

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 21-cr-719
	:	
CYNTHIA BALLENGER and	:	
CHRISTOPHER PRICE,	:	
	:	
Defendants.	:	

**NOTICE OF JOINT PROPOSED ELEMENTS OF LAW**

The United States of America and defendants Cynthia Ballenger and Christopher Price, by and through their undersigned attorney, hereby submit proposed elements of law for the four counts charged in the superseding information, as requested by the Court at the pre-trial conference on February 24, 2023. The parties have conferred on these proposed instructions, and agree on the elements and definitions except as specifically described below.<sup>1 2</sup>

**COUNT ONE**

Entering Or Remaining In A Restricted Building Or Grounds,  
in violation of 18 U.S.C. § 1752(a)(1)

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

1. The defendant entered or remained in a restricted building or grounds without lawful authority to do so; and
2. The defendant did so knowingly.

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<sup>1</sup> The proposed elements and the government’s proposed definitions are consistent with those jointly proposed by the parties in *United States v. Dennis*, 21-cr-679 (JEB).

<sup>2</sup> In addition to related footnotes, the Defense submits, connected to this proposal, Defendants’ Memorandum of Points and Authorities Stating Concerns with Certain Government Jury Instruction Requests and Support for Defense Jury Instructions (“Def. Mem.”).

### 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.<sup>3</sup>

The term “person protected by the Secret Service” includes the Vice President and the immediate family of the Vice President.<sup>4</sup>

#### **The government proposes:**

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 knowingly entered or remained in a restricted building, the fact-finder may consider all of the evidence, including what the defendant did or said. *See* Seventh Circuit Pattern Criminal Jury Instructions; *see also Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005). Furthermore, a person who enters or remains in a restricted area with a good faith belief that he is entering with the lawful authority is not guilty of this offense. Thus, the fact-finder cannot find the defendant guilty of this offense unless the fact-finder is convinced beyond a reasonable doubt that the defendant did not have a good faith belief of lawful authority to enter or remain in the restricted area.

#### **The defense proposes definition (knowingly-voluntarily)(Def. Mem. I and II):**

A person acts “knowingly” if he acts voluntarily<sup>5</sup>, 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 knowingly entered or remained in a restricted building, the fact-finder may consider all of the evidence, including what the defendant did or said. Furthermore, a

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<sup>3</sup> 18 U.S.C. § 1752(c).

<sup>4</sup> 18 U.S.C. § 3056.

<sup>5</sup> Fifth Cir. Pattern Jury Instructions (Criminal Cases) Paragraph 1.41 (2019); Seventh Circuit Pattern Criminal Jury Instructions

person who enters or remains in a restricted area with a good faith belief that he is entering with the lawful authority is not guilty of this offense. Thus, the fact-finder cannot find the defendant guilty of this offense unless the fact-finder is convinced beyond a reasonable doubt that the defendant did not have a good faith belief of lawful authority to enter or remain in the restricted area.

**The defense proposes additional definition (knowingly-remain)(Def. Mem. Sections I and III):**

In deciding whether the defendant acted knowingly to enter or remain in a restricted building or grounds, a defendant must know that the given area is restricted at the time and the defendant is not in a reasonable process of exiting such restricted area, including circumstances where such defendant is prevented or not able to exit such restricted area faster.

**The defense proposes additional definition (remains)(Def. Mem. Sections I and IV):**

The term “remains” in a restricted building or grounds does not include a reasonable process of exiting such restricted area, including circumstances where such defendant is prevented or not able to exit such restricted area faster.

**The defense proposes additional definition (materially exist at the time) (Def. Mem. Sections V):**

The terms “posted, cordoned or otherwise restricted area of a building or grounds” means an area of a building or grounds restricted by postings, an identifiable police or other cordon, and, possibly, by other physical elements, that materially exist at the time relevant to the conduct of the defendant.

**COUNT TWO**

Disorderly or Disruptive Conduct In A Restricted Building Or Grounds,  
in violation of 18 U.S.C. § 1752(a)(2)

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

1. The defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building or grounds;
2. The defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions; and
3. 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

**The government proposes (restricted building or grounds and knowingly):**

The terms “restricted building or grounds” and “knowingly” should have the same meanings as the instruction for Count One.

**The defense proposes (restricted building or grounds)(Def. Mem. Section VI):**

The terms “restricted building or grounds” should have the same meanings as the instruction for Count One.

**The government proposes (disorderly or disruptive conduct):**

“Disorderly conduct” occurs when a person acts in such a manner as to cause another person to be in reasonable fear that a person or property in a person's immediate possession is likely to be harmed or taken, uses words likely to produce violence on the part of others, is unreasonably loud and disruptive under the circumstances, or interferes with another person by jostling against or unnecessarily crowding that person. <sup>6</sup>

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<sup>6</sup> Redbook 6.643

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

**The defense proposes (disorderly or disruptive conduct)(Def. Mem. Section VII):**

“Disorderly conduct” occurs when a person acts in such a manner as to cause another person to be in reasonable fear that a person or property in a person’s immediate possession is likely to be harmed or taken, uses words likely to produce violence on the part of others, or is unreasonably loud and disruptive under the circumstances.

“Disruptive conduct” is specific conduct of the defendant which would itself be identified as disruptive conduct within common and ordinary meaning in a variety of such public settings.

**The defense proposes (knowingly and with intent) (Def. Mem. Section VI):**

For Count Two the law requires that a person engages in disorderly and disruptive conduct both knowingly and with intent to impede or disrupt the orderly conduct of Government business or official functions. Generally, a person acts “knowingly” if he acts voluntarily, realizes what he is doing, and is aware of the nature of his disorderly or disruptive conduct in, or in proximity to a restricted building or grounds, and does not act through ignorance, mistake, or accident.

**The defense proposes (in fact impeded or disrupted)(Def. Mem. Section VIII):**

The terms “such conduct, in fact, impedes or disrupts” means that defendant’s disorderly or disruptive conduct in fact causes and actually impedes or disrupts. Such terms do not attribute to the defendant’s conduct the conduct, actions or inactions of others or other causes, if any, including before, during or after defendant’s conduct.<sup>8</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Burrage v. United States*, 571 U.S. 204, 210-219 (2014); *Bittner v United States* 143 S. Ct. 713, 724-725 (2023) (Under rule of lenity, statutes imposing criminal penalties construed strictly

**COUNT THREE**

Disorderly or Disruptive Conduct In A Capitol Building,  
in violation of 40 U.S.C. § 5104(e)(2)(D)

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

1. The defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings or at any place in the Capitol Grounds;
2. 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; and
3. The defendant acted willfully and knowingly.

Definitions

The term “United States Capitol Buildings” includes the United States Capitol located at First Street, Southeast, in Washington, D.C.<sup>9</sup>

The term “United States Capitol Grounds” includes all squares, reservations, streets, roadways, walks, and other areas as defined on a map entitled “Map showing areas comprising United States Capitol Grounds,” dated June 25, 1946, approved by the Architect of the Capitol, and recorded in the Office of the Surveyor of the District of Columbia in book 127, page 8. The West Front of the United States Capitol, including the Upper Terrace Northeast, Upper North Terrace, Upper Northwest Terrace, and Upper West Terrace, is part of the “United States Capitol Grounds” for purposes of this count.

The term “disorderly or disruptive conduct” should have the same meaning as the instruction for Count Two. *See* differences between parties on Count Two disorderly or disruptive conduct.

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against government in favor of individuals”)

<sup>9</sup> For the definition of “United States Capitol Buildings” refer to 40 U.S.C. § 5101.

**The government proposes (willfully and knowingly):**

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. “Willfully” does not, however, require proof that the defendant be aware of the specific law or rule that his conduct may be violating. *See United States v. Bryan*, 524 U.S. 184, 190 (1998).

The term “knowingly” should have the same meaning as the instruction for Count One.

**The defense proposes (willfully and knowingly with intent) (Def. Mem. Section VI and IX):**

The disorderly or disruptive conduct must be “willfully and knowingly” and have the “intent to impede, disrupt or disturb” an orderly session of Congress or either House of Congress.” A defendant acts “willfully” if he knows his conduct was unlawful and intended to do something the law forbids. That is, to find that defendant acted “willfully,” a fact-finder must find that the evidence proved beyond a reasonable doubt that defendant acted with a purpose to disobey or disregard the law.<sup>10</sup> A person need not be aware of the specific law or rule that his conduct may be violating, but he must act with the intent to engage in conduct he knows that some law, that is similar to the specific law, forbids.

A person acts “knowingly” if he acts voluntarily, realizes what he is doing, and is aware of the nature of his disruptive and disorderly conduct, and does not act through ignorance, mistake, or accident.

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<sup>10</sup> *United States v. Bryan*, 524 U.S. 184, 192,193, 196 (1998); Redbook 6.644.

**COUNT FOUR**

Parading, Demonstrating, or Picketing In A Capitol Building,  
in violation of 40 U.S.C. § 5104(e)(2)(G)

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

1. The defendant paraded, demonstrated, or picketed in any of the United States Capitol Buildings; and
2. The defendant acted willfully and knowingly.

**Definitions**

The term “United States Capitol Buildings” should have the same meaning as the instruction for Count Three.

**The government proposes (parade, demonstrate, picket):**

The terms “parade” and “picket” have their ordinary meanings.

The term “demonstrate” refers to conduct that would disrupt the orderly business of Congress.<sup>11</sup>

**The government proposes (willfully and knowingly):**

The term “knowingly” should have the same meaning as the instruction for Count One.

The term “willfully” has the same meaning as the instruction for Count Three.

**The defense proposes (parade, demonstrate, picket)(Def. Mem. Section X):**

Generally, the terms “parade” and “picket” have their ordinary meanings.

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<sup>11</sup> *Bynum v. United States Capitol Police Board*, 93 F. Supp. 2d 50, 58 (D.D.C. 2000).



The terms to “parade” or “demonstrate” and “in any of the Capitol Building” also must involve participation in a parade or demonstration organized to occur at a Capitol Building, and also is not off-hand expressive conduct.<sup>12</sup>

The term “demonstrate” in “any Capitol building” refers to outwardly demonstrative conduct in a Capitol Building and where such demonstrative conduct is, itself, disruptive of the orderly business of Congress<sup>13</sup>. The term to “demonstrate” does not include peaceful praying<sup>14</sup> or activities consistent with ordinary activities at a Capitol building such as peacefully walking, standing, texting or taking pictures.<sup>15</sup>

**The defense proposes (willfully and knowingly)(Def. Mem. Section XI):**

The disorderly or disruptive conduct must be “willfully and knowingly” and have the “intent to impede, disrupt or disturb” an orderly session of Congress or either House of Congress.” A defendant acts “willfully” if he knows his conduct was unlawful and intended to do something the law forbids. That is, to find that defendant acted “willfully,” a fact-finder must find that the evidence proved beyond a reasonable doubt that defendant acted with a purpose to disobey or disregard the law.<sup>16</sup> A person need not be aware of the specific law or rule that his conduct may be violating, but he must act with the intent to engage in conduct he knows that some law, that is similar to the specific law, forbids.

A person acts “knowingly” if he acts voluntarily, realizes what he is doing and is aware of the nature of his disruptive and disorderly conduct, and does not act through ignorance, mistake, or accident.

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<sup>12</sup> *United States v. Nassif*, No. 21-421, 2022 WL 4130841 (D.D.C. Sept. 12, 2022).

<sup>13</sup> *Bynum v. United States Capitol Police Board*, 93 F. Supp. 2d 50, 58 (D.D.C. 2000).

<sup>14</sup> *Id.*

<sup>15</sup> Redbook 6.644.

<sup>16</sup> *United States v. Bryan*, 524 U.S. 184, 192,193, 196 (1998); Redbook 6.6444.

**The defense proposes an additional instruction related to Count One and Count Two (lesser included offense) (Def. Mem. Section XII)**

In some cases, one charge may be more serious than the other and inherently includes the charge. In the case of a charge being inclusive of a second charge, the second is generally called a “lesser included offense.” This case with regard to the offenses charged in Counts One under 18 U.S.C. § 1752(a)(1)) and Count Two under 18 U.S.C. § 1752(a)(2). The fact-finder should proceed to determine innocence and guilt under Count Two and if such innocence or guilt knowingly involves conduct in a restricted building or grounds.

If the fact-finder determines the defendant guilty of Count Two on such basis, the fact-finder should not proceed to determine whether the defendant is guilty or not guilty under Count One. If the fact-finder determines the defendant is not guilty under Count 2, the fact-finder should then proceed to decide whether the Defendant is guilty or not guilty of the lesser included offense under Count One.

**The defense proposes additional instruction (multiple defendants-multiple counts)<sup>17</sup> (Def. Mem. Section XIII)**

Each count of the indictment charges a separate offense. Moreover, each defendant is entitled to have the issue of his/her guilt as to each of the crimes for which s/he is on trial determined from his/her own conduct and from the evidence that applies to him/her as if s/he were being tried alone. You should, therefore, consider separately each offense, and the evidence which applies to it, and you should return separate verdicts as to each count of the indictment, as well as to each defendant.

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<sup>17</sup> Redbook 2.404 (Multiple Defendants—Multiple Counts)

The fact that you may find any one defendant guilty or not guilty on any one count of the indictment should not influence your verdict with respect to any other count of the indictment for that defendant. Nor should it influence your verdict with respect to any other defendant as to that count or any other count in the indictment. Thus, you may find any one [or more] of the defendants guilty or not guilty on any one or more counts of the indictment, and you may return different verdicts as to different defendants and as to different counts.

Respectfully submitted,

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