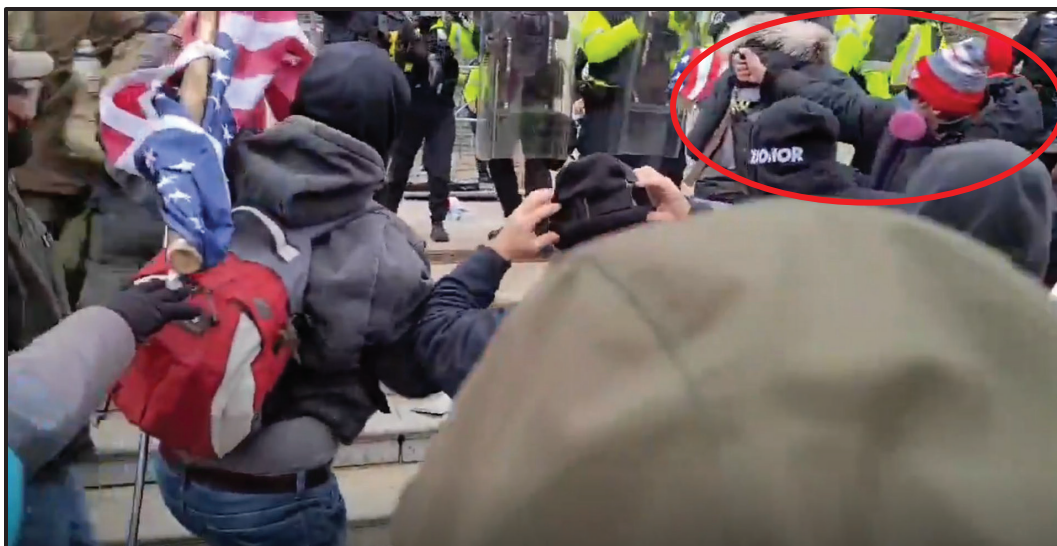


Figure 27: HODO (red) pointing the can at officers a second time



Figure 28: HODO (red) appearing to throw the can toward the officers; NOFTSGER (yellow)

At approximately 2:28 p.m., rioters on the West Plaza overran the police line. MPD and USCP officers on the West Plaza retreated to the Lower West Terrace, where a large crowd of rioters followed them.

After rioters overran the police line on the West Plaza, NOFTSGER and HODO climbed onto the Southwest Scaffolding. As shown in Capitol CCTV (Figure 29) and an open-source photograph (Figure 30), NOFTSGER and HODO unfurled the flag that they had been carrying.

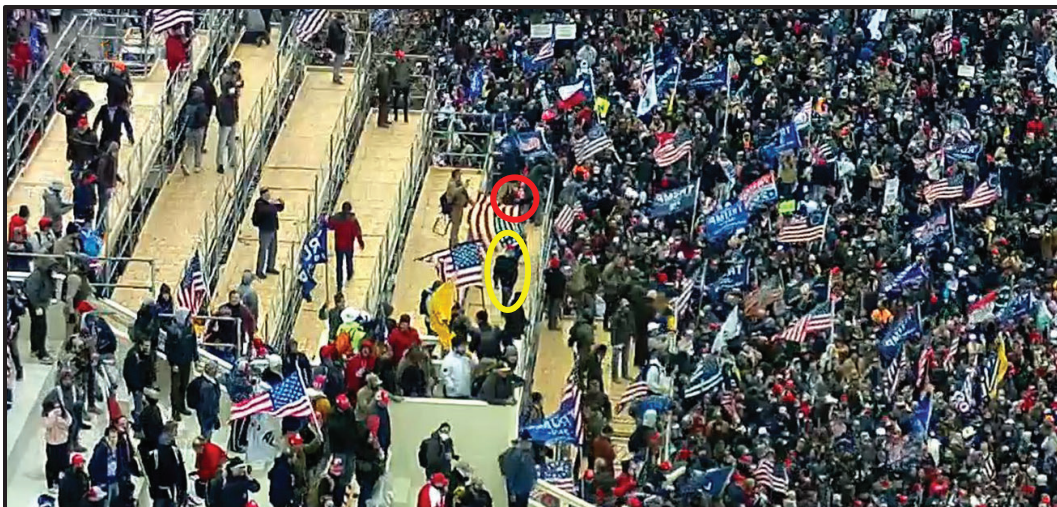


Figure 29: NOFTSGER (yellow) and HODO (red) on the Southwest Scaffolding

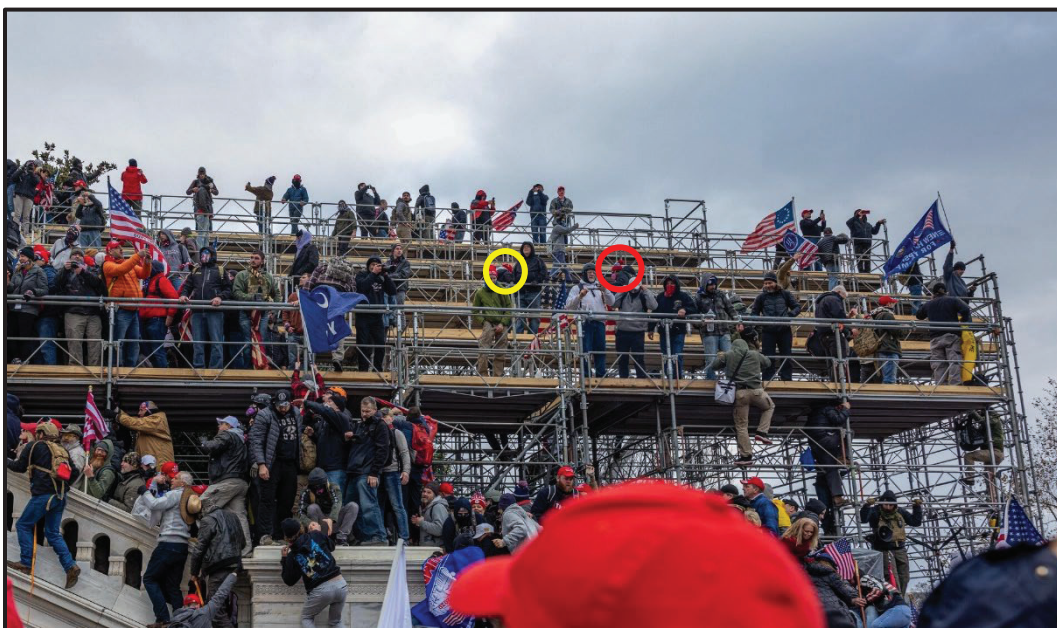


Figure 30 NOFTSGER (yellow) and HODO (red) on the Southwest Scaffolding

At approximately 2:52 p.m., NOFTSGER and HODO climbed onto the Lower West Terrace and walked toward a center portion of the inaugural stage that overlooks the West Plaza. There, they again unfurled the flag that they had been carrying, as shown in Figure 31.



Figure 31: NOFTSGER (yellow) and HODO (red) on the Lower West Terrace

In open-source video showing NOFTSGER and HODO on the Lower West Terrace, shown in Figure 32 below, HODO turns to the camera and says: “it could get a lot worse, we came in peace this time, it could get a lot worse, believe me we are well armed if we need to be.”



Figure 32: NOFTSGER (yellow) and HODO (red) on the Lower West Terrace

NOFTSGER’s and HODO’s Criminal Violations


Based on the foregoing, your affiant submits that there is probable cause to believe that DEREK NOFTSGER and THOMAS HODO 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 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; or attempts or conspires to do so. There is also probable cause to believe that DEREK NOFTSGER violated 18 U.S.C. § 1752(a)(4) which makes it a crime to knowingly engage in any act of physical violence against any person or property in any restricted building or grounds. 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 DEREK NOFTSGER and THOMAS HODO violated 40 U.S.C. § 5104(e)(2)(D), 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. There is also probable cause to believe that DEREK NOFTSGER violated 40 U.S.C. § 5104(e)(2)(F), which makes it a crime to 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 DEREK NOFTSGER and THOMAS HODO 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 DEREK NOFTSGER violated 18 U.S.C. § 111(a)(1) and (b), 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, while using a deadly or dangerous weapon or inflicting bodily injury. 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.



Kenna Gonzales
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 14th day of August 2024.

Zia M. Faruqui



Digitally signed by
Zia M. Faruqui
Date: 2024.08.14
17:13:59 -04'00'

HONORABLE ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE