

Case: 1:23-mj-00118
Assigned To : Upadhyaya, Moxila A.
Assign. Date : 6/6/2023
Description: Complaint W/ Arrest Warrant

STATEMENT OF FACTS

Your affiant, [REDACTED], is a Special Agent assigned to the Federal Bureau of Investigation (FBI) and is assigned to the Joint Terrorism Task Force in the New York Office, Long Island Resident Agency. Currently, I am tasked with investigating 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, detection, investigation, or prosecution of a violation of Federal criminal laws.

I. CHARGES

Based on the evidence contained in and referenced by this document, I believe that there is probable cause that Peter G. Moloney violated the following federal statutes:

- **18 U.S.C. § 231(a)(3)—Civil Disorder**
- **18 U.S.C. § 111(a)(1)—Assaulting, Resisting, or Impeding Certain Officers**
- **18 U.S.C. § 113(a)(4)—Assault by Striking**
- **18 U.S.C. § 1752(a)(1)—Entering and Remaining in a Restricted Building or Grounds**
- **18 U.S.C. § 1752(a)(2)—Disorderly and Disruptive Conduct in a Restricted Building or on Restricted 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 and Disruptive Conduct in Capitol Building or Grounds**
- **40 U.S.C. § 5104(e)(2)(F)—Act of Physical Violence in Capitol Building or Grounds**

II. THE UNITED STATES CAPITOL—JANUARY 6, 2021

The United States Capitol is secured twenty-four hours a day by the United States Capitol Police. Restrictions around the Capitol include permanent security barriers, temporary security barriers, and posts manned by USCP officers. Only authorized people with appropriate identification are allowed access to the Capitol and its restricted grounds. On January 6, 2021, the Capitol's exterior plaza and portions of the Capitol grounds were closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the 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 met in separate chambers of the Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which took place on Tuesday, 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 Michael Richard 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 Pence present and presiding over the Senate, a large crowd gathered outside the Capitol. As noted above, permanent barricades and temporary barricades were in place around the exterior of the Capitol and its grounds. USCP officers were also present and attempting to keep the advancing crowd

away from the Capitol, its grounds, and the official proceedings underway inside. While the certification proceedings were underway, the exterior doors and windows of the Capitol were locked or otherwise secured.

As time went on, the number of protestors around the Capitol and its grounds increased. Members of the Capitol Police attempted to maintain order and keep the crowd from entering the Capitol. Despite their efforts, the crowd advanced past barriers and onto restricted Capitol grounds. Individuals pushed their way up to the NW Plaza of the Capitol by assaulting USCP officers and by destroying government property. Around 2:13 p.m., individuals from the crowd forced their way into the Capitol by breaking windows and smashing open doors. Others in the crowd encouraged and assisted those acts.

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

During national news coverage of these events, video footage—much of which appeared to be captured on mobile devices of persons present on the scene—depicted evidence of violations of local and federal law. This included individuals assaulting police officers and scores of individuals inside the Capitol without permission or authority.

III. PETER G. MOLONEY

The defendant Peter G. Moloney is a 58-year-old White male from Bayport, New York. Peter is a co-owner of a small business in New York, according to that business's webpage. Although he is the only person being charged at this time, this affidavit will reference Colleague 1, an individual whose identity is known to the FBI and who is seen both in work photos with Peter G. Moloney on the same website and in various open-source intelligence (OSINT) and other media from the Capitol and its restricted grounds on January 6, 2021.

What follows is a progression of photographs and screenshots that spans several pages. This is necessary because by the time Peter G. Moloney assaults several police officers and a member of the news media, he has altered his appearance significantly. The photos and screenshots are necessary in order to connect the individual depicted in each photo back to the individual identified as Peter G. Moloney.

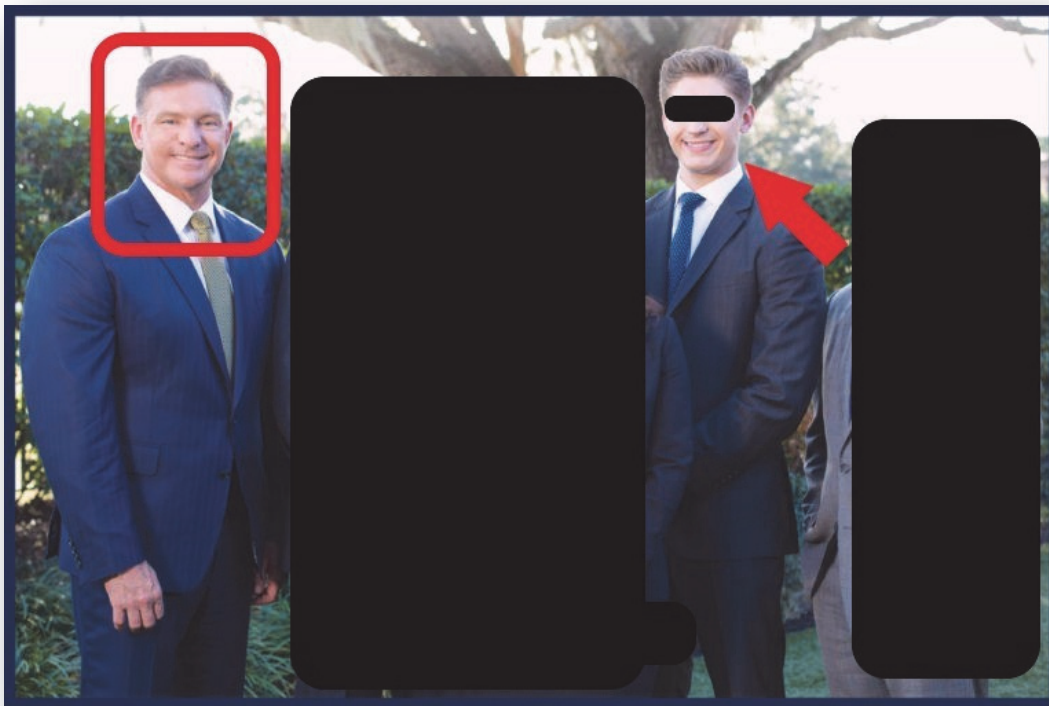


Image 1: Peter G. Moloney (circled in red) is seen in a publicly available photograph for his business. Colleague 1, who was near Peter G. Moloney on restricted Capitol grounds at several times on January 6, 2021, is indicated by a red arrow.



Images 2a-2d: (l to r) A series of four screenshots including one screenshot from a publicly available interview with Colleague 1 promoting their business, in which Colleague 1 identified himself by name (circa May 2021) (2a); and three cropped screenshots of Colleague 1 on January 6, 2021 (2b, 2c, and 2d).



Image 3a-3f: (l to r) Two screenshots from a publicly available commercial associated with Moloney’s business (3a and 3e); four screenshots from various publicly available videos showing Peter G. Moloney on January 6, 2021 (3b, 3c, 3d, and 3f).

As shown by the progression of video and photographs below. Moloney did not simply march to the Capitol with other protestors. He brought protective eyewear, a helmet, and a can of Black Flag® Wasp, Hornet & Yellow Jacket Killer¹. This indicates that he went to the Capitol on January 6, 2021, prepared for violence.

In an OSINT video, Peter G. Moloney can be seen with Colleague 1 at a location away from Capitol grounds wearing only his protective eyewear and a beanie with a thin blue line American flag.² Neither he nor Colleague 1 have helmets on at this time.



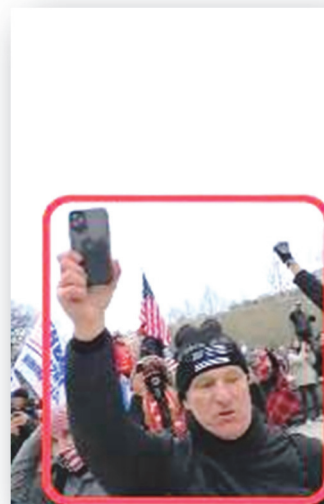
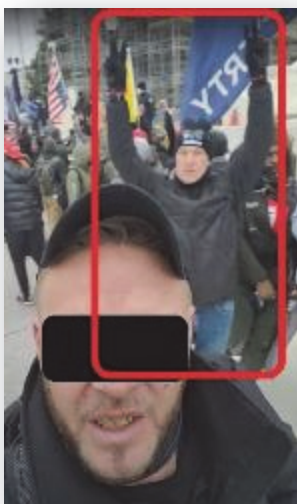
¹ <https://www.blackflag.com/products/outdoor-products/wasp-hornet-yellow-jacket-killer.aspx>; see also Image 25 (below).

² According to Thin Blue Line USA (<https://www.thinbluelineusa.com/blogs/thin-blue-line-blog/what-is-the-thin-blue-line>), “the black space above the blue line represents society, order and peace, while the black below, crime, anarchy, and chaos. The Thin Blue Line running between them, ‘law enforcement,’ keeps crime from pervading into society.”



Images 5 and 6: (top to bottom) Two screenshots from an OSINT video showing protestors making their way to the Capitol. Peter G. Moloney is indicated by a red rounded square. Colleague 1 is seen to Moloney's right and is wearing a grey beanie.

After arriving on Capitol grounds Moloney can be seen in the background of another rioter's publicly available video. At this point, Peter G. Moloney's helmet is clearly visible and appears to be attached to the black backpack that he wears throughout the day.



Images 7, 8, 9: (l to r) Three screenshots from a publicly available video³ showing Peter G. Moloney amongst the protestors on the restricted grounds of the Capitol, specifically the West Plaza. In the first screenshot, Peter G. Moloney is making a double peace-sign gesture. The second screenshot shows the helmet and protective eyewear (indicated by red arrows) that Peter G. Moloney will put on before assaulting police officers. The third screenshot shows Peter G. Moloney with a cellphone appearing to record a video.

³ <https://youtu.be/r1owIQzOYU0>

At a certain point, Peter G. Moloney put on what appears to be a bicycle helmet and protective eyewear. Colleague 1, who at that time was not wearing a helmet, has a close encounter with violent protestors ripping a bicycle rack style temporary barricade away from police officers.



Image 10: A publicly available photograph showing Peter G. Moloney (left) and Colleague 1 (right) on the restricted grounds of the Capitol. Colleague 1 appears to be speaking on a cellphone.



Image 11: A screenshot from a publicly available video⁴ showing Colleague 1 (left) and Peter G. Moloney (right) on the West Plaza of the Capitol. Neither of the two is yet wearing a helmet.

⁴ <https://youtu.be/DHessyWYXqM>



Image 12: A screenshot from a publicly available video⁵ showing Colleague 1 in close proximity to a group of rioters who are pulling a temporary barricade away from police officers. It is unclear if Colleague 1 is assisting the efforts of the protestors.

Soon after Colleague 1's close encounter with violence against police, OSINT video⁶ shows Colleague 1 and Peter G. Moloney near the police line, both in helmets with protective eyewear.



Image 13: A screenshot from a publicly available video showing Colleague 1 (left) and Peter G. Moloney (right) on the West Plaza of the Capitol near the police line.

⁵ <https://www.dropbox.com/s/jkodx5fml5fhltw/walking%20to%20the%20capitol.mp4?dl=0>

⁶ <https://web.archive.org/web/submit?url=https://video.parler.com/Fa/5a/Fa5akrU6JgKT.mp4>



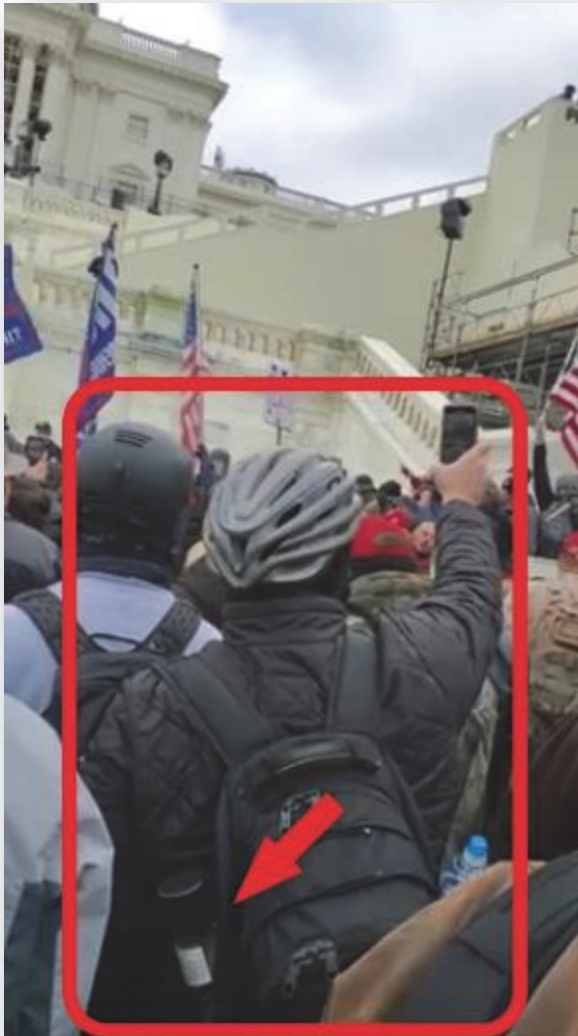
Image 14: A screenshot from a publicly available video⁷ showing Colleague 1 (left) and Peter G. Moloney (right) on the West Plaza of the Capitol near the police line. Both are wearing helmets but it appears that Peter G. Moloney is not wearing his black and red gloves.

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⁷ <https://youtu.be/MoBTO6NKuLY>

IV. ASSAULT OF POLICE OFFICERS

At a certain point, Peter G. Moloney attacked police officers. Videos show Peter G. Moloney carrying a can of what appears to be Black Flag® Wasp, Hornet & Yellow Jacket Killer² aerosol spray and using it several times against police officers.



Images 15 and 16: (l to r) A screenshot from a publicly available video showing what appears to be a can of Black Flag® Wasp, Hornet & Yellow Jacket Killer² aerosol spray in Peter G. Moloney's backpack; and a screenshot from that same video appearing to show Moloney removing the can from his backpack.



Images 17 and 18: (top to bottom) Two screenshots from the same OSINT video as above (fn. 4). These screenshots show Peter G. Moloney spraying USCP officers with the can of Wasp, Hornet, and Yellow Jacket aerosol spray that he brought with him to the Capitol. Image 18 shows one of the USCP officers reacting and raising a hand in an attempt to block the spray.

By this time, a certain number of police officers from the Metropolitan Police Department had arrived to aid and assist the USCP officers in protecting the Capitol and the certification proceedings taking place inside. The recordings from some of their body worn cameras show Peter G. Moloney's attack on the police officers.



Images 18 and 19: (top to bottom) Two screenshots from MPD BWC showing Peter G. Moloney first spraying officers to his left and then repositioning himself.



Images 20 and 21: (top to bottom) Two screenshots from MPD BWC showing Peter G. Moloney again spraying officers; and officers being hit by and covered with the white flecks that are the spray deployed for several seconds by Peter G. Moloney. These appear to be the same attacks covered by Images 17 and 18.

At another point in time during the chaos and violence on the West Plaza, at approximately 2:30 p.m., Peter G. Moloney can be seen once again spraying towards a line of police officers.

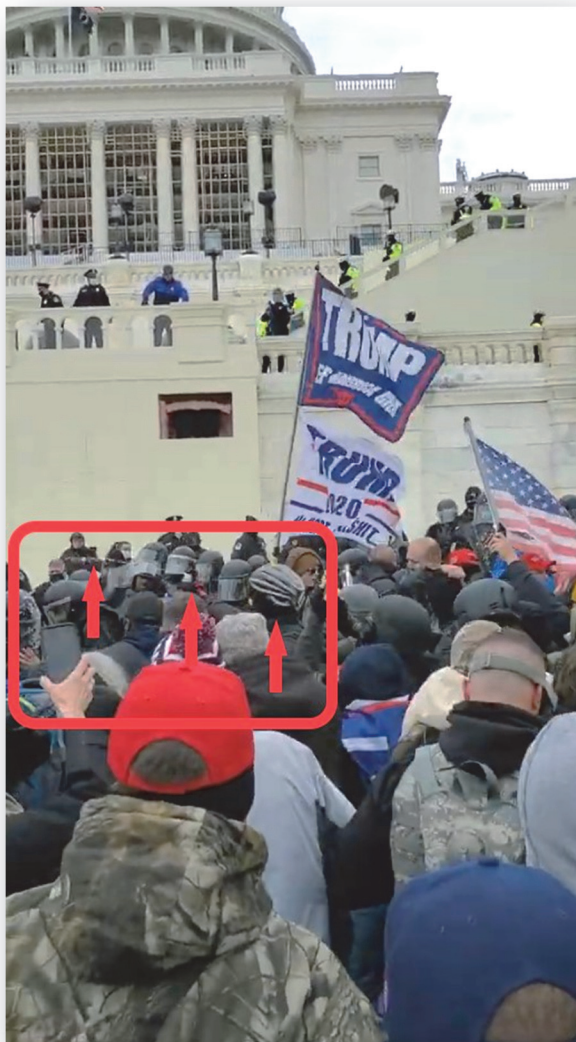


Image 22: A screenshot from an OSINT video showing Peter G. Moloney once again spraying what appears to be a Wasp, Hornet, and Yellow Jacket aerosol spray at a line of police officers. The three arrows indicate (from l to r) the white foam of the aerosol spray, Moloney's hand and the can, and Moloney himself.

Additional OSINT video shows Peter G. Moloney using what appears to be aerosol spray against police officers on another occasion.



Images 23 and 24: (top to bottom) Two screenshots from OSINT video showing Peter G. Moloney again spraying police officers.



Images 25 and 26: (l to r) A closeup from a photograph that shows Peter G. Moloney’s distinctive glove holding a and deploying a spray from a can that clearly reads Black Flag® Wasp, Hornet & Yellow Jacket Killer²; and a screenshot from an OSINT video showing Peter G. Moloney in the distinctive red and black gloves.



Image 27: An image from the blackflag.com website (<https://www.blackflag.com/products/outdoor-products/wasp-hornet-yellow-jacket-killer.aspx>) showing the full label of their Black Flag® Wasp, Hornet & Yellow Jacket Killer² aerosol spray. The label matches the can held by Peter G. Moloney.

V. ASSAULT BY STRIKING

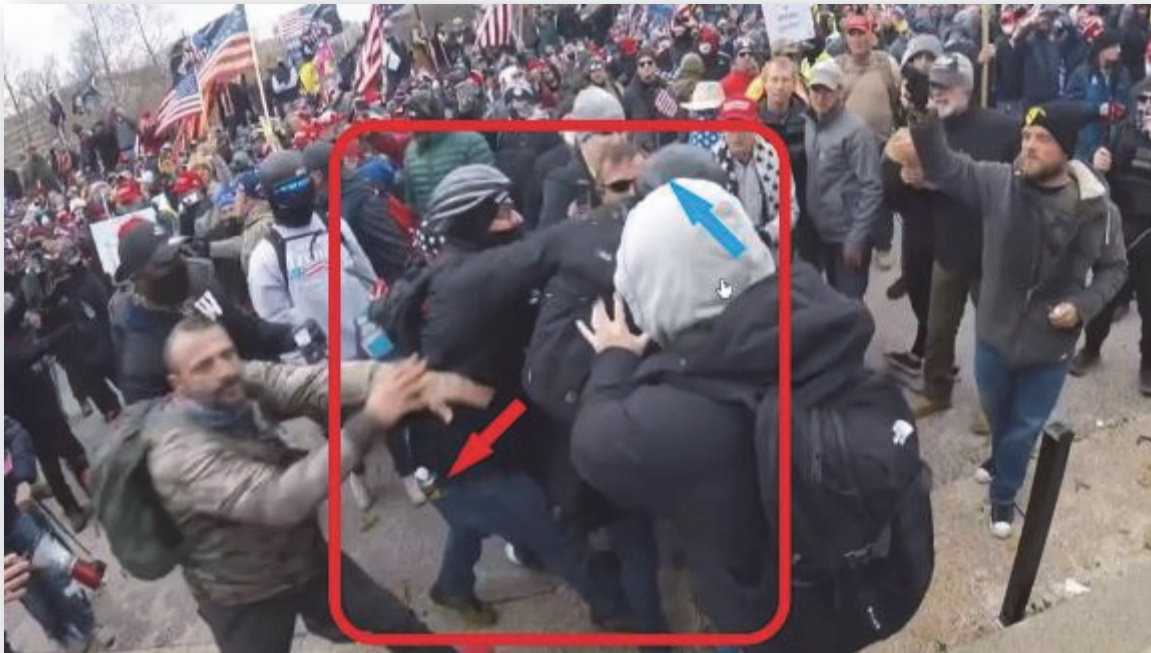
At another point in time OSINT video shows the protestors on the West Plaza becoming enraged when a member of the news media, an individual identified as Associated Press photographer J.M., is accused of being antifa.⁸ The crowd viciously attacks J.M., eventually forcing him over a wall. Peter G. Moloney participates in the initial attack on this member of the news media by grabbing onto his camera and pulling, causing him to stumble down the stairs. Peter G. Moloney then continues punching and shoving the member of the news media away from the West Plaza, with other rioters eventually pushing the member of the news media over a wall. The distinctive elements of Moloney's attire that day (bicycle helmet, gaiter, eyewear, gloves) and the can of Black Flag® Wasp, Hornet & Yellow Jacket Killer² are clearly visible in several of the screenshots.

At approximately 1:23 p.m., body worn camera video from Metropolitan Police Department Officer O.A. and OSINT video shows Peter G. Moloney attacking another member of the news media, N.Q., by swiping at and grabbing N.Q.'s camera while he is not looking. Moloney then pulled on the camera, hard enough to cause N.Q. to stumble down the stairs.



Image 28: A screenshot from the OSINT video posted to Instagram (fn. 8) showing Peter G. Moloney advancing towards a member of the news media, J.M., who is attempting to get away from angry protestors, including Moloney.

⁸ https://www.instagram.com/p/CJxKMArpN0_/



Images 29 and 30: (top to bottom) Screenshots from an OSINT video posted to Instagram (fn. 12) showing Peter G. Moloney punching the member of the news media (indicated with a blue arrow) in the head and then grabbing and pulling on the backpack of the member of the news media as he attempts to get away, pulling him off balance. The can of Black Flag® Wasp, Hornet & Yellow Jacket Killer₂ aerosol spray is visible in Moloney's back pocket in both screenshots (red arrow).



Image 31: A screenshot from an OSINT video recently posted to Twitter⁹ showing Peter G. Moloney's profile (to include his helmet, his eyewear, and his nose) as well as his distinctive red and black glove grabbing a camera that's in the hand of a member of the news media, N.Q., who is attempting to get away from angry protestors, including Moloney. Moloney pulls on the camera, causing the member of the news media to stumble down the stairs.



Image 32: A screenshot from the body worn camera of MPD Officer O.A.¹⁰ showing another angle of Peter G. Moloney grabbing N.Q.'s camera and pulling, causing N.Q. to stumble down the stairs.

⁹ <https://twitter.com/K2theSky/status/1651995330378964997>,
<https://twitter.com/SeditionHunters/status/1661353606279299073>

¹⁰ <https://rumble.com/v2bi8we-exhibit-bodycam-footage-from-officer-owais-akhtar.html> (at approx. 3 min 14 sec)

VI. MISUSE OF A PESTICIDE

As seen in Image 27, the label for Black Flag® Wasp, Hornet & Yellow Jacket Killer² spray clearly includes directions and warnings. These include directions to read the entire label before use, and to “not apply [Black Flag® Wasp, Hornet & Yellow Jacket Killer² spray] in a way that will contact adults [. . .], either directly or through drift. Keep people and pets out of the area during application.” The label also includes notice that, “It is a violation of Federal law to use this product in a manner inconsistent with its labeling.” and that, “To the extent consistent with applicable law, buyer assumes all responsibility for safety and use not in accordance with directions.”



- Do not apply this product in a way that will contact adults, children or pets, either directly or through drift. Keep people and pets out of the area during application. Exit area immediately and remain outside the treated area until sprays have dried.

NOTICE: To the extent consistent with applicable law, buyer assumes all responsibility for safety and use not in accordance with directions.

Images 33a, 33b, and 33c: (top to bottom) Three excerpts from the publicly available label of the pesticide Black Flag® Wasp, Hornet & Yellow Jacket Killer² spray advising of how not to use the product and the potential risk of and liability from misusing the product.

VII. IDENTIFICATION OF MOLONEY

I have spoken with FBI Task Force Officer Ryan O’Leary who has seen Peter G. Moloney on multiple occasions, in close proximity, with a clear and unobstructed view of Moloney’s face and person. I showed TFO O’Leary Image 3c, Image 3d, Image 3f, Image 5, Image 6, Image 9, and Image 26. This same law enforcement officer can say with confidence that the individual pictured in Image 3c, Image 3d, Image 3f, Image 5, Image 6, Image 9, and Image 26 is Peter G. Moloney.

VIII. PROBABLE CAUSE

A. *18 U.S.C. § 231(a)(3)—Civil Disorder*

Based on the foregoing, your affiant submits there is probable cause to believe that Peter G. Moloney 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 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. § 111(a)(1)—Assaulting, Resisting, or Impeding Certain Officers*

Based on the foregoing, your affiant submits there is probable cause to believe that Peter G. Moloney violated 18 U.S.C. § 111(a)(1), which makes it unlawful to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in 18 U.S.C. § 1114 while engaged in or on account of the performance of official duties where such acts involve physical contact with the victim of that assault or the intent to commit another felony.

For purposes of 18 U.S.C. § 111, a designated person includes any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services), or any person assisting such an officer or employee in the performance of or on account of official duties.

C. *18 U.S.C. § 113(a)(4)—Assault by Striking*

Based on the foregoing, your affiant submits that there is probable cause to believe that Peter G. Moloney violated 18 U.S.C. § 113(a)(4), which makes it a crime to commit an assault by striking within the territorial jurisdiction of the United States. For purposes of 18 U.S.C. § 113(a)(4), the Capitol and its grounds qualify as an area that is within the territorial jurisdiction of the territorial jurisdiction of the United States.

D. *18 U.S.C. § 1752(a)(1)—Entering and Remaining in a Restricted Building or Grounds*

Based on the foregoing, your affiant submits that there is probable cause to believe that Peter G. Moloney violated 18 U.S.C. § 1752(a)(1), which makes it a crime to knowingly enter or remain in any restricted building or grounds without lawful authority to do so, or to attempt or conspire to do so.

For purposes of 18 U.S.C. § 1752 (including the offenses described below), a “restricted building or grounds” 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.

E. 18 U.S.C. § 1752(a)(2)—Disorderly and Disruptive Conduct in a Restricted Building or on Restricted Grounds

Based on the foregoing, your affiant submits that there is probable cause to believe that Peter G. Moloney violated 18 U.S.C. § 1752(a)(2), which makes it a crime to 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 to attempt or conspire to do so.

F. 18 U.S.C. § 1752(a)(4)—Engaging in Physical Violence in a Restricted Building or Grounds

Based on the foregoing, your affiant submits that there is probable cause to believe that Peter G. Moloney violated 18 U.S.C. § 1752(a)(4), which makes it a crime to knowingly engage in any act of physical violence against any person or property in any restricted building or grounds, or to attempt or conspire to do so.

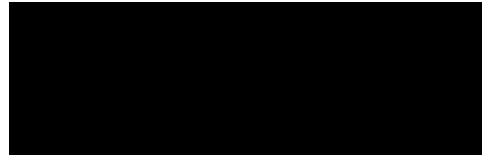
G. 40 U.S.C. § 5104(e)(2)(D)—Disorderly or Disruptive Conduct in a Capitol Building or Grounds

Based on the foregoing, your affiant submits that there is probable cause to believe that Peter G. Moloney violated 40 U.S.C. § 5104(e)(2)(D), which makes it a crime to willfully and knowingly 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.

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H. 40 U.S.C. § 5104(e)(2)(F)—Engaging in Physical Violence in a Capitol Building or Grounds

Based on the foregoing, your affiant submits that there is probable cause to believe that Peter G. Moloney violated 40 U.S.C. § 5104(e)(2)(F), which makes it a crime to willfully and knowingly engage in an act of physical violence in the Grounds or any of the Capitol Buildings.



Special Agent [REDACTED]
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 6th day of June 2023.

HONORABLE MOXILA A. UPADHYAYA
UNITED STATES MAGISTRATE JUDGE