

STATEMENT OF FACTS

Your affiant, [REDACTED] is a Special Agent with the United States Secret Service assigned to the Federal Bureau of Investigation (“FBI”) Joint Terrorism Task Force. In my duties as a Special Agent, I have received training and gained experience in a variety of criminal laws and procedures. 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 and/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 U.S. 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 U.S. 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.

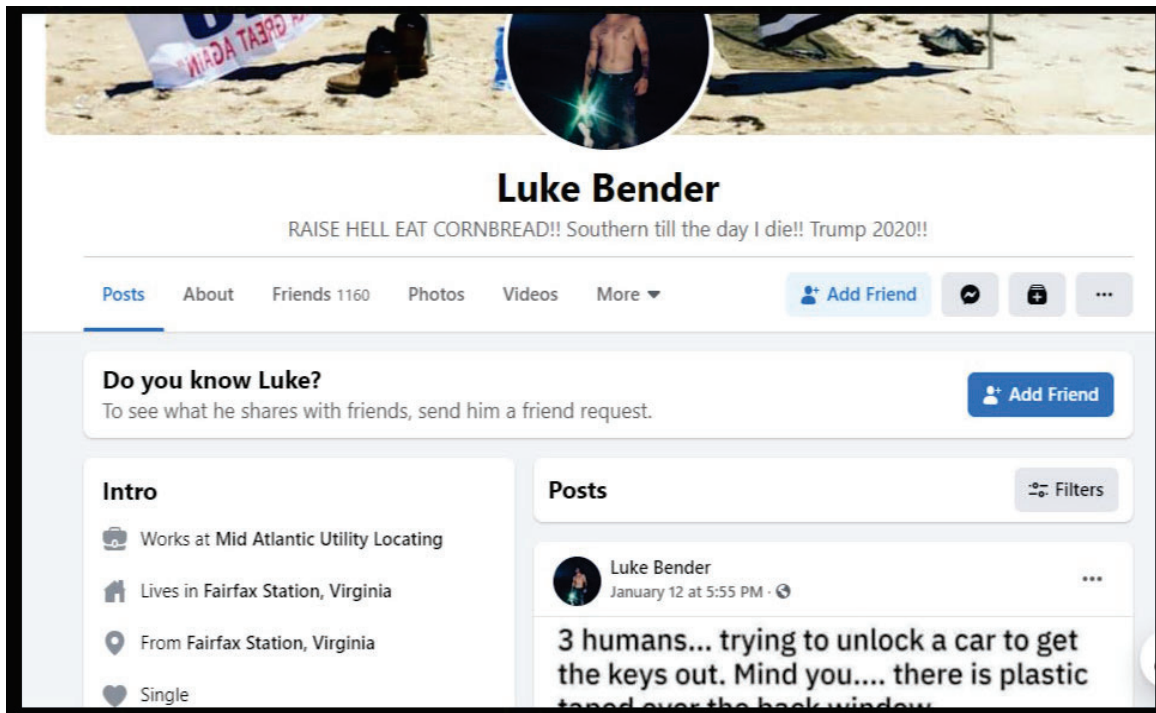
Shortly thereafter, at approximately 2:20 p.m., members of the U.S. House of Representatives and U.S. Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the U.S. Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the U.S. Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

FACTS SPECIFIC TO THIS CASE

Subsequent to January 6th, on January 13, 2021, the FBI received an anonymous tip stating that Luke Wessley Bender (“BENDER”) was inside of the Capitol on January 6, 2021. The tipster wrote, “Luke Bender was bragging about being present during the insurrection at the US Capitol on 1/6/2021. He has photos of himself and with others inside of the US Capitol Building. Some of the people he has photos with have already been arrested for their participation in this insurrection.” The tipster additionally wrote that s/he worked with BENDER at Mid Atlantic Utility Locating, located in Ashburn, Virginia.

On January 14, 2021, the FBI received another tip from a witness (“W-1”) regarding BENDER. W-1 stated that s/he went to high school with BENDER and provided a screenshot of an Instagram account believed to belong to BENDER, stating, “Here’s an Instagram post of someone I know. It doesn’t show anyone in the capital, but he was definitely there.”

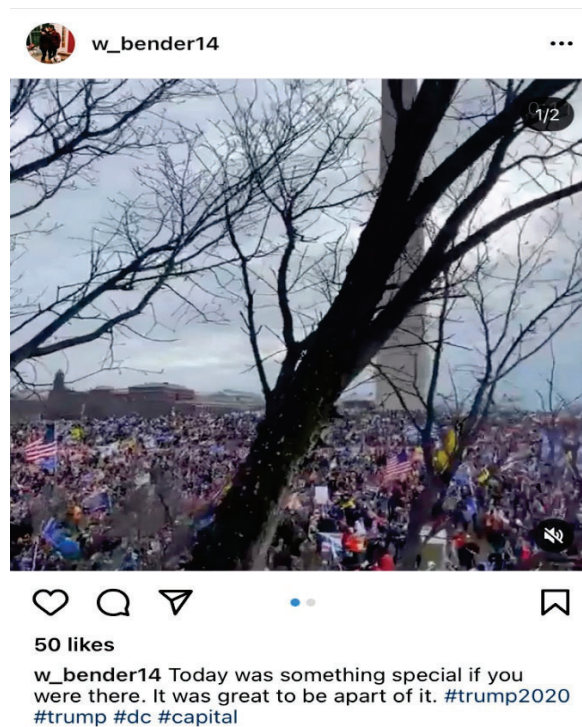
Your affiant reviewed open sources regarding BENDER, including a Facebook profile believed to belong to BENDER. As depicted below, the account profile page has a post supportive of the events of January 6, 2021, and lists BENDER’s workplace as Mid Atlantic Utility Locating, the same employer listed by the anonymous tipster.



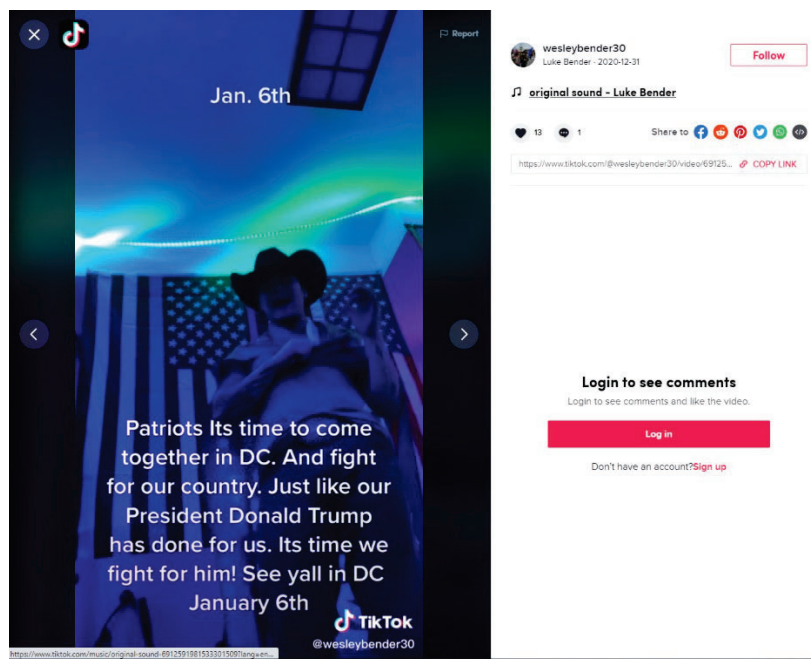


BENDER’s Facebook page also lists an Instagram account, which is the same account provided by W-1. Both the Facebook and Instagram accounts are associated with a phone number ending in 4966. The account holder of the 4966 Number is BENDER’s mother, also residing in Fairfax Station, Virginia.

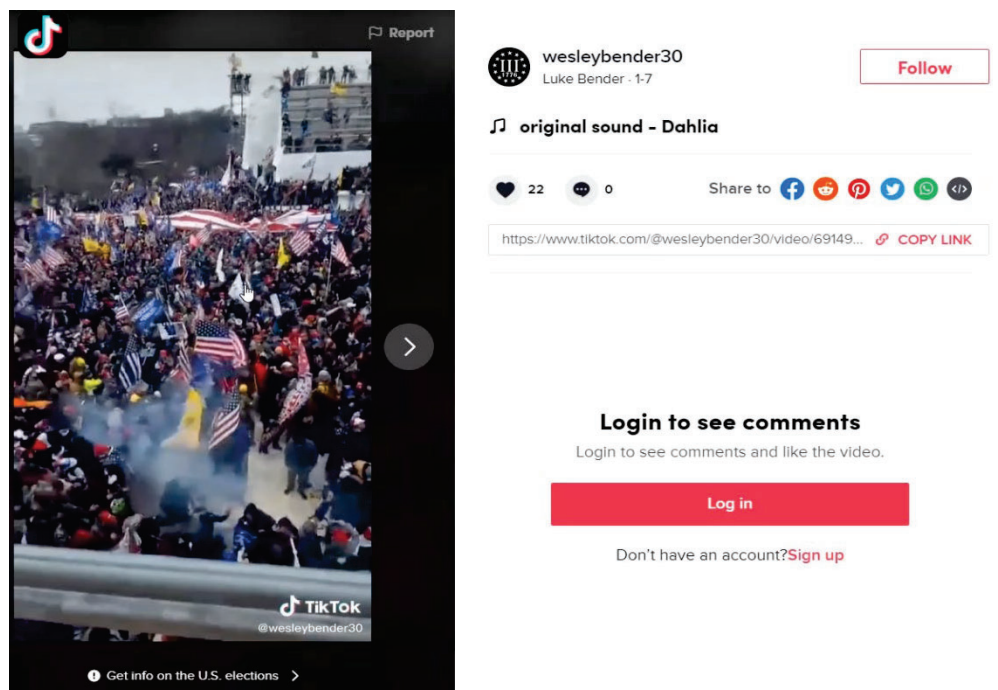
The Instagram account has publicly visible posts, including a post from January 6, 2021, containing a video taken from the top of the Capitol building scaffolding. The video shows individuals entering the Capitol building and a male voice states, “We’re storming the Capitol.” As depicted below, the caption for the post states, “Today was something special if you were there. It was great to be apart of it. #trump2020 #trump #dc #capital.”



BENDER's Facebook account also lists his TikTok page, which includes videos taken prior to January 6th.

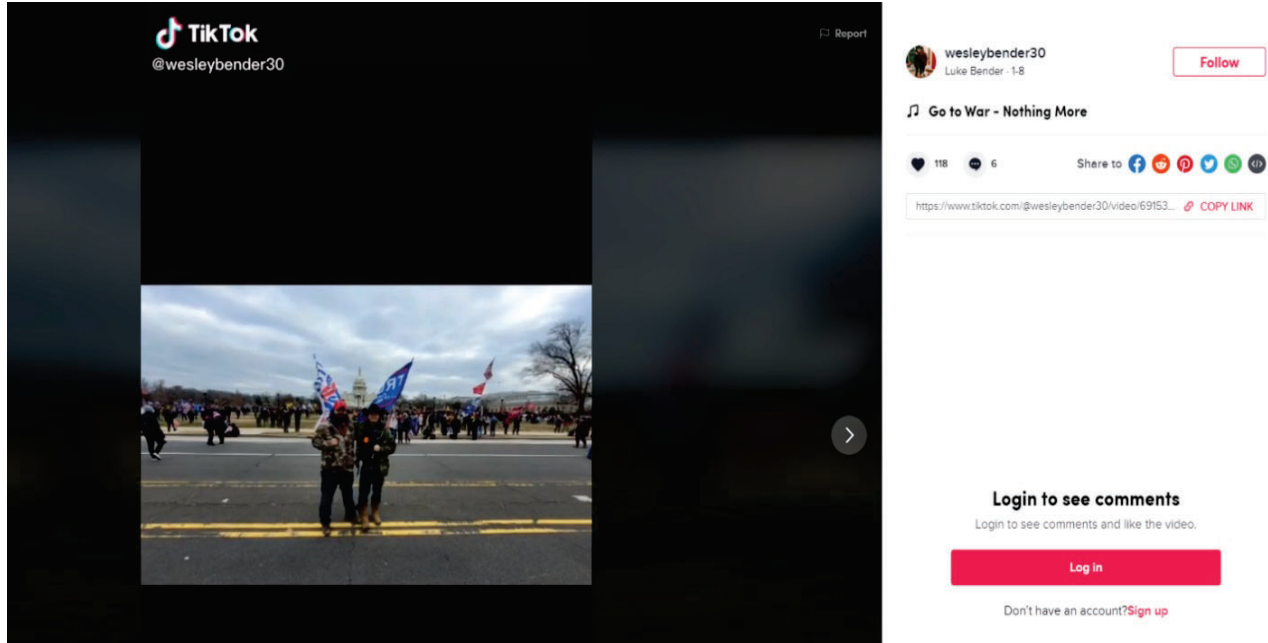


The account also includes videos from January 6th, from the Capitol scaffolding.



The TikTok page also contains videos of the exterior of the Capitol on January 6, 2021. In addition, the account contains a photo of BENDER and another individual standing across the street from the Capitol. In the photo, depicted below, BENDER is carrying a small American flag

and wearing a black hat, tan boots, dark pants, and a camouflage jacket over a sweatshirt with a white “M” on the right. Based on the U.S. Capitol in the background, BENDER’s clothing, and groups of people behind BENDER, your affiant believes this photograph was taken on January 6, 2021.

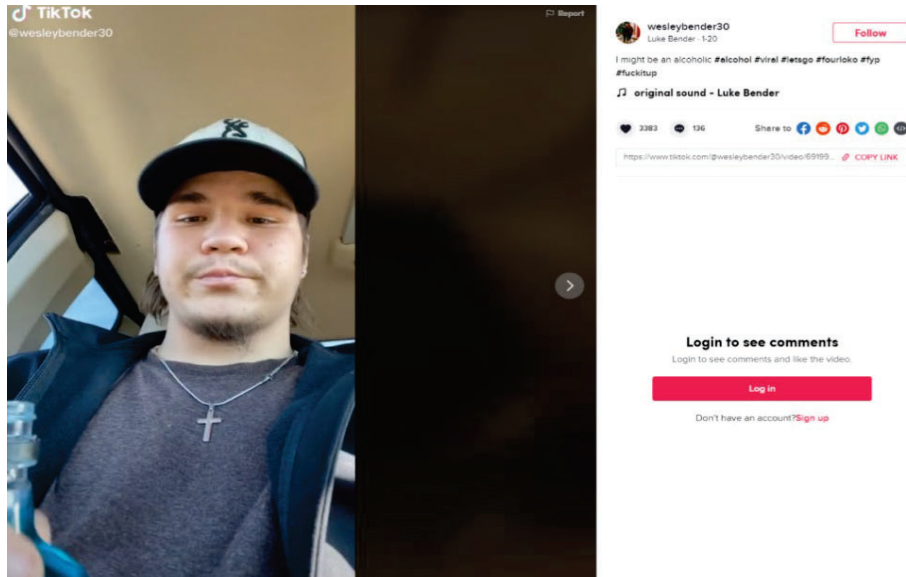


A closeup of the image is below:

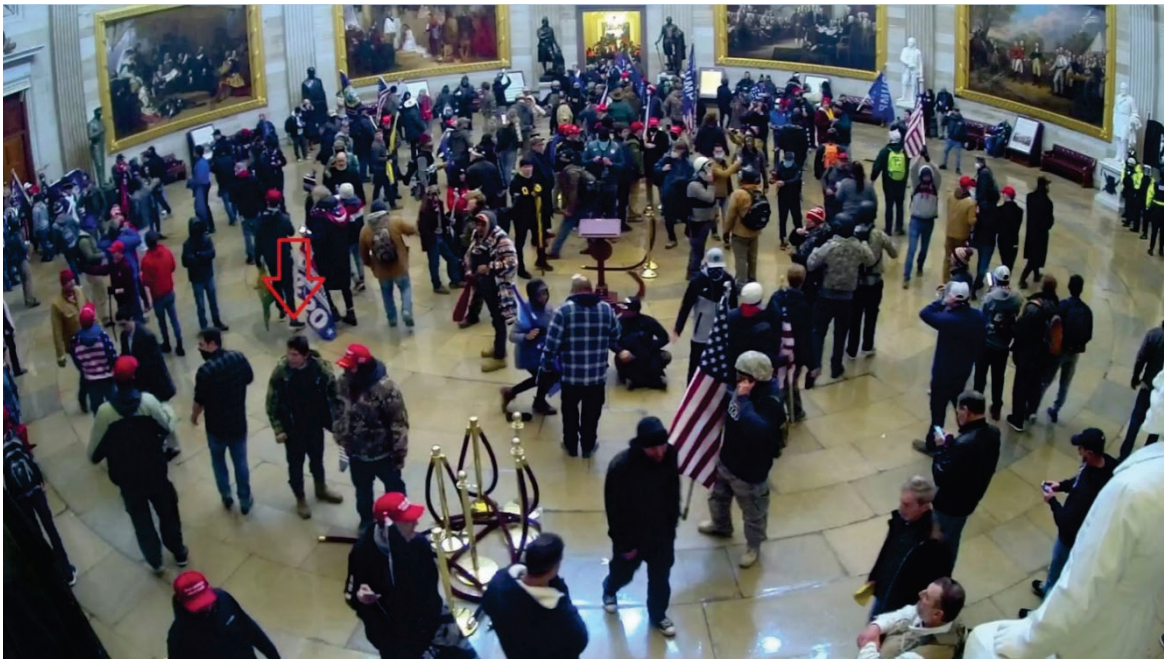


Your affiant was able to obtain records, including a photograph of BENDER, from the Virginia Department of Motor Vehicles, and confirm that the person depicted in BENDER’s

driver's license photograph bears a strong resemblance to the person depicted in BENDER's social media accounts, as depicted below, and the individual identified in the security footage at the Capitol.



Your affiant also reviewed videos from inside the Capitol on January 6, 2021, which show an individual matching BENDER's description and wearing identical clothing, without the hat. As depicted below, BENDER can be seen walking in the Rotunda of the U.S. Capitol.



BENDER also walked down the hallway in the East Front Corridor, towards the Senate Chamber.



Photograph 1

As seen below, BENDER walked inside of the Senate chamber.



TCG 15;04;11;43

Photograph 2



Photograph 3

Photograph 4 depicts BENDER inside of the Senate chamber, with the white "M" on his sweatshirt clearly viewable.



Photograph 4

BENDER appeared to use his phone to photograph documents within the Senate Chamber.



BENDER stood on the dais on the Senate floor.



On May 13, 2021, FBI interviewed W-1 and showed W-1 Photographs 1 through 4. W-1 was able to identify the indicated individual as BENDER.

On June 20, 2021, FBI received a tip from another witness (“W-2”). W-2 informed FBI that although s/he did not know BENDER personally, W-2 reviewed open source photographs of BENDER inside of the Capitol and believed that the person matched the person in a video of the

march to the Capitol on January 6, 2021. Your affiant believes that the video, screenshots of which are below, depicts BENDER in the same attire as in his TikTok photograph, as well as in surveillance from inside of the U.S. Capitol (without the hat).



Based on the foregoing, your affiant submits that there is probable cause to believe that BENDER 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 BENDER violated 40 U.S.C. §§ 5104(e)(2)(A), (D) and (G), which makes it a crime to willfully and knowingly (A) enter

or remain on the floor of either House of Congress or in any cloakroom or lobby adjacent to that floor, in the Rayburn Room of the House of Representatives, or in the Marble Room of the Senate, unless authorized to do so pursuant to rules adopted, or an authorization given, by that House; (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.

Finally, your affiant submits there is probable cause to believe that BENDER violated 18 U.S.C. § 1512(c)(2), which makes it a crime to obstruct, influence, or impede any official proceeding, or attempt to do so. Under 18 U.S.C. § 1515, congressional proceedings are official proceedings.



United States Secret Service

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 26th day of July 2021

A handwritten signature in cursive script, appearing to read "Robin M. Meriweather".

2021.07.26
11:40:59 -04'00'

HONORABLE ROBIN M. MERIWEATHER
U.S. MAGISTRATE JUDGE