

UNITED STATES DISTRICT COURT

for the

District of Columbia

United States of America
v.Sean Michael McHugh
DOB: XXXXXX

Case: 1:21-mj-00436

Assigned to: Judge Harvey, G. Michael

Assign Date: 5/19/2021

Description: COMPLAINT W/ ARREST WARRANT

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 6, 2021 in the county of _____ in the
_____ in the District of Columbia, the defendant(s) violated:*Code Section**Offense Description*

18 U.S.C. § 1752(a)(1) - Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority,
 18 U.S.C. § 1752(a)(2) - Disorderly and Disruptive Conduct in a Restricted Building or Grounds,
 18 U.S.C. § 1752(a)(4) - Engaging in Physical Violence in a Restricted Building or Grounds,
 40 U.S.C. § 5104(e)(2)(D) - Disorderly Conduct on Capitol Grounds,
 40 U.S.C. § 5104(e)(2)(F) - Physical Violence on Capitol Grounds,
 18 U.S.C. § 231(a)(3) - Obstruction of Law Enforcement During Civil Disorder,
 18 U.S.C. § 111(a)(1) and (b) - Assault Law Enforcement Officer with a Deadly or Dangerous Weapon,
 18 U.S.C. § 1512(c)(2) - Obstruction of Justice/Congress.

This criminal complaint is based on these facts:

See attached statement of facts.

☒ Continued on the attached sheet.

Complainant's signature

Ashley Walker, Special Agent

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
by telephone.Date: 05/24/2021

Judge's signatureCity and state: Washington, D.C.

G. Michael Harvey, U.S. Magistrate Judge

Printed name and title

STATEMENT OF FACTS

1. Your affiant, Ashley Walker, is a Special Agent with the Federal Bureau of Investigation ("FBI") since January 10, 2016 and am currently assigned to the Washington D.C. Field Office. As a Special Agent I have investigated homicides, assaults, narcotics and firearm trafficking, gang related violations, bank robberies, fugitive cases, and other crimes of violence committed with deadly weapons. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Special Agent with the FBI, 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.

Incursion at the U.S. Capitol on January 6, 2021

2. 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.

3. 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.

4. 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.

5. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public by a clearly marked perimeter fence line. This fence line was intended to keep the public away from the Capitol building and the Congressional proceedings underway inside and was manned by uniformed U.S. Capitol Police Officers and was constructed of metal bike rack barriers, physically linked end to end, and reinforced with dark colored plastic mesh safety fencing affixed behind the metal bike racks. The fence line was clearly marked with large white "AREA CLOSED" signs affixed to the fencing with bold red lettering.



6. 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, shortly 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.

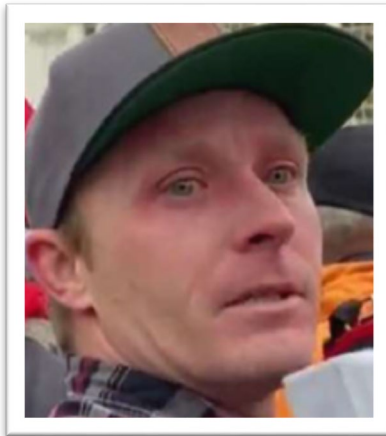
7. Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress 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.

8. 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 Specific to Sean Michael McHugh

9. Several videos from various sources taken on January 6, 2021 at the United States Capitol depict an individual identified as SEAN MICHAEL MCHUGH: 1) encouraging others to engage in disruptive and disorderly conduct, 2) assaulting U.S. Capitol Police Officers by pushing a large sign into a line of uniformed Police Officers, and 3) spraying an unknown chemical into a line of uniformed Police Officers. All these crimes occurred in the general area of the West Terrace of the U.S. Capitol Building.

10. The FBI utilized investigative resources that developed a known photograph of the subject, Sean Michael McHugh, that resulted in trained personnel determining a likely match with the subject's BOLO (all points bulletin, also known as "Be On the Look-Out") image. The FBI compared Sean Michael McHugh's image to the image of the individual captured in the riot footage, including the images displayed below. The FBI believed it was likely a positive match and conducted additional investigative steps to corroborate McHugh's identity and his involvement in the Capitol Riots.

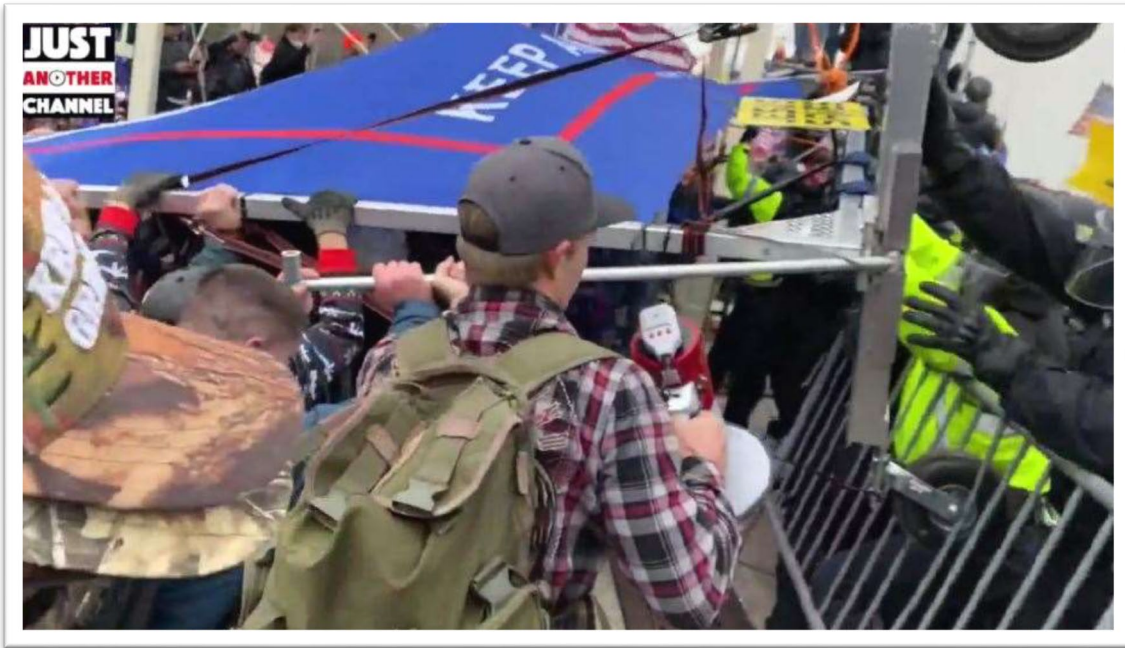


11. Your affiant reviewed a California driver's license photo issued to McHugh and compared it to the images and video of the individual rioting at the U.S. Capitol. By comparing this photograph to the video and images from the U.S. Capitol, your affiant believes that the image is consistent with Sean Michael McHugh.

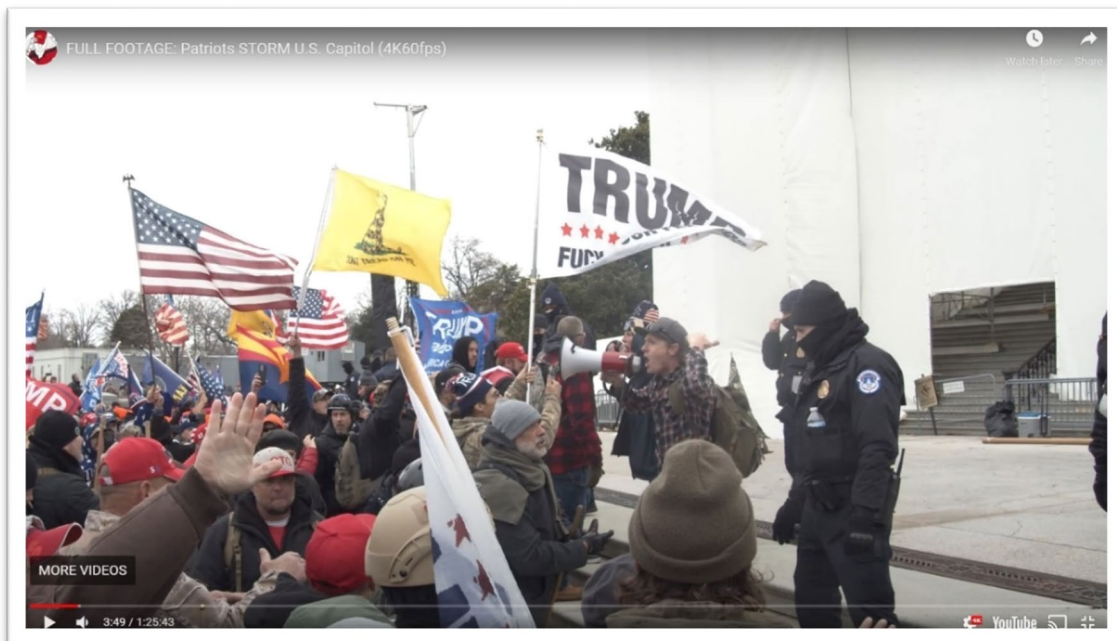
12. Body worn camera obtained from the Metropolitan Police Department shows McHugh interacting near a police barricade at approximately 1:30 pm with a megaphone. The audio captures McHugh yelling at Officers, among other things, the following [non-verbatim transcript]: "You guys like protecting pedophiles?"; "You're protecting communists!"; "I'd be shaking in your little shit boots too"; "There is a second amendment behind us, what are you going to do then?"; "You ain't holding the line!"



13. At approximately 1:40pm, as officers continue to fend off repeated attempts by rioters to breach the police line and assault the officers, the rioters moved a large metal sign. McHugh is seen pushing the sign into the officers and yelling into his megaphone [non-verbatim transcript]: “Put it up there! Put it up there!”



14. Several videos feature McHugh encouraging the crowd with his megaphone to intimidate officers and approach the police line. For example, in the photo immediately below, McHugh gestured to the crowd to advance on the police and yelled [non-verbatim transcript], “Come on! Let’s go!”

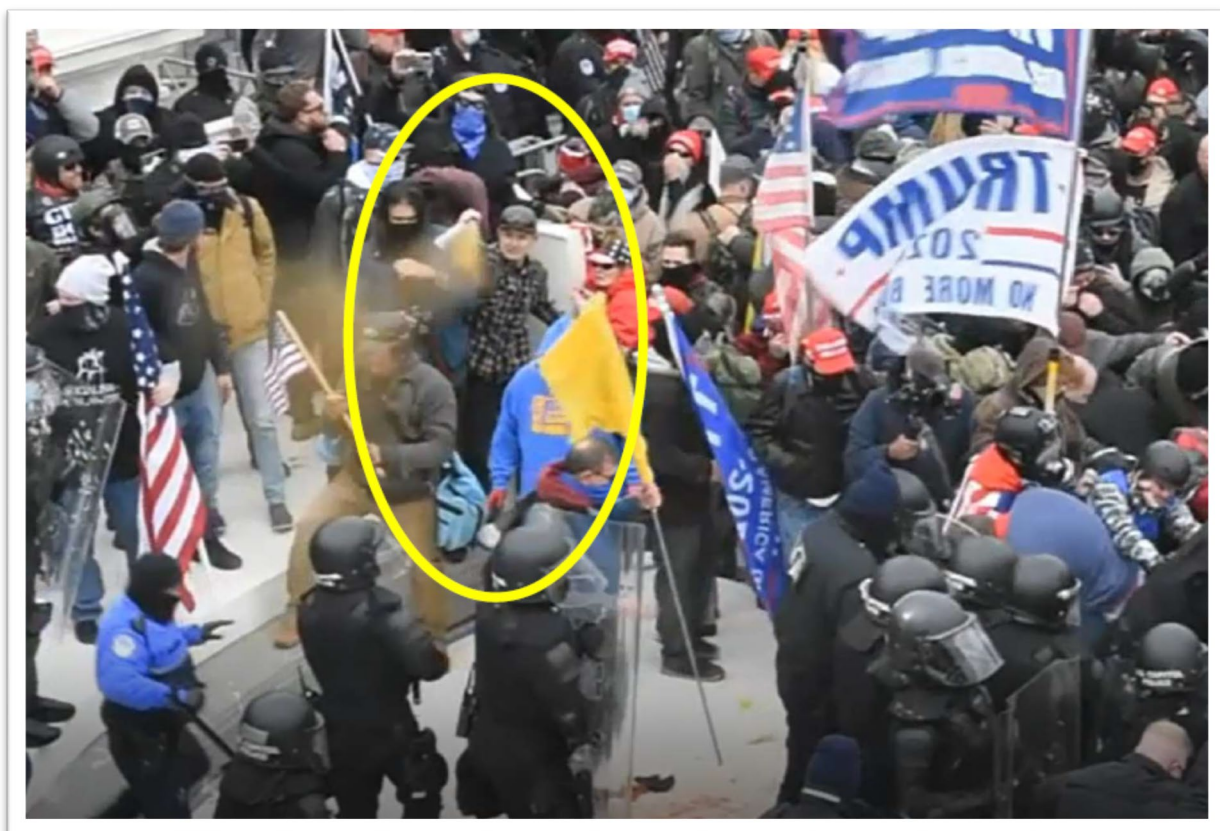




15. Another publicly available video shows McHugh scuffling with an officer in an attempt to defeat a barricade.



16. Still in the general area of the West Terrace of the U.S. Capitol Building, video captures McHugh shooting officers with a yellow spray. Other footage captures the spray bottle, which McHugh holstered at his right hip.





17. Your affiant received records from Expedia that revealed McHugh purchased travel on Delta Airlines from Sacramento International Airport (SMF) to Ronald Reagan Washington National Airport (DCA), with a layover in Los Angeles (LAX) on January 5, 2021. McHugh made travel arrangements through Expedia on United Airlines to return to SMF from DCA, with a layover in Denver, on January 7, 2021. The address in Auburn, CA 95603 and phone number ending with 6795 were listed on McHugh's Expedia reservation. Two other individuals were included on McHugh's Expedia travel reservation—another male, and one female. By reviewing her driver's license, the female traveler's identity appears to be consistent with Female 1 as outlined below.

18. Financial records from Bank of America corroborate that McHugh used his Bank of America account to complete financial transactions with Delta and United airlines, with a baggage fee charged by Delta Airlines on January 5, 2021 in Sacramento. The address in Auburn, CA 95603 and phone number ending in 6795 were identified on Sean McHugh's Bank of America customer account, as well as his date of birth of xx/xx/1986.

19. Your affiant has reviewed the open source video "JUST ANOTHER CHANNEL" (found at <https://www.youtube.com/watch?v=0zyjCvDN4Ig>) where at approximately 0:07:30, a female voice is audible from off-camera and heard saying [non-verbatim transcript] "Sean, tell them to get over here." An individual, who I recognize as Sean McHugh, appears to react to the name Sean and responds by using a bullhorn to announce [non-verbatim transcript] "Come on you guys, come on you guys. Bring it in..." while using his hand to gesture to the crowd.

20. About a minute prior to this interaction, the camera pans in a circle and a female, hereafter referred to as Female 1, with a distinctive "USA" ball cap, red face mask, sunglasses and a red jacket, is observed in close proximity to McHugh. A still frame of Female 1 is below.

21. At various points in video captured on January 6, 2021, McHugh and Female 1 appear to interact with each other, such as the still frame below where Female 1 pulls McHugh by his backpack to engage in a conversation.



22. Hotel invoice records from Yotel Washington DC show that Sean McHugh lodged at Yotel with a check in date of January 5, 2021 and a check out date of January 7, 2021. Yotel is located at 415 New Jersey Ave NW, Washington, DC, approximately three blocks from the United States Capitol building. Records from Yotel indicate that three adults occupied the room reserved by Sean McHugh.

23. Your affiant obtained surveillance video footage from Yotel which revealed that between approximately 12:30pm and 12:50pm on January 6, 2021, Female 1, wearing the same distinctive clothing, was observed walking in and out of the elevators inside Yotel.



24. As indicated above, your affiant compared these images of Female 1 with the driver's license of the female who traveled under McHugh's Expedia reservation. The female traveler's identity appears to be consistent with Female 1; however, she is wearing a hat and face mask in all the known photographs and video captured on January 6th. Thus, definitively establishing identity for Female 1 is an ongoing effort, but the gender, hair color, skin color, approximate age and approximate weight are all consistent.

25. An NCIC records check reveals that McHugh is currently on probation and was on probation on January 6, 2021. McHugh was arrested on July 20, 2018 for Driving Under the Influence and Driving with a Suspended License in Placer County, California. McHugh was subsequently convicted and sentenced to five years probation and 180 days in jail.

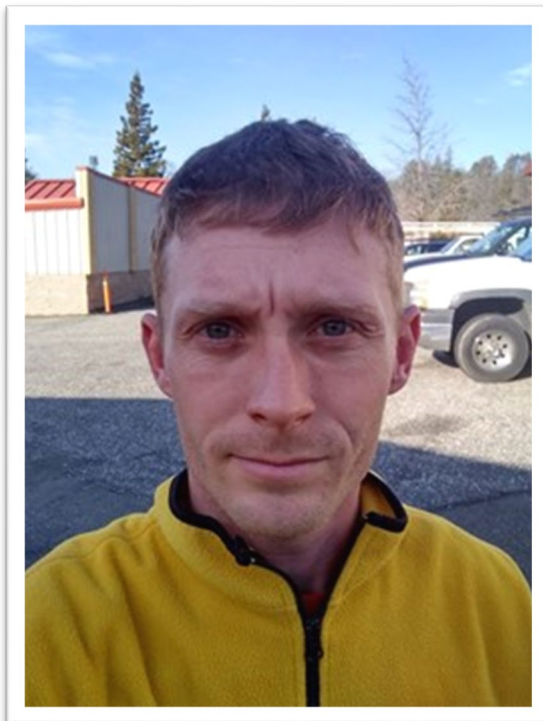
26. Placer County Probation Deputy Virginia Daniel, who supervised McHugh's probation was interviewed in person by the FBI on April 6, 2021. McHugh has been on Deputy Daniel's case load since September 2020. She has spoken with him on the phone but had yet to meet him in person. Deputy Daniel was shown the three pictures below and asked whether she could identify this individual.



27. Deputy Daniel could not positively identify the individual in the photos. She stated the photographed individual looked familiar but was not sure from where. Deputy Daniel later communicated with the FBI via email stating that after reviewing parolees' monthly check-in reports an individual on her case load may resemble the individual in the photographs she was previously shown. Deputy Daniel provided photographs of the individual she referenced, and it was not McHugh. The FBI emailed Deputy Daniel the photographs of McHugh that she was shown earlier, for reference, as she was going from memory. With the photographs at her disposal, she believed the two individuals were not the same person.

28. On April 7, 2021, Deputy Daniel contacted the FBI by phone and stated that after further review of the photographs shown to her the day prior, and after receiving the photographs via email, the individual resembled Sean Michael McHugh. She has spoken with him on the phone but had yet to meet him in person.

29. McHugh checked in with Deputy Daniel in October 2020 using a smartphone, and sent Deputy Daniel the following photograph:



30. Your affiant compared this photograph of McHugh to photographs captured on January 6th and noted unique characteristics including a distinctive nose and lips. Your affiant believes these images are both consistent with Sean Michael McHugh.



31. FBI Special Agents have conducted surveillance on the address 211 Racetrack Street, Auburn, CA, the address McHugh reported to the Department of Motor Vehicles as his address on record. McHugh consistently reports 211 Racetrack Street, Auburn, CA as his address of record and is associated with his Bank of America account and recent Expedia transactions.

According to California Secretary of State records, McHugh owns McHugh Construction and Electrical, which reported a business address of 211 Racetrack Street, Apt B, Auburn, CA. It should be noted that McHugh has used Unit A and Unit B interchangeably for 211 Racetrack Street, Auburn, CA.

32. On April 5, 2021, FBI Agents have observed Sean McHugh exit and enter the residence at 211 Racetrack Street. FBI agents who conducted the surveillance of McHugh compared the individual they observed with images of the individual rioting at the U.S. Capitol. These agents have confirmed that they believe that it is the same person—Sean Michael McHugh.

33. On April 15, 2021, the FBI showed the same images of Sean McHugh, from paragraph 16, to five Auburn Police Department employees and one former employee who now works with Placer County Sheriff's Office, none of whom could positively identify Sean McHugh. Later, the images were shown to two other retired Auburn Police Department employees, neither of which could positively identify Sean McHugh.

34. Some of these officers had never interacted with McHugh, while others had multiple contacts with McHugh—as many as 20 interactions, the most recent recorded interaction being from a 2017 DUI arrest. Their law enforcement experience was likewise varied, with some on the job a few years, others with over two decades of experience. These officers reported that they have hundreds of yearly contacts with various citizens, sometimes thousands

35. As of April 29, 2021, the FBI has received approximately ten tips regarding the identity of an image the FBI labeled as BOLO AFO-59 (later determined to be Sean Michael McHugh) in a national press release by law enforcement on February 1, 2021.

36. Once law enforcement has determined the identity of the individual reported within a publicly provided tip, analysts and law enforcement investigators query among other things, state driver's license information, criminal history convictions, publicly available social media profiles and in many cases a law enforcement officer will often directly contact the tipster for further information. A named individual is determined no longer to be the subject of a further law enforcement assessment once their identity is compared to the known physical characteristics of the assailant, and/or database queries do not correspond with known evidence of the BOLO subject.

37. Your affiant has reviewed the known leads related to AFO-59 generated from these tips. Nine of the ten tips suggested AFO-59 could be various individuals other than McHugh. After reviewing the tips mentioned above, the FBI concluded nine of the ten tips reported individuals or information that were not consistent with the actual identity of AFO-59 (McHugh) based on additional investigative efforts outlined above.

38. One of these ten tips alerted the FBI to a video of the rioting on January 6, 2021 in front of the Capitol where the aforementioned Female 1 called AFO-59 "Sean."

39. The FBI is receiving tips from throughout the country on a daily basis about individuals who may have participated in the events at the Capitol on January 6, 2021. Your affiant is not aware of any other information provided to the FBI about AFO-59 at this time.

Statement of Probable Cause

40. Based on the foregoing, your affiant submits that there is probable cause to believe that Sean Michael McHugh violated 18 U.S.C. § 1752(a)(1), (2) and (4), and (b)(1)(A), 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; (4) knowingly engage in any act of physical violence against any person or property in any restricted building or grounds; 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, while carrying or using a deadly or dangerous weapon or firearm, in this case chemical spray.

41. Your affiant submits there is also probable cause to believe that SEAN MICHAEL MCHUGH violated 40 U.S.C. § 5104(e)(2)(D) and (F), 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 (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings.

42. Your affiant submits there is probable cause to believe that SEAN MICHAEL MCHUGH 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.

43. Your affiant submits there is probable cause to believe that SEAN MICHAEL MCHUGH violated 18 U.S.C. § 111(a)(1), and (b) which makes it a crime to use a deadly or dangerous weapon, in this case chemical spray, to forcibly assault, resist, oppose, impede or interfere with any person engaged in the performance of official duties.

44. Finally, your affiant submits there is probable cause to believe that SEAN MICHAEL MCHUGH violated 18 U.S.C. § 1512(c)(2), which makes it a crime to obstruct, influence, or impede any official proceeding, or attempt to do so. Under 18 U.S.C. § 1515, congressional proceedings are official proceedings.

A handwritten signature in black ink, appearing to read 'AW', is written over a horizontal line.

ASHLEY WALKER
Special Agent, FBI

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
by telephone, this 24th day of May 2021.

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE