

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>UNITED STATES OF AMERICA</b>	:	
	:	
v.	:	<b>Case No. 1:21-CR-312 (JEB)</b>
	:	
<b>BRADLEY BENNETT</b>	:	
	:	
<b>Defendant.</b>	:	

**GOVERNMENT’S PROPOSED JURY INSTRUCTIONS**

The government submits the proposed jury instructions, subject to any issues that may arise during trial.

I. Proposed Instructions Regarding Charged Offenses

I will now instruct you on the specific offenses charged in the information. The Indictment in this case contains six counts:

- Obstruction of an Official Proceeding
- Entering or Remaining in a Restricted Building or Grounds;
- Disorderly or Disruptive Conduct in a Restricted Building or Grounds;
- Entering and Remaining in the Gallery of Congress;
- Disorderly Conduct in a Capitol Building; and
- Parading, Demonstrating, or Picketing in a Capitol Building.

1. **Count One—Obstruction of an Official Proceeding**

Count One of the Indictment charges the defendant with corruptly obstructing an official proceeding, which is a violation of federal law. Count One also charges the defendant with aiding and abetting others to commit the offense of obstruction of an official proceeding. First, I will explain the elements of the substantive offense, along with its associated definitions. Then, I will explain how to determine whether the defendant aided and abetted the offense.

## Elements

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

First, the defendant attempted to or did obstruct or impede an official proceeding.

Second, the defendant intended to obstruct or impede the official proceeding.

Third, the defendant acted knowingly, with awareness that the natural and probable effect of his conduct would be to obstruct or impede the official proceeding.

Fourth, the defendant acted corruptly.

## Definitions

To “obstruct” or “impede” means to block, interfere with, or slow the progress of an official proceeding.

The term “official proceeding” includes a proceeding before Congress. The official proceeding need not be pending or about to be instituted at the time of the offense. If the official proceeding was not pending or about to be instituted, the government must prove beyond a reasonable doubt that the official proceeding was reasonably foreseeable to the defendant. For purposes of this count, the term “official proceeding” means Congress’ Joint Session to certify the Electoral College vote.<sup>1</sup>

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<sup>1</sup> In *United States v. Fischer*, 64 F.4th 329, 342 (D.C. Cir. 2023), the D.C. Circuit held “that congressional certification of the Electoral College count is an ‘official proceeding’” for purposes of § 1512(c)(2). *See also* 18 U.S.C. § 1515(a)(1)(B) (defining “official proceeding” to include “a proceeding before the Congress”); § 1512(f)(1) (“For the purposes of this section—(1) an official proceeding need not be pending or about to be instituted at the time of the offense”). For the nexus requirement (that the official proceeding need be reasonably foreseeable), *see United States v. Sandlin*, 575 F. Supp. 3d 16, 32 (D.D.C. 2021); *United States v. Aguilar*, 515 U.S. 593, 599-600 (1995). For other January 6 trials that have used this instruction, *see, e.g., United States v. Reffitt*, No. 21-cr-32 (DLF) (ECF No. 119 at 25-26), *United States v. Robertson*, No. 21-cr-34 (CRC) (ECF No. 86 at 12), *United States v. Thompson*, No. 21-cr-161 (RBW) (ECF No. 832 at 26), *United States v. Williams*, No. 21-cr-377 (BAH) (ECF No. 112 at 7); and *United States v. Thomas*, No. 21-cr-552 (DLF) (ECF No. 150 at 23).

A person acts “knowingly” if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant acted knowingly, you may consider all of the evidence, including what the defendant did, said, or perceived.<sup>2</sup>

To act “corruptly,” the defendant must use independently unlawful means or act with an unlawful purpose, or both. The defendant must also act with “consciousness of wrongdoing.” “Consciousness of wrongdoing” means with an understanding or awareness that what the person is doing is wrong or unlawful.

Not all attempts to obstruct or impede an official proceeding involve acting corruptly. For example, a witness in a court proceeding may refuse to testify by invoking his or her constitutional privilege against self-incrimination, thereby obstructing or impeding the proceeding, but that person does not act corruptly. In contrast, an individual who obstructs or impedes a court proceeding by bribing a witness to refuse to testify in that proceeding, or by engaging in other independently unlawful conduct, does act corruptly.<sup>3</sup> Often, acting corruptly involves acting with

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<sup>2</sup> See The William J. Bauer Pattern Criminal Jury Instructions of the Seventh Circuit §§ 1512 & 1515(a)(1); see also *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005); *United States v. Carpenter*, No. 21-cr-305 (JEB) (ECF No. 97 at 11) (including instruction that the evidence to be considered includes “what [the defendant] did, said, or perceived”); *United States v. Kelly*, No. 21-cr-708 (RCL) (ECF No. 101 at 9) (same).

<sup>3</sup> The William J. Bauer Pattern Criminal Jury Instructions of the Seventh Circuit; *Arthur Andersen LLP v. United States*, 544 U.S. 696, 706 (2005); *United States v. Fischer*, 64 F.4th 329, 340 (D.C. Cir. 2023) (opinion of Pan, J.); *United States v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013); *United States v. Friske*, 640 F.3d 1288, 1291 (11th Cir. 2011); *United States v. Watters*, 717 F.3d 733, 735 (9th Cir. 2013); *United States v. North*, 910 F.2d 843, 883 (D.C. Cir. 1990), *withdrawn and superseded in part by United States v. North*, 920 F.2d 940 (D.C. Cir. 1990); *United States v. Sandlin*, 575 F. Supp. 3d 16, 32 (D.D.C. 2021); *United States v. Caldwell*, 581 F. Supp. 3d 1, 19-20 (D.D.C. 2021); *United States v. Mostofsky*, 579 F. Supp. 3d 9, 26 (D.D.C. 2021); *United States v. Montgomery*, 578 F. Supp. 3d 54, 82 (D.D.C. 2021); *United States v. Lonich*, 23 F.4th 881, 902-03 (9th Cir. 2022). For other January 6 trials that have used similar instructions, see, e.g., *United States v. Williams*, No. 21-cr-377 (BAH) (ECF No. 112 at 7), and *United States*

the intent to secure an unlawful advantage or benefit either for oneself or for another person.<sup>4</sup>

While the defendant must act with intent to obstruct the official proceeding, this need not be his sole purpose. A defendant's unlawful intent to obstruct an official proceeding is not negated by the simultaneous presence of another purpose for his conduct.<sup>5</sup>

In this case, the government further alleges that the defendant committed obstruction of an official proceeding, as charged in Count One, by aiding and abetting others in committing this offense. This is not a separate offense but merely another way in which the government alleges that the defendant committed this offense in Count One.

A person may be guilty of an offense if he aided and abetted another person in committing the offense. A person who has aided and abetted another person in committing an offense is often called an accomplice. The person whom the accomplice aids and abets is known as the principal. It is not necessary that all the people who committed the crime be caught or identified. It is sufficient if you find beyond a reasonable doubt that the crime was committed by someone and that the defendant knowingly and intentionally aided and abetted that person in committing the crime.

In order to find the defendant guilty of obstruction of an official proceeding because the defendant aided and abetted others in committing this offense, you must find that the government proved beyond a reasonable doubt the following elements:

First, that others committed obstruction of an official proceeding by committing

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*v. Reffitt*, No. 21-cr-32 (DLF) (ECF No. 119 at 25-29); *United States v. Kelly*, No. 21-cr-708 (RCL) (ECF No. 101 at 10).

<sup>4</sup> See, *United States v. Nordean, et al*, 21-cr-175 (TJK) (ECF No. 767 at 31-32), *United States v. Kelly*, No. 21-cr-708 (RCL) (ECF No. 101 at 10), and *United States v. Thomas*, No. 21-cr-552 (DLF) (ECF No. 150 at 24).

<sup>5</sup> *United States v. Carpenter*, No. 21-cr-305 (JEB) (ECF No. 97 at 11); *United States v. Kelly*, No. 21-cr-708 (RCL) (ECF No. 101 at 10).

each of the elements of the offense charged, as I have explained above.

Second, that the defendant knew that obstruction of an official proceeding was going to be committed or was being committed by others.

Third, that the defendant performed an act or acts in furtherance of the offense.

Fourth, that the defendant knowingly performed that act or acts for the purpose of aiding, assisting, soliciting, facilitating, or encouraging others in committing the offense of obstruction of an official proceeding.

Fifth, that the defendant did that act or acts with the intent that others commit the offense of obstruction of an official proceeding.

To show that the defendant performed an act or acts in furtherance of the offense charged, the government must prove some affirmative participation by the defendant which at least encouraged others to commit the offense. That is, you must find that the defendant's act or acts did, in some way, aid, assist, facilitate, or encourage others to commit the offense. The defendant's act or acts need not further aid, assist, facilitate, or encourage every part or phase of the offense charged; it is enough if the defendant's act or acts further aided, assisted, facilitated, or encouraged only one or some parts or phases of the offense. Also, the defendant's acts need not themselves be against the law.

In deciding whether the defendant had the required knowledge and intent to satisfy the fourth requirement for aiding and abetting, you may consider both direct and circumstantial evidence, including the defendant's words and actions and other facts and circumstances. However, evidence that the defendant merely associated with persons involved in a criminal venture or was merely present or was merely a knowing spectator during the commission of the offense is not enough for you to find the defendant guilty as an aider and abettor. If the evidence

shows that the defendant knew that the offense was being committed or was about to be committed, but does not also prove beyond a reasonable doubt that it was the defendant's intent and purpose to aid, assist, encourage, facilitate, or otherwise associate the defendant with the offense, you may not find the defendant guilty of obstruction of an official proceeding as an aider and abettor. The government must prove beyond a reasonable doubt that the defendant in some way participated in the offense committed by others as something the defendant wished to bring about and to make succeed.

**2. Count Two—Entering or Remaining in a Restricted Building or Grounds**

Count Two of the Indictment charges the defendant with entering or remaining in a restricted building or grounds, which is a violation of federal law.

**Elements**

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

First, the defendant entered or remained in a restricted building or grounds without lawful authority to do so.

Second, the defendant did so knowingly.

**Definitions**

The term "restricted building or grounds" means any posted, cordoned off, or otherwise restricted area of a building or grounds where a person protected by the Secret Service is or will be temporarily visiting.

The term "person protected by the Secret Service" includes the Vice President and the immediate family of the Vice President.

The term "knowingly" has the same meaning described in the instructions for Count One.

**3. Count Three—Disorderly or Disruptive Conduct in a Restricted Building**

Count Three of the Indictment charges the defendant with disorderly or disruptive conduct in a restricted building or grounds, which is a violation of federal law.

### **Elements**

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

First, the defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building or grounds.

Second, the defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions.

Third, the defendant's conduct occurred when, or so that, his conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

### **Definitions**

"Disorderly conduct" is conduct that tends to disturb the public peace or undermine public safety.<sup>6</sup>

"Disruptive conduct" is a disturbance that interrupts an event, activity, or the normal course of a process.<sup>7</sup>

The term "restricted building or grounds" has the same meaning described in the instructions for Count Two. The term "knowingly" has the same meaning described in the instructions for Count One.

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<sup>6</sup> *United States v. Grider*, 21-cr-22 (CKK) (ECF No. 150 at 24) ("'[D]isorderly' conduct is that which 'tends to disturb the public peace, offend public morals, or undermine public safety.' 'Disorderly,' *Black's Law Dictionary* (9th ed. 2009); *see also* 'Disorderly,' *Oxford English Dictionary* (2nd ed. 1989) ('Not according to order or rule; in a lawless or unruly way; tumultuously, riotously.')).

<sup>7</sup> Redbook 6.643.

**4. Count Four—Entering or Remaining in the Gallery of a House of Congress**

Count Four of the Indictment charges the defendant with entering or remaining in the Gallery of a house of Congress, which is a violation of federal law.

**Elements**

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

First, the defendant entered or remained in the Gallery of either House of Congress, without lawful authority to do so.

Second, the defendant acted willfully and knowingly.

**Definitions**

The term “House of Congress” means the United States Senate or the United States House of Representatives.

A person acts “willfully” if he acts with the intent to do something that the law forbids, that is, to disobey or disregard the law. While the government must show that a defendant knew that the conduct was unlawful, the government does not need to prove that the defendant was aware of the specific law that his conduct violated.<sup>8</sup>

The term “knowingly” has the same meaning described in the instructions for Count One.

**5. Count Five—Disorderly Conduct in a Capitol Building or Grounds**

Count Five of the Indictment charges the defendant with disorderly and disruptive

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<sup>8</sup> As the Supreme Court has explained, “willfully” is “a word of many meanings whose construction is often dependent on the context in which it appears.” *Bryan v. United States*, 524 U.S. 184, 191 (1998) (internal quotation marks omitted). “As a general matter, when used in the criminal context, a ‘willful’ act is one undertaken with a bad purpose. In other words, in order to establish a ‘willful’ violation of a statute, the Government must prove that the defendant acted with knowledge that his conduct was unlawful.” *Id.* at 191-92 (internal quotation marks omitted).

conduct within the United States Capitol Grounds or in a Capitol Building, which is a violation of federal law.

### **Elements**

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

First, the defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings or Grounds.

Second, the defendant did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress.

Third, the defendant acted willfully and knowingly.

### **Definitions**

The term “Capitol Buildings” includes the United States Capitol located at First Street, Southeast, in Washington, D.C.

The “Capitol Grounds” are defined by the United States Code, which refers to a 1946 map on file in the Office of the Surveyor of the District of Columbia. The boundaries of the Capitol Grounds include all additions added by law after that map was recorded. The Capitol Grounds includes the portion of Pennsylvania Avenue Northwest from the west curb of First Street Northwest to the curb of Third Street Northwest.

“Disorderly conduct” and “disruptive conduct” have the same meaning described in the instructions for Count Three. For purposes of this offense, “the orderly conduct of a session of Congress or either House of Congress” includes the actions of Congress’ Joint Session to certify

the Electoral College vote.<sup>9</sup>

The term “knowingly” has the same meaning described in the instructions for Count One. The term “willfully” has the same meaning described in the instructions for Count Four.

**6. Count Six—Parading, Demonstrating, or Picketing in a Capitol Building**

Count Six of the Indictment charges the defendant with parading, demonstrating, or picketing in a Capitol Building, which is a violation of federal law.

**Elements**

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

First, the defendant paraded, demonstrated, or picketed in any of the United States Capitol Buildings.

Second, the defendant acted willfully and knowingly.

**Definitions**

The terms “parade” and “picket” have their ordinary meanings. The term “demonstrate” refers to conduct that would disrupt the orderly business of Congress by, for example, impeding or obstructing passageways, hearings, or meetings, but does not include activities such as quiet praying.<sup>10</sup>

The term “Capitol Buildings” has the same meaning described in the instructions for Count Five. The term “knowingly” has the same meaning described in the instructions for Count One. The term “willfully” has the same meaning described in the instructions for Count Four.

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<sup>9</sup> See *United States v. Kelly*, No. 21-cr-708 (RCL) (ECF No. 101 at 17).

<sup>10</sup> *United States v. Barnett*, 21-cr-38 (CRC) (ECF No. 158 at 23); see also *Bynum v. United States Capitol Police Board*, 93 F. Supp. 2d 50, 58 (D.D.C. 2000).

Respectfully submitted,

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