

STATEMENT OF FACTS

Your affiant [REDACTED] is a Special Agent with the FBI's Washington Field Office, and have been since 2017. In my duties as a Special Agent, I have investigated counterterrorism matters. 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 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, 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 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.

Information Provided by W-1

On January 9, 2021, the FBI National Threat Operations Center received an online tip from an informant (“W-1”), claiming that his/her relative, Kenneth KELLY (“KELLY”), “broke into” the U.S. Capitol building on Wednesday, January 6, 2021. Specifically, W-1 claimed that KELLY drove to Washington, DC from his home in Florida to attend this riot, “knowing full well they were going to break in.” W-1 further claimed that he/she had text messages that had photos of KELLY and an unknown friend going to the riot and “breaking into the Capitol building via smashing windows.” W-1 stated that KELLY went by the name “Ken,” and that KELLY is approximately 58 years old. W-1 also provided a phone number for KELLY ending in -1533.

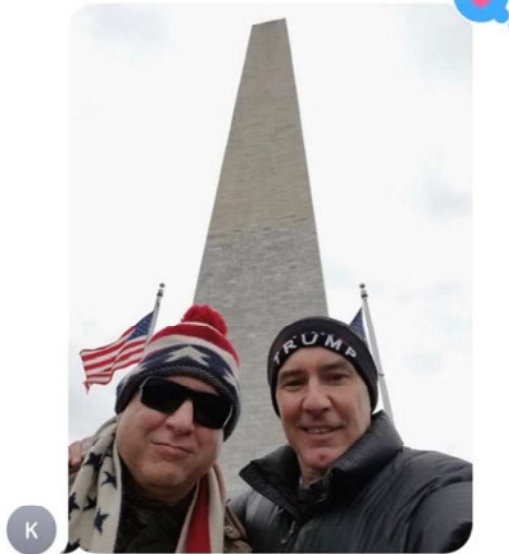
On January 10, 2021, the FBI conducted a follow-up telephonic interview with W-1. During the interview, W-1 claimed that KELLY held extreme political views and had mentioned “QAnon” a couple months before the January 6 riot. W-1 further stated that on or about January 6, 2021, KELLY sent another witness (“W-2”) a photo of himself wearing a blue “TRUMP” beanie, standing alongside an unknown male in Washington, D.C., as well as a photo that appeared to have been taken inside the Capitol building. According to W-1, KELLY also sent W-2 text messages in which he claimed to have entered the Capitol building by breaking windows.

W-1 subsequently provided the FBI with screen captures of the aforementioned text messages and photographs from W-2’s phone. Screen Capture 1 (see below) contains a photo of an individual that W-1 identified as KELLY, standing next to an Unknown Male 1 (“UM1”), in front of what appears to be the Washington Monument in Washington, D.C. KELLY can be seen wearing a dark-colored “TRUMP” beanie and a dark-colored puffer jacket, while UM1 can be seen wearing black sunglasses, an American flag patterned beanie, and an American flag patterned scarf. Screen Capture 1 reflects that the photograph was sent by a contact that appears to have been saved in W-2’s phone under the name “Ken,” on an unspecified Wednesday, at 11:04 a.m.¹

¹ January 6, 2021 fell on a Wednesday.

Wednesday 11:04 AM

Ken



Screen Capture 1

Screen Capture 2 contains a photo that shows the backside of an Unknown Male 2 (“UM2”), inside what appears to be the U.S. Capitol building. UM2 is wearing a red beanie, a beige jacket, and an orange backpack. The photo of UM2 is followed by text messages stating; “Inside White house [sic] via breaking in windows” and “Tree of liberty was watered today!”



Inside White house via
breaking in windows

Tree of liberty was
watered today!

Screen Capture 2

Screen Captures 3 and 4 contain a photo that depicts several individuals climbing what appears to be the outer structures of the U.S. Capitol building, followed by a text message stating: “Patriots stormed the White House [sic], broke in while Senate (with a little s) was in session denating [sic] Arizona. The [sic] were hiding under ther [sic] desks. Forced into recess. Patriots took back our capital today.” These screen captures also reflect that they were sent by a contact that appears to have been saved in W-2’s phone under the name “Ken.”

Ken



Patriots stormed the White House, broke in while Senate (with a

Screen Capture 3



Patriots stormed the White House, broke in while Senate (with a little s) was in session denating Arizona. The were hiding under ther desks. Forced into recess. Patriots took back our capital today

K

Wednesday 7:59 PM

Screen Capture 4

Information Provided by W-2

On January 28, 2021, the FBI conducted a phone interview with W-2, a relative of KELLY. During the interview, W-2 stated that he/she was not surprised to learn that KELLY was at the U.S. Capitol building on January 6, since KELLY had informed W-2 that he would be traveling to Washington, D.C. to attend rallies in support of former President Trump.

According to W-2, on January 6, 2021, KELLY sent W-2 text messages and photos from a phone number ending in -1533, which W-2 knew to belong to KELLY. W-2 indicated that one such photo depicted KELLY standing in front of a monument in Washington, D.C. W-2 also recalled receiving a photograph from KELLY in which KELLY was posing next to one specific

individual, which led W-2 to believe that the other individual pictured was KELLY's associate. W-2 claimed to be unable to locate the photos and messages from KELLY in his/her phone.

W-2 did not believe KELLY was involved in any violent acts on January 6, 2021. Finally, W-2 provided the following email addresses for KELLY: kenkellymd@gmail.com and ken@kellymd.com.

Identification of KELLY Inside the U.S. Capitol Building

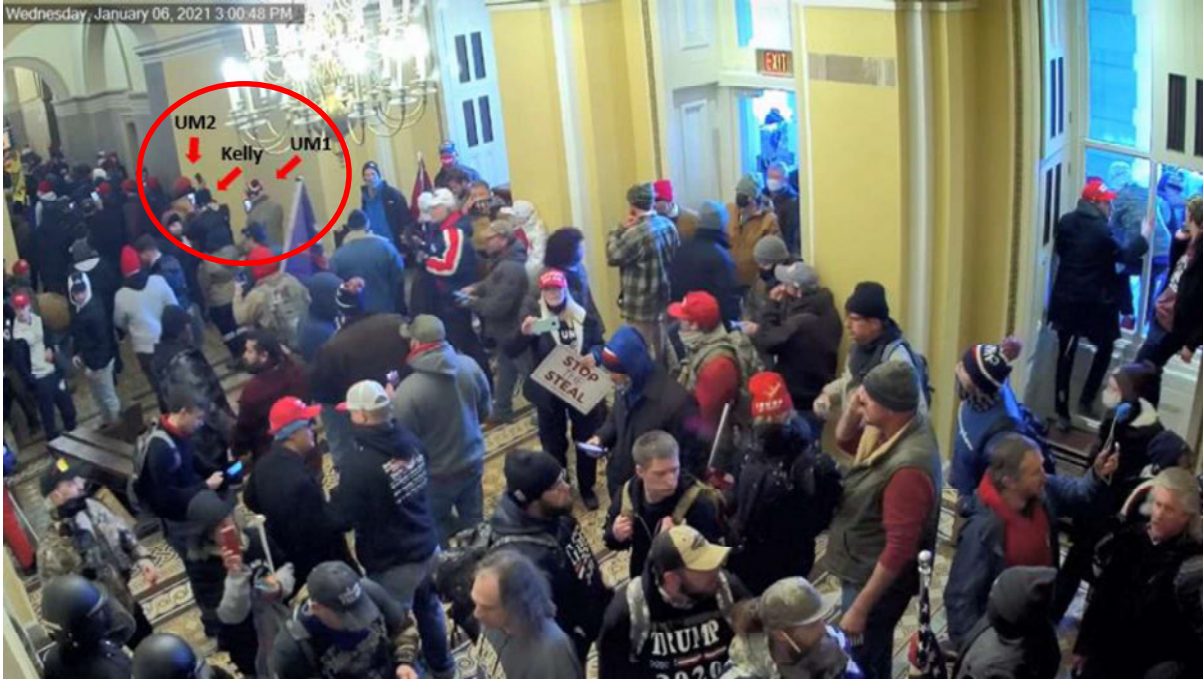
On January 21, 2021, U.S. Capitol Police provided the FBI with closed-circuit television ("CCTV") footage showing a man resembling KELLY entering the Senate Wing Door on the northwest side of the U.S. Capitol building at approximately 3:00 p.m. on January 6, 2021. (Surveillance Photo 1). The man who appears to be KELLY is seen wearing a dark-colored "TRUMP" beanie and dark-colored puffer jacket that resemble the beanie and jacket that KELLY can be seen wearing in Screen Capture 1, displayed and discussed above. Moreover, the man who appears to be KELLY is wearing an American flag patterned scarf as a face covering, which resembles the scarf that UM1 can be seen wearing in Screen Capture 1, displayed and discussed above.



Surveillance Photo 1

Standing directly behind the individual resembling KELLY is a man who appears to be the same UM1 depicted in the photo from Screen Capture 1, above. The individual believed to be UM1 is wearing what appears to be the same black sunglasses and American flag patterned beanie that UM1 is seen wearing in Screen Capture 1, as well as a blue face mask. The individual standing in front of KELLY—labeled "UM2" by your affiant and visibly wearing a red beanie, a beige jacket, and an orange backpack—appears to be the same UM2 from the photo that KELLY sent W-2 in Screen Capture 2, above.

The CCTV footage further shows KELLY, UM1, and UM2 continue down a hallway of the U.S. Capitol building. While doing so, KELLY appears to be using the camera of his cellular phone to capture his surroundings. At one point, KELLY is seen immediately behind UM2 in the hallway while using the camera on his cellular phone. (Surveillance Photo 2). As such, your affiant reasonably believes the moment depicted in Surveillance Photo 2 to be the approximate moment when KELLY took the photo depicted in Screen Capture 2, which has been reproduced below.



Surveillance Photo 2



Inside White house via breaking in windows

Tree of liberty was watered today!

K

Screen Capture 2

Finally, CCTV footage depicts what appears to be KELLY and UM1 walking through the Hall of Columns on the southern side of the U.S. Capitol building at approximately 3:07 p.m. (Surveillance Photo 3). The individual resembling KELLY is seen wearing the same dark-colored “TRUMP” beanie and dark-colored puffer jacket that KELLY can be seen wearing in Screen Capture 1. The individual resembling UM1 appears to have removed his American flag patterned beanie, but is still wearing the same black sunglasses and blue face mask as the surveillance photo above.



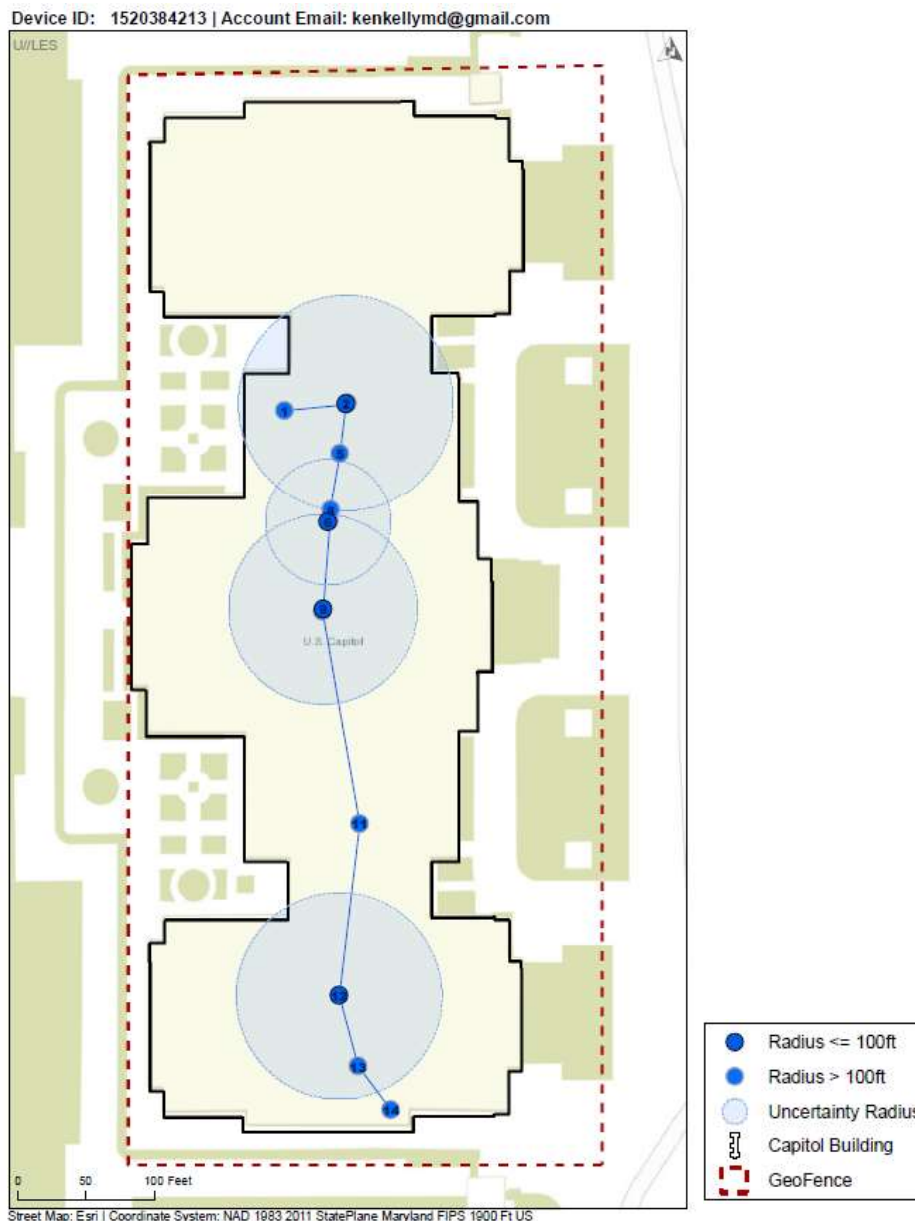
Surveillance Photo 3

Location Information for KELLY

According to records obtained through a search warrant served on Google, a mobile device associated with kenkellymd@gmail.com—the same email address provided by W-2 for KELLY—was present at the U.S. Capitol on January 6, 2021. Google estimates device location using sources including GPS data and information about nearby Wi-Fi access points and Bluetooth beacons. This location data varies in its accuracy, depending on the source(s) of the data. As a result, Google assigns a “maps display radius” for each location data point. Thus, where Google estimates that its location data is accurate to within 10 meters, Google assigns a “maps display radius” of 10 meters to the location data point. Finally, Google reports that its “maps display radius” reflects the actual location of the covered device approximately 68% of the time.

In this case, Google records show that the mobile device associated with kenkellymd@gmail.com was present at the locations illustrated in the map below. The mobile

device was within the U.S. Capitol at locations reflected by each darker blue circle in the below, with the “maps display radius” reflected by each lighter blue ring around each darker blue circle. As illustrated in the map below, the listed locations encompass areas that are at least partially within the U.S. Capitol Building between approximately 2:56 p.m. and 3:09 p.m. EST on January 6, 2021. In addition, as illustrated in the map below, the listed locations were entirely within areas of the U.S. Capitol Grounds which were restricted on January 6, 2021.



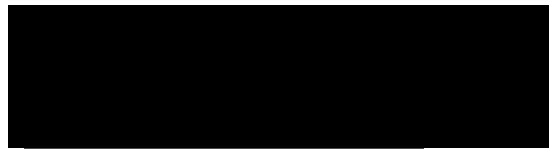
The FBI has reviewed the available information for the e-mail address kenkellymd@gmail.com in order to determine whether there was any evidence that devices associated with this e-mail address could have lawfully been inside the U.S. Capitol Building on

January 6, 2021. The information for kenkellymd@gmail.com did not match any information for persons lawfully within the Capitol. Accordingly, your affiant believes that the individual possessing this device was not authorized to be within the U.S. Capitol Building on January 6, 2021.

Finally, records provided by Google revealed that the mobile device associated with kenkellymd@gmail.com belonged to a Google account registered in the name of "Ken Kelly." The Google account also lists a recovery SMS phone number that matches the -1533 phone number for KELLY provided by W-1 and W-2.

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



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 _21st_ day of April 2021.



2021.04.21
17:04:24 -04'00'

ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE