UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	**Case No. 1:21-cr-383 (BAH)**
v.	:	
	:	
PATRICK ALONZO STEDMAN,	:	
	:	
Defendant.	:	

JOINT PROPOSED JURY INSTRUCTIONS

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby proposes the following preliminary and final jury instructions, subject to issues that arise during trial.

Defense objections to proposed instructions by the government are noted by interlineations or other comment adjacent to the government's request. When the defendant proposes an alternate instruction to one proposed by the government, the defendant's alternative proposal is set forth immediately following the particular request by the government.

I. Preliminary Instructions

1. Preliminary Instruction Before Trial, Redbook 1.102
2. Stipulations, Redbook 1.103(A)
3. Notetaking by Jurors, Redbook 1.105
4. A Juror's [Subsequent] Recognition of a Witness or Other Party Connected to the Case, Redbook 1.108)

II. Final Instructions

1. Furnishing the Jury with a Copy of the Instructions, Redbook 2.100
2. Function of the Court, Redbook 2.101
3. Function of the Jury, Redbook 2.102

4. Jury's Recollection Controls, Redbook 2.103
5. Evidence in the Case, Redbook 2.104
6. Statements of Counsel, Redbook 2.105
7. Indictment Not Evidence, Redbook 2.106
8. Burden of Proof, Redbook 2.107
9. Reasonable Doubt, Redbook 2.108
10. Direct and Circumstantial Evidence, Redbook 2.109
11. Nature of Charges Not to Be Considered, Redbook 2.110
12. Number of Witnesses, Redbook 2.111 [The defendant requests that the following language be added to this instruction: "Remember also that the defendant has no burden or obligation to call any witnesses." The defense requests this addition in light of the language in 2.111 references witnesses "testifying for each side" and references number of witnesses on either side].
13. Inadmissible and Stricken Evidence, Redbook 2.112
14. Credibility of Witnesses, Redbook 2.200
15. Police Officer's Testimony, Redbook 2.207 [Defense requests that the term "police officer" in the instruction be broadened to state "police officer or other law enforcement officer", as it is anticipated that agents will also testify.]
16. Right of Defendant Not to Testify, Redbook 2.208 [**if applicable after trial**]
17. Defendant As Witness, Redbook 2.209 [**if applicable after trial]** [The defendant requests that if this instruction is given, that the Court not include the bracketed ["a vital"] language.
18. Character of Defendant, Redbook 2.213 [**if applicable after trial**]

19. Count One, Obstruction of an Official Proceeding in violation of 18 U.S.C. § 1512(c)(2) [**see proposal below**]
20. Count Two, Entering or Remaining in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(1) [**see proposal below**]
21. Count Three, Disorderly or Disruptive Conduct in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(2) [**see proposal below**]
22. Count Four, Disorderly or Disruptive Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D) [**see proposal below**]
23. Count Five, Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G) [**see proposal below**]
24. Proof of State of Mind, Redbook 3.101
25. Multiple Counts – One Defendant, Redbook 2.402
26. Unanimity—General, Redbook 2.405
27. Verdict Form Explanation, Redbook 2.407
28. Redacted Documents and Tapes, Redbook 2.500
29. Exhibits During Deliberations, Redbook 2.501
30. Selection of Foreperson, Redbook 2.502 [Defendant requests that the following language be added to 2.502: "Please note that the views or vote of the foreperson are not entitled to any greater weight or consideration than those of each other juror."]
31. Possible Punishment Not Relevant, Redbook 2.505
32. Cautionary Instruction on Publicity, Communication, and Research, Redbook 2.508
33. Communication Between Court and Jury During Jury's Deliberations, Redbook 2.509
34. Attitude And Conduct of Jurors in Deliberations, Redbook 2.510

35. Excusing Alternate Jurors, Redbook 2.511

36. Limiting Instruction: Statements of Others (*United States v. Thompson*, Case No. 1:21-cr-00161-RBW, Docket Entry. 83 at 12 (D.D.C. Apr. 14, 2022)) [**if Applicable**] **[see also Defense and Government Proposals below for additional limiting instruction]**

OBSTRUCTION OF AN OFFICIAL PROCEEDING

NOTE: This is the preferred instruction by the government and has been used in or derived from multiple jury trials, including, but not limited to: *United States v. Sara Carpenter*, 21-cr-305-JEB (ECF No. 95); *United States v. Thomas Robertson*, 21-cr-34-CRC (ECF No. 86); *United States v. Dustin Thompson*, 21-cr-161-RBW (ECF No. 83); *United States v. Anthony Williams*, 21-cr-377-BAH (ECF No. 112); *United States v. Alexander Sheppard*, 21-cr-203-JDB (final instructions not available on ECF).

[NOTE: the parties present below different proposed instructions defining "corruptly"]

Count One of the indictment charges Patrick Stedman with Obstruction of an Official Proceeding, which is a violation of federal law. Count One also charges the defendant with attempt to obstruct or impede an official proceeding and aiding and abetting others to commit that offense. I will first explain the elements of the substantive offense, along with its associated definitions. Then, I will explain how to determine whether the defendant attempted the offense and 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 any official proceeding.

Second, the defendant acted with the intent 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.

The government must prove beyond a reasonable doubt that the defendant attempted to or did either obstruct or impede an official proceeding. The government does not need to prove that the defendant did both of those things. You must unanimously agree either that the defendant obstructed an official proceeding, or that he impeded an official proceeding, or that he did both.

[Defense requests this sentence be substituted for the last sentence above: "You must unanimously agree either that the defendant obstructed an official proceeding, or that he impeded an official proceeding, or that he did both, but as to each or any of those three possibilities, your agreement must be unanimous as to which one" The Government objects to this language as not accurate.]

An "official proceeding" includes a proceeding before the 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. As used in this Count, the term "official proceeding" means Congress's certification of the Electoral College vote.

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 Mr. Stedman acted knowingly, you may consider all of the evidence, including what he did, said, or perceived.

Government's Proposal regarding the definition of "Corruptly":

To act "corruptly" means to act knowingly, with the intent to obstruct or impede an official proceeding, and with consciousness of the wrongdoing of the act. To act corruptly, the defendant must use unlawful means or act with an unlawful purpose, or both. "Consciousness of wrongdoing" means an understanding or awareness that what the person is doing is wrong or unlawful. Not all attempts to obstruct or impede an official proceeding amount to acting corruptly. For example, a witness in a court proceeding may refuse to testify by invoking his constitutional privilege against self-incrimination, thereby obstructing or impeding the proceeding, but he is not

acting corruptly. In contrast, a person 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.[1]

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. However, the fact that the defendant's mere presence may have had the unintended effect of obstructing or impeding a proceeding does not establish that the defendant acted with the intent to obstruct or impede that proceeding.

Government Note: This government-proposed instruction is consistent with the law of 18 U.S.C. § 1512(c)(2), even post-*Fischer*. The defendant's alternate proposal below – as explained in footnote 2 – is derived from *Fischer*'s concurrence and dissent. We respectfully object to its inclusion entirely.

[1] This is the preferred instruction by the government. The government also notes the availability of an alternative instruction, in light of *United States v. Fischer*, No. 22-3038 (D.C. Cir. Apr. 7, 2023), which was provided in *United States v. Ethan Nordean, et al*, 21-cr-175-TJK (ECF No. 767). The entire instruction, as read above, remains the same, except the paragraph containing the definition of "corruptly" now reads as follows: "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. 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 constitutional privilege against self-incrimination, thereby obstructing or impeding the proceeding, but he does not act corruptly. In addition, the First Amendment to the United States Constitution affords people the right to speak, assemble, and petition the Government for grievances. Accordingly, an individual who does no more than lawfully exercise those rights does not act corruptly. In contrast, an individual who obstructs or impedes a court proceeding by engaging in conduct such as offering illegal bribes, engaging in violence, committing fraud, or through other independently unlawful conduct, is acting corruptly. Often, acting corruptly involves acting with the intent to secure an unlawful advantage or benefit either for oneself or for another person."

Defendant's Proposal regarding the definition of "Corruptly" [2]**.** To act "corruptly" means that (1) to act voluntarily and intentionally to bring about either an unlawful result or a lawful result by using some unlawful method, and (2) to act with an intent to procure an unlawful benefit either for himself or for another person. In addition, the defendant must not only know he was obtaining an unlawful benefit, it must also be his objective or purpose.

Defendant's additional proposed language regarding "corruptly", also in the nature of a Theory of the Case Instruction, *see* Redbook 9.100. The First Amendment to the United States Constitution affords people the right to speak, assemble, and petition the Government for grievances. Accordingly, an individual who does no more than lawfully exercise those rights does not act corruptly.[3] Speech is not limited to spoken or written words. Conduct also can constitute speech when it is intended by the actor to convey a particularized message that would be understood by those who viewed the conduct.[4] Some examples of conduct that constitutes

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[2] *United States v. Fischer,* No. 22-3038 at 18 (Judge Pan) and 41 (Judge Walker concurring opinion) (D.C. Cir. Apr. 7, 2023). *See also United States v. Aguilar*, 515 U.S. 593, 616-17 (1995)(Scalia, J. concurring and dissenting opinion)(quoting with approval definitions of "corruptly" that requires an advantage/benefit to the actor or another person). Defendant also submits that pursuant to *Marks v. United States*, 430 U.S. 188 (1977), as discussed in Judge Walker's concurring opinion (*Fischer,* No. 22-3038 at 22 n.10), because Judge Walker's definition of "corruptly" for 18 U.S.C. § 1512(c)(2) was essential to his concurring, Judge Walker's definition of "corruptly" is controlling. Defendant Stedman further submits that if *Fischer* is construed in a manner that does not adopt Judge Walker's definition of "corruptly", then Judge Katsas's "dissenting" opinion must be regarded as the opinion of the Court, requiring that Count One be dismissed for failure to state an offense. Fed. R. Crim. P. 12(b)(3)(B)(v)(which motion was previously filed by defendant Stedman and denied by this Court).

[3] U.S. Const. amend. I. Instruction given in *U.S. v. Nordean* et al, 21-175, Dkt. Entry 767 at 31. In response to the government's objection above, defendant notes that *Nordean* is cited for the proposition which this footnote precedes. However, the language that follows regarding conduct can be speech is supported by the cases cited in footnotes 4 & 5 below.

[4] *Texas v. Johnson*, 491 U.S. 397, 404 (1989).

protected First Amendment conduct and speech are burning the American flag, picketing in public at a funeral of a deceased soldier with a signs that read "Thank God for IEDs," "Thank God for Dead Soldiers,"[5], and picketing and leaflet distribution around a courthouse.[6]

Government Note: The government objects to the inclusion of the "First Amendment" paragraph here and below as proposed by the defendant. The case cited by the defendant, *U.S. v. Nordean*, 21-175 (TJK), did not include this language. That case included only the following two sentences: "In addition, the First Amendment to the United States Constitution affords people the right to speak, assemble, and petition the Government for grievances. Accordingly, an individual who does no more than lawfully exercise those rights does not act corruptly." Additional language is unnecessary and cumulative. In addition, the jury instruction in that case did not repeat the First Amendment language for each offense, as the defendant proposes herein.

Attempt

Defense Note/Request: Because "attempt" is a separate crime and has different elements than the underlying charge, is based on a distinct theory of liability, and it is being instructed on, the verdict sheet should require the jury to specify which theory or theories the jurors agreed upon in finding guilt (to ensure that Mr. Stedman is afforded his right to a unanimous verdict). This also is important because U.S.S.G. § 2X1.1 applies to provide a potential three-level decrease in the guideline offense level for an attempt.

Government Note: The government objects on the grounds that "attempt" in is not a separate crime, but rather part of 18 U.S.C. § 1512(c).

An attempt to commit obstruction of an official proceeding is a crime even if the defendant did not actually complete the crime of obstruction of an official proceeding. In order to find the defendant guilty of attempt to commit obstruction of an official proceeding, you must find that the government proved beyond a reasonable doubt each of the following two elements:

1. The defendant intended to commit the crime of obstruction of an official proceeding, as I have defined that offense above; and

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[5] *Snyder v. Phelps* 562 U.S. 443 (2011)

[6] *U.S. v. Grace*, 461 U.S. 171 (1983).

2. The defendant engaged in conduct that constituted a substantial step toward committing obstruction of an official proceeding which strongly corroborates or confirms that the defendant intended to commit that crime.

The defendant proposes different language for element #2, *United States v. Hite*, 769 F.3d 1154, 1165n.5 (D.C. Cir. 2014) (internal citations omitted]: The defendant engaged in conduct that constituted a substantial step toward committing obstruction of an official proceeding " 'which strongly corroborates the firmness of defendant's criminal attempt …' such that 'a reasonable observer, viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute [proscribing the crime of obstruction of an official proceeding].' "

Government Note: The government objects to this additional language as unnecessary and confusing.

With respect to the first element of attempt, you may not find the defendant guilty of attempt to commit obstruction of an official proceeding merely because he thought about it. You must find beyond a reasonable doubt that the evidence proved beyond a reasonable doubt that the defendant's mental state passed beyond the stage of thinking about the crime to actually intending to commit it.

With respect to the "substantial step" element, you may not find the defendant guilty of attempt to commit obstruction of an official proceeding merely because he made some plans to or some preparation for committing that crime. Instead, you must find beyond a reasonable doubt that the defendant took some firm, clear, undeniable action to accomplish his intent to commit obstruction of an official proceeding. However, the substantial step element does not require the

government to prove that the defendant did everything except the last act necessary to complete the crime.

Aiding and Abetting

Defense Note/Request: Because "aiding and abetting" is criminalized in a separate statute, and has different elements than the underlying charge, is based on a distinct theory of liability, and it is being instructed on, the verdict sheet should require the jury to specify which theory or theories the jurors agreed upon in finding guilt (to ensure that Mr. Stedman is afforded his right to a unanimous verdict).

Government Note: The government respectfully objects to this request. Aiding and abetting is another form of liability. Moreover, the means and manner in which a defendant commits a criminal offense are distinct from the elements of the offense. *See, e.g.*, *United States v. Davis*, 306 F.3d 398, 414 (6th Cir. 2002) ("[A]lthough there may have been various means by which Defendant aided and abetted in the underlying offenses for which he was convicted, no unanimity instruction with regard to these various means was necessary."). In *United States v. North*, 910 F.2d 834, 910 (D.C. Cir. 1990), the D.C. Circuit noted that "judicial distaste for "special verdicts" in criminal cases results from a concern that the jury will be led to its conclusion by a progression of questions each of which seems to require an answer unfavorable to the defendant. *But see United States v. North*, 920 F.2d 930, 950-51 (D.C. Cir. 1990) (reversing the ultimate conclusion that the failure to provide a special unanimity instruction was reversible error). In *North*, the trial court provided a verdict with an option to convict as a principal actor, as well as an aider and abettor, much like the defendant does now. 910 F.2d at 910. While the Court did not find such drafting error in that instance, the Court nevertheless suggested that "in the future, absent good cause for employing the kind of form used at North's trial, district judges ask for general verdicts that cover both the primary offense . . . and aiding and abetting." *Id.* at 911.

In this case, the government further alleges that Patrick Stedman 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 Patrick Stedman 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 he aided and abetted others in committing this offense, you must find that the government proved beyond a reasonable doubt the following five requirements:

1. Others committed obstruction of an official proceeding by committing each of the elements of the offense charged, as I explained above;

2. The defendant knew that obstruction of an official proceeding was going to be committed or was being committed by others;

3. The defendant performed an act or acts in furtherance of the offense;

4. The defendant knowingly performed that act or acts for the purpose of aiding, abetting, counseling, commanding, inducing, or procuring other to commit the offense of obstruction of an official proceeding; and

5. 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 needs to show some affirmative participation by the defendant that 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, abet, counsel, command, induce or procure others to commit the offense**.** The defendant's act or acts need not further aid, abet, counsel, command, induce or procure every part or phase of the offense charged; it is enough if the defendant's act or acts further aided, abetted, counselled, commanded, induced or procured 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 abetter. 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, abet, counsel, command, induce or procure the offense, you may not find the defendant guilty of the 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 **[Defense requests to add words "sought by his action"[7] here]** to make succeed.

[7] *Atchison v. United States*, 257 A.3d 524, 535 (D.C. 2021) ("In order to prove each of the appellants guilty under an aiding and abetting theory, the government had to prove that each had a purposive attitude toward the shooting, i.e., "associate[d] himself with the venture[,]" "participate[d] in it as in something that he wishe[d] to bring about," and "**s[ought] by his action** to make it succeed." *Walker v. United States*, 167 A.3d 1191, 1201–02 (D.C. 2017).")(bold added)

ENTERING OR REMAINING IN A RESTRICTED BUILDING OR GROUNDS – ELEMENTS

(18 U.S.C. § 1752(a)(1))

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

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.

The government must prove beyond a reasonable doubt only that the defendant either knowingly entered, or knowingly remained in, a restricted building or grounds without lawful authority, or both.

Defendant's additional proposed language, also in the nature of a Theory of the Case Instruction, *see* Redbook 9.100. Defendant notes that he is requesting this language regarding Counts 2 through 5 to be inserted in each count's instruction. Nevertheless, and although it is repeated below regarding each of those counts, the defendant has no objection to a single theory of defense instruction that references its applicability to Counts 2 through 5. Regarding Count 1 above though, the First Amendment/theory of defense instruction also references the term "corruptly", which is confined to Count 1, so that language should remain there. The requested language applicable to Counts 2 through 5 is:

The First Amendment to the United States Constitution affords people the right to speak, assemble, and petition the Government for grievances.[8] Speech is not limited to spoken or written words. Conduct also can constitute speech when it is intended by the actor to convey a particularized message that would be understood by those who viewed the conduct.[9] Some

[8] U.S. Const. amend. I. Instruction given in *U.S. v. Nordean et al*, 21-175, Dkt. Entry 767 at 31.

[9] *Texas v. Johnson*, 491 U.S. 397, 404 (1989).

examples of conduct that constitutes protected First Amendment conduct and speech are burning the American flag, picketing in public at a funeral of a deceased soldier with a signs that read "Thank God for IEDs," "Thank God for Dead Soldiers,"[10], and picketing and leaflet distribution around a courthouse.[11]

Government Note: As described above, the government objects to the inclusion of this language. It is misleading, not an element of the offense, and unlike Count One, counts two through five do not contain a specific scienter or *mens rea*. Such an instruction is likely to confuse the jury.

[If Applicable] If you find that the defendant entered or remained in the restricted perimeter with a good faith belief that he entered or remained with lawful authority, you must find him not guilty of this offense.

The definition of "knowingly" is the same definition used for Count One and throughout these instructions. Additionally, the instructions related to the theories of "Attempt" and "Aiding and Abetting" also apply to Counts Two through Seven of the indictment.

[10] *Snyder v. Phelps* 562 U.S. 443 (2011)

[11] U.S. v. Grace, 461 U.S. 171 (1983).

"RESTRICTED BUILDING OR GROUNDS"

(18 U.S.C. § 1752(c); 18 U.S.C. § 3056)

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.

DISORDERLY OR DISRUPTIVE CONDUCT IN A RESTRICTED BUILDING OR GROUNDS – ELEMENTS

(18 U.S.C. § 1752(a)(2))

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

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.

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

Third, the defendant's conduct was in a restricted building or grounds.

Fourth, the defendant's conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

The government must prove beyond a reasonable doubt only that the defendant engaged in either disorderly or disruptive conduct, or both.

The term "restricted building or grounds" has the same meaning as that described for Count Two. The term "knowingly" is the same definition throughout these instructions.

DISORDERLY OR DISRUPTIVE CONDUCT IN A RESTRICTED BUILDING OR GROUNDS – "DISORDERLY OR DISRUPTIVE CONDUCT"

(Adapted from Redbook 6.643)

The term "disorderly conduct" occurs when a person is unreasonably loud and disruptive under the circumstances or interferes with another person by jostling against or unnecessarily crowding that person.

"Disruptive conduct" is a disturbance that interrupts an event, activity, or the normal course of a process.

[Defendant's additional proposed language, also in the nature of a Theory of the Case Instruction, *see* Redbook 9.100. The First Amendment to the United States Constitution affords people the right to speak, assemble, and petition the Government for grievances.[12] Speech is not limited to spoken or written words. Conduct also can constitute speech when it is intended by the actor to convey a particularized message that would be understood by those who viewed the conduct.[13] Some examples of conduct that constitutes protected First Amendment conduct and speech are burning the American flag, picketing in public at a funeral of a deceased soldier with a signs that read "Thank God for IEDs," "Thank God for Dead Soldiers,"[14], and picketing and leaflet distribution around a courthouse.[15] **Defense Note:** See comment previously made as to no objection to a single instruction covering Counts 2-5 on this issue]

Government Note: The government objects to the inclusion of this language for the reasons previously described.

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[12] U.S. Const. amend. I. Instruction given in *U.S. v. Nordean et al*, 21-175, Dkt. Entry 767 at 31.

[13] *Texas v. Johnson*, 491 U.S. 397, 404 (1989).

[14] *Snyder v. Phelps* 562 U.S. 443 (2011)

[15] U.S. v. Grace, 461 U.S. 171 (1983).

[In response to the government's objection above, defendant notes that *Nordean* is cited for the proposition which the footnote to *Nordean* precedes. However, the language that follows regarding conduct can be speech is supported by the cases cited in the footnotes applicable to those sentences.]

DISORDERLY OR DISRUPTIVE CONDUCT IN A CAPITOL BUILDING – ELEMENTS

(40 U.S.C. § 5104(e)(2)(D))

Count Four of the indictment charges Patrick Stedman with disorderly or disruptive conduct in a capitol building, which is a violation of federal law.

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

First, the defendant was inside the United States Capitol Building.

Second, the defendant uttered loud, threatening, or abusive language, or engaged in disorderly or disruptive conduct**.**

Defense request/objection: The indictment Count Four does not allege that Mr. Stedman uttered loud, threatening or abusive language", only that Mr. Stedman "engaged in disorderly and disruptive conduct within the United States Capitol Grounds …" The terms "uttered loud, threatening, or abusive language" should not be instructed. Instructing the jury that it could convict if Mr. Stedman "uttered loud, threatening, or abusive language" would constructively amend the indictment to allow conviction on a ground not alleged in the indictment. *United States v. Toms*, 396 F.3d 427, 436 (D.C. Cir. 2005) ("To support a claim of constructive amendment, he would have needed to show that 'the evidence presented at trial and the instructions given to the jury so modify the elements of the offense charged that the defendant may have been convicted on a ground not alleged by the grand jury's indictment.'") (internal citation omitted).

Government Note: We respectfully object to the defendant's request. The inclusion of "utter loud, threatening, or abusive language" does not amend the substance of the indictment. This conduct is subsumed in "disorderly or disruptive conduct." Additionally, defendant was on notice that he was charged with violating 40 U.S.C. § 5104(e)(2)(D), which makes it a crime to "utter loud, threatening, or abusive language."

Third, the defendant acted with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress.

Fourth, the defendant acted willfully and knowingly.

The terms within these elements were previously defined.

For the purposes of Count Four, "the orderly conduct of a session of Congress or either House of Congress" includes the actions of the Joint Session of Congress convened on January 6, 2021, to certify the Electoral College Presidential Election of 2020.

Defendant's additional proposed language, also in the nature of a Theory of the Case Instruction, *see* Redbook 9.100. The First Amendment to the United States Constitution affords people the right to speak, assemble, and petition the Government for grievances.[16] Speech is not limited to spoken or written words. Conduct also can constitute speech when it is intended by the actor to convey a particularized message that would be understood by those who viewed the conduct.[17] Some examples of conduct that constitutes protected First Amendment conduct and speech are burning the American flag, picketing in public at a funeral of a deceased soldier with a signs that read "Thank God for IEDs," "Thank God for Dead Soldiers,"[18], and picketing and leaflet distribution around a courthouse.[19]

Defense Note: See comment previously made as to no objection to a single instruction covering Counts 2-5 on this issue.

Government Note: As described above, the government objects to the inclusion of this language.

[16] U.S. Const. amend. I. Instruction given in U.S. v. Nordean et al, 21-175, Dkt. Entry 767 at 31.

[17] *Texas v. Johnson*, 491 U.S. 397, 404 (1989).

[18] *Snyder v. Phelps* 562 U.S. 443 (2011)

[19] U.S. v. Grace, 461 U.S. 171 (1983).

PARADING, DEMONSTRATING, OR PICKETING IN A CAPITOL BUILDING – ELEMENTS

(40 U.S.C. § 5104(e)(2)(G)); *Bynum v. United States Capitol Police Board*, 93 F. Supp. 2d 50, 58 (D.D.C. 2000))

Count Five of the indictment charges Patrick Stedman with parading, demonstrating, or picketing in a capitol building, which is a violation of federal law.

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

First, the defendant was inside the United States Capitol Building.

Second, the defendant paraded, demonstrated, or picketed.

Third, the defendant acted willfully and knowingly.

The terms "parade" and "picket" have their ordinary meanings.

The terms within these elements were previously defined.

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.

Defendant's additional proposed language, also in the nature of a Theory of the Case Instruction, *see* Redbook 9.100. The First Amendment to the United States Constitution affords people the right to speak, assemble, and petition the Government for grievances.[20] Speech is not limited to spoken or written words. Conduct also can constitute speech when it is intended by the actor to convey a particularized message that would be understood by those who viewed the conduct.[21] Some examples of conduct that constitutes protected First Amendment conduct and

[20] U.S. Const. amend. I. Instruction given in *U.S. v. Nordean et al*, 21-175, Dkt. Entry 767 at 31.

[21] *Texas v. Johnson*, 491 U.S. 397, 404 (1989).

speech are burning the American flag, picketing in public at a funeral of a deceased soldier with a signs that read "Thank God for IEDs," "Thank God for Dead Soldiers,"[22], and picketing and leaflet distribution around a courthouse.[23]

Defense Note: See comment previously made as to no objection to a single instruction covering Counts 2-5 on this issue.

Government Note: As described above, the government objects to the inclusion of this language.

[22] *Snyder v. Phelps* 562 U.S. 443 (2011)

[23] U.S. v. Grace, 461 U.S. 171 (1983).

LIMITING INSTRUCTION: STATEMENTS OF OTHERS

(*United States v. Thompson*, 21-cr-00161-RBW, ECF No. 83 at 12 (D.D.C. Apr. 14, 2022))

You have heard evidence regarding statements made by former President Donald Trump on January 6, 2021. This evidence has been admitted for a limited purpose and that is its potential impact on the intent required to establish the defendant's guilt on the offenses he is charged with committing in this case, if you conclude that the defendant heard those statements. You are not to consider that evidence for any other purpose. Former President Donald Trump did not actually have the power to authorize or make legal the alleged crimes charged in this case. Again, the evidence regarding the statements may only be used in your assessment as to whether the defendant had the required intent to commit the crimes for which he has been charged.

Defendant's Requested Additional Language: You have heard and seen video evidence in which others who were in or near the Capitol Building or its grounds. You are to consider such evidence – the words and conduct of persons other than Mr. Stedman – only for the context of the events of January 6, 2021 as they may bear on any elements of the offenses that the government is required to prove, and how, if at all, Mr. Stedman's observance of any conduct or words by others relate to his state of mind (intent and knowledge) as to any particular offense with which he is charged. You cannot consider the words or actions of any persons other than Mr. Stedman for any other purpose.

Government Note: The government respectfully objects to this additional paragraph. It ignores attempt and aiding abetting liability and will confuse the jury as to how to contextualize the evidence of the riot as a whole, as it relates to the defendant's charged criminal conduct. To the extent the Court is willing to adopt a limiting instruction, we prefer the following language:

Government Preferred Additional Language: The Court has admitted certain evidence including videos and testimony to show the context of what happened on January 6, 2021, and you

may consider such evidence for this purpose. You may not, however, convict Mr. Stedman of what another person did or said, unless the government has proven, beyond a reasonable doubt, that Mr. Stedman aided and abetting the crime, as defined within my instructions.

Defense Note: Defense objects to government's preferred additional limiting instruction as inaccurate. Mr. Stedman is not charged with conspiracy and the words of others cannot be admitted as similar to coconspirator statements. Instead, defendant's proposed instruction above tracks the purposes for which the Court in its ruling on the motions allowed the admissibility of such evidence.

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