

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Crim. No. 21-cr-23 (TJK)
	:	
JOSHUA PRUITT,	:	
	:	
Defendant.	:	

**UNITED STATES’ MOTION IN LIMINE REGARDING
AUTHENTICATION OF PHOTOGRAPHIC AND VIDEO EVIDENCE**

The United States of America hereby moves this Court, *in limine*, for a ruling that the identified categories of photographic and video evidence are properly authenticated under Federal Rules of Evidence 104, 901, and 902 and are admissible at trial.

The siege of the Capitol generated an unprecedented amount of video and photographic evidence, not only from surveillance footage captured by U.S. Capitol Police (“USCP”) surveillance video and Metropolitan Police Department (“MPD”) body-worn cameras, but also from cameras, and phones, held by journalists and members of the mob. Moreover, the mass of relevant video evidence is not limited to January 6 itself. Many individuals, Defendant Joshua Pruitt included, took to the internet and social media in the days leading up to the riot to, among other things, make their plans for January 6 known. Pruitt, like others, also spoke with members of the media after January 6 to try to defend and explain his conduct.

The government will introduce evidence that depicts Pruitt’s conduct and—through his words and actions before, during, and after the crime—reveals his motive and intent when he stormed the Capitol on January 6. This memorandum outlines the types of exhibits the government plans to use and seeks a pretrial ruling on their authenticity. Specifically, this memorandum presents the following categories of evidence—along with discrete examples—and provides

factual and legal bases for the Court to conclude that such evidence is authentic.

1. USCP closed-circuit security video footage (“CCV”)
2. MPD body-worn camera
3. Third party video, which was generally either posted by other news outlets or individuals online or obtained from other defendants in the Capitol siege investigation
4. Portions of Pruitt’s media interviews
5. Videos and images recovered from Pruitt’s cellular phone
6. Video and images posted to Pruitt’s social media accounts

II. BACKGROUND

On January 6, 2021, Joshua Pruitt was one of the first individuals to breach the Capitol’s Senate Wing Door, entering at around 2:14 p.m. He was easily recognizable, based on his distinctive appearance and the black tank top he wore that January day.

Pruitt turned right and headed toward the Crypt. On his way there, he picked up a wooden sign, lifted it above his head, and hurled it to the ground. Upon arriving in the Crypt, Pruitt faced off with police. More and more rioters filled the Crypt until, at approximately 2:25 p.m., rioters overran the police line. Pruitt then headed to the Capitol Visitor’s Center, where he threw a chair and joined another standoff between police and rioters. He then returned to the Crypt before climbing out of a window near the Senate Wing Doors to exit the building.

That evening, Pruitt was arrested after violating curfew. A detective recognized him from a photo published that day in the *Washington Post*. She interviewed Pruitt, and he admitted that he had been inside the Capitol.

As the investigation continued, the FBI developed more evidence of Pruitt’s motive, intent, and conduct on January 6. For example, Pruitt had posed for pictures while holding what appeared to be an assault rifle, standing on a Black Lives Matter banner. The FBI found those pictures, and others foreshadowing violence on January 6, on Pruitt’s cell phone and social media accounts. The

FBI also discovered video of Pruitt's initiation into the Proud Boys in November, 2020, which circulated on the internet. Other evidence on Pruitt's phone indicates that Pruitt obtained a level of notoriety after his initiation video was posted. After initially claiming he was not familiar with the Proud Boys and had been drinking during his initiation, Pruitt then appeared to gravitate toward the group and other like-minded individuals, with whom he discussed the 2020 election and plans for January 6.

In the months following his arrest, Pruitt gave media interviews, describing his beliefs and recounting his view of what happened on January 6. He also continued to post on social media. Pruitt is now set to go to trial on July 18 for obstructing an official proceeding, among other charges.

III. ARGUMENT

The Court should find each of the six categories of evidence described above sufficiently authenticated to go the jury, which will ultimately determine how much weight to give each piece of evidence. Authenticity is not a high bar; below, the government puts forward a *prima facie* case of authenticity for each category, using examples.

A. Legal Standard

Under Federal Rule of Evidence 901(a), “[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Rule 901(b) provides a non-exhaustive list of examples of evidence that satisfies this requirement. As relevant here, those examples include:

(1) *Testimony of a Witness with Knowledge*. Testimony that an item is what it is

claimed to be.

...

(3) *Comparison by an Expert Witness or the Trier of Fact.* A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) *Distinctive Characteristics and the Like.* The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

...

(9) *Evidence About a Process or System.* Evidence describing a process or system and showing that it produces an accurate result.

Fed. R. Evid. 901(b)(1), (3), (4), (9).

As a general matter, establishing an item's authenticity is not "a particularly high hurdle." *United States v. Ortiz*, 966 F.2d 707, 716 (1st Cir. 1992). *See also United States v. Vidacak*, 553 F.3d 344, 349 (4th Cir. 2009) ("The burden to authenticate under Rule 901 is not high"); *Link v. Mercedes-Benz of N. Am., Inc.*, 788 F.2d 918, 927 (3d Cir. 1986) ("The burden of proof for authentication is slight."); *United States v. Hassanshahi*, 195 F. Supp. 3d 35, 48 (D.D.C. 2016) ("The threshold for the Court's determination of authenticity is not high, . . . and the proponent's burden of proof for authentication is slight[.]") (citation and quotation marks omitted). Rule 901 "requires only a prima facie showing of genuineness and leaves it to the jury to decide the true authenticity and probative value of the evidence." *United States v. Harvey*, 117 F.3d 1044, 1049 (7th Cir. 1997) (citing cases). *See also, e.g., United States v. Belfast*, 611 F.3d 783, 819 (11th Cir. 2010) ("[A]uthentication itself is 'merely . . . the process of presenting sufficient evidence to make out a prima facie case that the proffered evidence is what it purports to be.'" (quoting *United States v. Caldwell*, 776 F.2d 989, 1002 (11th Cir. 1985))); *Vidacak*, 553 F.3d at 349 ("only a prima facie showing is required"). Stated differently, "[t]he standard the district court must apply in evaluating a document's authenticity is whether there is enough support in the record to warrant a reasonable person in determining that the evidence is what it purports to be." *United States v.*

Blanchard, 867 F.3d 1, 6 (1st Cir. 2017) (quoting *United States v. Paulino*, 13 F.3d 20, 23 (1st Cir. 1994)). Once that showing is made, “[t]he factual determination of whether evidence is that which the proponent claims is ultimately reserved for the jury.” *Vidacak*, 553 F.3d at 349; *see also, e.g., Belfast*, 611 F.3d at 819 (“Once that *prima facie* case is established, the evidence is admitted and the ultimate question of authenticity is decided by the jury.”).

To make out a *prima facie* showing, “circumstantial evidence of authenticity can be sufficient.” *United States v. Bruner*, 657 F.2d 1278, 1284 (D.C. Cir. 1981). *See, e.g., United States v. Broomfield*, 591 F. App’x 847, 851 (11th Cir. 2014) (unpublished) (“Authentication may be established ‘solely through the use of circumstantial evidence.’”) (quoting *United States v. Smith*, 918 F.2d 1501, 1510 (11th Cir. 1990)). And, importantly, the party seeking to admit evidence need not “rule out all possibilities inconsistent with authenticity, or to prove beyond any doubt that the evidence is what it purports to be.” *United States v. Holmquist*, 36 F.3d 154, 168 (1st Cir. 1994). Rather, “the government must only ‘demonstrate that, as a matter of reasonable probability, possibilities of misidentification and adulteration have been eliminated.’” *United States v. Celis*, 608 F.3d 818, 842 (D.C. Cir. 2010) (quoting *United States v. Stewart*, 104 F.3d 1377, 1383 (D.C. Cir. 1997)). *See, e.g., United States v. Bowens*, 938 F.3d 790, 794-95 (6th Cir. 2019) (explaining that “[a]nyone could have used the defendants’ Facebook accounts, just as the pictures could have depicted the men smoking tobacco cigars, and ‘getting high’ could have been a reference to skydiving,” but that there was sufficient circumstantial evidence “for the jury to infer that the accounts belonged to the defendants, and that the defendants were the authors of the posts about using marijuana”); *Broomfield*, 591 F. App’x at 852 (finding sufficient evidence of authenticity even though “there was no testimony establishing that the recording equipment was reliable or that

the video was not altered or staged”).

In deciding preliminary questions about the admissibility of these videos, “[t]he court is not bound by evidence rules, except those on privilege.” Fed. R. Evid. 104(a). In other words, the government may rely upon otherwise inadmissible evidence in establishing the authenticity of the video evidence described in this motion, such as hearsay. *See, e.g., United States v. White*, 116 F.3d 903, 914 (D.C. Cir. 1997). A pretrial ruling that evidence is authentic and thus admissible does not relieve the government of its burden to introduce sufficient evidence at trial from which a reasonable juror could reach the same conclusion regarding authenticity (although the evidence of authenticity introduced at trial need not be the same as that introduced pretrial). *See, e.g., United States v. Gammal*, 831 F. App’x 539, 542 n.6 (2d Cir. 2020) (unpublished) (“Insofar as the District Court relied on non-public information to make its preliminary determination, it did not err because it did not do so in lieu of the presentation of sufficient authenticating public evidence later at trial.”); *United States v. Puttick*, 288 F. App’x 242, 246 (6th Cir. 2008) (unpublished) (“It is permissible for the judge to make a preliminary determination as to authentication, admit the evidence conditionally under Rule 104(b), and then allow the jurors to be the final arbiters of whether it was actually authenticated.”).

B. Analysis

The government’s evidence will show that all the videos and images described below fairly and accurately depict events which are relevant to an issue of consequence in Pruitt’s trial. While the government anticipates that the admission of USCP and MPD video footage will not be controversial, we discuss the evidentiary basis for authentication below. The bulk of the government’s argument focuses on authentication of videos from other sources, the distinctive

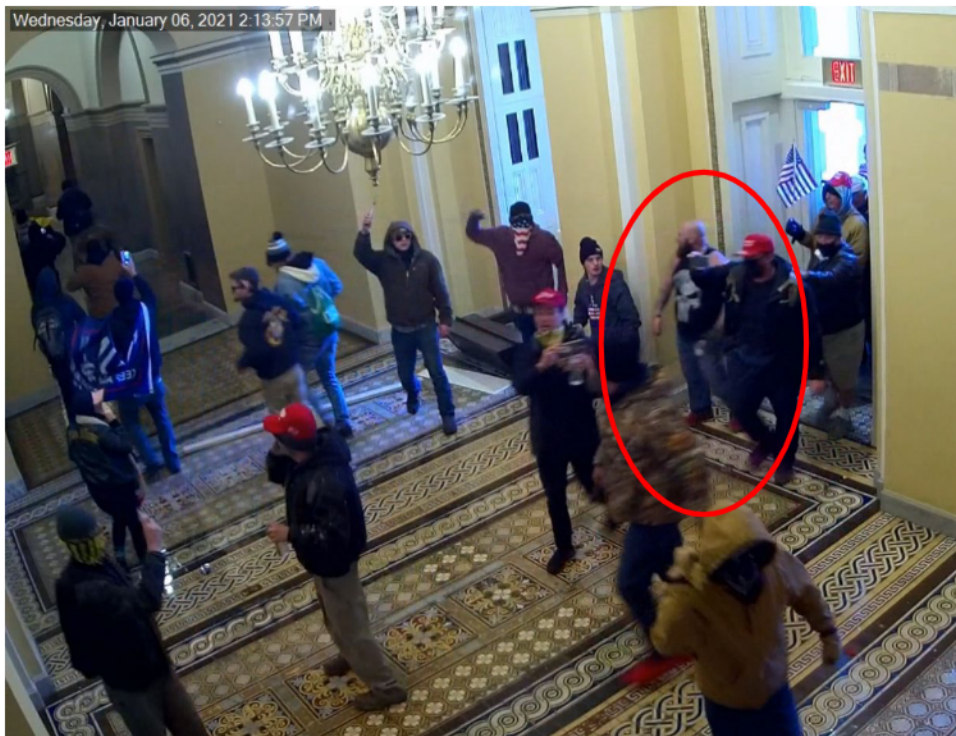
events and characteristics visible in those videos, and the corroboration that can be found from other pieces of evidence. The videos presented in this section are intended to be examples, not a comprehensive set of the videos or images the government plans to introduce at trial in any particular category.

1. U.S. Capitol Police Video Footage (CCV)

Admission of footage from USCP's own systems is straightforward. The government will present a USCP witness to testify to USCP's surveillance system. This witness will be able to explain how the system is used, that it reliably records and depicts the areas where USCP has installed cameras, and the internal characteristics of videos—such as date and time stamps—which allow USCP to identify and retrieve segments of video. A USCP witness or witnesses who were present during the attack on the Capitol will also be able to explain that the videos used by the government here are consistent with the events that occurred, generally, on January 6, 2021. Such evidence satisfies the requirement of Fed. R. Evid. 901(b)(4), which allows authentication by way of “the appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.” It also accords with the requirements of Rule 901(b)(9), which allows authentication by “[e]vidence describing a process or system and showing that it produces an accurate result.” See *United States v. Pinke*, 614 F. App'x 651, 653 (4th Cir. 2015) (unpublished) (finding “sufficient evidence of authentication” of a prison's closed circuit video where “a Government witness explained the manner in which the prison's closed circuit video system operates, the means by which he obtained the video, and that he downloaded it onto the DVD that was played for the jury.”); *United States v. Dale*, 991 F.2d 819, 843 (D.C. Cir. 1993) (“[t]apes may be authenticated by testimony describing the process or system that created the

tape”); *Rembert*, 863 F.2d at 1028 (finding photographs from ATM machine’s video system sufficiently authenticated by “circumstantial evidence provided by the victim witnesses as to the occurrences at the ATM machines, together with the testimony . . . as to the loading of the cameras and the security of the film, coupled with the internal indicia of date, place, and event depicted in the evidence itself”).

The government will present CCV footage from USCP that captures Pruitt’s unlawful conduct both outside and inside the Capitol building. The screen capture below, taken from CCV video footage near the Senate Wing Door at 2:13.57 p.m., is one such example. The CCV footage shows Pruitt’s unlawful entry to the Capitol building.



2. Body-Worn Camera Footage from the Metropolitan Police Department

Likewise, the admissibility of footage from body-worn cameras, worn by MPD and other

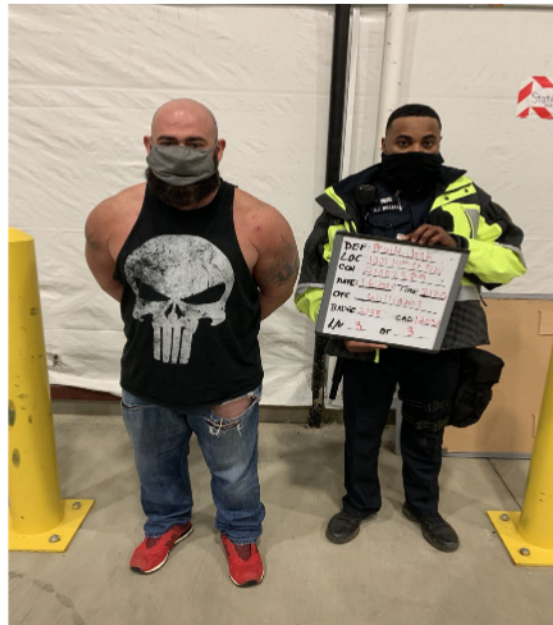
officers on January 6, 2021, is clear. Either the officer who wore the camera, or any other witness to the events depicted in the video, can authenticate the video based on their personal knowledge that the video fairly and accurately depicts the events that occurred. Fed. R. 901(b)(1) (allowing authentication by “[t]estimony that an item is what it is claimed to be”); *Rembert*, 863 F.2d at 1026 (noting one method of authentication occurs where “a sponsoring witness (whether or not he is the photographer) who has personal knowledge of the scene depicted testifies that the photograph fairly and accurately portrays that scene”).

As with USCP CCV footage, the witness or witnesses will be able to explain how the body-worn camera system is used and that it reliably records and depicts the areas where the camera is pointed, and the internal characteristics of videos—such as officer name, date, and time stamps—which allow MPD to identify and retrieve segments of video. Accordingly, in combination with corresponding testimony about the location of an officer at a particular date and time, the body-worn camera footage also complies with the requirements of Rule 901(b)(9), which allows authentication by “[e]vidence describing a process or system and showing that it produces an accurate result.”

MPD body-worn camera footage recorded Pruitt (1) on the grounds of the Capitol on January 6, (2) during his arrest for a curfew violation that night, and (3) being interviewed by MPD detectives post-arrest and discussing his participation in the Capitol breach. The screen capture below, taken from the body worn camera of an MPD officer near the area outside the Senate Wing Door at 2:53.05 p.m., is one such example. The footage shows Pruitt in his seasonally peculiar black “Punisher” tank top, faded blue jeans, red sneakers, and tactical glove on his dominant hand.



MPD post-arrest photos from the evening of January 6 show Pruitt's consistent appearance.





3. Third-Party Video

The government intends to introduce video taken by journalists and others inside and outside the Capitol on January 6. The government anticipates authenticating these videos in a number of ways. As with CCV or body-worn-camera footage, if a witness is present in a video, the witness can authenticate the third party video based upon his or her personal knowledge of its accuracy. Fed. R. 901(b)(1) (allowing authentication by “[t]estimony that an item is what it is claimed to be”). In addition, a witness can also (1) identify the locations depicted in the video; (2) establish that the video is generally consistent with their knowledge of events that occurred during the Capitol riot. *See, e.g., Holmquist*, 36 F.3d at 169 (“A photograph’s contents, buttressed by indirect or circumstantial evidence, can form a sufficient basis for authentication even without the testimony of the photographer or some other person who was present at the time it was taken.”); *United States v. Kandiel*, 865 F.2d 967, 974 (8th Cir. 1989) (“The contents of the tape recordings have numerous references to people, places and activities that were corroborative of other

testimony in the record”); *Rembert*, 863 F.2d at 1028 (photographs from ATM machine’s video system sufficiently authenticated by, among other things, “circumstantial evidence provided by the victim witnesses as to the occurrences at the ATM machines” and “the internal indicia of date, place, and event depicted in the evidence itself”); *United States v. Stearns*, 550 F.2d 1167, 1171 (9th Cir. 1977) (Kennedy, J.) (“the contents of a photograph itself, together with such other circumstantial or indirect evidence as bears upon the issue, may serve to explain and authenticate a photograph sufficiently to justify its admission into evidence.”). Distinctive characteristics can also help authenticate a video. Fed. R. Evid. 901(b)(4).

“Under Rule 901, there is a wide variety of extrinsic and circumstantial proof that may be used to authenticate evidence, . . . and there need only be sufficient proof ‘so that a reasonable juror could find in favor of authenticity or identification[.]’” *United States v. Hunt*, 534 F. Supp. 3d 233, 255 (E.D.N.Y. 2021) (quoting *United States v. Vayner*, 769 F.3d 125, at 129-30 (2d Cir. 2014)). *Broomfield*, 591 Fed. Appx. 847, is instructive. There, the Eleventh Circuit affirmed the authentication of the FBI’s copy of a YouTube clip depicting a defendant in possession of a firearm. When the FBI agent saw the YouTube video, he recognized defendant from a traffic stop and made a copy of the video, which the government presented as an exhibit. The Eleventh Circuit examined whether “the government made out a prima facie case that this YouTube video is what the government purports it to be—a video of Broomfield in possession of a firearm,” even though the person who filmed the video did not testify, nor did anyone who appeared in it. *Id.* The Court of Appeals found that the district court did not err by finding the video properly authenticated: other evidence established that the individual in the video was Broomfield, as well as “where and approximately when the video was recorded, and . . . the specific rifle and ammunition depicted in

the video.” *Id.* As in *Broomfield*, MPD detectives who interviewed Pruitt on January 6 or USCP officers who encountered Pruitt at the Capitol could testify that the individual depicted in the various videos looks and sounds the same as the person with whom they interacted that day.

In addition, authenticated video or photographs can also authenticate other, substantially similar videos or photographs of the same scene. *See* Fed. R. Evid. 901(b)(3) (authentication by comparison with another authenticated specimen); *see. e.g., Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1371; 2021 WL 3628664, at *8 (Fed. Cir. Aug. 17, 2021) (“Authentication by comparison is routine.”); *Stearns*, 550 F.2d at 1171-72 (where circumstantial evidence established one photograph’s authenticity, it “authenticates the other four pictures as to time”); *Diaz v. County of Ventura*, 512 F. Supp. 3d 1030, 1035 (C.D. Cal. 2021) (“Here, the videos can be authenticated through other evidence on the record—namely, other video and photographic evidence of the incident that Green provides.”); *United States v. Safavian*, 435 F. Supp. 2d 36, 40 (D.D.C. 2006) (“e-mails that are not clearly identifiable on their own can be authenticated under Rule 901(b)(3),” by the jury’s comparison with other “emails that already have been independently authenticated”).

Finally, for video obtained from other defendants’ cell phones, the government can offer metadata from the videos or other evidence establishing the date, time, and, potentially, the location of the video. The government can also establish that the person on whose phone or camera the video was found participated in the Capitol riot. *See, e.g., Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 547-48 (D. Md. 2007) (“Because metadata shows the date, time and identity of the creator of an electronic record, as well as all changes made to it, metadata is a distinctive characteristic of all electronic evidence that can be used to authenticate it under Rule 901(b)(4).”); *United States v. Gilbreath*, No. 3:19-CR-127-TAV-HBG, 2020 WL 5441226, at *3 (E.D. Tenn.

Sept. 10, 2020) (“Metadata . . . showed that these images were created at defendant’s home and on defendant’s cell phone on September 12, 2015.”)

The following are examples of third-party videos.

i. Bloomberg/Getty video of Pruitt throwing sign

A Bloomberg/Getty journalist filmed a video inside the Capitol on January 6 that shows Pruitt picking up a sign over his head and throwing it. *See* <https://www.gettyimages.com/detail/video/trump-supporter-breaking-sign-while-breaking-into-capitol-news-footage/1295754763?adppopup=true> (Exhibit 1). Pruitt’s distinctive features and clothing worn that day are recognizable. The video subsequently appeared in CNN’s June 2021 feature on Pruitt, described further below.

Below is a screenshot from the video with the defendant circled in red and two other individuals circled in yellow and green.



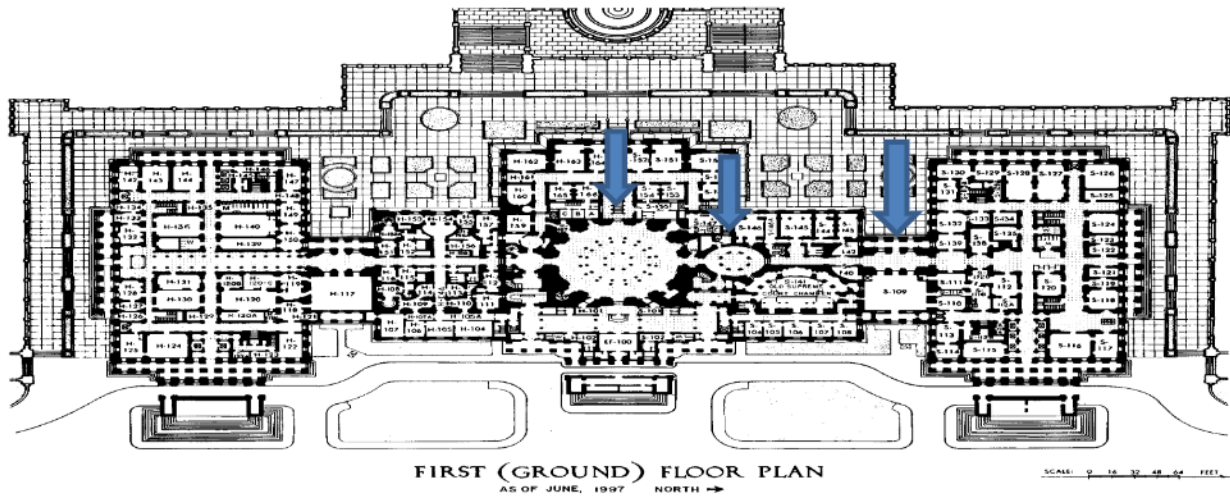
The *Washington Post* published a photograph of Pruitt in the same area on January 6, which led the MPD detective to identify Pruitt as a participant in the Capitol siege after he was arrested for violating curfew that night. *See*

<https://www.washingtonpost.com/graphics/photography/2021/01/06/photos-scene-capitol-dc/>.

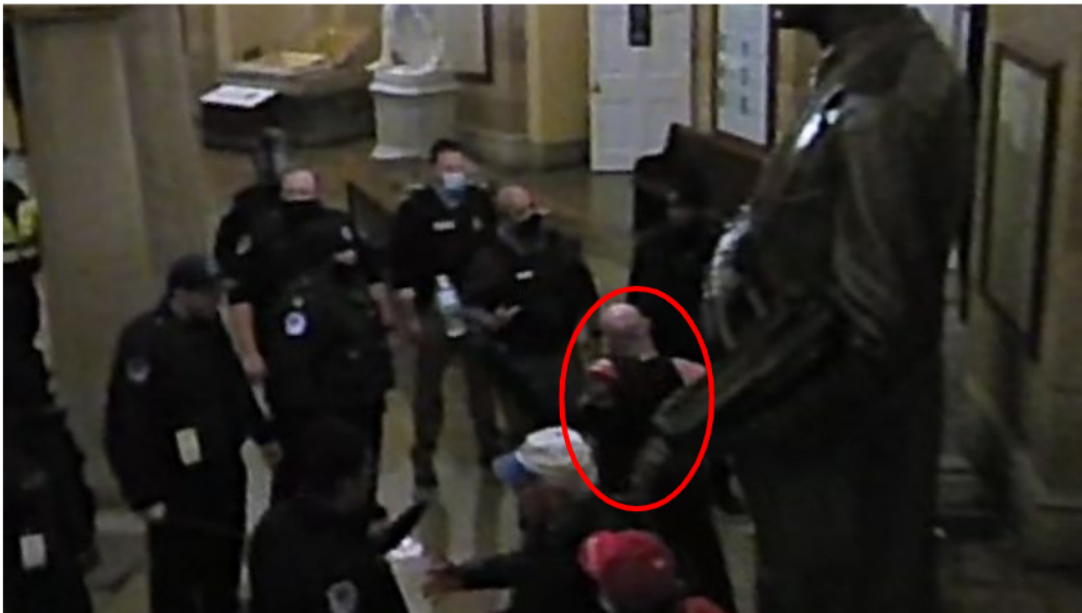


Capitol Police witnesses could testify that the atrium where Pruitt threw the sign indeed appears to be the area outside the Old Supreme Court; the upper floor of the atrium, where the photographers were located, is the Small Senate Rotunda. The area outside the Old Supreme Court is between the Senate Wing Door, where Pruitt entered at 2:13:57 p.m., and the Crypt, where Pruitt arrived by 2:15 p.m., according to CCV. From right to left, arrows on the map below point to the

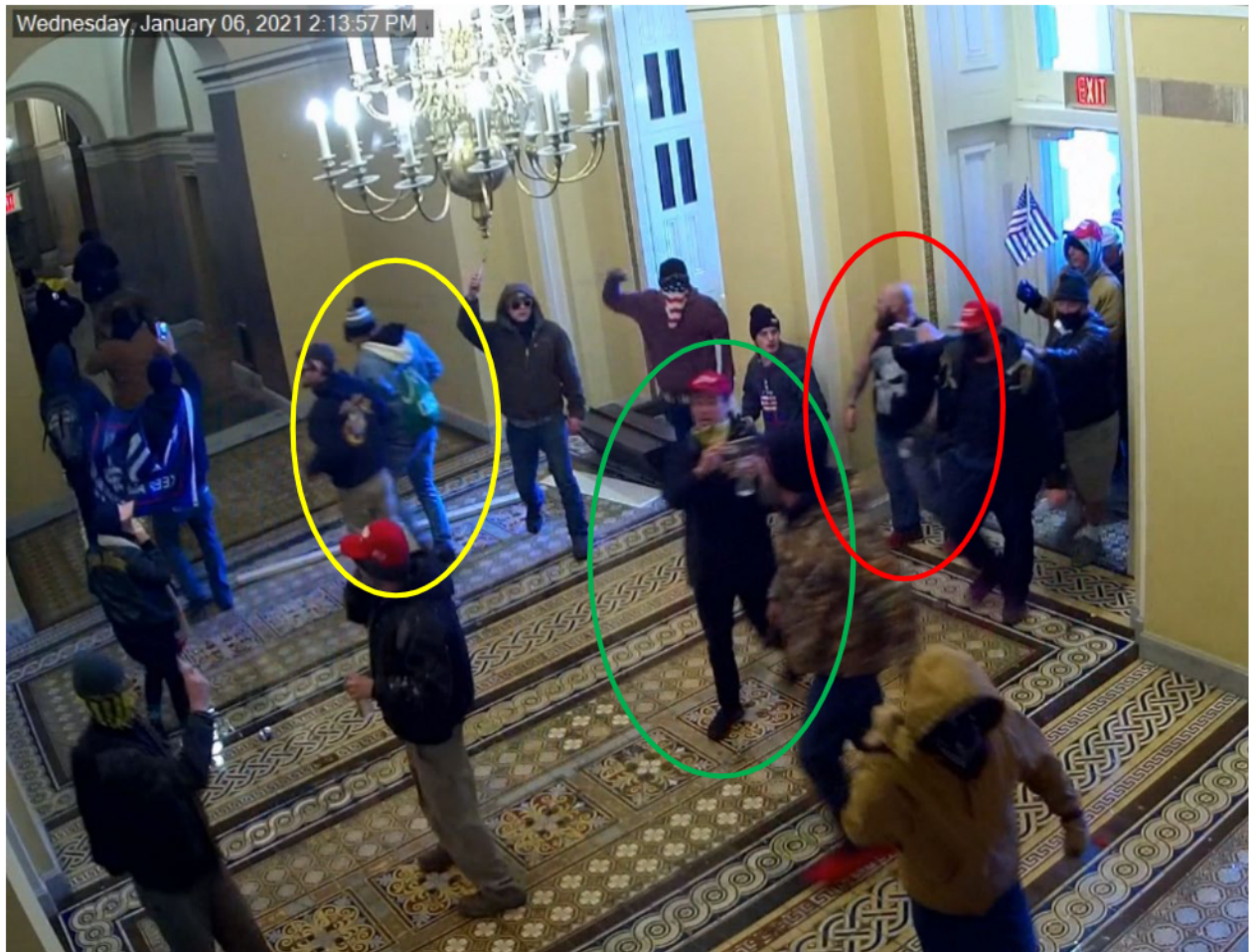
Crypt, the area outside the Old Supreme Court where Pruitt threw the sign, and the Senate Wing door.



Below is an image of Pruitt in the Crypt at approximately 2:15 p.m.



In addition, CCV video of Pruitt's entry to the Capitol building, shortly before he threw the sign, shows the same individuals who are in the Bloomberg/Getty video (again circled in yellow and green).



ii. Laslo video (Pruitt's approach to the Senate Wing Door)

Shortly before entering the Senate Wing Door, Pruitt hopped over a barrier and advanced toward the door. At 2:15 p.m. on January 6, 2021, a video of Pruitt's approach was posted on Twitter and other social media. The video was posted by an individual named Matt Laslo, who, according to his online biography at www.mattlaslo.com, is a journalist who has spent over 15 years covering federal policy, and has contributed to VICE News, Rolling Stone, and NPR, among other media outlets. Below is a screenshot from the video.



<https://twitter.com/mattlaslo/status/1346898208312713223> (Exhibit 2).

Capitol Police witnesses can testify that this area appears to be the approach to the Senate Wing Door; the camera pans to capture the porticos in front of the doorway and the distinctively shaped and manicured grass plantings on the Upper West Terrace. And, as with the video of Pruitt throwing the sign, some of the same individuals who appear in this video also appear in CCV surveillance footage around the same time that Pruitt entered, such as the individual with the red bucket hat and blue t-shirt over a white shirt, circled in green above and below.



From CCV video, we know that Pruitt entered the Senate Wing Door – just steps from where he hopped over the barrier lining the ramp – at approximately 2:13:57 p.m. The fact that Laslo’s video was posted at 2:15 p.m. is consistent with the timing of Pruitt’s illegal entry into the Capitol Building. Furthermore, in the June 2021 CNN feature (which included Laslo’s video), Pruitt questioned whether he should go to jail simply because he jumped “over a four-foot barricade,” which he appears to have done in the Laslo video.

iii. Schaffer video of Crypt rioters running into police

Another video shows Pruitt in the Crypt, his back to a pillar, as rioters push against the police, as if in a mosh pit. See <https://twitter.com/elijahschaffer/status/1346901420147167232> (Exhibit 3). The video was posted by an individual named Elijah Schaffer, a YouTube personality who reported that he was inside the Capitol on January 6 and posted videos from the breach.



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Capitol Police officers who are visible in the video can identify the location of the video as the Crypt on January 6 and recall Pruitt, who was vocal, and whose appearance was distinctive, at the front of the pack of intruders. CCV footage from approximately 2:21 p.m. also captures this incident, as group of intruders at the front of the mob can be seen trying to push against the police. Pruitt's head and bare shoulders are also briefly visible in this CCV footage as he moves to the side of the pillar. In both videos, an aggressive rioter, wearing a gray sweatshirt and a beanie, is also visible.

Below is a screenshot from the CCV of the entire scene, and another that zooms in on Pruitt, next to the pillar.



Finally, the June 2021 CNN feature (described below) reports that Pruitt claims he “leaned against a pillar and ‘backed off’ while Capitol Police and rioters scuffled.” Schaffer’s video is consistent with Pruitt’s claim that he leaned against a pillar while Capitol Police and rioters “scuffled.”

iv. Video from Chance Uptmore of breach of stairs leading to Upper West Terrace

The government may also introduce a video that shows rioters breaching the stairs leading to the Upper West Terrace (and the Senate Wing Door, through which Pruitt entered the Capitol). Pruitt is among the rioters beneath the stairs who see the breach and then move toward the staircase.

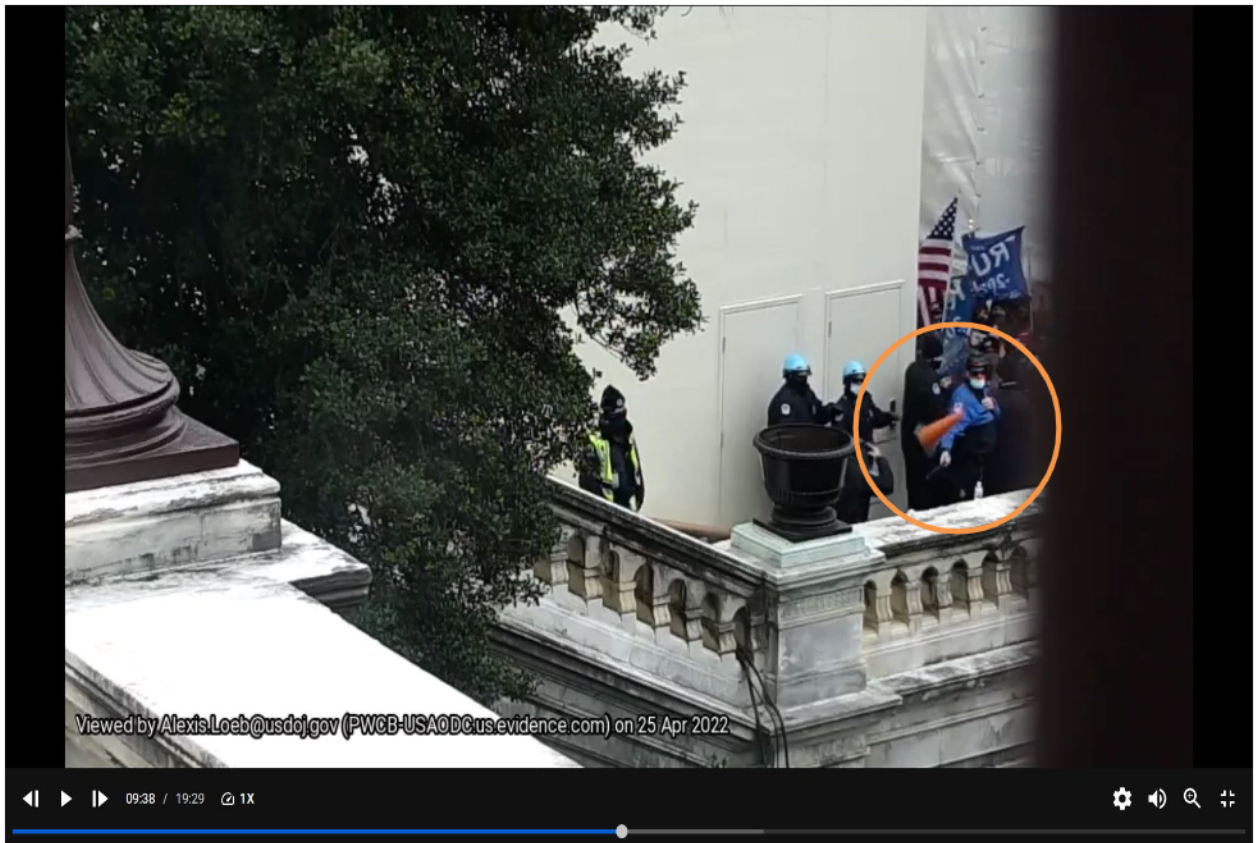


Exhibit 4. The video was recovered from the cell phone of another defendant, Chance Uptmore,

which the government obtained pursuant to a search warrant. *See United States v. Chance Anthony Uptmore*, 21-cr-149 (RCL). The area is recognizable as the Capitol on January 6, and Capitol Police witnesses could testify that Pruitt was in that area near the staircase depicted on that day. The video is corroborated by CCV footage, which shows rioters breaching the stairs. For example, Uptmore's video shows an orange cone being tossed at officers:



CCV video from approximately 2:09:38 p.m. shows the cone incoming and landing near officers.



The timing of the Uptmore video (2:09 p.m.) is also consistent with Pruitt's presence stairs at the Senate Wing Door approximately five minutes later.

v. *Video of Pruitt's initiation into the Proud Boys*

In addition to third-party video from January 6, the government may also introduce a video recording of Pruitt's initiation into the Proud Boys by Proud Boy leader Enrique Tarrío on the streets of Washington, D.C. on November 14, 2020, the night of the "Million MAGA March." The march gave way to violent clashes after dark and included members of the Proud Boys. *See, e.g.,* Marissa J. Lang, et al., *The Washington Post*, "After thousands of Trump supporters rally in D.C., violence erupts when night falls," available at <https://www.washingtonpost.com/dc-md-va/2020/11/14/million-maga-march-dc-protests/> (Nov. 15, 2020).

A screenshot from the initiation video is below:



See <https://twitter.com/bgonthescene/status/1327792375863898112> (Exhibit 5).

The initiation video was tweeted by Brendan Gutenschwager, who uses the handle “BGOntTheScene” and describes himself as an independent reporter. Gutenschwager posted various photos and videos from the November 14 event to social media. *See, e.g.,* <https://twitter.com/bgonthescene/status/1327833839964721152> (“Cheering for Trump as the Million MAGA March continues late into the evening here in DC”). In the video, Pruitt identifies himself by name and his appearance (including a different black tank top) is similar to his appearance on January 6. The video later appeared in CNN’s June 2021 feature on Pruitt.

Pruitt has acknowledged this video and discussed his interaction with Tarrio that night and his initiation into the Proud Boys in interviews. *See, e.g.,* Anne Speckhard, International Centre for the Study of Violent Extremism, “A Proud Boy Capitol Rioter’s Story,” Feb. 2, 2021, *available at* <https://www.icsve.org/a-proud-boy-capitol-rioters-story/> (“17 million views of me being

inducted into the Proud Boys, right outside the JW Marriot.”). When the FBI searched Pruitt’s phone, it discovered another copy of the video, as well as chats from the days following Pruitt’s initiation discussing it and other videos referring to Pruitt’s initiation into the Proud Boys.

vi. Video/photographs showing that the Capitol Grounds were closed to the public on January 6

The government may introduce open-source video or photographs depicting the area around the Capitol that was restricted and closed to the public on January 6, marked by signs, fencing, and barriers. Below are examples.





Capitol Police and/or U.S. Secret Service witnesses can testify that the areas depicted in the photographs was restricted on January 6 and that the photographs are consistent with their knowledge of the area.

4. Pruitt's CNN Interviews

CNN has aired interviews with Pruitt since his arrest, and the Court should permit the government to introduce portions of these interviews. In June, 2021, CNN featured Pruitt among five other participants in the Capitol siege in a piece called "Paths to Insurrection." *See* <https://www.cnn.com/interactive/2021/06/us/capitol-riot-paths-to-insurrection/josh-pruitt.html> The segment regarding Pruitt, entitled "The Proud Boy," includes social media posts by and depicting Pruitt (discussed further below), as well video clips from an interview with Pruitt. A clip

from the interview with Pruitt also appeared in a CNN segment previewing a special report called “Assault on Democracy.” See <https://www.cnn.com/videos/politics/2021/06/18/capitol-riot-documentary-cnn-preview-drew-griffin-vpx.cnn>.

Pruitt’s voice and appearance on CNN is consistent with his appearance and voice in other video in the case, such as his booking photograph and body-worn camera from his interview with MPD detectives on January 6. CNN identifies Pruitt by name, and, in some of the video clips (which all appear to be from a single interview), Pruitt provides identifying details about himself, such as the ages, genders, or locations of family members, and his work as a bartender. The video includes Pruitt saying, “[s]o jumping over a four-foot barricade is a reason for me to go to prison? That makes a lot of sense.” When asked what he believes in, Pruitt says, “Our country. And not cheating the system, like the election was cheated. That’s what I believe in.” Pruitt also acknowledges entering the Capitol that day, says he “didn’t do anything to any officers.” He also says that “Biden didn’t win” and “they stole it.”

On the evening of January 5, 2022, CNN broadcast another interview with Pruitt. See <https://www.cnn.com/videos/politics/2022/01/05/january-6-capitol-rioters-remorse-charges-sentence-ebf-schneider-pkg-vpx.cnn>. In the interview, Pruitt (who, again, is clearly recognizable) said he was “just a patriot” who was at the Capitol because of a “stolen election.” As in his earlier interview, Pruitt expresses disbelief that he could go to prison over the charges. In his January 13, 2022 revocation hearing, Pruitt acknowledged the second CNN interview. 1/13/22 Hearing Tr. at 39-41. The video accurately reports that Pruitt was living in Nashville at the time, wearing an ankle monitor.

Some of Pruitt’s statements on CNN are consistent with his statements recorded elsewhere,

further authenticating the videos. For example, during Pruitt's post-arrest interview, he similarly denied assaulting officers, which he again said on CNN in the June 2021 piece. As described above, the Laslo video shows Pruitt hopping over a barrier to enter the building, and up against a pillar in the Crypt during the scuffle between rioters and police, as recorded in the Schaffer video. The June 2021 CNN video also includes Pruitt's complaints about being "doxxed" by the left, which is consistent with complaints Pruitt expressed in private, on his cell phone. The government thus has shown that "as a matter of reasonable probability, possibilities of misidentification and adulteration have been eliminated." *Celis*, 608 F.3d at 842 (quoting *Stewart*, 104 F.3d at 1383).

5. Other Videos and Images from Pruitt's Cell Phone

Pruitt was arrested in Washington, D.C. on the night of January 6 for violating Mayor Bowser's curfew order. In connection with his arrest, Pruitt's iPhone was seized. The government intends to introduce, *inter alia*, photos and videos recovered from Pruitt's phone. The authentication of evidence from Pruitt's phone is straightforward. If the defendant is unwilling to stipulate, the government will introduce evidence from MPD and FBI concerning the seizure and subsequent examination of the phone. *United States v. Gray*, 669 F.3d 556, 566 (5th Cir. 2012) (holding that photographs of defendant holding a gun were sufficiently authenticated by officer's testimony that he downloaded them from third party's cell phone with her authorization), *vacated on other grounds*, 501 F. App'x 329 (5th Cir. 2012) (unpublished); *United States v. Lewisbey*, 843 F.3d 653, 658 (7th Cir. 2016) (finding text messages on phone authenticated by evidence tying defendant to phone, such as location from which phone was seized and information in phone's contacts and properties sections).

The government plans to introduce certain videos and photos from Pruitt's phone that

depict him in the leadup to his unlawful activity at the Capitol. These videos include selfie-style videos of Pruitt making statements about his plans for January 6. In one such video, Pruitt states, “Antifa [] and DC mayor jackoff, bring it motherfuckers. Y’all motherfuckers just started a war. You wanna arrest Enrique. Ok, we got you. You got to arrest fucking all of us...” As shown in the screenshots below, Pruitt then proceeds to put in a mouthguard and hold up the glove that he would later wear to the Capitol.



The government will also seek to introduce photographs and video that depict Pruitt on the morning of January 6 wearing the same “Punisher” tank top and holding what appears to be an assault-style weapon.



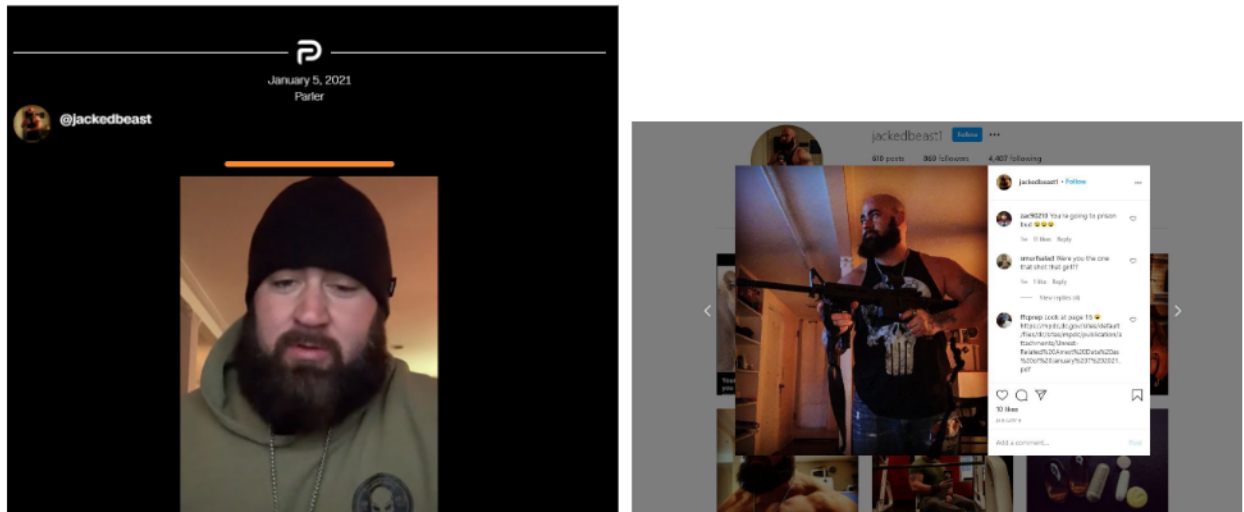
These videos and photographs are plainly authenticated based on both the seizure and examination of Pruitt’s device. *Id.* They are also authenticated based the distinctive characteristics of Pruitt as depicted in the photos and videos. *United States v. Chandler*, 5 F. App’x 839, 847 (10th Cir. 2001) (unpublished) (“Authentication under Rule 901(b)(4) is proper if the appearance, contents, distinctive characteristics and circumstances of discovery of the CCA Photograph support a finding that the matter in question is what its proponent claims.”)

6. Social Media Video and Photographs

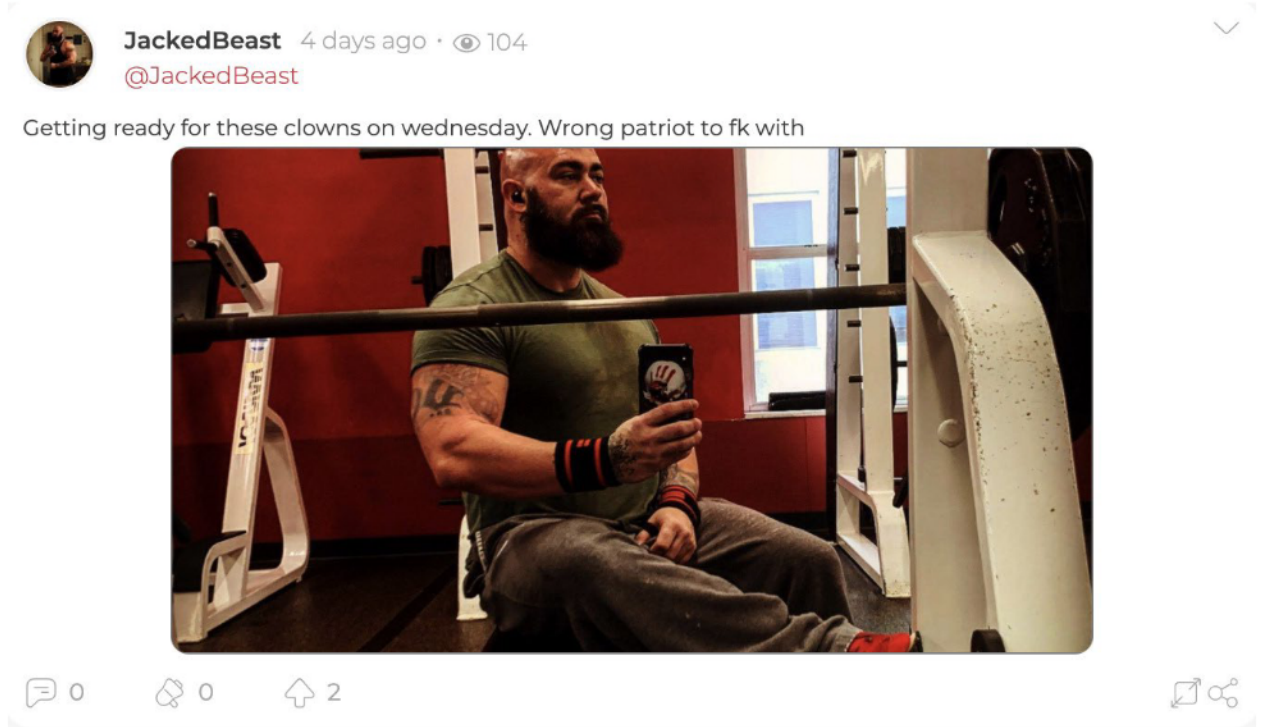
Pruitt was a visible presence on social media before and following January 6. The government intends to introduce videos and images on social media as evidence of Pruitt’s motive to storm the Capitol on January 6 and as evidence of his consciousness of wrongfulness in doing so. “The Government may authenticate social media evidence with circumstantial evidence linking the defendant to the social media account.” *United States v. Lamm*, No. 20-1128, 5 F.4th 942, 948; (8th Cir. 2021); *see also United States v. Barber*, 937 F.3d 965, 970-71 (7th Cir. 2019) (“This

court has relied on evidence such as the presence of a nickname, date of birth, address, email address, and photos on someone’s Facebook page as circumstantial evidence that a page might belong to that person”); *Bowens*, 938 F.3d at 795 (finding “circumstantial evidence from which the jury could infer that the defendants were the ones posting this content,” including “the account linked to *Bowens* was under the name he first gave the arresting officers” and “[b]oth accounts contained images of the two men.”).

In the days following January 6, the government obtained videos and posts of Pruitt from Parler and Instagram accounts. CNN also published posts from Pruitt’s account in its June 2021 feature. Many of the posts include videos and photographs that were also recovered from Pruitt’s phone. For example, Pruitt’s mouthguard video and assault weapon photograph were both posted online on Pruitt’s social media accounts.



The public posting of videos and photographs also present in Pruitt’s phone demonstrate Pruitt’s control and dominion over the social media accounts @JackedBeast on Parler and @JackedBeast1 on Instagram. Accordingly, Pruitt’s statements on his Parler and Instagram accounts are properly authenticated and attributed to Pruitt.



IV. CONCLUSION

For the foregoing reasons, the government respectfully requests that this Court grant the motion for a pre-trial determination that the aforementioned categories of exhibits and specific examples cited can be authenticated pursuant to the Federal Rules of Evidence and are admissible at trial.

Respectfully submitted,

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