

STATEMENT OF FACTS

Your Affiant, [REDACTED], is a Special Agent with the Federal Bureau of Investigation ("FBI"), assigned to the Indianapolis Field Office. I have investigated allegations associated with international terrorism, domestic terrorism, and interstate threatening communications. I have completed training and gained experience in interviewing and interrogation techniques, arrest procedures, search warrant applications, the execution of searches and seizures, and various other 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 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 and are 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.

1. Identification of Donald Lee Moss (MOSS) and James Link Behymer (BEHYMER)

On October 22, 2021, the FBI Washington Field Office (the “Washington Field Office”) provided FBI Indianapolis with records, including cell site location records, indicating that on January 6, 2021, a telephone utilizing telephone number 812-350-XXXX (the “350 Phone”) was identified as having utilized a cell site that provided service to a geographic area that included the interior of the United States Capitol Building.

The records provided by the Washington Field Office indicated the 350 Phone was associated with the email address XXXXXXXX@gmail.com and belonged to Hope, Indiana resident James Link BEHYMER, located at XXXXXXX, Hope, Indiana 47246.

On May 2, 2022, FBI Indianapolis determined from call records that BEHYMER’s 350 Phone contacted telephone number 812-447-XXXX while BEHYMER was inside the U.S. Capitol on January 6, 2021. FBI Indianapolis determined that telephone number 812-447-XXXX (the “447 Phone”) was registered to Donald Lee MOSS. A review of surveillance video from the United States Capitol Building, as well as from officer body camera footage, revealed that an individual believed to be MOSS was with BEHYMER both inside and outside the Capitol Building on January 6, 2021.

Witness 1, a long-time associate of both MOSS and BEHYMER, was shown still images, generated from video from the U.S. Capitol on January 6, 2021, of individuals believed to be MOSS (*see* Exhibit 1, below) and BEHYMER (*see* Exhibit 2, below). Witness 1 immediately identified MOSS in Exhibit 1 and BEHYMER in Exhibit 2.



Exhibit 1 (MOSS)



Exhibit 2 (BEHYMER)

2. MOSS and BEHYMER Assaulted Officers Outside the U.S. Capitol Building

Video footage from January 6, 2021, shows that at approximately 2:00 p.m., a group of approximately fifteen Washington D.C. Metropolitan Police (“MPD”) officers, wearing riot gear, walked toward the Lower West Terrace of the United States Capitol Building. Angry and violent rioters descended on, and surrounded, the officers and began shouting obscenities and curses at them. The surrounded officers repeatedly issued commands to “move back.” They also began to move rioters away from their position with their hands and batons.

At approximately 2:01 p.m., body-worn camera video shows MOSS and BEHYMER briefly speaking to each other. MOSS then pointed at the group of officers. A screenshot from the surveillance video (Exhibit 3, below) shows MOSS pointing at the officers. MOSS and BEHYMER are circled in red Exhibit 3. MOSS is wearing a jacket with a brown hood and BEHYMER is wearing a red baseball cap and glasses. Based on the video, it appears that MOSS and BEHYMER were planning to approach the surrounded MPD officers.



Exhibit 3

The body-worn camera video then shows MOSS and BEHYMER advancing towards the small group of MPD officers with BEHYMER in front of MOSS. Officer 1 extended his hand toward BEHYMER and said, “Sir, step back for your own safety.” While additional officers directed MOSS and BEHYMER to move back, BEHYMER stated, “Hey, I’ve been shoved in. I been shoved in. I been shoved in.” MOSS and BEHYMER refused to move back and BEHYMER raised his right arm with a closed fist and repeatedly shouted, “USA! USA! USA!” At the same time, MOSS pointed towards the U.S. Capitol Building and shouted, “[Unintelligible]. This is our fucking house!”

A few seconds later, Officer 1 extended his hand, touched BEHYMER’s right arm, and attempted to keep BEHYMER back. MOSS then forcefully shoved Officer 1’s hand off of BEHYMER. A screenshot (Exhibit 4) showing MOSS shoving Officer 1’s hand off of BEHYMER is below with MOSS’s hand circled in red.



Exhibit 4

After MOSS shoved Officer 1's arm, MOSS shouted, "[Unintelligible] . . .your fucking hand off of him!" and "Keep your fucking hand off of him!"

BEHYMER then shoved Officer 2's arm as Officer 2 attempted to keep BEHYMER and other rioters away from the surrounded MPD officers. A screenshot (Exhibit 5) showing BEHYMER shoving Officer 2's arm is below with BEHYMER's arm circled in red.



Exhibit 5

After BEHYMER pushed Officer 2's arm, MOSS pointed at Officer 2 and shouted for the third time, "Keep your fucking hand off of him!" BEHYMER then raised his fist in the air and again shouted, "USA! USA! USA!"

Officer 1 continued to order MOSS and BEHYMER to step back. Officer 1 also tried to keep MOSS and BEHYMER back with his right hand. MOSS then held up his arm, with a closed fist, in a threatening manner. At the same time, BEHYMER struck Officer 1's wrist. A screenshot (Exhibit 6) showing MOSS making a fist and BEHYMER striking Officer 1's wrist is below. BEHYMER's hand and Officer 1's hand are circled in red.



Exhibit 6

Seconds later, as Officer 1 held his baton horizontally against MOSS's body to keep him back, MOSS swung his right arm downward and struck Officer 1's hand and baton. A screenshot (Exhibit 7) showing MOSS striking Officer 1's hand and baton is below.



Exhibit 7

Very shortly after, as Officer 1 placed his right hand on BEHYMER to keep him back, BEHYMER swung his left arm downward and forcefully struck Officer 1's arm. A screenshot (Exhibit 8) showing BEHYMER striking Officer 1's arm is below with BEHYMER's arm and Officer 1's arm circled in red.



Exhibit 8

BEHYMER continued to shout, “USA! USA! USA!” As BEHYMER shouted, at about 2:02 p.m., the mob surged toward the surrounded MPD officers and began violently assaulting the officers. A screenshot (Exhibit 9) showing the mob surrounding the MPD officers is below. MOSS is circled in yellow. BEHYMER is circled in blue. The mob constricted the MPD officers’ movements and pushed them back, and members of the mob threw objects, to include a traffic cone, at the officers. Amidst the chaos, rioters screamed: “Fuck You! Fucking Nazis!”, “Go back to the Gestapo training camp!”, “You’re the traitors!”, and “You wanna take us all on?!” Rioters pulled at an MPD officer’s baton and attempted to steal it. One rioter sprayed what appeared to be chemical spray on multiple officers. One MPD officer fell to the ground during the melee.



Exhibit 9

Body-worn camera and third-party footage shows BEHYMER directly pressed against the bodies of multiple MPD officers during the surge of rioters. MOSS was behind BEHYMER and had his hand on BEHYMER's back. A screenshot (Exhibit 10) showing BEHYMER pressed against officers is below with BEHYMER circled in red.

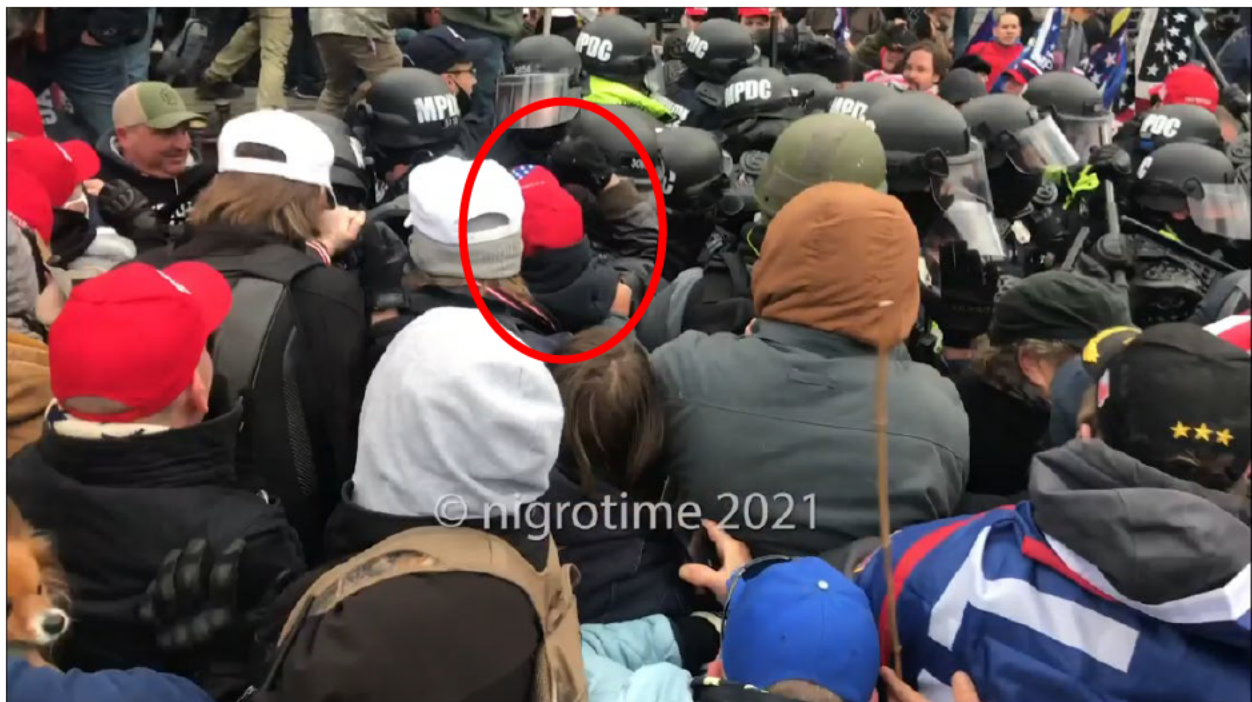


Exhibit 10

Shortly after the rioters attacked the MPD officers, MOSS leaned in with his body and forcefully pushed Officer 3 from behind with his right arm. A screenshot (Exhibit 11) is below and shows MOSS (circled in red) pushing Officer 3 (out of frame). BEHYMER (wearing a red hat) is circled in blue.

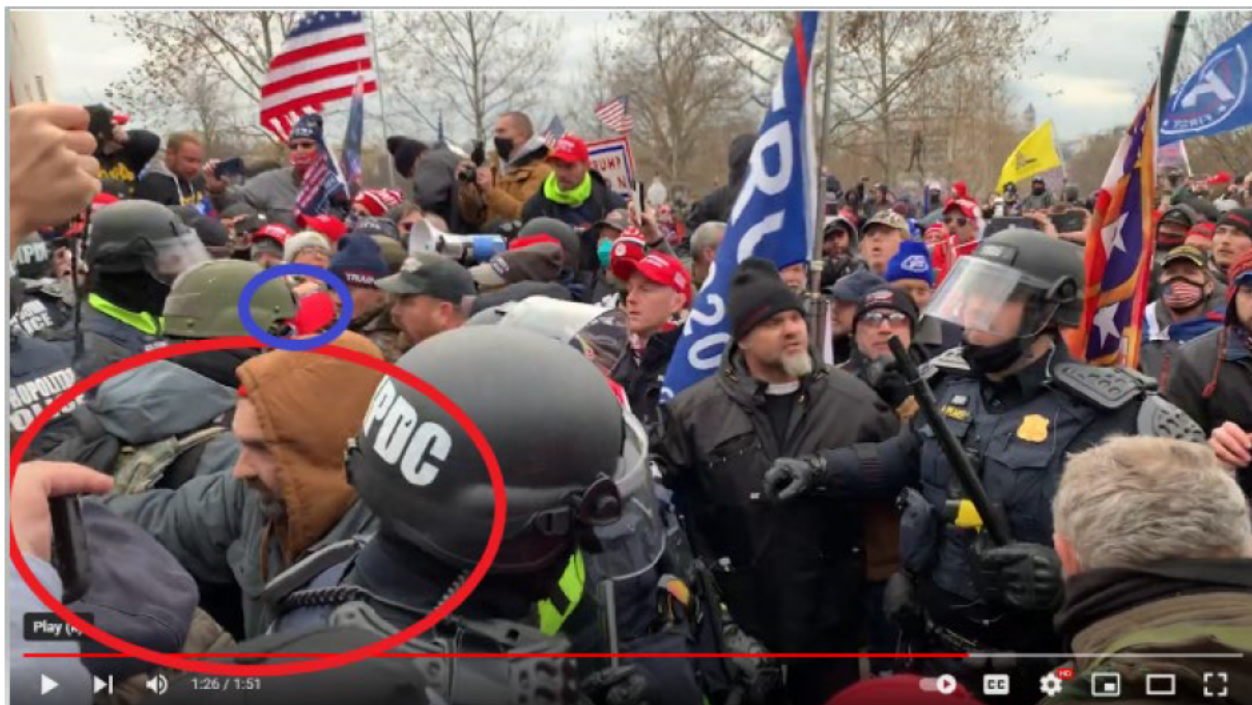


Exhibit 11

With the crowd surging, at approximately 2:02 p.m., BEHYMER was at the front of the rioters physically pressed into the officers. Right next to MOSS, a rioter shouted at police: “Y’all surrounded” At about this same time another rioter beside BEHYMER struggled to pry a baton from an officer stating, “Now I’m being soft, but I do want this pole.” A moment thereafter in the surging mob, BEHYMER repeatedly grabbed an officer’s hand and tactical baton while the officer attempted to keep BEHYMER away. A screenshot (Exhibit 12) is below and shows BEHYMER grabbing MPD Officer 2’s tactical baton.



Exhibit 12

While BEHYMER was grabbing at Officer 2’s baton (*see* Exhibit 12, above), MOSS pushed away Officer 4’s baton while Officer 4 attempted to hold MOSS back. A screenshot (Exhibit 13) showing Officer 4 attempting to hold MOSS back is below.



Exhibit 13

At approximately 2:03 p.m., approximately 45 seconds after MOSS pushed an officer's baton, (*see* Exhibit 13, above), BEHYMER re-engaged with police—again grabbing an officer's baton. A screenshot (Exhibit 14) showing BEHYMER grabbing the officer's baton is below.



Exhibit 14

MOSS subsequently walked away and BEHYMER was moved away from the group of MPD officers when the officer made their way through the crowd toward the U.S. Capitol Building.

3. MOSS and BEHYMER Trespassed in the U.S. Capitol Building and Engaged in Disorderly Conduct

After MOSS and BEHYMER forcibly assaulted and opposed officers on the Lower West Terrace, third-party camera footage recorded numerous rioters climbing a staircase to the Upper West Terrace of the U.S. Capitol Building. Rioters then kicked down and climbed over metal barricades after the mob overran the Capitol Police. Two screenshots showing MOSS and BEHYMER heading towards the Senate Wing Doors of the U.S. Capitol Building are below (Exhibits 15 & 16). Based on the positioning of the barricades (*see* Exhibit 15), MOSS and BEHYMER appear to have walked over the toppled barricades on their way into the U.S. Capitol Building.



Exhibit 15



Exhibit 16

At approximately 2:13 p.m., U.S. Capitol Closed Circuit Television (“CCTV”) cameras captured MOSS and BEHYMER crossing the threshold of the Senate Wing doors to the U.S.

Capitol Building. A screenshot (Exhibit 17) showing MOSS and BEHYMER entering the U.S. Capitol is shown below with MOSS circled in green and BEHYMER circled in yellow.

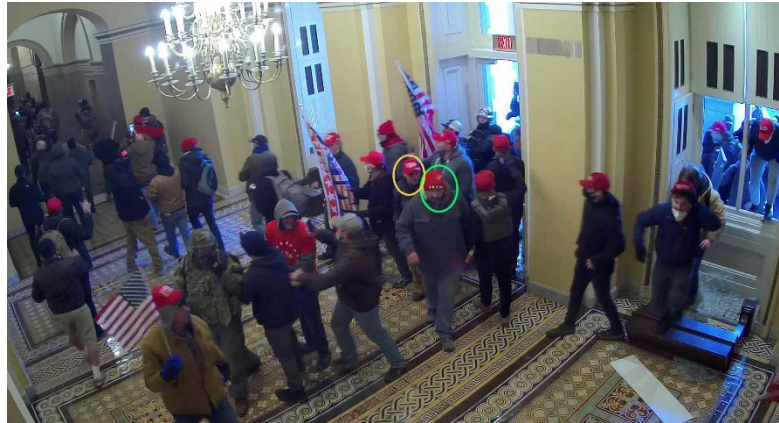


Exhibit 17

At approximately 2:18 p.m., MOSS stood in the Senate Wing Door entry area and extended his right arm upward while holding what appears to be a cell phone. MOSS appeared to repeatedly touch the screen as he moved the cell phone to face different angles around the room (Exhibit 18).



Exhibit 18

At about 2:21 p.m., MOSS stood at a shattered window and waved other rioters toward the U.S. Capitol Building. MOSS appeared to be encouraging other rioters to enter the building. A screenshot (Exhibit 19) showing MOSS near the shattered window is below with MOSS circled in red.

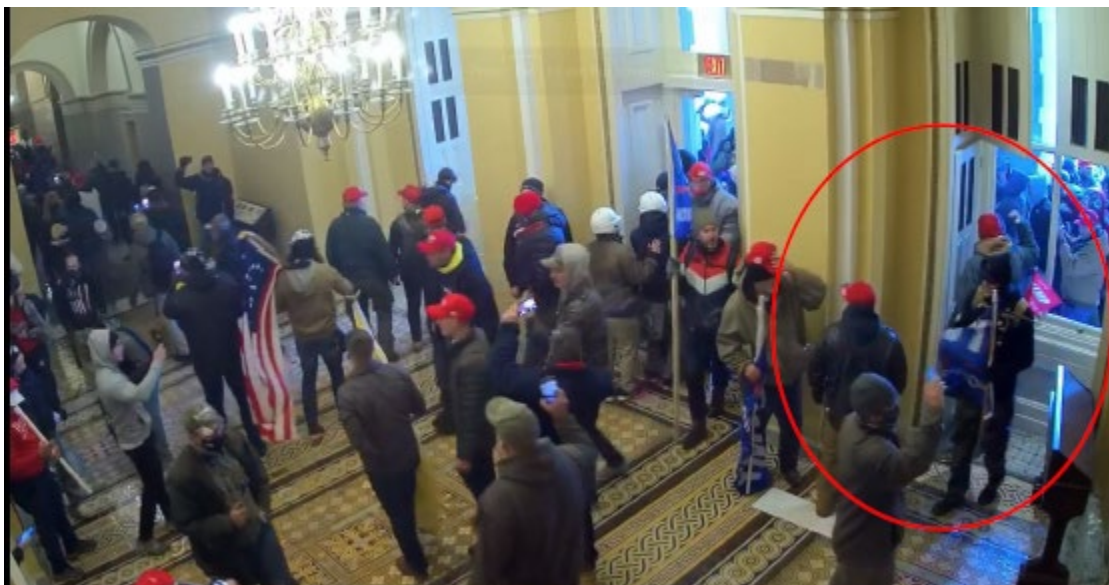


Exhibit 19

Around this time, BEHYMER gave another rioter a fist bump. A screenshot (Exhibit 20) showing BEHYMER fist bumping the other rioter inside the U.S. Capitol Building is below with BEHYMER and MOSS circled in red.

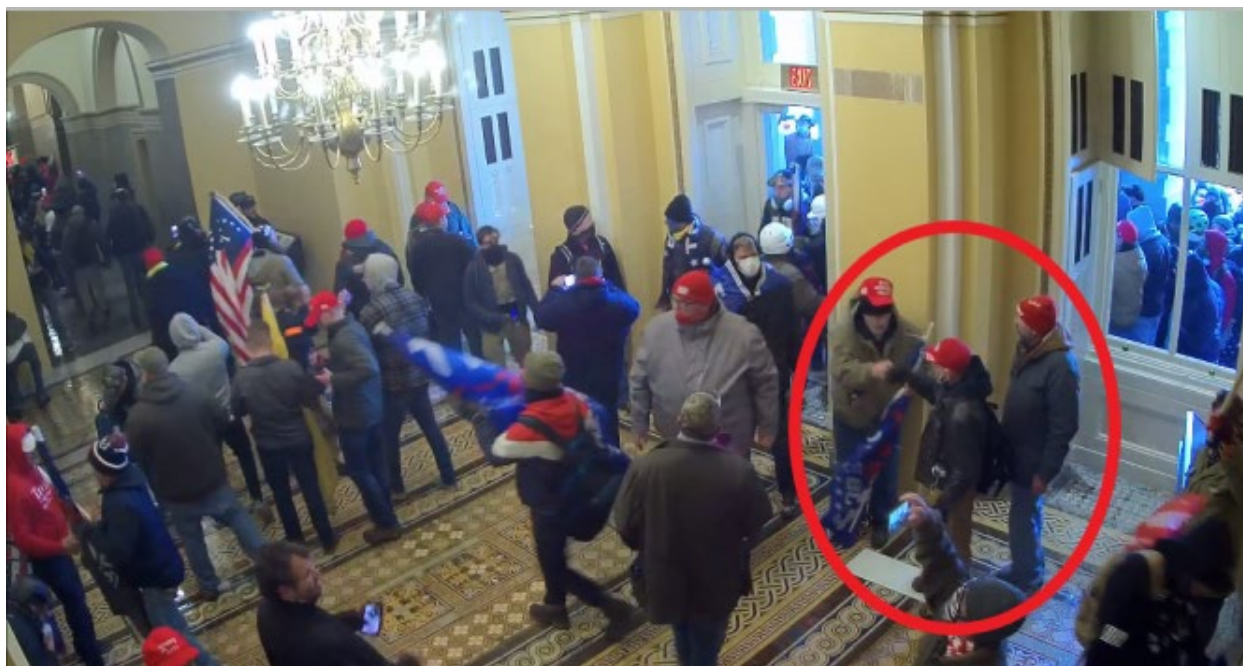


Exhibit 20

At about 2:22 p.m., MOSS and BEHYMER walked down the southern hallway towards the Crypt of the U.S. Capitol Building. Third-party video footage recorded MOSS and BEHYMER emerging from room S145 of the U.S. Capitol Building, which is in the hallway leading to the Crypt. A screenshot (Exhibit 21) of the video is included below with MOSS and BEHYMER circled in red.



Exhibit 21

At approximately 2:31 p.m., MOSS was recorded on CCTV in the Crypt Lobby East carrying a chair across the room and placing it directly in the path of the retractable ceiling door, which would prevent the door from closing. Immediately before MOSS moved the chair into the door's path, police were attempting to close off the area by closing the retractable doors. A screenshot (Exhibit 22) showing MOSS blocking the retractable doors is below.

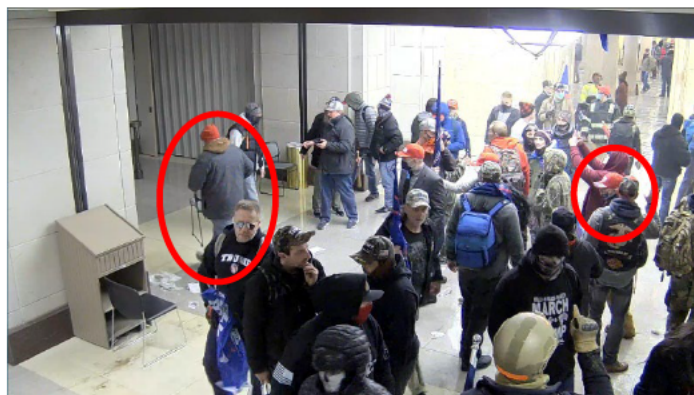


Exhibit 22

At approximately 2:33 p.m., MOSS and BEHYMER were recorded walking around the Crypt. A screenshot (Exhibit 23) showing MOSS and BEHYMER in the Crypt is below with MOSS and BEHYMER circled in red.



Exhibit 23

At approximately 2:34 p.m., MOSS exited the Crypt in the direction of the Senate Wing Doors.

At approximately 2:38 p.m., BEHYMER (who was still in the area of the Crypt and the Crypt Lobby East) was recorded typing on his cell phone and making four telephone calls. Toll records for BEHYMER's cell phone indicate that on January 6, 2021, BEHYMER called MOSS's cell phone at 2:36 p.m., 2:37 p.m., 2:39 p.m., and 2:40 p.m.

At approximately 2:41 p.m., MOSS exited the southernmost window near the Senate Wing Doors. A screenshot (Exhibit 24) showing MOSS heading towards the window is included below with MOSS circled in red.

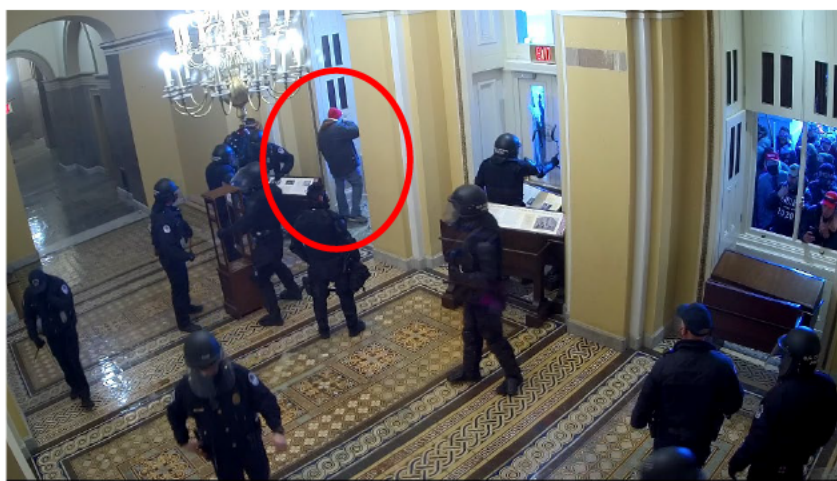


Exhibit 24

At approximately the same time (e.g., 2:41 p.m.), BEHYMER emerged from the Crypt and proceeded into the hallway linking the Crypt to the Senate Wing Doors. Video from the hallway shows BEHYMER holding a cell phone to his ear in a manner consistent with placing a call. BEHYMER then lined up with individuals exiting the Senate Wing Door area via the southernmost window and exited through the window at approximately 2:43 p.m. A screenshot (Exhibit 25) showing BEHYMER exiting through the window is included below with BEHYMER circled in red.



Exhibit 25

At approximately 2:48 p.m., rioters broke through a barricade set up by Capitol Police at the Senate Wing Doors. Roughly two minutes later, MOSS and BEHYMER re-entered the U.S. Capitol Building through the Senate Wing Doors. A screenshot (Exhibit 26) showing MOSS and BEHYMER re-entering the U.S. Capitol Building is included below with MOSS and BEHYMER circled in red.

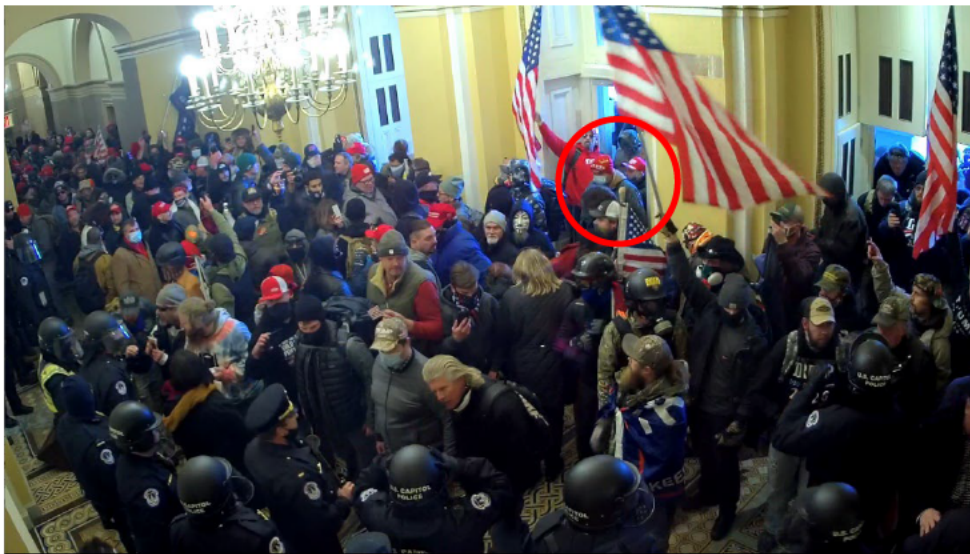


Exhibit 26

At approximately 3:00 p.m., MOSS and BEHYMER walked down the southern hallway towards the Crypt.

At approximately 3:05 p.m., MOSS and BEHYMER stood behind a statue at the northern entrance to the Crypt. After standing there for approximately eight minutes, MOSS removed a sign with a stuffed eagle on top of it from behind a statue. On one side of the sign was the letters “CCP”¹ with a circle and red line through it, and the phrases “NO LOCKDOWN” and “NO MASK.” A blue surgical mask was attached to this side of the sign. The other side of the sign contained the handwritten phrases: “AMERICA FIRST” and “NEVER GIVE UP NEVER SURRENDER!!!” MOSS placed the sign on another statue, then MOSS and BEHYMER held up their cell phones in a manner consistent with taking photographs. A screenshot (Exhibit 27) showing MOSS and BEHYMER taking photographs of the statute with the sign on it is included below with MOSS and BEHYMER circled in red.



Exhibit 27

At approximately 3:23 p.m., a police officer approached MOSS and appeared to briefly speak with him. MOSS then picked up the above-described sign and MOSS and BEHYMER left the Crypt. Camera footage recorded MOSS and BEHYMER exiting the Senate Wing Doors of the U.S. Capitol Building at approximately 3:34 p.m. MOSS was still carrying the sign when he left the U.S. Capitol Building. A screenshot (Exhibit 28) showing MOSS and BEHYMER exiting the U.S. Capitol with MOSS carrying the sign is below with MOSS, BEHYMER, and the sign circled in red.

¹ According to the Council on Foreign Relations, CCP stands for the Chinese Communist Party. See <https://www.cfr.org/background/chinese-communist-party>.

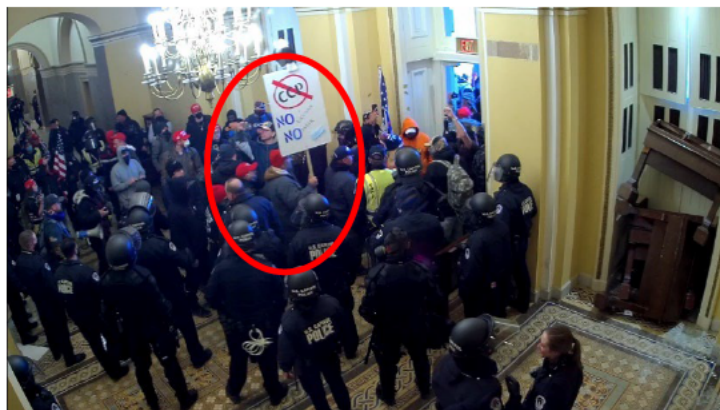


Exhibit 28

Thereafter, MOSS and BEHYMER descended from the Upper West Terrace of the U.S. Capitol Building. A screenshot (Exhibit 29) showing MOSS and BEHYMER descending from the Upper West Terrace is included below with MOSS and BEHYMER circled in red.

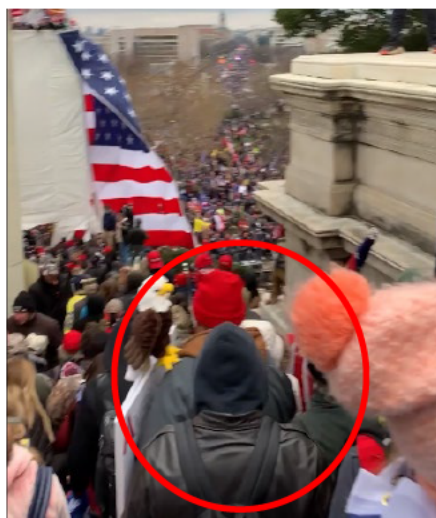


Exhibit 29

The last time MOSS and BEHYMER are visible in camera footage from January 6, 2021 is that evening, when MOSS and BEHYMER were recorded on what appears to be First Street NW in Washington D.C., with MOSS still carrying the sign that he removed from the U.S. Capitol Building. A screenshot (Exhibit 30) showing MOSS, BEHYMER, and the sign is included below with MOSS and BEHYMER circled in red.

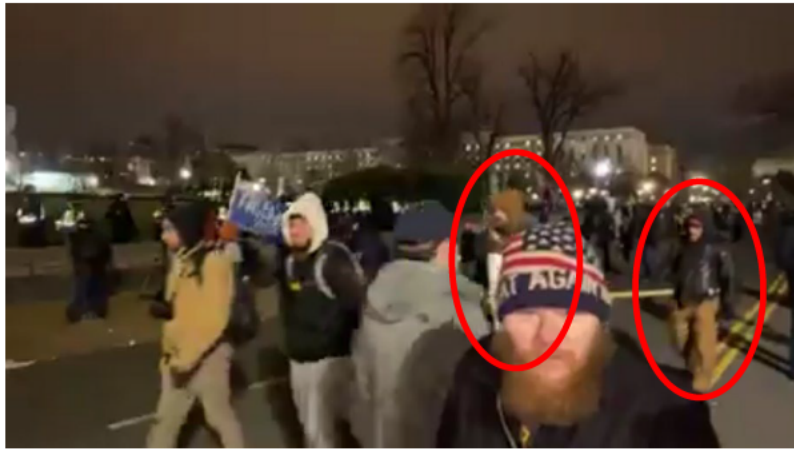


Exhibit 30

Based on the foregoing, your affiant submits that there is probable cause to believe that Donald Lee MOSS and James Link BEHYMER 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 attempt or conspire to do so. For purposes of Section 1752 of Title 18, a “restricted building or grounds” 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 Donald Lee MOSS and James Link BEHYMER violated 40 U.S.C. § 5104(e)(2)(D) and (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.

Additionally, your affiant submits that there is probable cause to believe that Donald Lee MOSS and James Link BEHYMER 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.

Finally, your affiant submits that there is probable cause to believe that Donald Lee MOSS and James Link BEHYMER violated 18 U.S.C. § 111(a)(1), which makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with a designated person while that person is engaged in the performance of official duties, or on account of that person's performance of official duties. For the purposes of Section 111 of Title 18, a designated person includes officers or employees of the United States or of any agency in any branch of the United States Government. This includes officers of the U.S. Capitol Police, and also includes members of the MPD when, as in the events described above, such officers were assisting a federal officer or employee in the performance of the federal officer's duties or were forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with on account of that assistance.

[REDACTED]
[REDACTED]
SPECIAL AGENT [REDACTED]
FEDERAL BUREAU OF INVESTIGATION

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 1st day of March 2024.

HONORABLE ROBIN M. MERIWEATHER
U.S. MAGISTRATE JUDGE