

Case: 1:22-mj-00256
Assigned To : Harvey, G. Michael
Assign. Date : 11/15/2022
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, [REDACTED] is a Detective with the New York Police Department (NYPD) assigned to the New York Joint Terrorism Task Force (JTTF). In my duties working with the Federal Bureau of Investigation (FBI) as part of the JTTF, I have participated in investigations of domestic terrorists and have used a variety of investigative techniques, including, but not limited to, interviews of witnesses, cooperating witnesses, and confidential informants; physical surveillance; reviews of telephone records; and search warrants as to physical premises, electronic devices, and social media accounts. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As part of the JTTF, 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 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.

Based on information previously provided by Google, subsequent to legal process served by the FBI, an electronic device logged into Google Account ID ending in -7037 was likely within the U.S. Capitol on January 6, 2021, in violation of federal law. According to information provided by Google, subsequent to legal process served by the FBI, Google Account ID ending -7037 was associated with email address xxxxxxxx@gmail.com (“the *Gmail* address”) and phone number xxx-xxx-3496 (“phone number ending -3496”). Additional records provided by Google indicated that Google Account ID ending -7037 had a listed name of MENY COHEN. I understand MENY to be a common nickname for MENACHEM.

According to information provided by T-Mobile, subsequent to legal process, the phone number ending -3496 was assigned to T-Mobile and the subscriber for this phone number during January 2021 was MENACHEM M COHEN. The phone number has been registered to COHEN since June 2015.

According to financial records provided by JPMorgan Chase Bank, N.A., subsequent to legal process, a checking account ending in -7800 for a business entity associated with COHEN reflects purchases on January 6, 2021 at a 7-Eleven in Marlow Heights, Maryland; the King Street Metro station in Alexandria, Virginia; and the Union Station Metro Station in Washington, D.C. A credit card account ending in -8702 in MENACHEM COHEN’s name reflects purchases on January 6, 2021 at a café in Alexandria, Virginia. These transactions are consistent with COHEN being in the D.C. area on January 6, 2021.

The FBI obtained a New York State DMV photograph of MENACHEM COHEN. Using the photo, I reviewed videos from various sources, including CCTV and publicly available websites, taken at the U.S. Capitol on January 6, 2021.

Based on my review, I have located COHEN on video showing him outside and inside the U.S. Capitol building on January 6, 2021, as reflected in the still images that follow.¹ The images of COHEN outside the U.S. Capitol show him unmasked. Once inside the U.S. Capitol Building, COHEN appears at times wearing a white face mask. I was able to identify COHEN inside the U.S. Capitol Building by the portions of his face not covered by the mask; another individual who is shorter than COHEN and wearing a puffy jacket, hat, and scarf over his face, who consistently appears with COHEN both outside and inside the U.S. Capitol; and the clothing COHEN is wearing (a dark hoodie, a dark puffer jacket, dark pants, and a dark backpack), which is consistent with the images of him outside the U.S. Capitol on January 6, 2021. As described further below, I have also interviewed COHEN on at least three occasions and had the opportunity to observe him

¹ On July 31, 2021, another agent with the FBI’s New York Office consulted with a U.S. Capitol Police Officer, who provided location information for some of the below footage.

during those interviews. The individual depicted in the New York State DMV photograph, the individual who appears in the CCTV and publicly available videos, and the individual I interviewed all appear to be the same person, MENACHEM COHEN.

During a previous interview, COHEN showed me photos and videos of his activities around the U.S. Capitol on his cell phone. I have reviewed photos and videos taken at the U.S. Capitol on January 6, 2021 that the FBI obtained from COHEN's phone.² During a subsequent interview, COHEN admitted to me that he took some of the photos and videos obtained from his phone, and that his voice can be heard in some of the videos. These particular photos and videos are also reflected in the still images that follow. The location and timing of the photos and videos obtained from COHEN's phone are also generally consistent with COHEN's path through the U.S. Capitol building on January 6, 2021 as reflected on CCTV.

On January 6, 2021, COHEN approached the U.S. Capitol Building from the northwest. A video found on COHEN's phone appears to show rioters breaching a barricade on the Upper West Terrace of the U.S. Capitol Building:



² On June 8, 2022, the Honorable Robert M. Levy, U.S.M.J of the Eastern District of New York, signed a search warrant for COHEN's phone.

Prior to entering the Capitol, COHEN is seen in a publicly available video on the West side of the Capitol Building, somewhere between the Lower West Terrace and Upper West Terrace:



COHEN recorded other rioters attempting to scale the wall to the Upper West Terrace, commenting to another rioter, "Yeah man, the wall is coming down." COHEN previously admitted to me that he took this video and that his voice can be heard in the video.



At approximately 2:24PM, COHEN entered the Senate Wing Door, which had been earlier breached by other rioters:



As he entered the building, COHEN took a video showing the broken glass in the Senate Wing Door, stating, “inside the building.” COHEN previously admitted to me that he took this video on his phone and that his voice can be heard in the video.



COHEN then proceeded to the Crypt, where he was seen on CCTV at approximately 2:27PM:



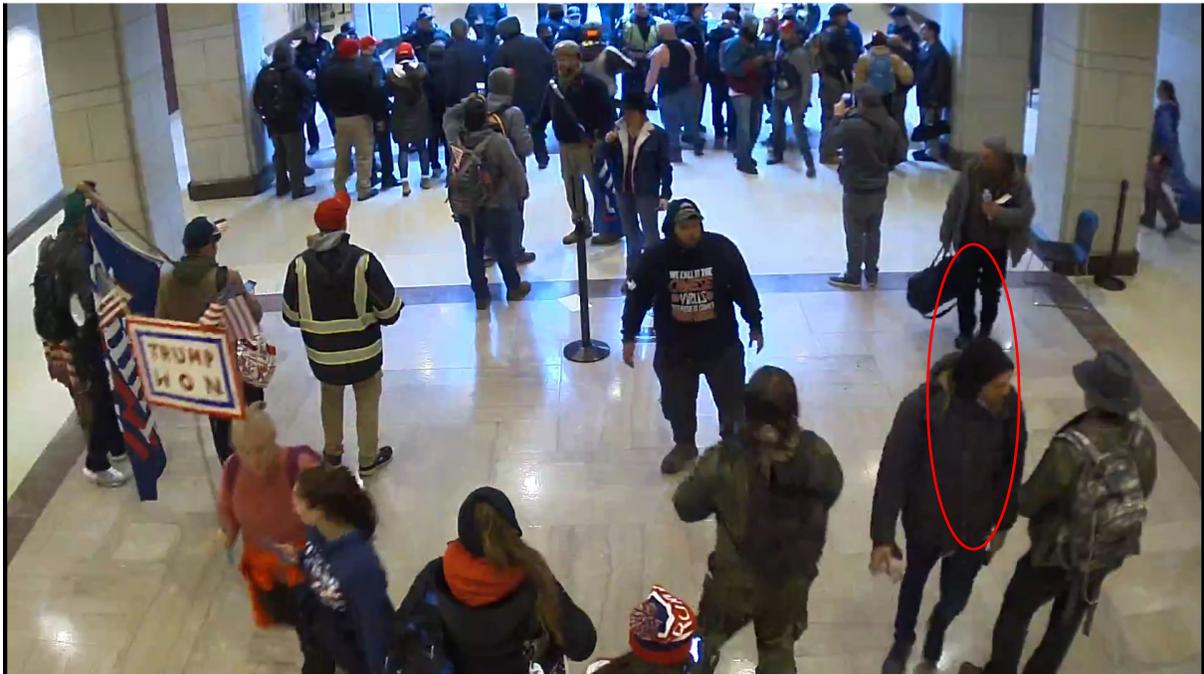
A video on COHEN's phone shows crowds of rioters both around and above the Crypt:



Near the Crypt, COHEN took a photo of a bust of George Washington with a red “Trump” hat. COHEN previously admitted to me that he took this photo on his phone.



COHEN walked from the Crypt to the Capitol Visitor Center, where he is seen on CCTV at approximately 2:43PM:



In the Capitol Visitor Center, COHEN encountered a line of police officers. A video from COHEN's phone shows officers arresting a rioter, as well as other rioters standing on the glass above the Capitol Visitor Center:



COHEN then walked from the Capitol Visitor Center to the Crypt, where he is seen on CCTV at approximately 2:46PM:



COHEN next walked back to the Senate Wing Doors—the way he had entered the Capitol—at approximately 2:48PM. COHEN appears to be holding up his hands and holding a device in one of his hands.



COHEN took a video of a line of police officers attempting to secure the Senate Wing door from additional rioters. COHEN previously admitted to me that he took this video on his phone. COHEN exited the Capitol through the broken window to the left of the officers.



I have interviewed COHEN on several occasions about his activities in the U.S. Capitol Building on January 6, 2021.

On June 3, 2022, another agent from the FBI's New York Office and I interviewed COHEN in front of his residence in Brooklyn, New York. COHEN identified himself as MENY and MENACHEM COHEN, that his phone number was the phone number ending in -3496, that he was the only one who used that phone number, and that his email address was the *Gmail* address. During that interview, COHEN admitted to being inside the U.S. Capitol on January 6, 2021.

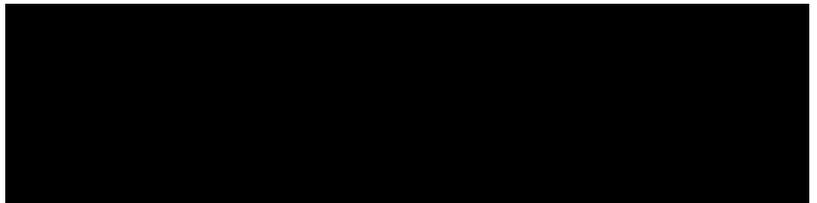
On June 9, 2022, another agent with the FBI's New York Office and I interviewed COHEN on a street near his home in Brooklyn, New York. COHEN again admitted to being inside the U.S. Capitol on January 6, 2021. COHEN said that he saw a statue inside on which someone had placed a red MAGA Trump hat, and that the front door where he entered had broken glass. COHEN said that if there were ramifications to entering the U.S. Capitol, he would accept them.

On November 1, 2022, another agent with the FBI's New York Office and I interviewed COHEN at a location of COHEN's choosing in Brooklyn, New York. COHEN again admitted to being inside the U.S. Capitol on January 6, 2021 and further identified himself in a still photo from

CCTV footage inside the U.S. Capitol Building on January 6, 2021. COHEN also admitted that he had taken several of the photos and videos that the FBI had obtained from his cell phone and identified his voice in some of the videos, as noted above.

Based on the foregoing, your affiant submits that there is probable cause to believe that COHEN violated 18 U.S.C. § 1752(a)(1) and (2), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; and (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; or attempts or conspires to do so. For purposes of Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant submits there is also probable cause to believe that COHEN 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; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.



Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
by telephone, this 15th day of November 2022.

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE