

AFFIDAVIT OF SPECIAL AGENT ANDREW KIRK

I, Andrew Kirk, being duly sworn, depose and state as follows:

INTRODUCTION

1. I am a Special Agent with the Federal Bureau of Investigation (“FBI”) and have been since July of 2019. I am currently assigned to a national security squad that focuses on counterintelligence and foreign influence operations. In my work with the FBI, I have received training and experience in interviewing and interrogation techniques; arrest procedures; search and seizure; money laundering investigations, including the illegal structuring of financial transactions; surveillance techniques; asset forfeiture; how criminals engage in financial transactions to promote, disguise or conceal illegal activities and the source of the proceeds derived from it; how criminals unlawfully engage in monetary transactions involving the proceeds of specified unlawful activity (practices commonly referred to collectively as “money laundering”); counterintelligence operations and espionage-related activities conducted by foreign countries in the United States; and conspiracies associated with criminal offenses.

2. Prior to my employment with the FBI, I was a Special Agent with the Air Force Office of Special Investigations from 2013. In that capacity, I conducted a variety of investigations regarding violent crimes, sexual assault, drug distribution, and from June 2016 on I specifically handled counterintelligence matters.

3. As a Special Agent, I am authorized to investigate violations of United States laws and to execute warrants issued under the authority of the United States.

4. I submit this affidavit in support of a criminal complaint charging XIAOLEI WU (“WU”) with violating 18 U.S.C. § 2261A (stalking), in connection with a series threats and

statements made by WU towards and about an individual who posted a flier supporting democracy and freedom in China.

5. This affidavit is based on statements made by WU and other people to me, to other law enforcement officers, and other witnesses; my review of records gathered during the investigation; information conveyed to me by other law enforcement agents involved in the investigation; and my own experience, training, and background as a Special Agent in both the FBI and the Air Force. This affidavit does not detail all of the facts known to me or other law enforcement agents regarding this matter, but instead relates only those facts that I believe are necessary to establish the requisite probable cause for issuance of the requested complaint and arrest warrant.

RELEVANT LEGAL AUTHORITY

6. Title 18, United States Code, Section 2261A(2) prohibits any person who, “with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that... (A) places a person in reasonable fear of the death of or serious bodily injury to a person... or (B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to” that person, an immediate family member, or a spouse or intimate partner of that person.

FACTS SUPPORTING PROBABLE CAUSE

WU's Background, Social Media, and Email

7. WU is a citizen of the People's Republic of China ("PRC"). In or around August 2021, he entered the United States on an F-1 visa to attend the Berklee College of Music in Boston, Massachusetts. In the fall of 2022, he was residing in an apartment building near the Berklee College of Music campus in Boston.

8. Based on my investigation, I know that WU was a user of WeChat under the screen name "AlDiMeowu." WeChat is the international version of the PRC-based electronic communication app Weixin that is downloaded to a user's mobile phone. WeChat currently has over one billion active users. Its uses include text messaging, voice messaging, and photo and video sharing. All WeChat communications are stored on servers in the Singapore and the Hong Kong Special Administrative Region. On WeChat, WU was a member of the WeChat group "Berklee Class of 2024."

9. WU has also been a user of Instagram, using the screen name "aldimeowu." Instagram is a social media platform headquartered in California. Instagram can be used to post photographs, stories, as well as to send messages between individual users. Based on my investigation and experience, I am aware that Instagram has no data centers located in Massachusetts, and therefore any email sent or received using WU's Instagram account would have been stored in data centers located outside of Massachusetts.

10. WU also has an email account through the Berklee College of Music (the "Berklee Email Account"). Berklee College of Music email accounts are hosted by Google,

which is headquartered in California. Based on my investigation and experience, I am aware that Google has no data centers located in Massachusetts, and therefore any email sent or received using the Berklee Email Account would have been stored in data centers located outside of Massachusetts.

Threatening and Harassing Communications

11. On or about October 22, 2022, Individual 1¹ posted a flier on a window at or near the Berklee College of Music in Boston, Massachusetts:



¹ This affidavit uses the terms “Individual 1” and “Individual 2” to protect the identities and safety of the individuals referenced.

Individual 1 also took a photograph of the flier, and posted it to Individual 1's Instagram account. Once posted to Individual 1's Instagram account, it could be viewed by WU, who was a follower of Individual 1's Instagram account. Individual 1 is a U.S. lawful permanent resident originally from the PRC, and has family members who still reside in the PRC.

12. On or about October 22, 2022, at approximately 10:48 pm, after Individual 1 had posted the photograph of the flier to Instagram, WU posted in Berklee Class of 2024 WeChat group. At the time, the group had over 300 members, including Individual 1. WU's posts were in Chinese. A translation² of WU's posts indicates that he said the following:

@[Individual 1] don't you fucking post reactionary posters
Fucking tear [tore] all of them you bastard
You go to post them at Tian'anmen Square
Post more, I will chop your bastard hand(s) off
...
Let barklee [sic] bite your hand(s) off
Not killed by pandemic but about to be killed by Public Security
[image of law enforcement personnel]

13. On October 23, 2022, at approximately 1:54 am, WU posted another message to the Berklee Class of 2024 WeChat group, in which he said the following:

I already called the tipoff line in the country, the public security agency will go greet your family.

Based on my training and experience, I believe that when WU said he had called the "tipoff line in the country," and referenced the "public security agency," he was referring to informing either the Ministry of Public Security (MPS) or the Ministry of State Security (MSS) in the PRC. MPS

² All of the quoted communications made by WU referenced herein were originally in Chinese. The quotations are translations which I have reviewed.

is a PRC government ministry responsible for public security/law enforcement, as well as counterintelligence and political security functions. MSS is a PRC government agency responsible for counterintelligence, foreign intelligence, and political security. Both agencies investigate political dissidents, including those who voice support for democracy. In addition, based on my investigation, I know that Berklee College interviewed WU about this message. WU admitted to sending the message, and said that the term “greet” was a reference to beginning an investigation into the political loyalty of Individual 1’s family. In other words, I believe WU was informing Individual 1 that he had reported Individual 1’s actions to either MPS or MSS, and that he believed either MPS or MSS agents would then visit Individual 1’s family in the PRC to begin an investigation into their political loyalty.

14. Furthermore, I know based on my training and experience and on my investigation that the Chinese Communist Party (CCP) dominates the PRC judicial system, with courts at all levels supervised by CCP political-legal committees that have influence over the appointment of judges, court operations, and verdicts and sentences. Prosecutions in the PRC also rely heavily on confessions, many of which are believed to be obtained through torture, and criminal trials are frequently closed to the public. According to human rights agencies such as Freedom House, detention conditions in the PRC are harsh, with reports of inadequate food, regular beatings, and deprivation of medical care. Torture and other forms of coercion are also widely employed by PRC authorities to force political dissidents to recant their beliefs, and the CCP has historically used its security apparatus to repress overseas voices critical of its power, including by detaining and harassing dissidents’ parents. As a result, a threat to report a person’s

anti-PRC activities (which would include voicing support for “democracy” and “freedom”) to MPS or MSS – or a statement that such a report had been made – would be reasonably expected to cause substantial emotional distress to that person. Furthermore, I know, based on my investigation, that WU admitted that he sent these messages with the intent to scare and cause fear to Individual 1.

15. Later, on or about the morning of October 23, 2022, WU made additional posts in the Berklee Class of 2024 WeChat group. WU’s posts indicate that he was attempting to locate Individual 1’s residence:

This asshole lived at Greenhouse N 8th or 9th floor don’t know if still there, those living at greenhouse can go greet this person

...

The school can also check this person’s record, anyone who has the authority to check or is willing to do so, we would greatly appreciate it.

...

Be able to check even after graduation

Let’s call a spade a spade, your family can spend money providing for your overseas studies, you f**king should be truly thankful.

WTF You have no freedom?

...

Based on my training and experience, and on my investigation, I believe that WU was attempting to learn Individual 1’s whereabouts, and was inviting those who knew of Individual 1’s whereabouts to “greet” Individual 1.

16. On or about October 24, 2022 at 2:39 a.m., WU then sent Individual 1 an email using his Berklee Email Account. WU also posted a screenshot of this email to his Instagram account, which enabled others to view it. A translation of WU’s email shows that he told Individual 1 he believed that Individual 1 would be arrested upon returning to the PRC; that he believed

Individual 1's family members would receive a "political review" from PRC government authorities; and that he had called the "tip-off" line in the PRC:

[Individual 1]

How come no posting today?

I heard you are going back to the country. I think you should just cancel your flight ticket. I am afraid the customs may seize you, put all your family members through political review...

You can continue to get hyped by yourself. You put my name on the poster, I have no problem, best if you find someone to stab me with a knife. I think you only dare to stir up trouble at school. In any case if you went to Chinatown, Quincy to post, you could be beaten to death by people of the chamber of commerce there, and by then no one would rescue you even if 911 was dialed. Those who follow you to kick up a fuss are all supporters of Hong Kong independence and Taiwan Independent, right? Then as a Chinese growing up in Mainland China, you are rather pathetic. No, I don't think you deserve to be a Chinese. You don't deserve to hold a red-cover passport. You should wash dishes for the capitalist dogs. Be careful that you get poked with a needle by a homeless person someday when you pass by south bay, then get eaten by someone.

... You can join Falun Gong, it seems place like that can make underclass people like you find a bit of sense of existence.

Oh right, you can also sue me for personal attacks against you, but I feel that with your family background, you will not be able to get rid of me. I already got screenshot(s) of your social account(s) number(s). I also read your records at school. I also called the tip-off line in the country. If you can overturn this, I consider you fucking awesome. Don't go back to the country, it is not appealing to you...

I hope your family is having a good time being greeted. Be "safe"

17. Based on my training and experience and on my investigation, I believe that when WU referred to putting "all your family members through political review" and said "I also

called the tip-off line in the country,” he was referring to his claim that he had reported Individual 1’s activities to either MPS or MSS, which would result in Individual 1’s family being investigated by either MPS or MSS. Furthermore, when WU said “I hope your family is having a good time being greeted,” I believe that WU was referring to the possibility that MPS or MSS agents would visit Individual 1’s family in China with the intent of pursuing an investigation into their loyalty to the PRC government.

18. On or about October 24, 2022, WU also posted Individual 1’s email address in the Berklee Class of 2024 WeChat Group and said “let’s all do it together.” I believe, based on my investigation, that WU was encouraging other individuals to harass Individual 1 online.

19. As part of my investigation, I know that Berklee College’s Office of Community Standards and Conflict Resolution interviewed WU about the series of incidents relating to Individual 1. During that interview, WU admitted to Berklee officials that he spoke to Individual 2, who worked at the Berklee College of Music’s information technology department. WU told the officials that he asked Individual 2 to provide him with information regarding Individual 1. WU stated he knew the information he was seeking from Individual 2 would be illegal for him to obtain.

20. WU also admitted sending the WeChat messages, the email, and to posting the email on Instagram. WU said that he sent the communications to Individual 1 because WU wanted to stop Individual 1 from posting pro-democracy posters; because he intended to frighten Individual 1; and because he hoped people would “abuse” Individual 1 online. He further stated that he had no sympathy for Individual 1, because he believed Individual 1’s constituted a

serious crime in the PRC, and Individual 1 does not deserve to be Chinese as Individual 1 betrayed their home country.

CONCLUSION

21. Based on the information described above, there is probable cause to believe that on or around October 22-24, 2022, WU, with the intent to injure, harass, or intimidate another person, used the mail, and an interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce, to engage in a course of conduct that placed that person in reasonable fear of the death of or serious bodily injury, or caused, attempted to cause, or would be reasonably expected to cause substantial emotional distress to that person, all in violation of 18 U.S.C. § 2261A(2)(B). Accordingly, I respectfully request that this Court issue a criminal complaint charging WU with a violation of these crimes and a warrant for his arrest.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Andrew Kirk

Andrew Kirk
FBI Special Agent

Signed electronically and sworn before me by telephone this 9 day of December, 2022.



Hon. M. Page Kelley
United States Magistrate Judge

