

STATEMENT OF FACTS

I, [REDACTED] am a Special Agent of the Federal Bureau of Investigation, currently assigned to the Minneapolis Division, Mankato Resident Agency. In my duties 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. One of my current responsibilities is investigating criminal activity in and around the U.S. Capitol grounds on January 6, 2021.

Background

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, 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.

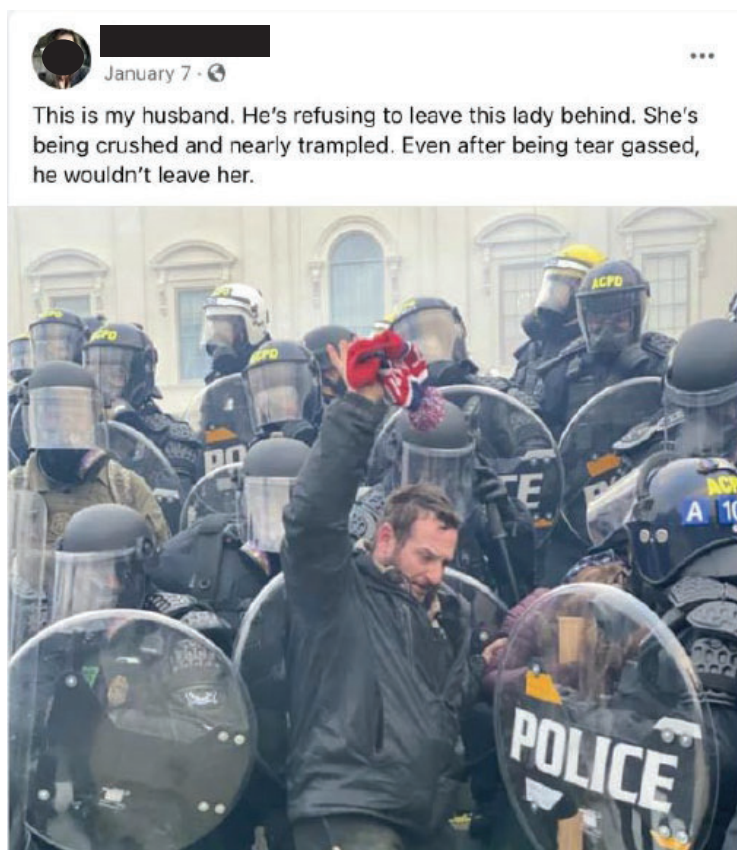
Facts Linking Kenneth Wayne Fuller, Caleb Kenneth Fuller, and Nicholas John Fuller to the January 6, 2021, Attack on the U.S. Capitol

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. The FBI received information from tips and reviewed social media posts and law enforcement officer body camera footage indicating that Kenneth Wayne Fuller, Caleb Kenneth Fuller, and Nicholas John Fuller trespassed on U.S. Capitol grounds on January 6, 2021, and engaged in confrontations with law enforcement officers on the Upper West Terrace at approximately 4:30 p.m. on that day.

Identification of Kenneth Wayne Fuller

On February 12, 2021, an Investigator with the Brown County Sheriff's Office (BCSO) in Minnesota notified the FBI they had received information that Kenneth Fuller from Cleveland, Minnesota had been present at the U.S. Capitol on January 6, 2021. Tipster 1, a resident of southern Minnesota had provided the BCSO Investigator with an image of a January 7, 2021 Facebook post from the account of A.F., believed to be the wife of Kenneth Fuller (Exhibit A). The Facebook post included a photo that depicted a male in front of a line of law enforcement officers in riot gear at what appeared to be the U.S. Capitol. The caption on the post included the text "This is my husband." Tipster 1 reported the Facebook post was provided by a relative who knows Kenneth and A.F.

Exhibit A



I reviewed the Body Worn Camera (“BWC”) footage obtained from multiple law enforcement officers who were present during the riot on January 6, 2021, including officers from the Metropolitan Police Department (“MPD”), Arlington County Police Department (“ACPD”), and Montgomery County Police Department (“MCPD”). During my review of these videos, I observed the individual depicted in Exhibit A on numerous occasions. In several of the videos, the individual can be heard stating that he is from Minnesota. The videos also show that the individual had been present within the restricted perimeter of the U.S. Capitol grounds with two other individuals, whose identities are known to me and listed below, and are relatives of the individual. A still image from one of these BWC videos is shown below as Exhibit B.

Exhibit B



Based on a comparison of the current Minnesota driver's license photo for Kenneth Wayne Fuller, the individual depicted in Exhibits A and B, and images from multiple BWC videos depicting the individual in Exhibits A and B, I believe these images depict the same person. A member of a local law enforcement agency responsible for law enforcement functions in and around the area of Cleveland, Minnesota was asked if he could identify the individual pictured in Exhibit B as well as several other still images taken from BWC footage that depict the same person shown in Exhibit B. The officer identified the individual in Exhibit B and each of the additional photos as Kenneth Fuller.

Identification of Caleb Kenneth Fuller

The FBI Washington Field Office published multiple still images on the FBI website (www.fbi.gov) of participants in the riot at the U.S. Capitol Building on January 6, 2021, seeking to identify those pictured. Each individual pictured was assigned a number to aid in identification, to include Photographs #416 - AFO A through D, four still images that were believed to depict the same person (Exhibits C1 – C4).

Exhibit C1

MOST WANTED

Ten Most Wanted Fugitives | Fugitives | Capitol Violence | Terrorism | Kidnappings/Missing Persons | Parental Kidnappings | Seeking Info | More

Photograph #416 - AFO A

The FBI is seeking to identify individuals involved in the riots at the U.S. Capitol on January 6, 2021, including those who assaulted federal law enforcement officers. Call 1-800-CALL-FBI or visit tips.fbi.gov to submit information. Reference the assault on federal officer (AFO) photo number when calling or submitting information online. More at fbi.gov/capitolviolence



Size: 155KB

Exhibit C2

MOST WANTED

Ten Most Wanted Fugitives | Fugitives | Capitol Violence | Terrorism | Kidnappings/Missing Persons | Parental Kidnappings | Seeking Info | More

Photograph #416 - AFO B

The FBI is seeking to identify individuals involved in the riots at the U.S. Capitol on January 6, 2021, including those who assaulted federal law enforcement officers. Call 1-800-CALL-FBI or visit tips.fbi.gov to submit information. Reference the assault on federal officer (AFO) photo number when calling or submitting information online. More at fbi.gov/capitolviolence



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Exhibit C3

MOST WANTED

Ten Most Wanted Fugitives | Fugitives | Capitol Violence | Terrorism | Kidnappings/Missing Persons | Parental Kidnappings | Seeking Info | More

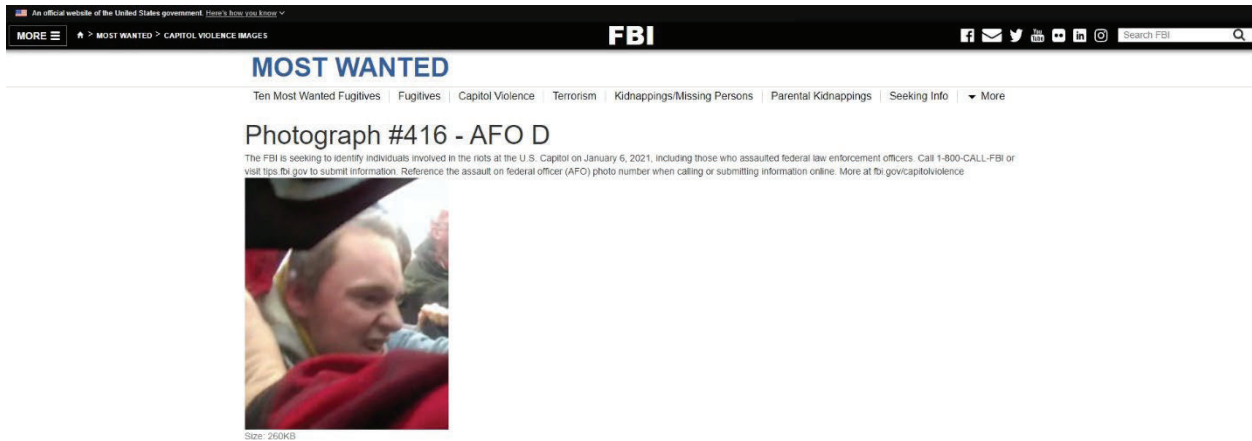
Photograph #416 - AFO C

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Exhibit C4



In July 2021, the FBI Washington Field Office received information that the Instagram account “cfullera” may belong to the person depicted as #416 – AFO. A review of the account showed it contained multiple photos (Exhibits D1 – D3) of a person who appeared similar in physical characteristics and clothing to that of #416 – AFO, posing for photos with an older male who appeared similar to Kenneth Wayne Fuller, at various areas near the U.S. Capitol.

Exhibit D1

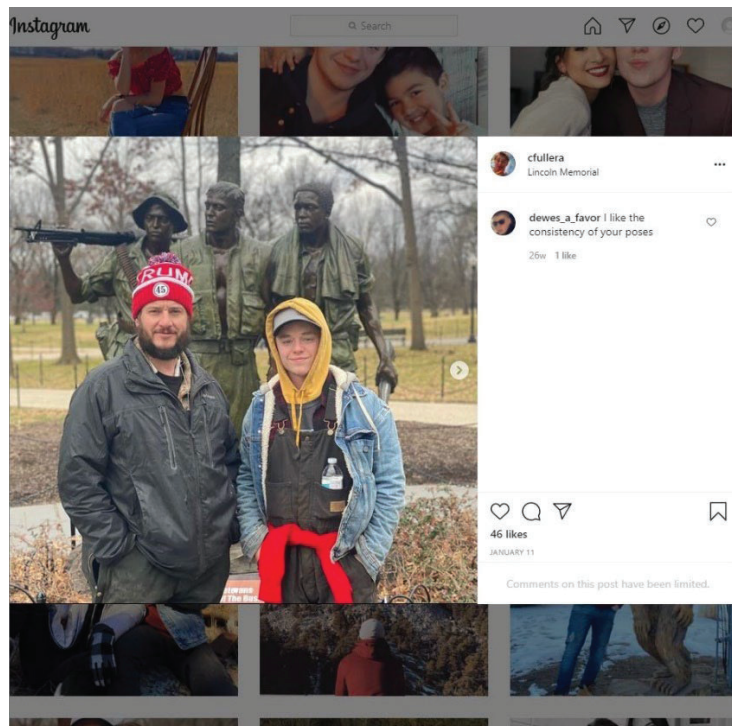


Exhibit D2

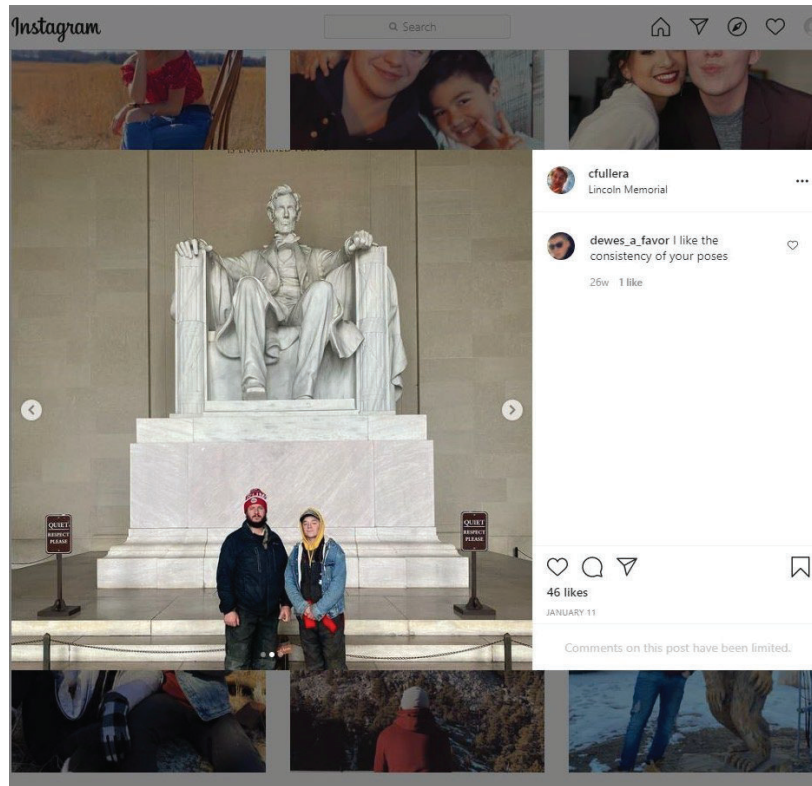
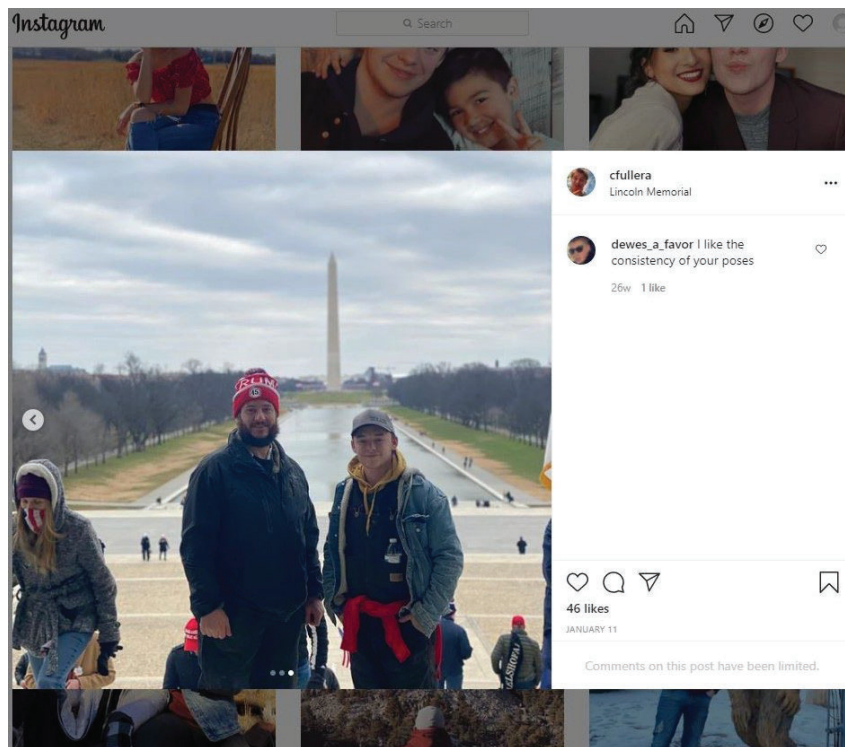
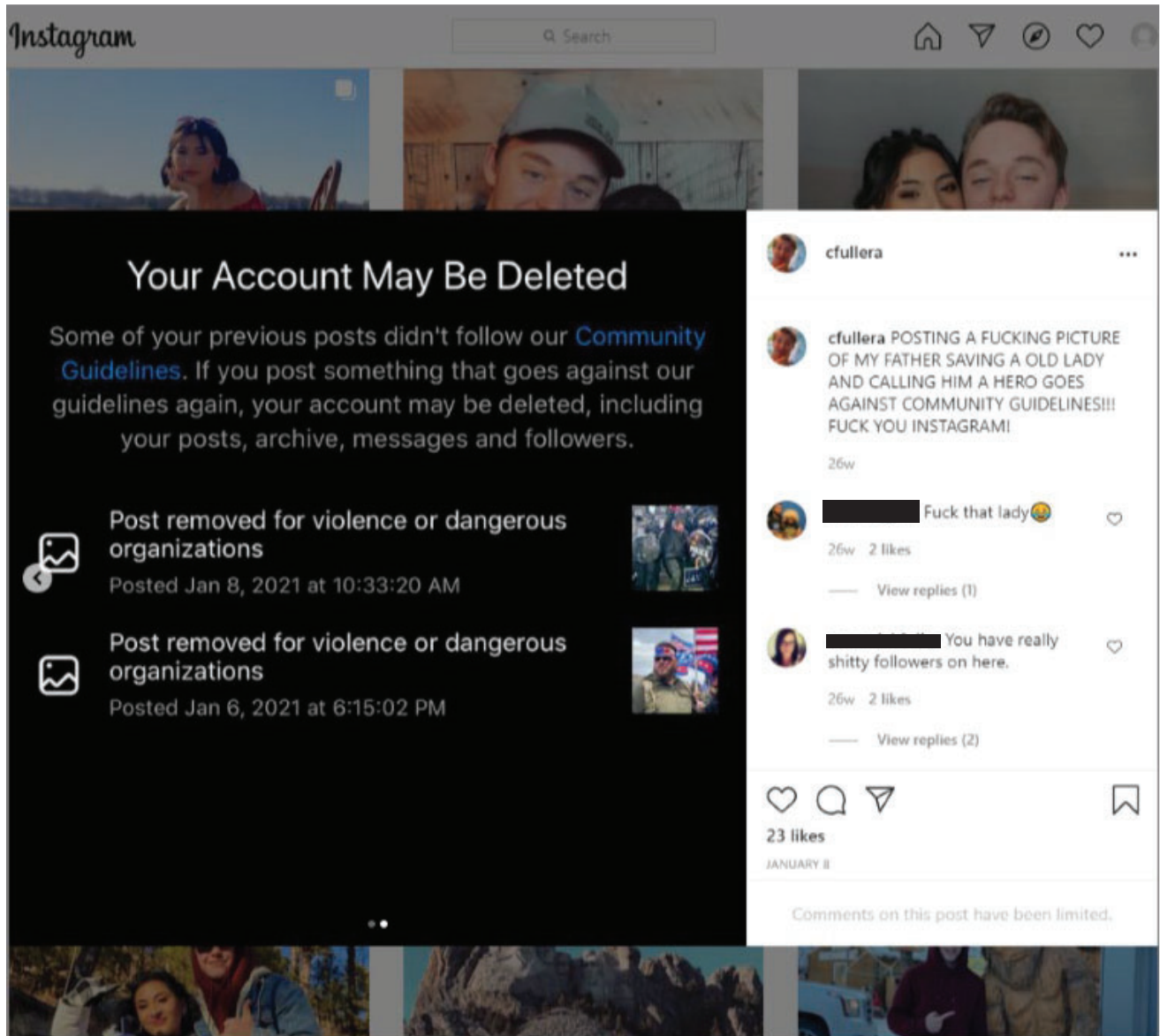


Exhibit D3



Another post in the Instagram account of “cfullera” was a screenshot of an Instagram notification that stated a post made on January 8, 2021 had been removed due to a violation of Community Guidelines (Exhibit E). The thumbnail image of the removed post was a photo depicting a male who appeared to be on the steps of the U.S. Capitol, in the midst of law enforcement in riot gear, holding onto the arm of a woman (the same image posted to the Facebook account of A.F. on January 7, 2021). “cfullera” referred to the male depicted in the removed post as his father, and he claimed he had been “saving an old lady.” Another Instagram user with a screen name in the name of Kenneth Fuller’s wife had commented on the post.

Exhibit E



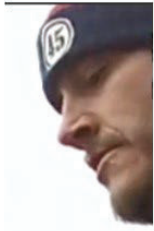
Open source records indicate that A.F. is married to Kenneth Fuller, and they live in Cleveland, Minnesota. According to Minnesota Driver and Vehicles Services records, A.F., Kenneth Wayne Fuller, and Caleb Kenneth Fuller are licensed drivers registered at the same address in Cleveland, Minnesota. Based on a comparison of the current Minnesota driver's license photo for Caleb Kenneth Fuller, and the individual depicted in Exhibits C1 – C4, and D1 – D3, I believe these images depict the same person.

On December 21, 2021, I contacted a staff member from the sole high school in Cleveland, Minnesota. The staff member was asked to identify the individual pictured in Exhibits C1 and C2, as well as several other still images taken from BWC footage that depict the same person shown in those Exhibits. The staff member identified the individual in Exhibits C1 and C2, as well as the additional photos, as Caleb Fuller, a former local home schooled student who had played on the high school football team. Caleb Fuller is believed to be the son of Kenneth Wayne Fuller.

Identification of Nicholas John Fuller

Also published on the FBI website (www.fbi.gov) were eight still images listed as Photographs #415 - AFO A through H, believed to depict the same person who had participated in the riot at the U.S. Capitol Building on January 6, 2021 (Exhibits F1 – F4).

Exhibit F1



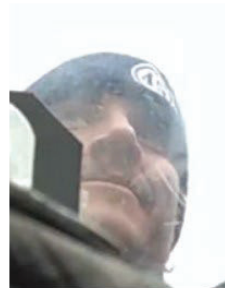
Photograph #415 - AFO E



Photograph #415 - AFO D



Photograph #415 - AFO C



Photograph #415 - AFO B



Photograph #415 - AFO A

Exhibit F2

An official website of the United States government. 1/20/21, 10:03 AM EST

MORE MOST WANTED CAPITOL VIOLENCE IMAGES FBI

Ten Most Wanted Fugitives | Fugitives | Capitol Violence | Terrorism | Kidnappings/Missing Persons | Parental Kidnappings | Seeking Info | More

Photograph #415 - AFO F

The FBI is seeking to identify individuals involved in the riots at the U.S. Capitol on January 6, 2021, including those who assaulted federal law enforcement officers. Call 1-800-CALL-FBI or visit fbi.gov to submit information. Reference the assault on federal officer (AFO) photo number when calling or submitting information online. More at fbi.gov/capitolviolence.



Size: 1.6KB

Exhibit F3

An official website of the United States government. 1/20/21, 10:03 AM EST

MORE MOST WANTED CAPITOL VIOLENCE IMAGES FBI

Ten Most Wanted Fugitives | Fugitives | Capitol Violence | Terrorism | Kidnappings/Missing Persons | Parental Kidnappings | Seeking Info | More

Photograph #415 - AFO G

The FBI is seeking to identify individuals involved in the riots at the U.S. Capitol on January 6, 2021, including those who assaulted federal law enforcement officers. Call 1-800-CALL-FBI or visit fbi.gov to submit information. Reference the assault on federal officer (AFO) photo number when calling or submitting information online. More at fbi.gov/capitolviolence.



Size: 1.3KB

Exhibit F4


An official website of the United States government. 1/20/21, 10:03 AM EST

MORE MOST WANTED CAPITOL VIOLENCE IMAGES FBI

Ten Most Wanted Fugitives | Fugitives | Capitol Violence | Terrorism | Kidnappings/Missing Persons | Parental Kidnappings | Seeking Info | More

Photograph #415 - AFO H

The FBI is seeking to identify individuals involved in the riots at the U.S. Capitol on January 6, 2021, including those who assaulted federal law enforcement officers. Call 1-800-CALL-FBI or visit fbi.gov to submit information. Reference the assault on federal officer (AFO) photo number when calling or submitting information online. More at fbi.gov/capitolviolence.



Size: 1.3KB

In July 2021, the FBI Washington Field Office received information that the person depicted as #415 – AFO on the FBI website was Nicholas Fuller. Investigators reviewed the law enforcement BWC footage that was the source of the still images depicting #415 – AFO and determined this individual had been present on the U.S. Capitol grounds with Kenneth Wayne Fuller and Caleb Kenneth Fuller.

According to Minnesota Driver and Vehicle Services records, Nicholas John Fuller holds a valid driver's license in Minnesota. Based on a comparison of the current Minnesota driver's license photo for Nicholas John Fuller and the individual depicted in Exhibits F1 through F4, I believe these images depict the same person.

A search of a public records database that provides names, dates of birth, addresses, relatives, associates, and other information was conducted for Nicholas Fuller. These public records indicate Nicholas Fuller is a relative of Kenneth Fuller, and both individuals are listed as registered agents for the same active Limited Liability Company (LLC) in Minnesota.

In December 2021, several still images depicting the person in Exhibits F1 – F4, taken from BWC footage from the Capitol grounds (Exhibit G), were shared with multiple local law enforcement agencies in southern Minnesota for identification purposes. A deputy with the Le Sueur County Sheriff's Office advised that he recognized the person depicted in the photos as Nicholas Fuller. Nicholas Fuller is believed to be the brother of Kenneth Wayne Fuller

Exhibit G



Conduct of Kenneth, Nicholas, and Caleb Fuller on the Grounds of the U.S. Capitol

Kenneth, Nicholas, and Caleb Fuller were captured on numerous law enforcement officers' BWCs, specifically those officers working on the exterior West Plaza of the Capitol during the riot. All three Fullers are seen consistently in front of police lines at various locations along the West Plaza between approximately 3:30 pm and 4:50 pm. Still images from two BWCs in which all three Fullers are shown together are listed below as Exhibits H and I.

Exhibit H



Exhibit I



Kenneth Fuller

BWC footage from Montgomery County Police Department officers shows Kenneth Fuller standing in front of police lines assembled near the top of two separate staircases on the northwest side of the Capitol.

In one BWC video, beginning at approximately 4:22 pm (the 16:22:26 timestamp), law enforcement can be heard repeatedly instructing the crowd in front of them to get back. In response, Kenneth Fuller turned to the crowd behind him and yelled “Hey guys, they’re getting ready to push! They’re getting ready to push guys!” The police line then moved forward, using their shields to move the crowd down the stairs. Another BWC video captured a different angle of this event that shows Kenneth Fuller turning and bracing his back and right arm against the police shields as the officers attempt to move Kenneth Fuller and the crowd down the stairs. Kenneth Fuller fell down in the process. Still images from this video are shown below as Exhibits J1 and J2. This incident on the stairs concluded with Kenneth Fuller assisting a woman who had also fallen down, which is depicted in the Facebook image posted by Kenneth Fuller’s wife (Exhibit A).

Exhibit J1



Exhibit J2



BWC footage shows that law enforcement moved the crowd, including Kenneth Fuller, off the steps of the West Plaza in the minutes following the 4:22 pm incident. The crowd was moved back across the West Plaza, and people began to descend a lower West Plaza staircase as the police line moved into position at the top of those stairs.

BWC camera footage shows that Kenneth Fuller, Nicholas Fuller, and Caleb Fuller began to descend the lower West Plaza steps at approximately 4:24 pm. They stopped partway down the steps and appeared to converse with each other. At approximately 4:26 pm, the three walk back up the stairs towards the police line, where Kenneth and Nicholas Fuller takes up a position directly in front of the police line.

In a Montgomery County PD BWC video at approximately 4:42 pm (the 16:42:12 timestamp), an officer can be heard telling Kenneth Fuller that law enforcement plans to move the crowd further down the stairs, and they don't want anyone in the crowd to fall down. Kenneth Fuller then relays the message to the crowd behind him, to which someone yells "no!, no!". In response, Kenneth Fuller stated "then you better get somebody up here", and shortly thereafter yelled to the crowd "hey we need some people up here". At the 16:48:19 timestamp, an officer can be heard repeatedly addressing the crowd at the top of the stairs to "move back". In response, Kenneth Fuller addressed others in the crowd behind him by repeating the statement "Guys, they're coming again", and motioned with his hand for people to come up to the police line.

Nicholas Fuller

As stated above, Nicholas Fuller is captured on numerous law enforcement officers' BWCs, specifically those officers working on the exterior West Plaza of the Capitol during the riot. Nicholas Fuller is seen consistently directly in front of police lines at various locations along the West Plaza.

In the 4:22 pm incident described above, Nicholas Fuller had been standing directly in front of the police line. As the officers moved forward with their shields, Nicholas Fuller pushed against the officers shields with his raised left elbow and forearm, before turning and leaning into the shields with his back, in an apparent attempt to prevent the forward movement of the officers. Still images taken from BWC footage of the incident are shown below as Exhibits K1 – K3.

Exhibit K1



Exhibit K2



Exhibit K3



At approximately 4:42 pm, Nicholas Fuller motioned with his hand for people to ascend the stairs towards the police line after Kenneth Fuller announced to the crowd behind them “we need some people up here” (Exhibit L).

Exhibit L



Caleb Fuller

As stated above, Caleb Fuller is captured on numerous law enforcement officers' BWCs, specifically those officers working on the exterior West Plaza of the Capitol during the riot. Caleb Fuller is seen consistently near the front of police lines at various locations along the West Plaza.

During the 4:22 pm incident described above, as the officers moved forward with their shields, Caleb Fuller grabbed onto Nicholas Fuller, who was standing directly in front of the police line, and began pushing forward in an apparent effort to resist the forward momentum of the officers. The incident lasted approximately one minute. Still images taken from BWC footage of the incident are shown below as Exhibits M1 – M5.

Exhibit M1



Exhibit M2

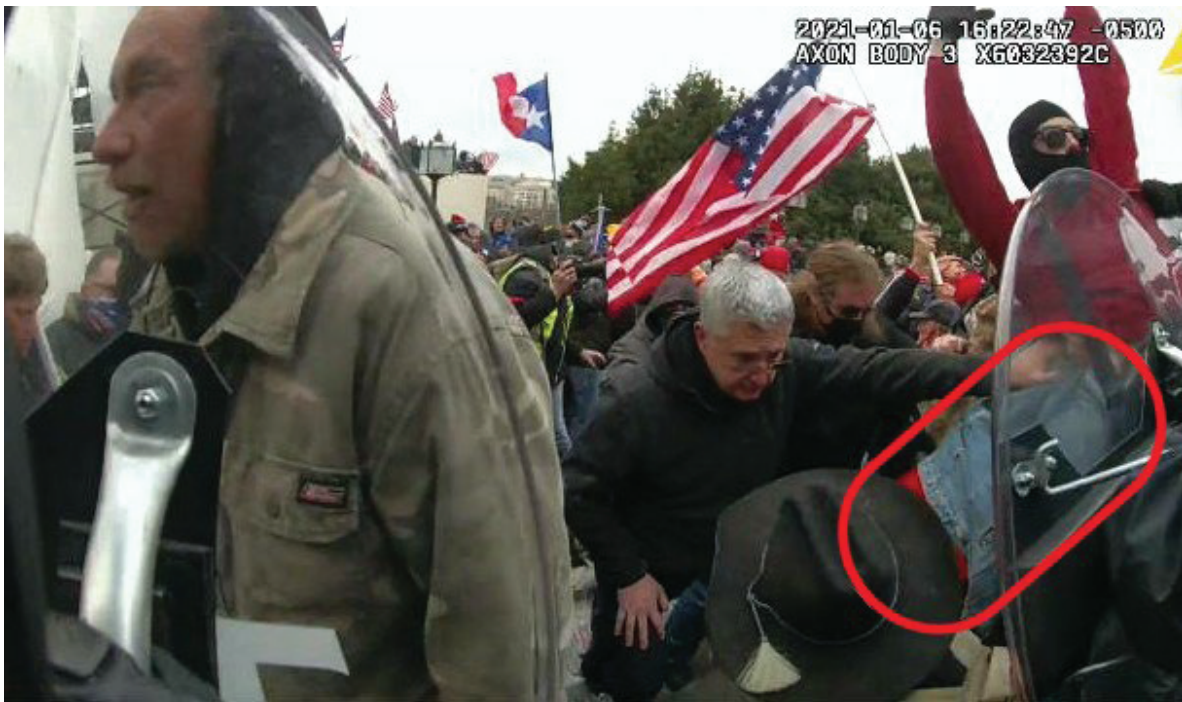


Exhibit M3



Exhibit M4



Exhibit M5



BWC footage also shows that at approximately 4:48 pm, a line of officers began an attempt to move the crowd down the lower stairs. As the officers moved forward with their shields, Caleb Fuller pushed forward against a person who was standing directly in front of the police line, in an apparent effort to resist the forward momentum of the officers. The incident lasted approximately nine seconds. A still image taken from BWC footage of the incident is shown below as Exhibit N.

Exhibit N



Charges

Based on the foregoing, your affiant submits that there is probable cause to believe that Kenneth Wayne Fuller, Nicholas John Fuller, and Caleb Kenneth Fuller 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.

Your affiant submits there is also probable cause to believe that Kenneth Wayne Fuller, Nicholas John Fuller, and Caleb Kenneth Fuller 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.



Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 9th day of June, 2023.

A handwritten signature in blue ink that reads "M. A. Upadhyaya".

A circular digital seal with a blue border and a central emblem. To its right, the text reads: "Moxila A. Upadhyaya", "2023.06.09 12:09:54", and "-04'00'".

Moxila A. Upadhyaya
2023.06.09 12:09:54
-04'00'

Honorable Moxila A. Upadhyaya
U.S. MAGISTRATE JUDGE