

## STATEMENT OF FACTS

I am employed as a Special Agent of the Federal Bureau of Investigation (FBI) and have been employed since 2010. Currently, I am assigned to a squad that investigates Counterintelligence matters as part of the FBI Washington Field Office. The focus of my Counterintelligence efforts has been foreign intelligence activities. My squad is based at the Washington Field Office. As a Special Agent, I am authorized to investigate violations of laws of the United States and am authorized to execute warrants issued under the authority of the United States. My duties with the FBI include but are not limited to the investigation of counterintelligence matters.

The United States Capitol (the Capitol), which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by United States Capitol Police (Capitol Police). Restrictions around the Capitol include permanent and temporary security barriers and posts manned by Capitol Police. Only authorized people with appropriate identification are allowed access inside the Capitol. On January 6, 2021, the exterior plaza of the Capitol was closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the Capitol. 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 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 of the United States Michael R. 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 Pence present and presiding over the Senate, a large crowd gathered outside of the Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the Capitol building, and Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades and Capitol Police officers, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by Capitol Police Officers or other authorized security officials.

At such time, the certification proceedings were still underway, and the exterior doors and windows of the Capitol were locked or otherwise secured. Capitol Police officers attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the Capitol, including by breaking windows and by assaulting members of the Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m. members of the House and Senate, including Vice President Pence serving as the President of the Senate, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day.

In light of the dangerous circumstances caused by the unlawful entry to the Capitol, including the danger posed by individuals who had entered the Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the Capitol, and law enforcement could confirm the building had been secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the session 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 Capitol building without authority to be there.

A search of open sources revealed a video credited to Townhall Media, a political news organization, depicting various events that occurred at the Capitol on January 6, 2021.<sup>1</sup> At approximately twelve minutes and fifty-two seconds into the video, an individual (PERSON 1) is visible in the United States Capitol Rotunda (the Rotunda), wearing a dark-colored jacket with the markings “USA” in white printed letters on the back. PERSON 1 can be seen in the bottom-center of the screenshot of the video below with a red oval around him:



<sup>1</sup> This video is publicly accessible on the Internet at the following URL: [https://www.youtube.com/watch?v=YzxvVi8wkrU&feature=emb\\_title](https://www.youtube.com/watch?v=YzxvVi8wkrU&feature=emb_title). The video is also available with dialogue from the individual who recorded the video at the following URL: <https://townhall.com/tipsheet/juliorosas/2021/01/11/watch-townhalls-frontline-video-of-capitol-building-riot-n2582910>.

Beginning at approximately thirteen minutes and six seconds, law enforcement officers attempt to remove individuals from the Rotunda and continue to do so for the next several minutes of the video. At approximately fourteen minutes and thirty-eight seconds, PERSON 1 is still in the Rotunda, and the back of his jacket is again visible. PERSON 1 stands taller than a number of individuals around him and can clearly be seen as law enforcement officers repeatedly attempt to remove him and others from the Rotunda.

At fourteen minutes and forty-one seconds, law enforcement officers appear to push PERSON 1 from behind. PERSON 1 can be seen standing in the Rotunda still wearing the dark-colored USA jacket, which also appears to bear a Nike logo on the front right side and a red and white Olympic patch on the front left side, as depicted in the below screenshot:



Below is a photograph of what appears to be the red and white Olympic patch on the front left side of PERSON 1's jacket:



Continuing through the video, at fourteen minutes and fifty-three seconds, law enforcement officers continue to try and remove PERSON 1, among other individuals, from the Rotunda. PERSON 1's bearded face is clearly visible on the left side of the video in the below screenshot depicted in the red oval:



Additional open-source research revealed that media outlets such as SwimSwam, a news organization that covers competitive swimming and other related sports, identified this individual as possibly KLETE DERIK KELLER. Your affiant has confirmed this identification.

First, a search of Colorado's Department of Motor Vehicles returned KLETE DERIK KELLER's August 2019 driver's license photograph. By comparing this photograph to the image of PERSON 1, your affiant reasonably believes that PERSON 1 is identical to KLETE DERIK KELLER. The photograph affiliated with KLETE DERIK KELLER's driver's license is below:



Second, Colorado state records and publicly available information list KELLER's height at 6 feet, 6 inches tall, and PERSON 1 appears to be one of the tallest individuals in the video depicting individuals in the Rotunda.

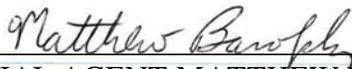
Third, open-source research revealed that KELLER is a three-time Olympic athlete and Olympic Gold Medalist, and PERSON 1 appears to be wearing a United States Olympic Team jacket in the video showing him in the Rotunda.

Based on the foregoing, your affiant submits that there is probable cause to believe that KLETE DERIK KELLER 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 attempt or conspire 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 KLETE DERIK KELLER violated 40 U.S.C. § 5104(e)(2), 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; (E) obstruct, or impede passage through or within, the Grounds or any of the Capitol Buildings; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.

Finally, your affiant submits there is probable cause to believe that KLETE DERIK KELLER 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.

  
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SPECIAL AGENT MATTHEW R. BAROFSKY  
FEDERAL BUREAU OF INVESTIGATION

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 13th day of January 2021.

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ROBIN M. MERIWEATHER  
UNITED STATES MAGISTRATE JUDGE