

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

UNITED STATES OF AMERICA :
 :
 v. : **Case No. 22-cr-186 (TJK)**
 :
RALPH JOSEPH CELENTANO III, :
 :
 Defendant. :

JOINT PROPOSED JURY INSTRUCTIONS

Instructions Before and During Trial

The parties have no objection to the Pattern Criminal Jury Instructions for the District of Columbia, 2021 Release (“Redbook”) for preliminary instructions and as appropriate based on the developments at trial.

Final Instructions

The parties jointly request the following Pattern Criminal Jury Instructions, except where noted.

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
13. Inadmissible and Stricken Evidence, Redbook 2.112
14. Credibility of Witnesses, Redbook 2.200
15. Police Officer's Testimony, Redbook 2.207 [Defense Objection - see proposal below]
16. Right of Defendant Not to Testify, Redbook 2.208 *or*
Defendant as Witness, Redbook 2.209, *as applicable* [Defense Objection - see
proposal below]
17. False or Inconsistent Statement by Defendant, Redbook 2.210 *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. Statements of the Defendant – Substantive Evidence, Redbook 2.305, *as applicable*
21. Proof of State of Mind, *See United States v. Nordean, et al*, 21-cr-175 (TJK).
22. Multiple Counts – One Defendant, Redbook 2.402
23. Count One, Assaulting, Resisting, or Impeding Certain Officers, in violation of 18
U.S.C. § 111(a)(1) [see proposal below]
24. Count Two, Civil Disorder, in violation of 18 U.S.C. § 231(a)(3) [see proposal below]
25. Count Three, Entering or Remaining in a Restricted Building or Grounds, in violation
of 18 U.S.C. § 1752(a)(1) [see proposal below]
26. Count Four, Disorderly or Disruptive Conduct in a Restricted Building or Grounds, in
violation of 18 U.S.C. § 1752(a)(2) [see proposal below]
27. Count Five, Engaging in Physical Violence in a Restricted Building or Grounds, in
violation of 18 U.S.C. § 1752(a)(4) [see proposal below]

28. Count Six, Act of Physical Violence in the Capitol Grounds or Buildings, in violation of 40 U.S.C. § 5104(e)(2)(F) [see proposal below]
29. Count Seven, Obstruction of an Official Proceeding, in violation of 18 U.S.C. §§ 1512(c)(2), 2 [see proposal below]
30. Notetaking by Jurors, Redbook 1.105B
31. Unanimity—General, Redbook 2.405
32. Verdict Form Explanation, Redbook 2.407
33. Redacted Documents and Tapes, Redbook 2.500
34. Exhibits During Deliberations, Redbook 2.501
35. Selection of Foreperson, Redbook 2.502
36. Possible Punishment Not Relevant, Redbook 2.505
37. Cautionary Instruction on Publicity, Communication, and Research, Redbook 2.508
38. Communication Between Court and Jury During Jury’s Deliberations, Redbook 2.509
39. Attitude and Conduct of Jurors in Deliberations, Redbook 2.510
40. Excusing Alternate Jurors, Redbook 2.511
41. Court Interaction with Jury During Deliberations – Note, Redbook 2.600, *as applicable*
42. When Jurors Cannot Agree, Redbook 2.601, *as applicable*
43. Instructions to Jury Before Polling, Redbook 2.602
44. Instructions to Jury After Polling, Redbook 2.603
45. Comment on Verdict – Note, Redbook 2.604

2.207
Police Officer's Testimony¹

A police officer's testimony should be evaluated by you just as any other evidence in the case. In evaluating the officer's credibility, you should use the same guidelines that you apply to the testimony of any witness. In no event should you give either greater or lesser weight to the testimony of any witness merely because he or she is a police officer.

Defense Objection

The defense proposes the following instruction:

You have heard the testimony of law enforcement officers. The fact that a witness is employed as a law enforcement officer does not mean that his or her testimony necessarily deserves more or less consideration or greater or lesser weight than that of any other witness. At the same time, it is quite legitimate for defense counsel to try to attack the believability of a law enforcement witness on the ground that his or her testimony may be colored by a personal or professional interest in the outcome of the case. You must decide, after reviewing all the evidence, whether you believe the testimony of the law enforcement witness and how much weight, if any, it deserves.

See Third Circuit Model Criminal Jury Instruction 4.18, Credibility of Witnesses – Law Enforcement Officer (Feb 2021).

¹ Redbook Instruction 2.207; *see also* *United States v. Douglas Jensen*, 21-cr-006 (TJK).

2.208

Right of Defendant Not to Testify²

Every defendant in a criminal case has an absolute right not to testify. Ralph Celentano has chosen to exercise this right. You must not hold this decision against him, and it would be improper for you to speculate as to the reason or reasons for his decision. You must not assume the defendant is guilty because he chose not to testify.

Defense Objection

The defense proposes the following instruction:

Mr. Celentano did not testify (or did not present evidence) in this case. A defendant has an absolute constitutional right not to testify (or to present any evidence). The burden of proof remains with the prosecution throughout the entire trial and never shifts to the defendant. The defendant is never required to prove that she is innocent. You must not attach any significance to the fact that Mr. Celentano did not testify. You must not draw any adverse inference against him because he did not take the witness stand. Do not consider, for any reason at all, the fact that Mr. Celentano did not testify. Do not discuss that fact during your deliberations or let it influence your decision in any way.

See Third Circuit Model Criminal Jury Instruction 4.27, Defendant's Choice not to Testify or Present Evidence (Feb 2021).

² Redbook Instruction 2.208; *see also United States v. Douglas Jensen*, 21-cr-006 (TJK).

2.209

Defendant as Witness³

A defendant has a right to become a witness on his own behalf. His testimony should not be disbelieved merely because he is the defendant. In evaluating his testimony, however, you may consider the fact that the defendant has a vital interest in the outcome of this trial. As with the testimony of any other witness, you should give the defendant's testimony as much weight as in your judgment it deserves.

Defense Objection

The defense proposes the following instruction:

In a criminal case, the defendant has a constitutional right not to testify. However, if he chooses to testify, he is, of course, permitted to take the witness stand on his own behalf. In this case, Mr. Celentano testified. You should examine and evaluate his testimony just as you would the testimony of any witness.

See Third Circuit Model Criminal Jury Instruction 4.28, Defendant's Testimony (Feb 2021).

³ Redbook Instruction 2.209; *see also United States v. Richard Barnett*, 21-cr-38 (CRC).

Proof of State of Mind⁴

Someone's intent or knowledge ordinarily cannot be proved directly, because there is no way of knowing what a person is actually thinking, but you may infer someone's intent or knowledge from the surrounding circumstances. You may consider any statement made or acts done by the defendant, and all other facts and circumstances received in evidence which indicate his or her intent or knowledge.

You may infer, but are not required to infer, that a person intends the natural and probable consequences of acts he or she intentionally did or intentionally did not do. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial. You should consider all the circumstances in evidence that you think are relevant in determining whether the government has proved beyond a reasonable doubt that the defendant acted with the necessary state of mind.

While a defendant must act with the intent as I describe below for each charged crime, this need not be the defendant's sole purpose. A defendant's unlawful intent is not negated by the simultaneous presence of another purpose for the defendant's conduct.

Defense Objections

The Defense objects to this instruction and can address the issue at the pretrial conference or during the charge conference.

⁴ See *United States v. Nordean, et al*, 21-cr-175 (TJK).

COUNT ONE
ASSAULTING, RESISTING, or IMPEDING CERTAIN OFFICERS⁵

18 U.S.C. § 111(a)(1)

Count One charges that: On or about January 6, 2021, in the District of Columbia, **RALPH CELENTANO** forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with an officer or an employee of the United States who was engaged in the performance of their official duties, while making physical contact with the person or acting with the intent to commit another felony, in violation of federal law.

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

1. The defendant assaulted, resisted, opposed, impeded, intimidated, or interfered with Officer K.E. United States Capitol Police.
2. The defendant did such acts forcibly.
3. The defendant did such acts voluntarily and intentionally;
4. Officer K.E. was an officer of the United States who was then engaged in the performance of his official duties.
5. The defendant made physical contact with an officer or an employee of the United States who was engaged in the performance of their official duties, or acted with the intent to commit another felony. For purposes of this element, “another felony” refers to the offense charged in Count Two or Count Seven

Definitions

The defendant acted “forcibly” if he used force, attempted to use force, or threatened to use force against the officer. A threat to use force at some unspecified time in the future is not sufficient to establish that the defendant acted forcibly. All of the acts alleged—assault, resist, oppose, impede, intimidate and interfere with—are modified by the word “forcibly.” Thus, before you can find the defendant guilty you must find, beyond a reasonable doubt, that he acted forcibly.

The term “assault” means any intentional attempt or threat to inflict injury upon someone

⁵ 18 U.S.C. § 111(a)(1); *United States v. Gillespie*, No. 22-cr-60 (BAH) (ECF 62 at 6); *United States v. Jenson*, No. 21-cr-6 (TJK) (ECF 97 at 29); *United States v. Williams*, No. 21-cr-618 (ABJ) (ECF 122 at 32); *Tenth Circuit Pattern Jury Instruction 2.09* (Assault on a Federal Officer); *United States v. Arrington*, 309 F.3d 40, 47 n.13 (D.C. Cir. 2002).

else, when coupled with an apparent present ability to do so. Injury means any physical injury, however small, including a touching offensive to a person of reasonable sensibility.⁶ A finding that one used force (or attempted or threatened to use it) is not the same as a finding that he attempted or threatened to inflict injury. In order to find that the defendant committed an “assault,” you must find beyond a reasonable doubt that the defendant acted forcibly and that the defendant intended to inflict or intended to threaten injury.

The terms “resist,” “oppose,” “impede,” “intimidate,” and “interfere with” carry their everyday, ordinary meanings.

You are instructed that officers of the United States Capitol Police were acting in their official duties, to protect the U.S. Capitol complex on January 6, 2021, and detaining individuals who lacked authorization to enter the restricted area around the complex. It is not necessary to show that the defendant knew the person being forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with was, at that time, assisting federal officers in carrying out an official duty so long as it is established beyond a reasonable doubt that the victim was, in fact, assisting a federal officer acting in the course of his duty and that the defendant intentionally forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with that officer.

Defense Objections

3. 18 U.S.C. § 111(a)(1) lists two separate bases for liability: 1) if the acts involve physical contact with the victim; or 2) the intent to commit another felony. It is the defense position that the jurors have to be unanimous as to the basis for liability and they should be instructed as such. See *United States v. Kimes*, 246 F.3d 800 (2001).⁷

⁶ *United States v. Watts*, 798 F.3d 650, 654 (7th Cir. 2015) (“an assault may also be committed by a person who intends to threaten or attempt to make offensive rather than injurious physical contact with the victim”); *United States v. Acosta-Sierra*, 690 F.3d 1111, 1117 (9th Cir. 2012) (“Because Section 111 does not define assault, we have adopted the common law definition of assault as either (1) a willful attempt to inflict injury upon the person of another, or (2) a threat to inflict injury upon the person of another which, when coupled with an apparent present ability, causes a reasonable apprehension of immediate bodily harm.”) (quotation marks omitted); *Comber v. United States*, 584 A.2d 26, 50 (D.C. 1990) (en banc) (explaining that the crime of simple assault “is designed to protect not only against physical injury, but against all forms of offensive touching, . . . and even the mere threat of such touching”); Criminal Jury Instructions for the District of Columbia, No. 4.100 (2022 ed.) (“Injury means any physical injury, however small, including a touching offensive to a person of reasonable sensibility.”). For other January 6 trials that have used similar instructions, see *United States v. Jensen*, No. 21-cr-6 (TJK) (ECF No. 97 at 30), and *United States v. Webster*, No. 21-cr-208 (APM) (ECF No. 101 at 14).

⁷ If the Court gives this instruction, the defense reserves the right to move to modify the verdict sheet accordingly.

4. The defense objects to the addition of the sentence, “Injury means any physical injury, however small, including a touching offensive to a person of reasonable sensibility.” The definition of “injury” that the government is seeking to include comes from the model instruction for a different statute where injury must be proven as an element. Here, injury is not an element of the crime, and this sentence would only serve to confuse the jury.

COUNT TWO
CIVIL DISORDER⁸
18 U.S.C. § 231(a)(3)

Count Two charges that: On or about January 6, 2021, in the District of Columbia, **RALPH CELENTANO** did commit or attempted to commit an act to obstruct, impede, or interfere with officers who were lawfully carrying out their official duties incident to a civil disorder, which is a violation of federal law.

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

1. The defendant knowingly committed an act with the intended purpose of obstructing, impeding, or interfering with law enforcement officers.
2. At the time of the defendant's actual act, law enforcement officers were engaged in the lawful performance of his official duties incident to and during a civil disorder.
3. The civil disorder in any way or degree obstructed, delayed, or adversely affected either commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function.

If you find defendant **RALPH CELENTANO** guilty of this offense, you must also answer two questions that follow Count Two on the Verdict Form asking whether the jury unanimously agrees that the government has shown 1) that the civil disorder obstructed, delayed, or adversely affected commerce or the movement of an article or commodity in commerce; or 2) that the civil disorder obstructed, delayed, or adversely affected the conduct or performance of a federally protected function. You may find that the civil disorder affected both commerce and the conduct of a federally protected function. In that case, you will answer both of the questions that follow Count Two. Alternatively, you may find that the government has only shown that a civil disorder affected either commerce or a federally protected function. In that case, you will answer YES to only one of the two questions that follow Count Two.⁹

Committing or attempting to commit this offense are not separate offenses but alternative ways in which the government alleges that defendant **RALPH CELENTANO** committed this same offense in Count Two. You need not conclude that he both committed and attempted to commit the acts described in the above paragraph. I will instruct you as to both the commission of the

⁸ *United States v. Pugh*, 20-cr-73 (S.D. Ala. May 19, 2021); *United States v. Rupert*, No. 20-cr-104 (D. Minn. Mar. 12, 2021) (ECF No. 81)); 18 U.S.C. § 232; 18 U.S.C. § 6; 5 U.S.C. § 101; 2 U.S.C. §§ 1961, 1967. For other January 6 trials that have used similar instructions, see, e.g., *United States v. Webster*, No. 21-cr-208 (APM) (ECF 101 at 15-18); *United States v. Robertson*, No. 21-cr-34 (CRC) (ECF 86 at 16); *United States v. Williams*, No. 21-cr-618 (ABJ) (ECF 122 at 25); *United States v. Gillespie*, No. 22-cr-60 (BAH) (ECF 62 at 7-8); *United States v. Jensen*, No. 21-cr-6 (TJK) (ECF 97 at 21-22).

⁹ See *United States v. Vincent Gillespie*, 22-cr-060 (BAH), Final Jury Instructions, ECF No. 62 at 7.

offense and the attempted commission of the offense below. You may consider these two alternatives in any order you wish.

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 or said.

The term “civil disorder” means any public disturbance involving acts of violence by groups of three or more persons, which (a) causes an immediate danger of injury to another individual, (b) causes an immediate danger of damage to another individual’s property, (c) results in injury to another individual, or (d) results in damage to another individual’s property.

The term “commerce” means commerce or travel between one state, including the District of Columbia, and any other state, including the District of Columbia. It also means commerce wholly within the District of Columbia.¹⁰

The term “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.¹¹

The term “department” includes executive departments. The Department of Homeland Security, which includes the United States Secret Service, is an executive department.

The term “agency” includes any department, independent establishment, commission, administration, authority, board, or bureau of the United States.

The term “law enforcement officer” means any officer or employee of the United States or the District of Columbia while engaged in the enforcement or prosecution of any criminal laws of the United States or the District of Columbia.

For the U.S. Capitol Police and Metropolitan Police Department on January 6, 2021, the term “official duties,” means policing the U.S. Capitol Building and Grounds, and enforcing federal law and D.C. law in those areas.¹²

¹⁰ Modified definition of 18 U.S.C. § 232(2) from jury instructions *United States v. Pugh*, 20-cr-73 (S.D. Ala. May 19, 2021); *see also United States v. Schwartz, et al.*, No. 21-cr-178 (APM) (ECF No. 172 at 18).

¹¹ *See* 18 U.S.C. § 232(3).

¹² *United States v. Schwartz, et al.*, No. 21-cr-178 (APM) (ECF No. 172 at 19). *See, e.g.*, Fifth Circuit Pattern Criminal Jury Instruction No. 2.07; Tenth Circuit Pattern Criminal Jury Instruction No. 2.09; Eleventh Circuit Pattern Criminal Jury Instruction No. 01.1; *United States v. Smith*, 743 F. App’x 943, 949 (11th Cir. 2018) (“Furthermore, the district court instructed the jury regarding the Task Force’s duties, stating: ‘A member of the U.S. Marshals Regional Fugitive Task Force is a Federal officer and has the official duty to locate and apprehend fugitives.’”); *United States v. Green*, 927 F.2d 1005, 1008 (7th Cir. 1991) (“Given the sweep of

Defense Objections

1. The defense requested the following language with respect to element 2 of the Civil Disorder count: “At the time of the defendant’s actual act, Officer K.E. was engaged in the lawful performance of his official duties incident to and during a civil disorder.”
2. 18 U.S.C. § 231(a)(3) lists two separate bases for liability: 1) the civil disorder in any way or degree obstructed, delayed, or adversely affected either commerce or the movement of any article or commodity in commerce; or 2) the conduct or performance of any federally protected function. It is the defense position that the jurors have to be unanimous as to the basis for liability and they should be instructed as such. Further, the verdict sheet should require the jury to indicate the basis of liability of which they are required to be unanimous. See *United States v. Vincent Gillespie*, 22-cr-060 (BAH), ECF No. 70

Government Position

1. It is the Government’s position that a specific officer does not need to be named in element 2 of the Civil Disorder count.
2. The Government will address the defense request for a modified verdict form at the charge conference.

Attempt¹³

In Count Two, **RALPH CELENTANO** is alternatively charged with attempt to commit the crime of civil disorder. As I mentioned, attempting to commit this offense is not a separate offense but an alternative way in which the government alleges that defendant **RALPH CELENTANO** committed this same offense in Count Two.

the phrase ‘official duties,’ the district court did not err in instructing the jury that the duties of a federal prison employee, even a food service worker, extend to ‘safekeeping, protection and discipline.’”); *United States v. Span*, 970 F.2d 573, 581 (9th Cir. 1992) (“The instruction states only that the activity of looking for a suspect is official conduct. We find no error in the district court’s instruction characterizing this aspect of the marshals’ conduct as official duty.”); *United States v. Ellsworth*, 647 F.2d 957, 963 (9th Cir. 1981) (“‘Instruction No. 10. Among the official duties of officers and agents of the United States Geological Service of the United States Interior Department are inspections of oil drilling apparatus to insure compliance with various Federal laws.’ We think the above language of the charge employed by the trial judge reveals no insufficiency in defining the offense.”).

¹³ *United States v. Gillespie*, No. 22-cr-60 (BAH) (ECF 62 at 8); *United States v. Jensen*, No. 21-cr-6 (TJK) (ECF 97 at 22-23).

In order to find the defendant guilty of attempt to commit civil disorder, 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 civil disorder, as I have defined that offense above; and
2. The defendant took a substantial step toward committing civil disorder.

With respect to the first element of attempt, you may not find the defendant guilty of attempt to commit civil disorder merely because he thought about it. You must find 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 civil disorder merely because he made some plans to or some preparation for committing that crime. Instead, you must find that the defendant took some firm, clear, undeniable action to accomplish his intent to commit civil disorder. However, the substantial step element does not require the government to prove that the defendant did everything except the last step necessary to complete the crime.

COUNT THREE
ENTERING OR REMAINING IN A RESTRICTED BUILDING OR GROUNDS¹⁴
18 U.S.C. § 1752(a)(1)

Count Three charges that: On or about January 6, 2021, in the District of Columbia, **RALPH CELENTANO** entered or remained in a restricted building or grounds, which is a violation of federal law.

To find the defendant guilty of this offense, you 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

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.

Specifically, to prove the defendant “knowingly” committed the relevant acts in a “restricted building or grounds” the government must prove not only that the defendant knew he was in a “posted, cordoned off, or otherwise restricted area” but also that he knew that it was such an area “of a building or grounds where the President or other person protected by the Secret Service is or was temporarily visiting.”¹⁵

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

Government Objection:

1. The Government objects to the inclusion of an additional element regarding the defendant’s knowledge as to *why* an area is restricted. This instruction has not been given in any other January 6th case except for *Bingert* which was a bench trial and is not consistent with the statutory text, structure, or congressional intent. To the extent the Court requires additional briefing on this issue, the Government would request the opportunity to respond in writing. *See e.g., United States v. David Charles Rhine*, 21-CR-687 (RC), Dkt. Entry 105 at 15 (including government’s proposed instructions on violations of Sections 1752(a)); *United States v. Donnie Wren et al.*, No. 21-CR-599 (RBW), Dkt. Entry 121 at 39 (same); *United States v. Sara Carpenter*, 21-CR-305 (JEB),

¹⁴ 18 U.S.C. § 1752; *United States v. Jabr*, 4 F.4th 97, 101 (D.C. Cir. 2021); *United States v. Gillespie*, No. 22-cr-60 (BAH) (ECF 62 at 8-9); *United States v. Herrera*, No. 21-cr-619 (BAH) (ECF 65 at 8); *United States v. Bledsoe*, No. 21-cr-204 (BAH) (ECF 215 at 9-10); *United States v. Williams*, No. 21-cr-377 (BAH) (ECF 112 at 9); *United States v. Jensen*, No. 21-cr-6 (TJK) (ECF 97 at 34-35).

¹⁵ *United States v. Bingert, et al.*, 21-cr-091 (RCL), ECF No. 163.

Dkt. Entry 97 at 12 (same); *United States v. Vitali GossJankowski*, 21-CR-123(PLF),
Dkt. Entry 166 at 31 (same).

Defense Objections:

1. The definition of “restricted building or ground” should be... where a person protected by the Secret Service is temporarily visiting or will be temporarily visiting
2. The defense objects to the inclusion of “immediate family” as the Indictment does not include that language.
3. The defense requests the following language for element 2: “The defendant did so knowingly, meaning he knew that the building or grounds was restricted and he knew he lacked lawful authority to enter or remain there. See *United States v. Guy Reffitt*, ECF No. 119 at 30.”

COUNT FOUR
DISORDERLY OR DISRUPTIVE CONDUCT IN A RESTRICTED BUILDING OR
GROUNDS¹⁶

18 U.S.C. § 1752(a)(2)

Count Four charges that: On or about January 6, 2021, in the District of Columbia, **RALPH CELENTANO** engaged in disorderly or disruptive conduct in a restricted building or grounds, which is a violation of federal law.

To find the defendant guilty of this offense, you 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.

The term “restricted building or grounds” and “knowingly” have the same meanings as I have already described to you in the instructions for Count Four for all of the charges.

“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.

Defense Objections

1. The defense contends that the conduct being in a restricted building or grounds is a separate element.
2. The definition of “disorderly conduct” should read as follows: Disorderly conduct occurs when a person is unreasonably loud and disruptive under the circumstances or interferes with another person. It may include loud, threatening or abusive language, disruptive conduct, or acting in a manner as to cause another individual to be in reasonable fear that some harm to their person or property is likely. It is behavior that tends to disturb the public peace, offend public morals, or undermine public safety.

¹⁶ 18 U.S.C. § 1752(a)(2); *United States v. Robertson*, No. 21-cr-34 (CRC) (ECF 86 at 22-23); *United States v. Hale-Cusanelli*, No. 21-cr-37 (TNM) (ECF 84 at 33); *United States v. Webster*, No. 21-cr-208 (APM) (ECF 101 at 20-21); *United States v. Herrera*, No. 21-cr-619 (BAH) (ECF 65 at 8-9); *United States v. Bledsoe*, No. 21-cr-204 (BAH) (ECF 215 at 10); *United States v. Williams*, No. 21-cr-377 (BAH) (ECF 112 at 9-10); *United States v. Herrera*, No. 21-cr-619 (BAH) (ECF No. 65 at 8-9); *United States v. Gillespie*, No. 22-cr-60 (BAH) (ECF No. 62 at 9); *United States v. Jensen*, No. 21-cr-6 (TJK) (ECF 97 at 37-38).

See United States v. Riley Williams, 21-cr-618 (ABJ), Final Jury Instructions, ECF No. 122 at 38.

COUNT FIVE
ENGAGING IN PHYSICAL VIOLENCE IN A RESTRICTED BUILDING OR
GROUNDS¹⁷

18 U.S.C. § 1752(a)(4)

Count Five charges that: On or about January 6, 2021, in the District of Columbia, **RALPH CELENTANO** engaged in an act of physical violence against a person or property in a restricted building or grounds, which is a violation of federal law.

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

1. The defendant engaged in an act of physical violence against a person or property in, or in proximity to, a restricted building or grounds.
2. The defendant did so knowingly.

The term “act of physical violence” means any act involving an assault with intent to harm or injure or other infliction of death or bodily harm on an individual, or damage to, or destruction of, real or personal property. In connection with bodily harm, the act must consist of force capable of causing physical pain or injury to another person.

The terms “restricted building and grounds” and “knowingly” have the same meanings described in the instructions above.

Defense Objections:

1. The defense contends that the act of physical violence occurring in a restricted building or grounds is a separate element.

¹⁷ 18 U.S.C. § 1752(a)(4); *United States v. Gillespie*, No. 22-cr-60 (BAH) (ECF 62 at 9-10); *United States v. Webster*, No. 21-cr-208 (APM) (ECF 101 at 23-24); *Tenth Circuit Pattern Jury Instruction 2.09* (assault requires intent to harm or injure); *Johnson v. United States*, 559 U.S. 133, 140 (2010) (clarifying physical force).

COUNT SIX
ACT OF PHYSICAL VIOLENCE IN THE CAPITOL GROUNDS OR
BUILDINGS¹⁸

40 U.S.C. § 5104(e)(2)(F)

Count Six charges that: On or about January 6, 2021, in the District of Columbia, **RALPH CELENTANO** engaged in physical violence within the United States Capitol Grounds or in any of the Capitol Buildings, 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:

1. The defendant engaged in an act of physical violence in the United States Capitol Grounds or any of the Capitol Buildings.
2. The defendant acted willfully and knowingly.

I have already defined the term “act of physical violence” for you in connection with Count Five and it has the same meaning here.

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. You are instructed that the West Front of the United States Capitol is part of the “United States Capitol Grounds” for purposes of this count.

The terms “willfully” and “knowingly” have the same meanings described in the instructions above.

Defense Objections:

1. The defense contends that the act of violence occurring on Capitol Grounds or in Capitol Buildings is a separate element.

¹⁸ 40 U.S.C. § 5104(e)(2)(F); *United States v. Gillespie*, No. 22-cr-60 (BAH) (ECF 62 at 10-11); *United States v. Webster*, No. 21-cr-208 (APM) (ECF 101 at 24-25).

COUNT SEVEN
OBSTRUCTION OF AN OFFICIAL PROCEEDING¹⁹
(18 U.S.C. §§ 1512(c)(2), 2)

Count Seven charges as follows: On or about January 6, 2021, within the District of Columbia and elsewhere, **RALPH CELENTANO**, attempted to, or did corruptly obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, specifically, Congress’s certification of the Electoral College vote as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. (which is short for United States Code) §§ 15–18, in violation of 18 U.S.C. §§ 1512(c)(2), 2.

Included with this charge is that defendant aided and abetted others to commit this offense.

Attempting or aiding and abetting others to commit this offense are not separate offenses but alternative ways in which the government alleges that defendant committed this same offense in Count Seven.

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.

In order to find the defendant guilty of corruptly obstructing an official proceeding, you must find that the government proved each of the following four elements beyond a reasonable doubt:

1. The defendant attempted to or did obstruct or impede an official proceeding, specifically Congress’ certification of the Electoral College vote;
2. The defendant intended to obstruct or impede the official proceeding, specifically Congress’ certification of the Electoral College vote ;
3. The defendant acted knowingly, with awareness that the natural and probable effect of his conduct would be to obstruct or impede the official proceeding, specifically Congress’ certification of the Electoral College vote; and
4. The defendant acted corruptly.

Definitions

The term “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

¹⁹ 18 U.S.C. § 1512(c)(2); *United States v. Gillespie*, No. 22-cr-60 (BAH) (ECF 62 at 11-12); *United States v. Jensen*, No. 21-cr-6 (TJK) (ECF 97 at 24-25) *United States v. Herrera*, No. 21-cr-619 (BAH) (ECF 65 at 6-8); *United States v. Bledsoe*, No. 21-cr-204 (BAH) (ECF 215 at 6-9); *United States v. Williams*, No. 21-cr-377 (BAH) (ECF 112 at 6-9).

used in Count Seven, the term “official proceeding” means Congress’s Joint Session to certify the Electoral College vote.²⁰

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

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.

Defense Request: If you find Mr. Celentano guilty of any of the other charges in the indictment, that finding alone is not sufficient to determine that he acted corruptly for purposes of Count 7, Obstruction of an Official Proceeding. The “unlawful purpose” and corrupt intent must be directly tied to the official proceeding.

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 a proceeding is not negated by the simultaneous presence of another purpose for his conduct.²¹

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 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 bribing a witness to refuse to testify in that proceeding, or by engaging in other independently unlawful

²⁰ 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), and *United States v. Williams*, No. 21-cr-377 (BAH) (ECF No. 112 at 7).

²¹ *United States v. Gillespie*, No. 22-cr-60 (BAH) (ECF 62 at 12); *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).

conduct, does act corruptly.²² Often, acting corruptly involves acting with the intent to secure an unlawful advantage or benefit either for oneself or for another person.²³

Government Objection:

1. The Government objects to the defense request for repeated inclusion of the phrase “specifically Congress’ certification of the Electoral College vote” for each element as unnecessary given the definition of “official proceeding” is provided.
2. The Government objects to the defense request contained in paragraph four of the definitions as unnecessary and likely to confuse the jury. If the Court requires it, the Government will respond to this request at the charge conference, either in writing or orally.

Defense Objections:

1. The defense objects to the line that an “official proceeding includes a ‘proceeding before Congress.’” The defense proposes that the definition reads: “the term ‘official proceeding’ is a formal hearing before a tribunal.
2. The defense objects to the line “As used in Count Seven, the term ‘official proceeding’ means Congress’ Joint Session to certify the Electoral College Vote. The defense does not agree with this statement, contends the government must prove this element beyond a reasonable doubt, and it is for the jury to determine whether the government has satisfied their burden as to that element.
4. The defense objects to the entire second to last paragraph. The language about “sole intent” is unnecessary and will serve to confuse the jury, as they must find beyond a reasonable doubt that Mr. Celentano’s intent was to obstruct an official proceeding – whether he had other purposes is irrelevant and this language waters down the government’s burden.

²² 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 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).

²³ This last line, which incorporates aspects of the lead and concurring opinions in *United States v. Fischer*, 64 F.4th 329, 340 (D.C. Cir. 2023) (opinion of Pan, J.); *id.* at 352 (Walker, J., concurring), was provided in *United States v. Nordean, et al*, 21-cr-175 (TJK) (ECF No. 767 at 31-32), and *United States v. Kelly*, No. 21-cr-708 (RCL) (ECF No. 101 at 10).

5. The defense objects to the entire last paragraph – the government has not cited any authority for this instruction, and it is unnecessary and will only serve to confuse the jury.

Attempt²⁴

In Count Seven, **RALPH CELENTANO** is alternatively charged with attempt to commit 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
2. The defendant took a substantial step toward committing obstruction of an official proceeding.

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 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 or some preparation for committing that crime. Instead, you must find 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 step necessary to complete the crime.

Aiding and Abetting²⁵

You may find **RALPH CELENTANO** guilty of the crime charged in Count Seven without finding that he personally committed each of the acts that make up the crime or that he was present while the crime was being committed. Any person who in some way intentionally participates in the commission of a crime or acts intending to facilitate the commission of a crime by another, can be

²⁴ *United States v. Gillespie*, No. 22-cr-60 (BAH) (ECF 62 at 12); *United States v. Jensen*, 21-cr-6 (TJK) (ECF 97 at 25-26); *United States v. Herrera*, No. 21-cr-619 (BAH) (ECF 65 at 7).

found guilty either as an aider and abettor or as a principal offender. It makes no difference which label you attach. The person is as guilty of the crime as he would be if he had personally committed each of the acts that make up the crime.

To find that a defendant aided and abetted in committing a crime, you must find that the defendant knowingly associated himself with the commission of the crime, that he participated in the crime as something he wished to bring about, and that he intended by his actions to make it succeed.

Some affirmative conduct by the defendant in planning or carrying out the crime is necessary. Mere physical presence by **RALPH CELENTANO** at the place and time the crime is committed is not by itself sufficient to establish his guilt. However, mere physical presence is enough if it is intended to help in the commission of the crime. It is not necessary that you find that **RALPH CELENTANO** was actually present while the crime was committed.

The government is not required to prove that anyone discussed or agreed upon a specific time or method of committing the crime. The government is not required to prove that the crime was committed in the particular way planned or agreed upon. Nor need the government prove that the principal offender and the person alleged to be the aider and abettor directly communicated with each other.

I have already instructed you on the elements of the offense with which **RALPH CELENTANO** is charged in Count Seven. With respect to the charge of Obstruction of an Official Proceeding, regardless of whether **RALPH CELENTANO** is an aider and abettor or a principal offender, the government must prove beyond a reasonable doubt that **RALPH CELENTANO** personally acted knowingly, corruptly, and with intent to obstruct or impede the official proceeding.

Defense Objection

1. The defense proposes the following revised charge.

*Aiding and Abetting*²⁶

A person may be guilty of an offense because he personally committed the offense himself or because 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 principle.

In this case, the government alleges that Mr. Celentano aided and abetted others in committing obstruction of an official proceeding as charged in the indictment. In order to find Mr. Celentano guilty of obstruction of an official proceeding because he aided and abetted the commission of this offense, you must find the government proved beyond a reasonable doubt each of the following four (4) requirements:

²⁶ 18 U.S.C. § 2(a); Third Circuit Model Jury Instructions 7.02

First: That others committed the offense charged by committing each of the elements of the offense charged, as I have explained those elements to you in these instructions;

Second: That Mr. Celentano had advanced knowledge²⁷ that the offense charged was going to be committed or was being committed by others;

Third: That Mr. Celentano knowingly did some act for the purpose of aiding, assisting, facilitating, or encouraging others in committing the specific offense charged and with the intent that others commit that specific offense; and

Fourth: That Mr. Celentano performed an act in furtherance of the offense charged.

In deciding whether Mr. Celentano had the required knowledge and intent to satisfy the third requirement for aiding and abetting, you may consider both direct and circumstantial evidence including Mr. Celentano's words and actions and the other facts and circumstances. However, evidence that Mr. Celentano 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 him guilty as an aider and abettor. If the evidence shows that Mr. Celentano 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 Mr. Celentano's intent and purpose to aid, assist, encourage, facilitate or otherwise associate himself with the offense, you may not find Mr. Celentano guilty of the offense as an aider and abettor. The government must prove beyond a reasonable doubt that Mr. Celentano in some way participated in the offense committed by others as something Mr. Celentano wished to bring about and to make succeed.

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

²⁷ See *Rosemond v. United States*, 572 U.S. 65, 81-82 (2014) (“The District Court erred...because it did not explain that Rosemond needed advance knowledge of a firearm's presence.”).

Defense Proposed Instruction: Self-Defense [If applicable]

Self-Defense

Every person has the right to use a reasonable amount of force in self-defense if (1) he has a reasonable belief that the use of force was necessary to defend himself or another against the immediate use of excessive force and (2) uses no more force than was reasonably necessary in the circumstances. A person who was the initial aggressor does not act in self-defense.

If you believe that Mr. Celentano actually and reasonably believed that another person was in imminent danger of serious bodily harm and that Mr. Celentano had reasonable grounds for that belief, then Mr. Celentano has a right to defend that other person even if Mr. Celentano also had other possible motives, such as feelings of anger toward Officer K.E. or a desire for revenge. A defendant's other possible motives do not defeat an otherwise valid claim of self-defense but can be considered in evaluating whether Mr. Celentano actually and reasonably believed that another person was in imminent danger of serious bodily harm.

Self-defense is a defense to the charges in Counts I, II, V, VI and VII. Mr. Celentano is not required to prove that he acted in defense of others. Where evidence of defense of others is present, the government must prove beyond a reasonable doubt that Mr. Celentano did not act in defense of others. If the government has failed to do so, you must find Mr. Celentano not guilty on these counts. *See United States v. Thomas Webster*, 21-cr-208 (APM), Final Jury Instructions, ECF No. 101 at 25 – 26.

Self-defense is not, however, a defense to the Counts III and IV.

Self-Defense – Amount of Force Permissible

A person may use a reasonable amount of force in defense of others. A person may use an amount of force which, at the time of the incident, he actually and reasonably believes is necessary to protect himself or the person of another from imminent bodily harm.

Even if the other person is the aggressor and Mr. Celentano is justified in using force in defense of another, he may not use any greater force than he actually and reasonably believes to be necessary under the circumstances to prevent the harm he reasonably believes is intended.

In deciding whether Mr. Celentano used excessive force in defending another person, you may consider all the circumstances under which he acted. A person acting in the heat of passion caused by an assault does not necessarily lose his claim of self-defense by using greater force than would seem necessary to a calm mind. In the heat of passion, a person may actually and reasonably believe something that seems unreasonable to a calm mind. *See United States v. Thomas Webster*, 21-cr-208 (APM), Final Jury Instructions, ECF No. 101 at 26.

Self-Defense – Amount of Force Permissible Where Appearances are False

If Mr. Celentano actually and reasonably believes it is necessary to use force to prevent imminent bodily harm to another, he may use a reasonable amount of force even though afterwards it turns out that the appearances were false. *See United States v. Thomas Webster*, 21-cr-208 (APM), Final Jury Instructions, ECF No. 101 at 26.

Self-Defense- Where Defendant Might Have Been the Aggressor

If you find that the person Mr. Celentano asserts he was protecting from imminent bodily harm was the initial aggressor, he cannot rely upon the right of self-defense to justify his use of force. Mere words, without more, however do not constitute aggression. *See United States v. Thomas Webster*, 21-cr-208 (APM), Final Jury Instructions, ECF No. 101 at 27.

Government objection

Considering the defense request for the above referenced self-defense instructions, the Government has filed a motion regarding the factual basis for a self-defense claim. *See* ECF No. 46. If the Court finds that a self-defense instruction is appropriate, the Government will provide its proposed jury instructions.