

**AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT
AND ARREST WARRANT**

I, [REDACTED] being first duly sworn, hereby depose and state as follows:

PURPOSE OF AFFIDAVIT

1. I make this affidavit in support of an application for arrest warrants for TONEY SHELDON BRAY (hereinafter “TONEY BRAY”) and ETHAN AARON BRAY (hereinafter “ETHAN BRAY”).

AGENT BACKGROUND

2. Your Affiant, [REDACTED], has been a special agent with the Federal Bureau of Investigation (“FBI”) since January 2021. I am currently assigned to the Seattle, Washington, FBI Field Office and specifically, to the Vancouver, Washington Resident Agency. I am currently on a temporary duty assignment to the Washington Field Office. I am an “investigative or law enforcement officer of the United States” within the meaning of Title 18, United States Code, Section 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations of, and to make arrests for, offenses enumerated in Title 18, United States Code, Section 2516.

3. Since joining the FBI, I have been trained in interview and interrogation techniques, investigative techniques, legal concepts, and evidence collection and preservation. In my duties as a special agent, I have been involved in investigations of international and domestic terrorism, to include the investigation of criminal activity in and around the Capitol grounds on January 6, 2021. 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.

4. The facts of this affidavit come from my review of the evidence, my personal observations, my training and experience, and information obtained from other law enforcement officers and witnesses. Except as explicitly set forth below, I have not distinguished in this affidavit between facts of which I have personal knowledge and facts of which I have hearsay knowledge. This affidavit merely intends to show that sufficient probable cause exists for the requested warrants and does not set forth all of my knowledge about this matter.

FACTUAL BACKGROUND

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

FACTS SUPPORTING PROBABLE CAUSE

10. ETHAN BRAY and TONEY BRAY were among the individuals arrested on the eve of January 6, 2021 for curfew violations. However, they were not charged for their conduct in and around the Capitol at that time. Body-worn camera (“BWC”) depicts the BRAYs at the time of their arrest:

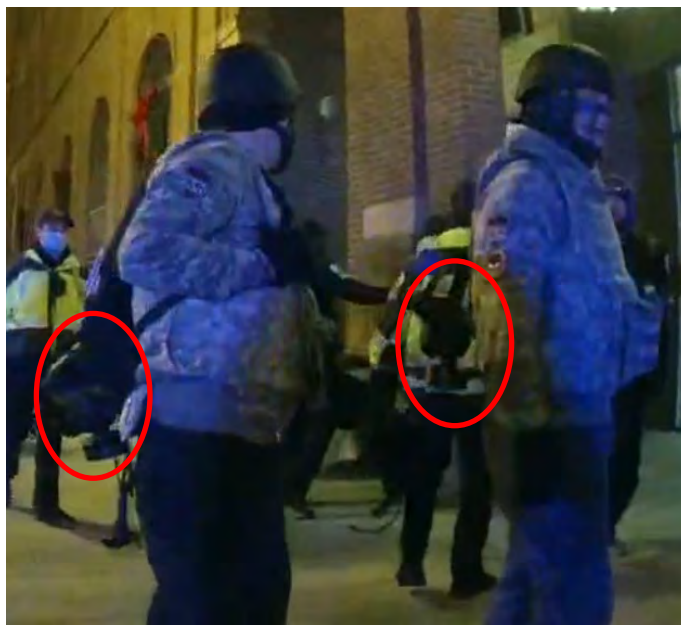


11. BWC footage shows that the BRAYs provided their names to MPD at the time of their arrest, i.e., Toney Bray and Ethan Aaron Bray. TONEY BRAY stated that his address is XXXXX County Road XXX, Blue Springs, Mississippi. ETHAN BRAY initially provided a Colorado driver’s license, but clarified that he had moved to Mississippi. ETHAN and TONEY BRAY reside at the same address in Mississippi. Additionally, TONEY BRAY provided his cellphone number: XXX-XXX-1008. ETHAN BRAY stated that he did not have a phone number, but his email is brayethanXX@gmail.com.

12. As a part of the investigation, TONEY and ETHAN BRAY’s Department of Motor Vehicle Records, specifically their driver’s license photographs, were located and compared with open source and BWC videos from January 6, 2021. They appear to be the same individuals.

Additionally, the address associated with TONEY BRAY's driver's license is the same address that was provided to MPD during processing. ETHAN BRAY has a Colorado driver's license, which is consistent with the information that he provided to MPD.

13. Although difficult to see in a screenshot due to the lighting and graininess of the screenshot, both ETHAN AND TONEY BRAY had gas masks hanging from their backs at the time of their arrest:



And ETHAN BRAY carried a black backpack with distinctive ribbon:



The following photos were taken of ETHAN and TONEY BRAY during processing:

Toney Bray



Ethan Bray



ETHAN BRAY was wearing the following attire at the time of his arrest on January 6th:



TONEY BRAY was wearing the below attire:

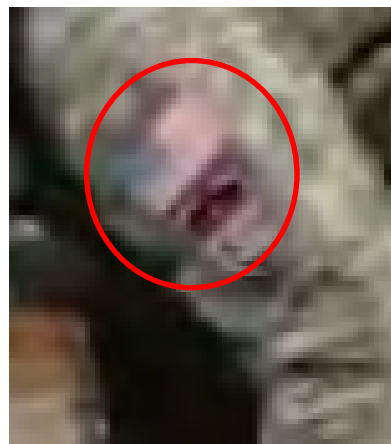
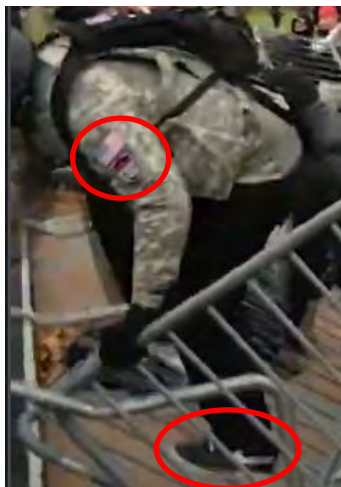


14. A subsequent review of open-source video and BWC footage from January 6th revealed that ETHAN and TONEY BRAY were part of the initial breach of police barricades at approximately 12:53 p.m. at Peace Circle, located at Pennsylvania Avenue NW and First Street NW. Specifically, ETHAN and TONY BRAY pushed and climbed over the police barriers:



Ethan Bray (circled in red)

Although the angle of the video does not capture ETHAN BRAY's face, the FBI identified him in the video based on his attire, the distinctive patch fixed to his left arm, black backpack, and white and black shoes. The distinct ribbon on his backpack was also captured.



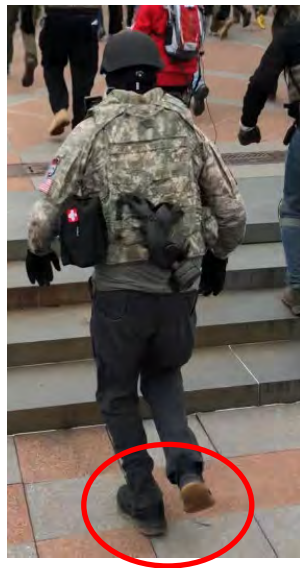
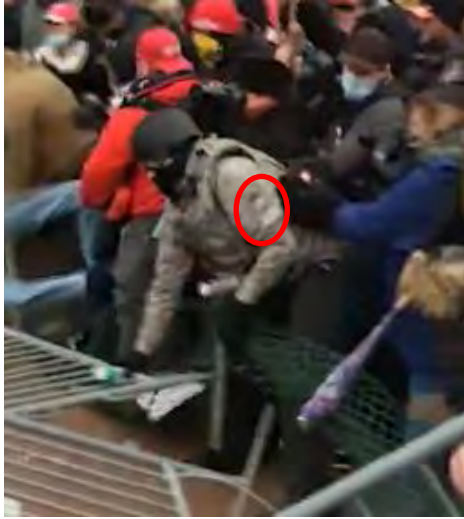


All of these features are consistent with ETHAN BRAY's appearance at the time of his arrest later that evening.

15. TONEY BRAY also pushed and climbed over police barriers. Similarly, his face is obscured due to the angle of the video, but was identified due to his distinctive attire, patches on his left arm, his shoes, which are consistent with his appearance at the time of his arrest later that evening:



Toney Bray (circled in red)



Notably, ETHAN and TONEY BRAY wore identical patches on their left arm: an American flag patch and “Armor of God” patch. ETHAN BRAY wore the American flag patch above the “Armor of God” patch on his left arm. TONEY BRAY wore the “Armor of God” patch above the American flag patch on his left arm. Although blurry in the close-up screenshots, it is apparent from the video of the BRAYs toppling the barricades, and from other open-source material, that

the patches are the “Armor of God” and American flag video are the same patches the BRAYs were wearing at the time of their arrest.

Another open-source video shows a different angle of the BRAYs toppling the police barrier at Peace Circle:



16. As the BRAYs and other rioters approached the first set of barricades, “AREA CLOSED” signs were affixed to the barriers:

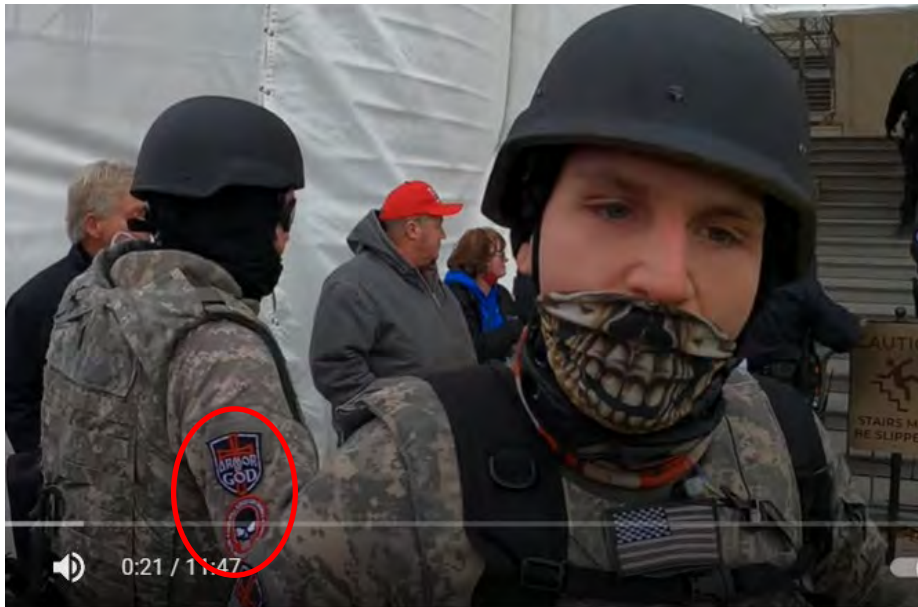


17. From Peace Circle, the BRAYs continued towards the Capitol.

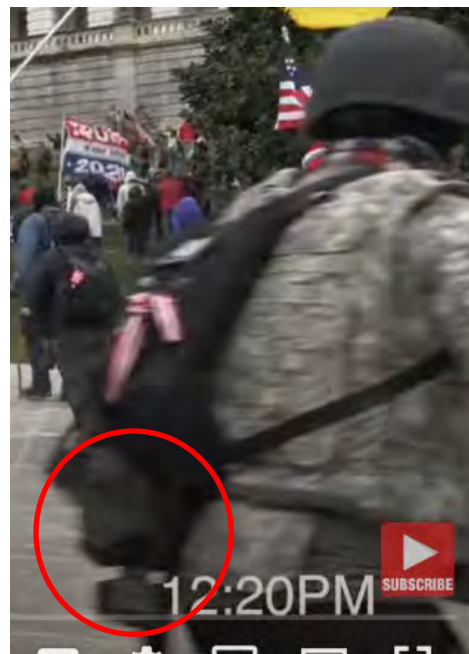


18. Open-source material taken on the west side of Capitol grounds reveal that ETHAN and TONEY BRAY had patches on their right arms that are consistent with the patches they were wearing when they were arrested later that evening:





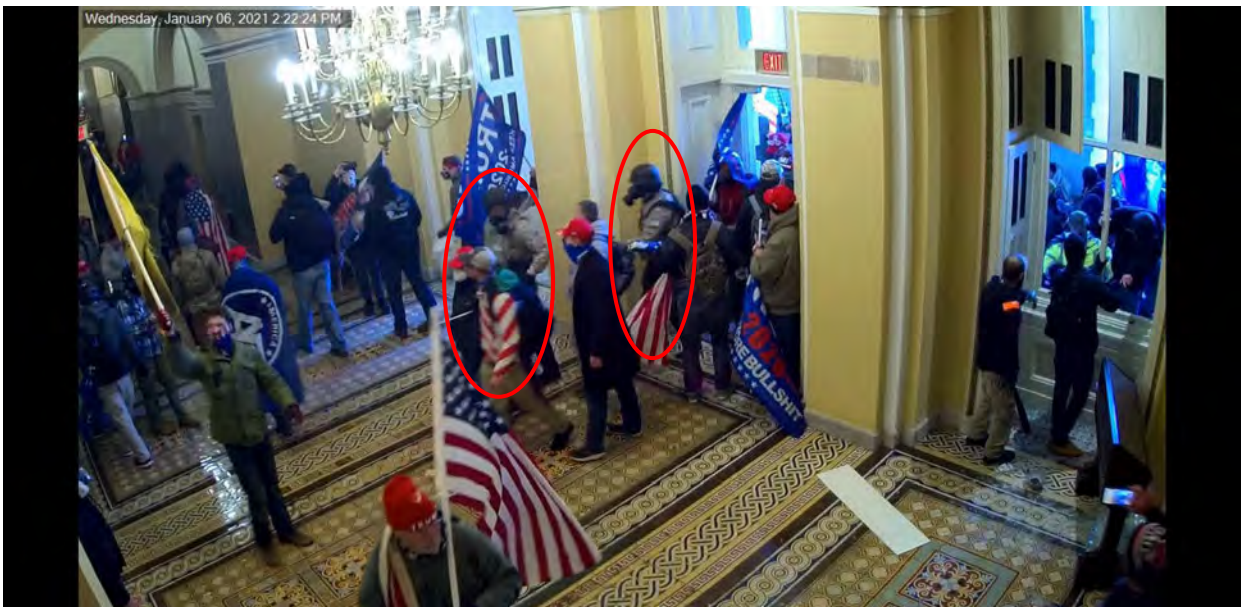
And that, prior to donning their gas masks, they were hanging from their backs. The gas masks appear consistent with appearance of the gas masks that the BRAYs possessed at the time of their arrest:



19. The BRAYS were among the first to confront law enforcement on the staircase under scaffolding leading from the West Plaza to the Lower West Terrace:



20. The BRAYs entered the U.S. Capitol Building at approximately 2:22 p.m. EST through the Northwest Senate Door and moved toward the Crypt as captured on Capitol CCTV footage.





At the time they entered the Capitol, the BRAYs were wearing gas masks. From their appearance, the self-proclaimed Sedition Hunters gave them the nickname “gasmasktwins.”

21. The BRAYs were captured on CCTV in the Crypt at approximately 2:24 p.m.

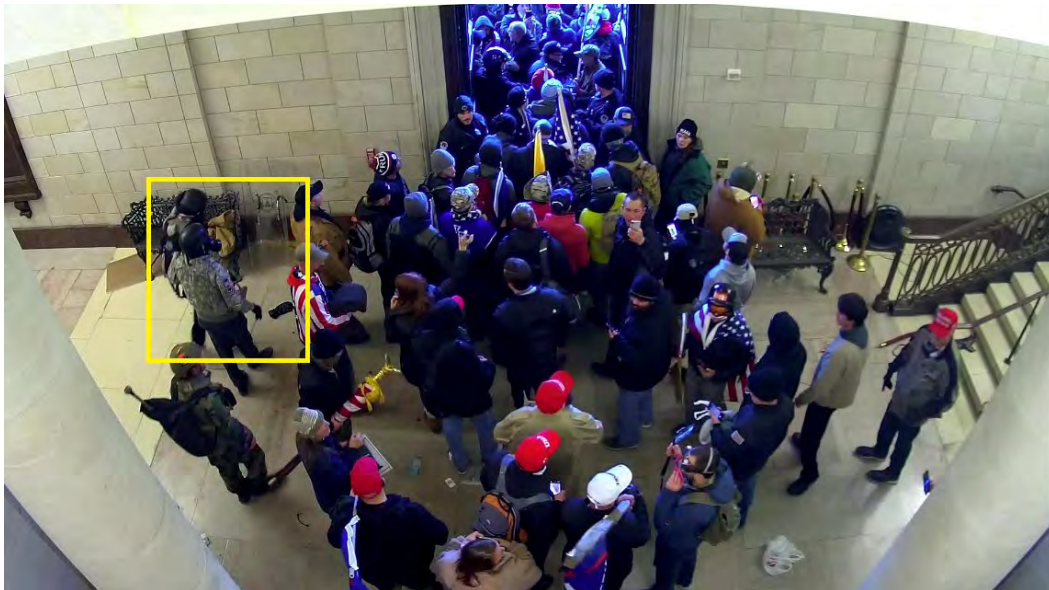


22. After exiting the Crypt, the BRAYs moved together to the Rotunda where they were again captured in an open-source photo and Capitol CCTV at approximately 2:36 p.m.:



Again, the patches on TONEY BRAY's right arm match the patches that he was wearing during his arrest later that evening.

23. After moving between the hallway and the Rotunda for some time, the BRAYs ultimately exited through the Rotunda doors leading to the East Front of the Capitol at approximately 2:54 p.m. In total, the Brays were inside the Capitol from approximately 2:22 p.m. until 2:54 p.m., for a total of 32 minutes.



24. After leaving the Rotunda, open-source and Capitol CCTV footage captured TONEY BRAY carrying a U.S. Capitol Police riot shield. TONEY BRAY still had the shield after exiting the Capitol building:



25. After the BRAYs were identified as individuals involved in the Capitol Riot, the FBI ran the phone number associated with TONEY BRAY against the geofencing data obtained from the U.S. Capitol on January 6th. That phone number was not present in the geofencing data.

CONCLUSION

26. Based on the foregoing, your Affiant submits there is probable cause to believe that TONEY BRAY violated:

- a. 18 U.S.C. § 231(a)(3) (Obstruction of Law Enforcement During Civil Disorder), which makes it unlawful to commit or attempt to commit any act to obstruct, impede, or interfere with any law enforcement officer lawfully engaged in the lawful performance of his/her 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 18

U.S.C. § 231, 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.

- b. 18 U.S.C. § 641 (Theft of Government Property), which makes it a crime for a person to embezzle, steal, purloin, or knowingly convert to his use or the use of another, or without authority, sell, convey or dispose of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or receive, conceal, or retain the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted.
- c. 18 U.S.C. § 1752(a)(1) (Knowingly Entering or Remaining in any Restricted Building or Grounds without Lawful Authority) and (2) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds without Lawful Authority), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority; and (2) knowingly, and with the 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 did, in fact, impede or disrupt the orderly conduct of Government business or official functions. For purposes of 18 U.S.C. § 1752, 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.

- d. 40 U.S.C. § 5104(e)(2)(D) (Disorderly Conduct in a Capitol Building) and (G) (Parading, Demonstrating, or Picketing in a Capitol Building), 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.


27. Your Affiant submits there is probable cause to believe that ETHAN BRAY violated:

- a. 18 U.S.C. § 231(a)(3) (Obstruction of Law Enforcement During Civil Disorder), which makes it unlawful to commit or attempt to commit any act to obstruct, impede, or interfere with any law enforcement officer lawfully engaged in the lawful performance of his/her 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 18 U.S.C. § 231, 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.

- b. 18 U.S.C. § 1752(a)(1) (Knowingly Entering or Remaining in any Restricted Building or Grounds without Lawful Authority) and (2) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds without Lawful Authority), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority; and (2) knowingly, and with the 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 did, in fact, impede or disrupt the orderly conduct of Government business or official functions. For purposes of 18 U.S.C. § 1752, 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.
- c. 40 U.S.C. § 5104(e)(2)(D) (Disorderly Conduct in a Capitol Building) and (G) (Parading, Demonstrating, or Picketing in a Capitol Building), 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.


Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 10th day of January 2023.

HONORABLE G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE