

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

**UNITED STATES OF AMERICA,**

Plaintiff,

v.

**RUSSELL DEAN ALFORD,**

Defendant.

Criminal Action No. 21-cr-0263 (TSC)

**ORDER**

In light of the representations made at the September 2 and 23, 2022 pretrial conferences, the court hereby memorializes its rulings on various pretrial motions.

**A. Evidentiary Matters**

i. Facebook Material from Before January 6

Government's Exhibits 302, 303, 304, 305, 306, 307, 308, 309, 315, 316, 317, 318, and 322 contain material from Defendant's Facebook account from before January 6, 2021. The Government is hereby instructed to identify no more than **seven** of those Exhibits to introduce at trial and to timely notify the Defendant which seven it has selected, so that the Defendant may make any objections. Those seven Exhibits and objections thereto shall be filed in a joint omnibus notice on the docket, on or before **5:00 PM on September 26, 2022**.

ii. Facebook Material from After January 6

Government's Exhibits 319, 326, 327, 328, 329, 330, 331, 332, 333, and 334 contain material from Defendant's Facebook account from after January 6, 2021. Exhibit 330 may be introduced at trial. The admissibility of the remaining exhibits will be discussed after the presentation of the evidence on **Thursday, September 29, 2022**.

iii. Facebook Groups

Government Exhibit 300 is a compilation of Facebook groups in which the Defendant is listed as a member. The court hereby **EXCLUDES** Exhibit 300. Should the Government seek anew to introduce Exhibit 300 based on arguments or evidence presented at trial, it must timely notify the Defendant.

iv. Facebook Events

Government Exhibit 301 is a compilation of Facebook events to which the Defendant received invitations. The court **OVERRULES** the Defendant's pretrial objections to Exhibit 301, though he will be allowed to renew his objection if during trial.

v. Withdrawn Objections

Based on the parties' representations that the Government's objections to Defense Exhibits 4, 5, and 6, as well as Defendants objections to Government Exhibits 108, 109, 110, 111, and 112 have been resolved by mutual agreement of the parties, the court shall take no action as to these Exhibits.

vi. Joint Stipulations

The parties represented that they have agreed on two stipulations as set out in the United States' Trial Brief, ECF No. 85-1. *See* Exs. 4, 5.

**B. Jury and Offense Instructions**

i. Jury Instructions

The court **DEFERS** ruling on the following proposed instructions to which the Government objects until the Charge Conference:

- Improper Considerations: Political and Social Views, General Views of the Events Of Jan. 6, 2021, *see* Joint Proposed Jury Instr. § II(a), ECF No. 66.
- Accountability for Conduct of Another, *see* Joint Proposed Jury Instr. § II(b).

- “Knowingly” and “Willfully” - Definitions, *see* Joint Proposed Jury Instr. § II(f).
- Theory of the Case, *see* Joint Proposed Jury Instr. § II.

Should the Defendant seek to modify his proposals as to these instructions, as discussed at the September 23 pretrial conference, he is hereby instructed to timely notify the Government so that the Government may make any objections.

The court hereby **REJECTS** the following proposed instructions.

- Specialized Opinion Testimony, *see* Joint Proposed Jury Instr. § II(c).
- Cautionary Instruction on Publicity, Communication, and Research, *see* Joint Proposed Jury Instr. § II(d).
- Duty to Deliberate, *see* Joint Proposed Jury Instr. § II(e).

The parties have agreed to—and the court will use—the following jury instructions from the District of Columbia Redbook:

1. Note Taking by Jurors, Redbook 1.105
2. Furnishing the Jury with a Copy of the Instructions, Redbook 2.100
3. Function of the Court, Redbook 2.101
4. Function of the Jury, Redbook 2.102
5. Jury’s Recollection Controls, Redbook 2.103
6. Evidence in the Case, Redbook 2.104
7. Statements of Counsel, Redbook 2.105
8. Information Not Evidence, Redbook 2.106, (*as adapted to substitute the word “Information” for the word “Indictment” in the Redbook charge*)
9. Burden of Proof, Redbook 2.107
10. Reasonable Doubt, Redbook 2.108
11. Direct and Circumstantial Evidence, Redbook 2.109
12. Nature of Charges Not To Be Considered, Redbook 2.110

13. Number of Witnesses, Redbook 2.111
14. Inadmissible and Stricken Evidence, Redbook 2.112, *as applicable*
15. Credibility of Witnesses, Redbook 2.200
16. Police Officer's or Law Enforcement Official's Testimony, Redbook 2.207, (*as adapted to include the phrase "or law enforcement official" after each instance of the phrase "police officer" in the Redbook charge*)
17. Right of Defendant Not to Testify, Redbook 2.208 or Defendant as Witness, Redbook 2.209, *as applicable*
18. Evaluation of Prior Inconsistent Statement of a Witness, Redbook 2.216, *as applicable*
19. Evaluation of Prior Consistent Statement of a Witness, Redbook 2.217, *as applicable*
20. Proof of State of Mind, Redbook 3.101
21. Multiple Counts – One Defendant, Redbook 2.402
22. Unanimity—General, Redbook 2.405
23. Verdict Form Explanation, Redbook 2.407
24. Redacted Documents and Tapes, Redbook 2.500, *as applicable*
25. Exhibits During Deliberations, Redbook 2.501
26. Selection of Foreperson, Redbook 2.502
27. Communication Between Court and Jury During Jury's Deliberations, Redbook 2.509
28. Attitude and Conduct of Jurors in Deliberations, Redbook 2.510
29. Excusing Alternate Jurors, Redbook 2.511

ii. Offense Instructions

The court **DEFERS** its ruling as to the offense instructions for all counts until the Charge Conference.

**C. Verdict Form**

The court hereby **ADOPTS** the parties' proposed verdict form. *See* Ex. 1.

**D. Statement of the Case**

The court hereby **ADOPTS** the parties' joint proposed statement of the case. *See* Ex. 2.

**E. Voir Dire**

The court hereby **ADOPTS** the parties' proposed *voir dire* questions with the exceptions of Questions 28, 29, and 30. *See* Ex. 3.

**F. Juror Questionnaire Procedures**

The juror questionnaire shall be distributed to potential jurors on the morning of Tuesday, September 27. Court staff shall collect the responses and provide them to Government counsel at approximately noon in Courtroom 9. The Government shall provide electronic copies of the responses to the court and the Defendant as soon as possible and no later than **3:00 PM on September 27, 2022**. The Government may use whatever file transfer medium is most conducive to a speedy process, e.g., email, USAfx, or a physical USB transfer.

**G. Other Trial Logistics**

Any exhibits, charts, or summaries to be used in opening statements must be cleared with counsel for the other side prior to the opening statements.

To ensure the health and safety of all trial participants, courthouse staff and visitors, all persons in the courtroom must wear a KN95, N95, or equivalent mask, unless otherwise expressly permitted by the Court or when testifying before or speaking to the Court or witnesses. Masks must be worn over the nose and mouth.

The parties have invoked Federal Rule of Evidence 615, and therefore all witnesses, except the government case agent and the defense investigator be excluded from the courtroom except when testifying, pursuant to.

**H. Pretrial Filings**

Any new motions or issues for the court's attention should be included in the Monday, September 26 filing. Any filings related to §§ B(i) & (ii) shall be docketed in one joint omnibus notice no later than **5:00 PM on September 30, 2022**.

Date: September 24, 2022

*Tanya S. Chutkan*

TANYA S. CHUTKAN  
United States District Judge