

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

UNITED STATES OF AMERICA

v.

**KYLE ALAN MLYNAREK AND
RONALD MICHAEL BALHORN**

Defendants.

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CASE NO. 1:23-CR-114

PARTIES' PRETRIAL STATEMENT

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The parties submit the following pretrial statement, noting areas of agreement and disagreement, and where further trial preparation may require modifications.

I. Plea Agreements

The government extended plea offers to Kyle Alan Mlynarek and Ronald Michael Balhorn on July 18, 2023, with an initial expiration date of August 7. The expiration date was extended several times, to August 17. The defendants ultimately rejected the plea offers, which are attached as Exhibits A and B for reference. Both defendants were offered agreements to plea to violations of 18 U.S.C. § 231 (civil disorder). The government did not discuss with defense counsel any potential sentencing exposure.

- i. Mr. Thompson and Mr. Gay met with Mr. Mlynarek on July 17, 2023, and discussed all the evidence and the terms of the plea. Mr. Mlynarek suggested counter terms of a plea. Mr. Thompson and Mr. Gay contacted Mr. Ballou and discussed those counter terms and other outstanding matters. Mr. Gay and Mr. Thompson spoke to Mr. Mlynarek again on July 24, 2023, to inform Mr. Mlynarek about the conversation with Mr. Ballou and discussed the terms of the plea (that Mr. Ballou rejected our counter proposal). Mr. Ballou sent another e-mail dated August 10, 2023, about potentially locating the officer involved in this case. Mr. Thompson and Mr. Gay relayed this information to Mr. Mlynarek, who rejected the offer on August 18, 2023.
- ii. On July 17, 2023, Mr. Byrd, Mr. Gay, Mr. Thompson, and the rest of the defense team met with Mr. Mlynarek to discuss the evidence and potential sentencing exposer. Mr. Mlynarek is aware he faces a maximum of five years' incarceration under 18 U.S.C. § 231 and a felony conviction. Counsel communicated that his potential criminal history category is a category 1 and his potential guidelines 12-18 months of incarceration. Counsel communicated that these are estimates and that the Court can sentence him up to five years' incarceration, and that the Department of Probation may calculate a different criminal history or a different application of the guidelines, and thus a potentially increased guideline sentence. He is also aware his that his guideline sentence under defense counsel's calculation is in Zone C, which requires at least one half of the sentence to be incarceration if he is given a guideline sentence.
- iii. By Formal plea letter dated July 14, 2023 the Government made a plea offer to Mr. Balhorn. The plea required him to plead guilty to Count One of the

Indictment, with civil disorder, in violation of 18 U.S.C. § 231(a)(3). Mr. Balhorn understands that a violation of 18 U.S.C. § 231(a)(3) carries a maximum sentence of five years of imprisonment; a fine of \$250,000 or twice the pecuniary gain or loss of the offense, pursuant to 18 U.S.C. §§ 3571(b)(3) and (d); a term of supervised release of not more than three years, pursuant to 18 U.S.C. § 3583(b)(2). The plea offer was discussed with Mr. Balhorn on July 26, 2023. The Defense submitted a counteroffer to Special Counsel Brendan Ballou by formal letter on July 26, 2023 and requesting that he be permitted to plea to Count 6 and 7 in the indictment. On July 27, 2023 by email the Government rejected the Defendant's proposed plea agreement. The Government extended Mr. Balhorn plea agreement until August 7, 2023. On August 7, 2023, the plea was discussed with Mr. Balhorn when it was rejected.

II. Joint Statement of The Case

The parties propose the following joint statement of the case:

“In this case the government alleges that on January 6, 2021, Kyle Alan Mlynarek and Ronald Michael Balhorn entered the Capitol grounds and interfered, impeded, or obstructed one or more police officers during a civil disorder at the U.S. Capitol. The government further alleges that Mlynarek and Balhorn entered the U.S. Capitol building and grounds without authority, were willfully disorderly while in the Capitol and paraded, demonstrated, or picketed inside the Capitol. Mlynarek and Balhorn deny the allegations.”

III. Proposed Voir Dire Questions

a. General Questions

1. Do you have any difficulty speaking, reading, writing, or understanding the English language?
2. Do you have any vision or hearing issues, or any other physical, health, or medical conditions, that might interfere with your ability to hear or understand what the witnesses say, to view exhibits and photographs, or to give this trial your full attention?
3. Do you live outside of the District of Columbia?
4. Did you graduate high school? If yes, did you attend college? If yes, did you graduate college? If yes, did you go to graduate school? If yes, did you complete it?
5. Are you employed?¹

b. Questions Involving Publicity and Predisposition Due to Nature of Case

6. Do you know or are you acquainted with the defendants in this case, Ronald Michael Balhorn and Kyle Alan Mlynarek?
7. Have you seen or heard anything in the news or elsewhere about Mr. Balhorn or Mr. Mlynarek?
8. Do you live or work at or near the U.S. Capitol building or its grounds? Did you on January 6, 2021?
9. Have you followed the news about the events that took place at the U.S. Capitol on January 6, 2021?

¹ Mr. Mlynarek suggests adding the question, “What do you do for work?” if the Court uses open-ended questions in voir dire, the government does not oppose this addition.

10. If you answered “yes” to the previous question, would you describe yourself as having closely² followed the news related to the events at the U.S. Capitol on January 6, 2021?
11. Have you watched any of the January 6 Commission Hearings?
12. Do you or someone you know have a direct or indirect connection to the events that occurred at the U.S. Capitol on January 6, 2021?
13. Were you, your family, or your close friends affected by the events at the U.S. Capitol on January 6, 2021, or the response?
14. Some people have strong feelings—both positive and negative—about the events that occurred on January 6, 2021. Do you have strong feelings – positive or negative?
15. Do you believe that you can sit fairly and impartially in a case in which a defendant is charged with unlawfully entering the Capitol that day?
16. Do you have any impressions or feelings, positive or negative, about how the Department of Justice has been handling the criminal cases arising from the events at the U.S. Capitol on January 6, 2021, that would make it hard for you to be a fair and impartial juror in this case?
17. Have you seen, heard, or followed anything in the news or elsewhere about specific individuals who were present at the U.S. Capitol on January 6, 2021?
18. Do you have any strong personal feelings or opinions about the outcome of the 2020 presidential election, such that it would impact your ability to be fair and impartial in this case?

² Mr. Mlynarek requests the word “closely” be removed and ask simply if a prospective juror followed the news.

19. Do any of you believe that the 2020 presidential election was stolen, corrupt, or fraudulent?

c. Knowledge of The Participants

20. The government is represented in this case by Special Counsel Brendan Ballou and Assistant United States Attorney Jack Burkhead. (Please have them stand and introduce themselves.) Do you know Mr. Ballou or Mr. Burkhead?

21. Mr. Mlynarek is represented in this case by Darin Thompson, Matthew Gay, and Andrew Byrd. (Please have them stand and introduce themselves.) Do you know Mr. Thompson, Mr. Gay, or Mr. Byrd?

22. Mr. Balhorn is represented in this case by Mark Rollins. Do you know Mr. Rollins?

23. Does anyone have any opinions about prosecutors or defense attorneys that might affect your ability to serve as a fair and impartial juror?

24. (Introduce courtroom personnel.) Do you know or are you acquainted with any of these individuals?

25. The following individuals may be called as witnesses or mentioned by name in this case. Do you recognize any of the following names? (Read list of names).

26. There are many people on this jury panel. Do you recognize another member of the panel as being a relative, close friend, or associate?

d. Legal Concepts

27. Does anyone believe that because Mr. Balhorn and Mr. Mlynarek were charged, they are probably guilty?

28. The burden of proof, as in all criminal cases, is proof beyond a reasonable doubt, and this burden rests on the government and never shifts to the defendant. The defendant is presumed innocent unless the government meets that burden, and he has no obligation to

offer his own defense. Would anyone have any difficulty or hesitation with respecting this allocation of the burden of proof?

29. The government is not required to prove its case to a mathematical certainty or prove guilt beyond all doubt. Would anyone of you require proof to a mathematical certainty or proof of guilt beyond all doubt?
30. All defendants have a constitutional right not to testify, and if Mr. Balhorn or Mr. Mlynarek decide not to testify, I will instruct you that you cannot hold their silence against them in any way. Would you have any difficulty following that instruction?
31. Jurors are the sole judges of the facts, but they must follow the principles of law as I instruct. The jury may not choose to follow some rules of law and ignore others, and even if the jury disagrees with or dislikes a rule of law, or does not understand the reasons for some of the rules, it is the jury's duty to follow those rules. Will you have any difficulty following my legal instructions, whatever they may be?

e. Familiarity With News and Social Media

32. Do you check the news daily, whether via newspaper, television, the Internet, or another source?
33. Do you use social media?
34. Have you attended a protest, rally, or demonstration in the last 6 years? Did you observe law enforcement present at it? Did you interact with law enforcement officers there?

f. Questions About Current Events

35. If you are selected as a juror in this case, I will continue to instruct you to avoid all media coverage relating to this case, including radio, television, podcasts, social media, and other Internet sources. That is, you will be forbidden from reading any newspaper articles about this case, listening to any radio or podcast stories about this case, or

watching any TV news about this case. You will also be forbidden from Googling this case, blogging, tweeting, reading, or posting comments about this case on social media sites or anywhere else on the Internet. Do you have any reservations or concerns about your ability or your willingness to follow this instruction?

g. Questions Regarding Relationship with Criminal Justice System

36. Do you work for any law enforcement agency, or do you have any close friends or family that work in law enforcement? This includes any local police or sheriff's department in or outside the district and it includes federal law enforcement agencies like the FBI, the Secret Service, the Department of Homeland Security, the U.S. Capitol Police, and the National Guard. It also includes any prosecutors' offices, such as a U.S. Attorney's office, a state's attorney's office, or a district attorney's office.
37. I will instruct the jury at the end of the trial that the testimony of a police officer should be treated the same as testimony from any other witness and that the jury should give neither greater nor lesser weight to the testimony of a witness simply because that witness is a police officer. Do you have such strong feelings or opinions about law enforcement officers, either positive or negative, that it would be difficult for you to be an impartial juror in a case involving testimony from law enforcement officers?
38. Do you, a family member, or close friend work for the legislative branch of the United States?
39. Has anyone in this group ever attended law school, worked as a lawyer, worked as a paralegal, or otherwise worked in a law office? Have any members of your immediate family or close personal friends done so?

40. Has anyone in this group ever been arrested for, charged with, or convicted of a crime, other than traffic violations? Have any members of your immediate family or close personal friends?
41. If yes, do you believe the justice system treated you (or your family member or friend) fairly? Was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case?
42. Has anyone in this group ever been the victim of or witness to a crime? Have any members of your immediate family or close personal friends? If yes, do you believe the justice system treated you (or your family member or friend) fairly? Was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case?

h. Prior Jury Service or Appearance as Witness

43. Have you ever served as a grand juror in either state or federal court? Was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case?
44. Have you ever served as a trial juror in a criminal or civil case? If so, did the jury reach a verdict? Were you the foreperson? Was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case?
45. Have you ever appeared as a witness in either state or federal court? Was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case?

i. Roles of the Court and Final Questions

46. If, after considering all of the evidence and my instructions on the law, you find the defendant guilty of one or more counts in the indictment, it will be my job as the judge

and my job alone to determine the punishment. The law does not permit you to consider the issue of punishment because there are factors, having nothing to do with this trial, which will help me determine the appropriate sentence, if any. Would you have difficulty, or would you be uncomfortable serving as a juror knowing that you will not have any say in any fine, restitution, or jail sentence that I may impose?

47. Do you have any personal beliefs, whether religious, philosophical, or otherwise, such that you could not, after hearing all the evidence and law in this case, pass judgment on another person in a criminal case?

48. To reach a verdict on a particular charge, every juror must agree on the verdict. That is, any verdict must be unanimous. In deliberations you must consider the opinions and points of your fellow jurors, but you must also follow your own conscience and be personally satisfied with any verdict. Would you have difficulty expressing your own opinions and thoughts about this case to your fellow jurors?

49. We expect the presentation of evidence in this case to conclude this week. After the close of evidence, the jury will deliberate until it reaches a decision. Would serving as a juror in this case be an extreme hardship to you? And by this this, I mean extreme. Serving on a jury is often inconvenient. What I am asking is whether serving on this jury would be very difficult to you.

50. My final question is a catchall question. Are there any other reasons that I have not asked about that make you unable to sit fairly, impartially, and attentively as a juror in this case.

IV. Proposed Jury Instructions

The proposed jury instructions are drawn from the “Redbook” Criminal Jury Instructions for the District of Columbia. Any meaningful modifications are suggested in footnotes.

a. Instructions Before Trial

i. 1.101 Introduction And Voir Dire

Good [morning] [afternoon], ladies and gentlemen, and welcome to courtroom 12. I am Judge Reyes, and I will be the presiding judge in this case. You have been called to this courtroom for possible selection in a criminal case entitled *United States v. Mlynarek et al.*, 1:23-CR-114.

Would you all please stand so that the Deputy Clerk can swear you in, and then we will proceed. [Oath given.]

The purpose of jury selection is to select jurors who have no prior knowledge of the case and no bias toward either side in the case. In short, it is our aim to select a jury that will reach a verdict based solely on the evidence presented in this courtroom and the law as I instruct you. During this process, you will be introduced to the participants in the trial, and I will ask you a series of questions that the lawyers and I think will be helpful to us in selecting a fair and impartial jury. You, of course, are bound by the oath you've just taken to truthfully answer those questions.

[If index cards are used] You all should now have an index card and a pen or pencil. Please look at your juror badge and write the last three digits from your badge in the upper right-hand corner of your index card. I am now going to ask you a series of [give number] questions. They are all yes/no questions. If you have a "yes" answer to a particular question, please write the number of the question on your card. Don't write "yes" or why you have a "yes" answer; just write the number. I will then bring each of you to the bench and put this husher on. You will give me your card and state your jury number, and I will ask you why you did or did not answer particular questions. We do this at the bench to preserve your privacy.

[If topic sheets are used] You all should now have a topic sheet and a pen or pencil.

Please look at your juror badge and write the last three digits from your badge in the upper right-hand corner of your topic sheet. I am now going to ask you the series of [give number] questions on your sheet. They are all yes/no questions. If you have a “yes” answer to a particular question, please circle the number of the question on your sheet. Don’t write “yes” or why you have a “yes” answer; just circle the number. I will then bring each of you to the bench and put this husher on. You will give me your card and state your jury number, and I will ask you why you did or did not answer particular questions. We do this at the bench to preserve your privacy.

We’re going to be asking what may appear to you to be some personal questions in an attempt to get your viewpoint about things, and it is important that you be entirely straightforward with us in your responses so that we may more easily select the jury for this case.

[Read questions.]

ii. 1.102 Preliminary Instruction Before Trial

Before we begin the trial, I want to explain some of the legal rules that will be important in this trial. I want to emphasize that these remarks are not meant to be a substitute for the detailed instructions that I will give at the end of the trial just before you start your deliberations. These preliminary instructions are intended to give you a sense of what will be going on in the courtroom and what your responsibilities as jurors will be.

iii. 1.103 Definitions

A. STIPULATION OF FACT

The government and the defendants may stipulate—that is, agree—to certain facts. You should consider any stipulation of fact to be undisputed evidence.

B. STIPULATION OF TESTIMONY

The government and the defendants may stipulate—that is, agree—to the testimony a particular witness would have given if s/he had testified in this case. You should consider this stipulated testimony to be exactly what this witness would have said had he or she testified here.

C. DEPOSITION

A deposition is the sworn testimony given by a witness before trial. The witness is placed under oath to tell the truth, and lawyers for each party may ask questions. The questions and answers are recorded by a court reporter. You may consider deposition testimony in the same way you would consider testimony actually given in court.

D. JUDICIAL NOTICE

I may take what is called “judicial notice” of public acts, places, facts, and events that I consider to be matters of common knowledge or matters that can be determined easily through undisputed sources. When I take judicial notice of a particular fact, you may [if you choose to do so,] regard that fact as proven evidence. [Because you are the sole judges of the facts, however, you are not required to accept any fact that is judicially noted.]

iv. 1.105A Notetaking by Jurors

When you took your seats, you probably noticed that each of you had a notebook and pencil waiting for you. That is because I permit jurors to take notes during trial if they wish. Whether you take notes or not is entirely up to you. Many people find that taking notes helps them remember testimony and evidence; others find it distracts them from listening to the witnesses.

You will be permitted to take your notebooks back with you into the jury room during deliberations. You should remember, however, that your notes are only an aid to your memory. They are not evidence in the case, and they should not replace your own memory of the evidence. Those jurors who do not take notes should rely on their own memory of the evidence and should not be influenced by another juror's notes.

Other than during your deliberations, the notebooks will remain locked in the courtroom during recesses and overnight. You will not be able to take the notebooks with you as you come and go and you will not be permitted to take them home with you overnight. At the end of the trial, when you come back to the courtroom to deliver your verdict, your notebooks will be collected, and the pages torn out and destroyed. No one, including myself, will ever look at any notes you have taken, so you may feel free to write whatever you wish.

v. 1.106 Questions by Jurors

Generally, only the lawyers and I ask witnesses questions. Occasionally, however, a juror thinks that an important question has not been asked. As a juror, you must be an impartial judge of the facts, not an advocate for either side in this proceeding. While I am not encouraging any of you to pose questions to the witnesses, if during the course of the trial you feel an important question has not been asked, you may write out that question on a piece of paper. You may not ask a question orally at any time during a trial. In addition, you may not discuss the questions with any fellow jurors or anyone else. You should submit your question to the court after the lawyers are finished with their questioning of the witness, but before the witness leaves the witness stand. Once a witness has left the witness stand and been excused, that witness will not be recalled to respond to a juror's question.

After consulting with the lawyers, I will determine whether the question relates to a fact or facts about which the witness can properly testify. If it is proper, I will ask the question. If I do not ask the question, that means I have decided that the question is not a legally proper one. The juror posing it should not guess or speculate about what the answer might have been and must not consider the question or discuss it with other jurors during deliberations. If I decide the question relates only to a legal issue, I may decide to wait until final instructions and answer the question then.

vi. 1.107, Preliminary Instruction to Jury Where Identity of Alternates Is Not Disclosed

You have probably noticed that there are [fourteen (14)] [insert number] of you sitting in the jury box. Only twelve (12) of you will retire to deliberate in this matter. Before any of you even entered the courtroom, we randomly selected the alternates' seats. I will not disclose who the alternate jurors are until the end of my final instructions just before you begin your deliberations. As any seat might turn out to be an alternate's seat, it is important that each of you think of yourselves as regular jurors during this trial, and that all of you give this case your fullest and most serious attention.

vii. 1.108 A Juror's Recognition of a Witness or Other Party Connected to The Case

At the beginning of the jury selection process, you were introduced to some witnesses in person. Others were identified to you only by name. If, at any time during this trial, you suddenly realize that you recognize or might know any witness, lawyer, someone who is mentioned in the testimony or evidence, or anyone else connected with this case in any way, you should raise your hand immediately and ask to speak with me.

b. Instructions After Trial

i. 2.100 Furnishing the Jury with a Copy of the Instructions

I will provide you with a [copy] [tape] of my instructions. During your deliberations, you may, if you want, refer to these instructions. While you may [refer] [listen] to any particular portion of the instructions, you are to consider the instructions as a whole and you may not follow some and ignore others. If you have any questions about the instructions, you should feel free to send me a note. Please return your instructions to me when your verdict is rendered.

ii. 2.101 Function of the Court

My function is to conduct this trial in an orderly, fair, and efficient manner; to rule on questions of law; and to instruct you on the law that applies in this case.

It is your duty to accept the law as I instruct you. You should consider all the instructions as a whole. You may not ignore or refuse to follow any of them.

iii. 2.102 Function of the Jury

Your function, as the jury, is to determine what the facts are in this case. You are the sole judges of the facts. While it is my responsibility to decide what is admitted as evidence during the trial, you alone decide what weight, if any, to give to that evidence. You alone decide the credibility or believability of the witnesses.

As I explained earlier, as human beings, we all have personal likes and dislikes, opinions, prejudices, and biases. Generally, we are aware of these things, but you also should consider the possibility that you have implicit biases, that is, biases of which you may not be consciously aware. Personal prejudices, preferences, or biases have no place in a courtroom, where the goal is to arrive at a just and impartial verdict. All people deserve fair treatment in the legal system regardless of any personal characteristic, such as race, national or ethnic origin, religion, age, disability, sex, gender identity or expression, sexual orientation, education, or income level, or any other personal characteristic. You should determine the facts solely from a fair consideration of the evidence.

You may not take anything I may have said or done as indicating how I think you should decide this case. If you believe that I have expressed or indicated any such opinion, you should ignore it. The verdict in this case is your sole and exclusive responsibility.

iv. 2.103 Jury's Recollection Controls

If any reference by me or the attorneys to the evidence is different from your own memory of the evidence, it is your memory that should control during your deliberations.

v. 2.104 Evidence in The Case—Judicial Notice, Stipulations, Depositions

During your deliberations, you may consider only the evidence properly admitted in this trial. The evidence in this case consists of the sworn testimony of the witnesses, [the exhibits that were admitted into evidence] [the facts of which I took judicial notice] [the facts and testimony stipulated to by the parties] [depositions].

I may take what is called “judicial notice” of public acts, places, facts, and events that I consider to be matters of common knowledge or matters that can be determined easily through undisputed sources. In this case, I took judicial notice of [describe fact of which the court took judicial notice]. When I take judicial notice of a particular fact, you may [if you choose to do so,] regard that fact as proven evidence. [Because you are the sole judges of the facts, however, you are not required to accept any fact that is judicially noted.]

[During the trial, you were told that the parties had stipulated—that is, agreed—to certain facts. You should consider any stipulation of fact to be undisputed evidence.]

[During the trial, you were told that the parties had stipulated—that is, agreed—to what testimony [name of witness] would have given if s/he had testified in this case. You should consider this stipulated testimony to be exactly what s/he would have said had s/he testified here.]

[A deposition is the sworn testimony given by a witness before trial. The witness is placed under oath to tell the truth, and lawyers for each party may ask questions. The questions and answers are recorded by a court reporter. You may consider deposition testimony in the same way you would consider testimony actually given in court.]

When you consider the evidence, you are permitted to draw, from the facts that you find have been proven, such reasonable inferences as you feel are justified in the light of your

experience. You should give any evidence such weight as in your judgment it is fairly entitled to receive.

vi. 2.105 Statements of Counsel

The statements and arguments of the lawyers are not evidence. They are only intended to assist you in understanding the evidence. Similarly, the questions of the lawyers are not evidence.

vii. 2.106 Indictment Not Evidence

The information is merely the formal way of accusing a person of a crime. You must not consider the information as evidence of any kind—you may not consider it as any evidence of Mr. Balhorn or Mr. Mlynarek’s guilt or draw any inference of guilt from it.³

³ Mr. Mlynarek seeks the following additional language, “The defendants are presumed innocent and that presumption remains with them until, and only until the government has proven every element of a charged crime beyond a reasonable doubt.”

viii. 2.107 Burden of Proof—Presumption of Innocence

Every defendant in a criminal case is presumed to be innocent. This presumption of innocence remains with the defendant throughout the trial unless and until the government has proven he is guilty beyond a reasonable doubt. This burden never shifts throughout the trial. The law does not require a defendant to prove his innocence or to produce any evidence at all. If you find that the government has proven beyond a reasonable doubt every element of a particular offense with which a defendant is charged, it is your duty to find him guilty of that offense. On the other hand, if you find the government has failed to prove any element of a particular offense beyond a reasonable doubt, it is your duty to find the defendant not guilty.

ix. 2.108 Reasonable Doubt

The government has the burden of proving Mr. Balhorn and Mr. Mlynarek guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not, or, in some cases, that its truth is highly probable. In criminal cases such as this one, the government's proof must be more powerful than that. It must be beyond a reasonable doubt. Reasonable doubt, as the name implies, is a doubt based on reason—a doubt for which you have a reason based upon the evidence or lack of evidence in the case. If, after careful, honest, and impartial consideration of all the evidence, you cannot say that you are firmly convinced of the defendant's guilt, then you have a reasonable doubt.

Reasonable doubt is the kind of doubt that would cause a reasonable person, after careful and thoughtful reflection, to hesitate to act in the graver or more important matters in life. However, it is not an imaginary doubt, nor a doubt based on speculation or guesswork; it is a doubt based on reason. The government is not required to prove guilt beyond all doubt, or to a mathematical or scientific certainty. Its burden is to prove guilt beyond a reasonable doubt.

x. 2.109 Direct and Circumstantial Evidence

There are two types of evidence from which you may determine what the facts are in this case—direct evidence and circumstantial evidence. When a witness, such as an eyewitness, asserts actual knowledge of a fact, that witness’s testimony is direct evidence. On the other hand, evidence of facts and circumstances from which reasonable inferences may be drawn is circumstantial evidence.

Let me give you an example. Assume a person looked out a window and saw that snow was falling. If he later testified in court about what he had seen, his testimony would be direct evidence that snow was falling at the time he saw it happen. Assume, however, that he looked out a window and saw no snow on the ground, and then went to sleep and saw snow on the ground after he woke up. His testimony about what he had seen would be circumstantial evidence that it had snowed while he was asleep.

The law says that both direct and circumstantial evidence are acceptable as a means of proving a fact. The law does not favor one form of evidence over another. It is for you to decide how much weight to give to any particular evidence, whether it is direct or circumstantial. You are permitted to give equal weight to both. Circumstantial evidence does not require a greater degree of certainty than direct evidence. In reaching a verdict in this case, you should consider all of the evidence presented, both direct and circumstantial.

xi. 2.110 Nature of Charges Not to Be Considered

One of the questions you were asked when we were selecting this jury was whether the nature of the charges itself would affect your ability to reach a fair and impartial verdict. We asked you that question because you must not allow the nature of a charge to affect your verdict. You must consider only the evidence that has been presented in this case in reaching a fair and impartial verdict.

xii. 2.111 Number of Witnesses

The weight of the evidence is not necessarily determined by the number of witnesses testifying for each side. Rather, you should consider all the facts and circumstances in evidence to determine which of the witnesses you believe. You might find that the testimony of a smaller number of witnesses on one side is more believable than the testimony of a greater number of witnesses on the other side or you might find the opposite.

xiii. 2.112 Inadmissible and Stricken Evidence

The lawyers in this case sometimes objected when the other side asked a question, made an argument, or offered evidence that the objecting lawyer believed was not proper. You must not hold such objections against the lawyer who made them or the party she or he represents. It is the lawyers' responsibility to object to evidence that they believe is not admissible.

If, during the course of the trial, I sustained an objection to a lawyer's question, you should ignore the question, and you must not speculate as to what the answer would have been. If, after a witness answered a question, I ruled that the answer should be stricken, you should ignore both the question and the answer and they should play no part in your deliberations. Likewise, exhibits as to which I have sustained an objection or that I ordered stricken are not evidence, and you must not consider them in your deliberations.

xiv. 2.200 Credibility of Witnesses

In determining whether the government has proved the charges against the defendant beyond a reasonable doubt, you must consider the testimony of all the witnesses who have testified.

You are the sole judges of the credibility of the witnesses. You alone determine whether to believe any witness and the extent to which a witness should be believed. Judging a witness's credibility means evaluating whether the witness has testified truthfully and also whether the witness accurately observed, recalled, and described the matters about which the witness testified.

As I instructed you at the beginning of trial and again just now, you should evaluate the credibility of witnesses free from prejudices and biases.

You may consider anything else that in your judgment affects the credibility of any witness. For example, you may consider the demeanor and the behavior of the witness on the witness stand; the witness's manner of testifying; whether the witness impresses you as having an accurate memory; whether the witness has any reason for not telling the truth; whether the witness had a meaningful opportunity to observe the matters about which he or she has testified; whether the witness has any interest in the outcome of this case, stands to gain anything by testifying, or has friendship or hostility toward other people concerned with this case.

In evaluating the accuracy of a witness's memory, you may consider the circumstances surrounding the event, including the time that elapsed between the event and any later recollections of the event, and the circumstances under which the witness was asked to recall details of the event.

You may consider whether there are any consistencies or inconsistencies in a witness's testimony or between the witness's testimony and any previous statements made by the witness.

You may also consider any consistencies or inconsistencies between the witness's testimony and any other evidence that you credit. You may consider whether any inconsistencies are the result of lapses in memory, mistake, misunderstanding, intentional falsehood, or differences in perception.

You may consider the reasonableness or unreasonableness, the probability or improbability, of the testimony of a witness in determining whether to accept it as true and accurate. You may consider whether the witness has been contradicted or supported by other evidence that you credit.

If you believe that any witness has shown him or herself to be biased or prejudiced, for or against either side in this trial, or motivated by self-interest, you may consider and determine whether such bias or prejudice has colored the testimony of the witness so as to affect the desire and capability of that witness to tell the truth.

You should give the testimony of each witness such weight as in your judgment it is fairly entitled to receive.

xv. 2.207 Police Officer's Testimony

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 s/he is a police officer.⁴

⁴ Mr. Mlynarek proposes adding at the beginning of the instruction, "You have heard testimony from officers of the United States Capitol Police, the Federal Bureau of Investigation, and the Metropolitan Police Department." The government does not oppose this addition.

xvi. 2.208 Right of Defendant Not to Testify

Every defendant in a criminal case has an absolute right not to testify. Mr. Balhorn and Mr. Mlynarek have chosen to exercise this right. You must not hold this decision against them, and it would be improper for you to speculate as to the reason or reasons for their decision. You must not assume the defendants are guilty because they chose not to testify.

xvii. 2.209 Defendant as Witness

A defendant has a right to become a witness in 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 an 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.⁵

⁵ Mr. Mlynarek proposes the alternative instruction, "A defendant has a right to testify 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 an interest in the outcome of the case. As with the testimony of any other witness, you should give the defendant's testimony as much weight as in your judgment it deserves."

xviii. 2.210 False or Inconsistent Statement by Defendant

You have heard evidence that the defendant made statements in explanation of his actions that may have been false or inconsistent. It is up to you to decide whether s/he made the statements, and whether they were, in fact, false or inconsistent. If you find he did make such statements and that they were false or inconsistent, you may consider such evidence as tending to show his/her feelings of guilt, which you may, in turn, consider as tending to show actual guilt. On the other hand, you may also consider that he may have given such statements for reasons consistent with his innocence.

If you find that the defendant made a false or inconsistent statement in explanation of his/her actions, you should give the testimony as much weight as in your judgment it deserves.

xix. 2.216 Evaluation of Prior Inconsistent Statement of a Witness

The law treats prior inconsistent statements differently depending on the nature of the statements and the circumstances in which they were made. I will now explain how you should evaluate those statements.

PART A (for use when prior statements not made under oath are introduced):

You have heard evidence that [name of witness] made a statement on an earlier occasion and that this statement may be inconsistent with his/her testimony here at trial. It is for you to decide whether the witness made such a statement and whether in fact it was inconsistent with the witness's testimony here. If you find such an inconsistency, you may consider the earlier statement in judging the credibility of the witness, but you may not consider it as evidence that what was said in the earlier statement was true.

PART B (for use when prior statements made under oath are introduced):

You [also] have heard evidence that [name of witness] made an earlier statement under oath, subject to the penalty of perjury at [a prior proceeding] [the grand jury] [a deposition] and that this statement may be inconsistent with [his] [her] testimony here at trial. If you find that the earlier statement is inconsistent with the witness's testimony here in court, you may consider this inconsistency in judging the credibility of the witness. You also may consider this earlier statement as evidence that what was said in the earlier statement was true.

PART C (for use when prior identification statements are used to impeach a witness):

You [also] have heard evidence that [name of witness] [made an identification] [provided a description] on an earlier occasion, and that his/her testimony here at trial may be inconsistent with that [identification] [description]. It is for you to decide whether s/he [made such an identification] [provided such a description] and whether his/her testimony here was, in fact, inconsistent with it. If you find such an inconsistency, you may consider this inconsistency in

judging the credibility of [name of witness]. You also may consider the earlier [identification] [description] as evidence that what was said in the prior [identification] [description] was true.

xx. 2.217 Evaluation of Prior Consistent Statement of a Witness

You have heard evidence that [name of witness] [name of defendant] made a statement on an earlier occasion and that this statement may be consistent with his/her testimony here at trial. This earlier statement was brought to your attention [both] to help you in evaluating the credibility of the witness [and as evidence in this case]. If you find that the earlier statement is consistent with the witness's present testimony in court, you may consider this consistency [both] in judging the credibility of the witness here at trial [but you may not use it] [and] as proof that what was said in the earlier statement was true.

It is for you to decide whether a witness made a statement on an earlier occasion and whether it was in fact consistent with the witness's in-court testimony here.

xxi. 2.305 Statements of The Defendant—Substantive Evidence

You have heard evidence that each defendant made statements to the police about the crime charged. You should consider all the circumstances, including whether the police recorded the statement, in deciding whether he made the statement. If you find that he did make the statement, you must decide how much weight to give the statement. For example, you may consider whether he made the statement voluntarily and understood what he was saying. You may consider whether he was forced, threatened, or pressured, either physically or psychologically, and whether he was promised any reward or benefit for making the statement. You may consider all the conversations between him and the police. You may consider whether the police warned him of his rights. You may consider where and when the statement was given; the duration of any questioning; who was present during some or all of the questioning of the defendant; and whether the police recorded some or all of the conversations. You may consider the age, education, experience, intelligence and the physical and mental condition of the defendant.

xxii. 2.307 Motive

Motive is not an element of the offenses charged, and the government is not required to prove motive in this case. You may, however, consider evidence of motive or lack of evidence of motive in deciding whether or not the government has proved the charges beyond a reasonable doubt.

xxiii. 2.308 Evidence Admitted Against One Defendant Only

[Identify evidence/statement admitted only against a particular defendant] was admitted only with respect to [name of particular defendant], and it was not admitted against [name(s) of other defendant(s)]. You may consider such evidence only with respect [name of defendant]. You must not consider it in any way in your deliberations with respect to [names of other defendants].⁶

⁶ Mr. Mlynarek proposes the following language: “The government has presented evidence of an alleged weapon, a stick. That evidence was admitted only with respect to Ronald Balhorn, and it was not admitted against Kyle Mlynarek. You may consider such evidence only with respect Ronald Balhorn, you must not consider it in any way in your deliberations with respect to Kyle Mlynarek.”

xxiv. 2.404 Multiple Counts—Multiple Defendants

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 [unless I specifically instruct you to do otherwise].

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. At any time during your deliberations you may return your verdict of guilty or not guilty with respect to any defendant on any count.

xxv. 2.405 Unanimity

A verdict must represent the considered judgment of each juror, and in order to return a verdict, each juror must agree on the verdict. In other words, your verdict on each count must be unanimous.

xxvi. 2.407 Verdict Form Explanation

You will be provided with a Verdict Form for use when you have concluded your deliberations. The form is not evidence in this case, and nothing in it should be taken to suggest or convey any opinion by me as to what the verdict should be. Nothing in the form replaces the instructions of law I have already given you, and nothing in it replaces or modifies the instructions about the elements which the government must prove beyond a reasonable doubt. The form is meant only to assist you in recording your verdict.

xxvii. 2.501 Exhibits During Deliberations

I will be sending into the jury room with you the exhibits that have been admitted into evidence. You may examine any or all of them as you consider your verdict(s). Please keep in mind that exhibits that were only marked for identification but were not admitted into evidence will not be given to you to examine or consider in reaching your verdict.

[If you wish to [see] [hear] those portions of [describe recordings] which I have admitted into evidence, please notify the clerk by a written note and we will assemble in the courtroom with the appropriate equipment.]

xxviii. 2.502 Selection of Foreperson

When you return to the jury room, you should first select a foreperson to preside over your deliberations and to be your spokesperson here in court. There are no specific rules regarding how you should select a foreperson. That is up to you. However, as you go about the task, be mindful of your mission—to reach a fair and just verdict based on the evidence. Consider selecting a foreperson who will be able to facilitate your discussions, who can help you organize the evidence, who will encourage civility and mutual respect among all of you, who will invite each juror to speak up regarding his or her views about the evidence, and who will promote a full and fair consideration of that evidence.

xxix. 2.505 Possible Punishment Not Relevant

The question of possible punishment of the defendant in the event a conviction is not a concern of yours and should not enter into or influence your deliberations in any way. The duty of imposing sentence in the event of a conviction rests exclusively with me. Your verdict should be based solely on the evidence in this case, and you should not consider the matter of punishment at all.

xxx. 2.508 Cautionary Instruction on Publicity, Communication, and Research

I would like to remind you that, in some cases, although not necessarily this one, there may be reports in the newspaper or on the radio, internet, or television concerning this case. If there should be such media coverage in this case, you may be tempted to read, listen to, or watch it. You must not read, listen to, or watch such reports because you must decide this case solely on the evidence presented in this courtroom. If any publicity about this trial inadvertently comes to your attention, do not discuss it with other jurors or anyone else. Just let me or my clerk know as soon after it happens as you can, and I will then briefly discuss it with you.

As you retire to the jury room to deliberate, I also wish to remind you of an instruction I gave you at the beginning of the trial. During deliberations, you may not communicate with anyone not on the jury about this case. This includes any electronic communication such as email or text or any blogging about the case. In addition, you may not conduct any independent investigation during deliberations. This means you may not conduct any research in person or electronically via the internet or in another way.

xxxi. 2.509 Communication Between Court and Jury During Jury's Deliberations

If it becomes necessary during your deliberations to communicate with me, you may send a note by the clerk or marshal, signed by your foreperson or by one or more members of the jury. No member of the jury should try to communicate with me except by such a signed note, and I will never communicate with any member of the jury on any matter concerning the merits of this case, except in writing or orally here in open court.

Bear in mind also that you are never, under any circumstances, to reveal to any person—not the clerk, the marshal or me—how jurors are voting until after you have reached a unanimous verdict. This means that you should never tell me, in writing or in open court, how the jury is divided on any matter—for example, 6-6 or 7-5 or 11-1, or in any other fashion—whether the vote is for conviction or acquittal or on any other issue in the case.

xxxii. 2.510 Attitude and Conduct of Jurors in Deliberations

The attitude and conduct of jurors at the beginning of their deliberations are matters of considerable importance. It may not be useful for a juror, upon entering the jury room, to voice a strong expression of an opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, a sense of pride may cause that juror to hesitate to back away from an announced position after a discussion of the case. Furthermore, many juries find it useful to avoid an initial vote upon retiring to the jury room. Calmly reviewing and discussing the case at the beginning of deliberations is often a more useful way to proceed. Remember that you are not partisans or advocates in this matter, but you are judges of the facts.

xxxiii. 2.511 Excusing Alternate Jurors

The last thing I must do before you begin your deliberations is to excuse the alternate jurors. As I told you before, the selection of alternates was an entirely random process; it's nothing personal. We selected [two] [insert other number as appropriate] seats to be the alternate seats before any of you entered the courtroom. Since the rest of you have remained healthy and attentive, I can now excuse those jurors in seats [insert seat numbers].

Before you [two] [insert other number as appropriate] leave, I am going to ask you to tear out a page from your notebook, and to write down your name and daytime phone number and hand this to the clerk. I do this because it is possible, though unlikely, that we will need to summon you back to rejoin the jury in case something happens to a regular juror. Since that possibility exists, I am also going to instruct you not to discuss the case with anyone until we call you. My earlier instruction on use of the Internet still applies; do not research this case or communicate about it on the Internet. In all likelihood, we will be calling you to tell you there has been a verdict and you are now free to discuss the case; there is, however, the small chance that we will need to bring you back on to the jury. Thank you very much for your service, and please report back to the jury office to turn in your badge on your way out.

xxxiv. 3.101 Proof of State of Mind

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 Mr. Balhorn and Mr. Mlynarek, and all other facts and circumstances received in evidence which indicate his intent or knowledge.

You may infer, but are not required to infer, that a person intends the natural and probable consequences of acts he 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 Mr. Balhorn and Mr. Mlynarek acted with the necessary state of mind.

xxxv. 1.105B Notetaking by Jurors

During the trial, I have permitted those jurors who wanted to do so to take notes. You may take your notebooks with you to the jury room and use them during your deliberations if you wish. As I told you at the beginning of the trial, your notes are only to be an aid to your memory. They are not evidence in the case, and they should not replace your own memory of the evidence. Those jurors who have not taken notes should rely on their own memory of the evidence. The notes are intended to be for the notetaker's own personal use.

c. Elements Of Crimes Alleged

i. Count One: 18 U.S.C. § 231(a)(3)⁷

Count One of the Indictment charges Ronald Michael Balhorn and Kyle Alan Mlynarek with committing or attempting to commit an act to obstruct, impede, or interfere with law enforcement officers lawfully carrying out their official duties incident to a civil disorder, which is a violation of federal law.

In order to find the defendant guilty of this crime, you must find the following elements beyond a reasonable doubt:

- First, the defendant knowingly committed an act or attempted to commit an act with the intended purpose of obstructing, impeding, or interfering with one or more law enforcement officers;
- Second, at the time of the defendant's actual or attempted act, the law enforcement officer or officers were engaged in the lawful performance of their official duties incident to and during a civil disorder; and
- Third, 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.⁸

⁷ Adapted from Proposed Legal Instructions, *U.S. in Pollock et al.*, 1:21-CR-447 (D.D.C. Mar. 13, 2023), ECF No. 218.

⁸ Mr. Balhorn proposes the following alternate instruction:

Count Two of the indictment charges the defendant with committing or attempting to commit an act to obstruct, impede, or interfere with law enforcement officers lawfully carrying out their official duties incident to a civil disorder, which is a violation of federal law.

In order to meet its burden under 18 U.S.C. § 231(a)(3), the government must prove beyond a reasonable doubt each of the following elements:

- 1. That a civil disorder existed at the time the defendant was arrested;*
- 2. That such civil disorder interfered with a federally protected function;*

Definitions

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.⁹

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.

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.¹⁰

The term “department” includes executive departments. The Department of Homeland

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3. *That one or more law enforcement officers were lawfully engaged in the lawful performance of their official duties’ incident to and during the commission of such civil disorder;*
 4. *That the defendant committed or attempted to commit any act for the intended purpose of obstructing, impeding, or interfering, either by himself or with someone else, in a violent manner, with such law enforcement officer or officers;*
 5. *That such act or attempt to act was done willfully and knowingly.*

United States v. Red Feather, 392 F. Supp. 916, 918–19 (D.S.D. 1975)

⁹ See Seventh Circuit Pattern Criminal Jury Instructions; see also *Arthur Andersen LLP v. United States* 544 U.S. 696, 705 (2005); and *United States v. Carpenter*, 21-CR-305 (JEB) (D.D.C. 2023) ECF No. 97 at 12.

¹⁰ Mlynarek proposes adding “It does not include Congress’s certification of the Electoral College vote.” See *United States v. Nordean*, 579 F.Supp.3d 28, 55 (D.D.C. 2021).

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.

ii. Count Two: 18 U.S.C. § 1752(a)(1)¹¹

Count Two of the Indictment charges Kyle Alan Mlynarek 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:

1. First, the defendant entered or remained in a restricted building or grounds without lawful authority to do so; and
2. Second, 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.

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

A person acts “knowingly” if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant acted knowingly, you may consider all of the evidence, including what the defendant did, said, or perceived.¹²

¹¹ Adapted from Proposed Jury Instructions, *U.S. v. Dennison*, 1:23-CR-32 (D.D.C. May 22, 2023), ECF No. 21.

¹² Mr. Mlynarek seeks the additional sentence that “a person who enters or remains in a restricted building with a good faith belief that he is entering or remaining with lawful authority is not guilty of this crime.” See *United States v. Carpenter* 21-cr-305 (JEB), ECF No.97 at 12.

iii. Count Three: 18 U.S.C. § 1752(a)(2)¹³

Count Three of the Indictment charges Kyle Alan Mlynarek with disorderly or disruptive conduct in a restricted building or grounds, which is a violation of federal law. I am going to instruct you on this charge and explain the various elements that you must consider. 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. First, the defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building or grounds;
2. Second, the defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions;
3. Third, the defendant's conduct occurred when, or so that, his conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

“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.¹⁴

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

The terms “restricted building or grounds” and “knowingly” have the same meanings described in the instructions for Count Two.

¹³ Adapted from Proposed Jury Instructions, *U.S. v. Dennison*, 1:23-CR-32 (D.D.C. May 22, 2023), ECF No. 21.

¹⁴ Mr. Mlynarek proposes the following alternate definition: “‘Disorderly conduct’ is conduct that tends to disturb the public peace or undermine public safety.” See *United States v. Grider*, 21-cr-22 (CKK), ECF No. 150 at 24 (“[D]isorderly’ conduct is conduct that which tends to disturb the public peace, offend public morals, or undermine public safety.’ ‘Disorderly,’ *Black’s Law Dictionary* (9th ed. 2009); See also ‘Disorderly,’ *Oxford English Dictionary* (2nd ed. 1989) (‘not according to order or rule; in a lawless or unruly way; tumultuously, riotously.’)).

iv. Count Four: 18 U.S.C. § 1752(a)(1) and (b)(1)(A)¹⁵

Count Four of the Indictment charges Ronald Michael Balhorn with entering or remaining in a restricted building or grounds while carrying a dangerous or deadly weapon, which is a violation of federal law.

Entering or Remaining in a Restricted Building or Grounds with a Deadly or Dangerous Weapon (Greater Offense)

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

1. First, that the defendant entered or remained in a restricted building or grounds without lawful authority to do so.
2. Second, that the defendant did so knowingly.
3. Third, that the defendant carried a deadly or dangerous weapon during and in relation to the offense.

Entering or Remaining in a Restricted Building or Grounds (Lesser Included Offense)

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

1. First, that the defendant entered or remained in a restricted building or grounds without lawful authority to do so.
2. Second, that the defendant did so knowingly.

Definitions

The terms “restricted building or grounds” and “knowingly” have the same meanings

¹⁵ Adapted from Proposed Legal Instructions, *U.S. in Pollock et al.*, 1:21-CR-447 (D.D.C. Mar. 13, 2023), ECF No. 218.

described in the instructions for Count Two.

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

An object may be considered a “deadly or dangerous weapon” for one of two reasons. First, an object is a deadly or dangerous weapon if it is inherently or obviously dangerous or deadly. Such inherently dangerous weapons include guns, knives, and the like. Second, an object is a deadly or dangerous weapon if the object is capable of causing serious bodily injury or death to another person and the defendant used it in that manner. Objects that have perfectly peaceful purposes may be turned into dangerous weapons when used in a manner likely to cause seriously bodily injury or death.¹⁶

¹⁶ Mlynarek proposes the following addition: “A ‘deadly or dangerous weapon’ is ‘any object which, as used or attempted to be used, may endanger the life of or inflict great bodily harm on a person.’” *United States v. Sanchez*, 914 F.2d 1355, 1358 (9th Cir. 1990); *see also United States v. Chansley*, No. 21-cr-3 (RCL), 2021 WL 861079, at *7 (D.D.C. Mar. 8, 2021) (defining “dangerous weapon” as “an object that is either inherently dangerous or is used in a way that is likely to endanger life or inflict great bodily harm”). “Whether something is a ‘dangerous’ weapon depends on how it is used.” *Gray v. United States*, 980 F.3d 264, 267 (2d Cir. 2020). Thus, “‘objects that have perfectly peaceful purposes may be turned into dangerous weapons’ when used in a manner likely to cause bodily harm.” *Chansley*, 2021 WL 861079, at *7 (quoting *United States v. Smith*, 561 F.3d 934, 939 (9th Cir. 2009) (en banc)).

v. Count Five: 18 U.S.C. § 1752(a)(2) and (b)(1)(A)¹⁷

Count Five of the Indictment charges Ronald Michael Balhorn with disorderly or disruptive conduct in a restricted building or grounds, while carrying a dangerous or deadly weapon, namely a riot shield and flagpole, which is a violation of federal law.

Disorderly or Disruptive Conduct in a Restricted Building or Grounds with a Deadly or Dangerous Weapon (Greater Offense)

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

- First, the defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building or grounds.
- Second, the defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions.
- Third, the defendant's conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.
- Fourth, the defendant carried a deadly or dangerous weapon during and in relation to the offense.

Disorderly or Disruptive Conduct in a Restricted Building or Grounds (Lesser Offense)

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

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

¹⁷ Adapted from Proposed Legal Instructions, *U.S. in Pollock et al.*, 1:21-CR-447 (D.D.C. Mar. 13, 2023), ECF No. 218.

- Second, that the defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions.
- Third, that the defendant's conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

Definitions

“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

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

The terms “restricted building or grounds” and “knowingly” have the same meanings described in the instructions for Count Two.

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

The term “deadly or dangerous weapon” has the same meaning described in the instructions for Count Four a similar meaning to that I gave you previously.

vi. Count Six: 40 U.S.C. § 5104(e)(2)(D)¹⁸

Count Six of the Indictment charges Ronald Michael Balhorn and Kyle Alan Mlynarek with disorderly and disruptive conduct in a Capitol 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:

1. First, the defendant engaged in disorderly or disruptive conduct in any of the United States Capitol buildings or grounds;
2. Second, the defendant did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress; and
3. Third, the defendant acted willfully and knowingly.

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

The term “disorderly or disruptive conduct” has the same meaning described in the instructions for Count Three defining “disorderly conduct” and “disruptive conduct.”

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.¹⁹

The term “knowingly” has the same meaning described in the instruction for Count Two.

¹⁸ Adapted from Proposed Jury Instructions, *U.S. v. Dennison*, 1:23-CR-32 (D.D.C. May 22, 2023), ECF No. 21.

¹⁹ Mlynarek proposes adding “A person acts willfully if he acts intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law. Now, the 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 do something that the law forbids.” See *United States v. Bryan*, 524 U.S. 184, 190-194 (1998) (“More is required, however, with respect to the conduct in the fourth category that is only criminal when done “willfully.” The jury must find that the defendant acted with an evil-meaning mind, that is to say, that he acted with knowledge that his conduct was unlawful.”).

vii. Count Seven: 40 U.S.C. § 5104(e)(2)(G)²⁰

Count Seven of the Indictment charges Ronald Michael Balhorn and Kyle Alan Mlynarek 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 elements beyond a reasonable doubt:

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

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

The terms “United States Capitol Buildings” has the same meaning described in the instructions for Count Six.

The terms “knowingly,” and “willfully” have the same meanings as described in the instructions for Counts Two and Six respectively.

²⁰ Adapted from Proposed Jury Instructions, *U.S. v. Dennison*, 1:23-CR-32 (D.D.C. May 22, 2023), ECF No. 21.

V. Prior Convictions

At trial, the government may raise Mlynarek's arrest on June 1, 2018 for "Operating While Impaired," for which he was fined \$1,280 and sentenced to 12 months' probation.

VI. Proposed Stipulations

The government has proposed the following stipulations to defense counsel. The parties expect to work cooperatively to produce an agreed-upon list of stipulations prior to trial.

a. The United States Capitol Building & Grounds

By law, the U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured twenty-four hours a day by U.S. Capitol Police (USCP). Restrictions around the Capitol include permanent and temporary security barriers and posts manned by USCP. Only authorized people with appropriate identification are allowed access inside the Capitol. At the U.S. Capitol, the building itself has 540 rooms covering 175,170 square feet of ground, roughly four acres. The building is 751 feet long (roughly 228 meters) from north to south and 350 feet wide (106 meters) at its widest point. The U.S. Capitol Visitor Center is 580,000 square feet and is located underground on the east side of the Capitol. On the west side of the Capitol building is the West Front, which includes variety of open concrete spaces, a fountain surrounded by a walkway, two broad staircases, and multiple terraces at each floor. On January 6, 2021, the inaugural stage scaffolding was on the West Front of the Capitol building. On the East Front are three staircases, porticos on both the House and Senate side, and two large skylights into the Visitor's Center surrounded by a concrete parkway.

On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public. These security barriers included bike racks that were positioned to the north of the U.S. Capitol along Constitution Avenue; to the south of the U.S. Capitol along Independence Avenue; to the west of the U.S. Capitol along First Street on the eastern side of that street; and, on the east side of the U.S. Capitol, between the Capitol Plaza (East Front) and the grassy areas located between the Plaza and First Street. Within the West Front of the Restricted Area there were

additional temporary barriers due to preparations and ongoing construction for the Inauguration which was scheduled for January 20, 2021, including green snow fencing and signs stating, “Area Closed By order of the United States Capitol Police Board.”

On January 6, 2021, the Restricted Area described above and depicted in Exhibit 101 was a posted, cordoned off, or otherwise restricted area where the Vice President and members of his immediate family were and would be temporarily visiting, and therefore constituted a “restricted building or grounds” as that term is used in Title 18, United States Code, Section 1752(c).

b. Donald J. Trump’s Speech at the “Stop the Steal” Rally

On January 6, 2021, then-President Donald J. Trump held the “Stop the Steal” rally on the “Ellipse,” a 52-acre park, located south of the White House and north of the National Mall, bordered by 15th Street NW to the east, 17th Street, NW to the west, E Street NW to the north, and Constitution Avenue NW to the south. Several individuals made speeches at the rally, commencing at approximately 8:30 a.m. Trump himself began speaking at approximately 11:57 a.m. and spoke for approximately one hour and eleven minutes.

c. The Certification of the Electoral College Vote

On January 6, 2021, a joint session of the United States Congress convened at the U.S. Capitol. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in both the House and Senate chambers of the Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on Tuesday, November 3, 2020.

On January 6, 2021, the House of Representatives began its session at approximately 12:00 p.m., the Senate began its session at approximately 12:30 p.m., and the two Houses met together at approximately 1:00 p.m. in the House of Representatives chamber to begin the joint session. Vice President Mike Pence was in the Capitol building and presiding over the joint session. At approximately 1:15 p.m., the House and Senate adjourned to their separate chambers for up to two hours to resolve a particular objection.

At approximately 2:12 p.m., Vice President Pence evacuated the Senate chamber, and approximately one minute later the senator who had become the presiding officer in Vice President Pence's absence declared that the Senate would stand in recess. Senators evacuated the Senate chamber.

At approximately 2:15 p.m., Speaker Nancy Pelosi, who was presiding over the House of Representatives, evacuated the House chamber, and approximately fifteen minutes later the representative who had become the presiding officer in her absence declared that the House would stand in recess. Representatives evacuated the House chamber. Other Representatives were evacuated later from the House Gallery.

The joint session was suspended.

The Senate and House resumed meeting at approximately 8:06 p.m. and 9:02 p.m., respectively. Congress's joint session continued until approximately 3:44 a.m. on January 7, 2021,

when it completed the certification of the Electoral College vote.

d. United States Capitol Police Closed Circuit Video Monitoring

The United States Capitol Police (USCP) operate and maintain closed-circuit video monitoring and recording equipment that captures locations inside and outside of the U.S. Capitol building and on the Capitol grounds. The video equipment timestamps each recording with the date and time at which the footage is captured. The USCP-controlled video equipment was in good working order on January 6, 2021, and video footage recovered from the cameras and equipment for the day of January 6, 2021, is footage of January 6, 2021. The events depicted in the video footage are a fair and accurate depiction of the events at the U.S. Capitol on January 6, 2021. Where the timestamps are visible on the recordings, they are accurate. The video footage was not altered or edited in any way except to create clips. The video footage is authentic in that it is what it purports to be.

e. Metropolitan Police Department Body-Worn Cameras

Members of the Metropolitan Police Department utilize equipment known as body-worn cameras (“BWC”). BWC record both audio and video. The BWC equipment timestamps each recording with the date and time at which the footage is captured. The BWC equipment was in good working order on January 6, 2021, and video footage recovered from the cameras and equipment with the timestamp of January 6, 2021 is footage from January 6, 2021. The events depicted in the video footage are a fair and accurate depiction of the events at the U.S. Capitol on January 6, 2021, the timestamps on the recordings are accurate, and the video footage was not altered or edited in any way other except to create clips. The video footage is authentic in that it is what it purports to be.

f. House and Senate Recording Studio Closed Circuit Video Monitoring

The House Recording Studio and the Senate Recording Studio operate and maintain closed-circuit video monitoring and recording equipment that captures locations inside the House Chamber and the Senate Chamber. The video equipment timestamps each recording with the date and time at which the footage is captured. The House Recording Studio and Senate Recording Studio controlled video equipment was in good working order on January 6, 2021, and video footage recovered from the cameras and equipment for the day of January 6, 2021, is footage of January 6, 2021. The events depicted in the video footage are a fair and accurate depiction of the events in the Senate Chamber and House Chamber on January 6, 2021.

g. Civil Disorder

Beginning at approximately 12:53 p.m. on January 6, 2021, and continuing until approximately 6:30 p.m. on January 6, 2021, the events on the Grounds of the U.S. Capitol and in the U.S. Capitol building constituted a “civil disorder” as that term is used in Title 18, United States Code, Section 231(a)(3). This means that it was a public disturbance involving acts of violence by assemblages of three or more persons, which caused an immediate danger of or resulted in damage or injury to the property or person of any other individual.

h. Interstate Commerce

The civil disorder on the Grounds of the U.S. Capitol and in the U.S. Capitol building on January 6, 2021, as described above, obstructed, delayed, or adversely affected commerce or the movement of any article or commodity in commerce as those terms are used in Title 18, United States Code, Section 231(a)(3). The term “commerce” means commerce (A) between any State or the District of Columbia and any place outside thereof; (B) between points within any State or the District of Columbia, but through any place outside thereof; or (C) wholly within the District of Columbia. Under the Constitution, Congress has the exclusive power to enact laws for the

District of Columbia.

i. Federally Protected Function

The civil disorder on the Grounds of the U.S. Capitol and in the U.S. Capitol building on January 6, 2021, as described above, adversely affected a “federally protected function” as that term is used in Title 18, United States Code, Section 231(a)(3). That means that the civil disorder adversely affected 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. The federally protected functions that were adversely affected included the following: the United States Capitol Police’s protection of the U.S. Capitol and the Capitol grounds, and the United States Secret Service’s protection of the Vice President of the United States and immediate family members of the Vice President.

VII. Expert Witnesses

Neither the prosecution nor the defense plan to call expert witnesses.

VIII. Motions in Limine

Counsel for Mlynarek anticipates filing motions in limine to:

- Exclude all video evidence of events at the capital that depict something other than: (1) Mlynarek's alleged obstruction (2) Mlynarek's alleged trespass inside the Capitol;
- Preclude the government from introducing the "nigrotimes" video unless they establish a foundation for the authenticity of the video; and
- Preclude the government from using inflammatory language, such as calling Mlynarek an "insurrectionist" and saying that "democracy was under attack."

The government anticipates filing motions in limine to preclude the defendants from introducing evidence or making arguments:

- On the specific location of security cameras in the U.S. Capitol;
- On specific Secret Service tactics and emergency operations;
- That their conduct was authorized by former President Trump or other officers or officials;
- That any inaction by law enforcement permitted their conduct;
- That the First Amendment permitted their conduct;
- On any matter that encourages jury nullification;
- That they defended themselves or others on January 6, 2021; and
- On their prior good acts or relative culpability to other actors on January 6, 2021.

IX. Exhibit List

Below is a current exhibit list for the government. The government continues to investigate this matter and anticipates supplementing this list in the coming weeks, as well as deleting where possible unnecessary exhibits. The government will alert defense and the court as it does so.

Exhibit Name	Description
0176-DE-3420369_0000005_1A0000003_0000002.jpg	Profile photo of Kyle Mlynarek
0176-DE-3420369_0000005_1A0000003_0000004.zip	Screenshots of Mlynarek's social media
0176-DE-3420369_0000005_1A0000003_0000014.jpg	Mlynarek Facebook records
0176-DE-3420369_0000021_1A0000018_0000001.pdf	Facebook contents for Mlynarek (Part 1)
0176-DE-3420369_0000021_1A0000018_0000002.pdf	Facebook contents for Mlynarek (Part 2)
0176-DE-3420369_0000023.pdf	Video from Mlynarek's Facebook account
0176-DE-3420369_0000023_1A0000022_0000001.PNG	Messages from Mlynarek's Facebook account
0176-DE-3420369_0000023_1A0000022_0000002.PNG	Comments from Mlynarek on another user's posts
0176-DE-3420369_0000023_1A0000022_0000003.pdf	Facebook Post regarding January 6th
0176-DE-3420369_0000026_1A0000024_0000001.pdf	Report from Mlynarek iOS device
0176-DE-3420369_0000026_1A0000025_0000001_PHYSICAL.pdf	Cellbrite preliminary device report for Mlynarek (program)
0176-DE-3420369_0000026_1A0000024_0000002.pdf	Cellbrite preliminary device report for Mlynarek (.pdf)
0176-DE-3420369_0000028.pdf	Description of contacts between Mlynarek and Balhorn
0176-DE-3420369_0000030_1A0000027_0000001.mp4	Audio from Mlynarek's phone
0176-DE-3420369_0000030_1A0000028_0000001.MOV	Video from Mlynarek's phone
0176-DE-3420369_0000030_1A0000029_0000001.mp4	Audio from Mlynarek's phone
0176-DE-3420369_0000032.pdf	Scoped evidence from Mlynarek's iPhone
0176-DE-3420369_0000034.pdf	Images of Balhorn and Mlynarek at the Capitol
0176-DE-3420369_0000035.pdf	Scoped Evidence from Mlynarek's Facebook Account

0176-DE-3420369 0000043.pdf	Review of Parler videos
0176-DE-3420369 0000043 1A0000011 0000001.PNG	Image of Balhorn Parler video
0176-DE-3420369 0000043 1A0000011 0000002.PNG	Image of Balhorn and Mlynarek Parler video 1
0176-DE-3420369 0000043 1A0000011 0000003.PNG	Image of Balhorn and Mlynarek Parler video 2
0176-DE-3420369 0000043 1A0000011 0000004.PNG	Image from Mlynarek Parler video
0176-DE-3420369 0000043 1A0000010 0000001.mp4	Image from Parler video 2
0176-DE-3420369 0000043 1A0000011 0000005.PNG	Balhorn Parler video 2
0176-DE-3420369 0000043 1A0000011 0000006.PNG	Balhorn and Mlynarek Parler video image
0176-DE-3420369 0000043 1A0000010 0000002.mp4	Parler video
0176-DE-3420369-GJ 0000004 1A0000002 0000001.pdf	Instagram search result return
0176-DE-3420369-GJ 0000004 1A0000002 0000002.pdf	Facebook search result return
0176-DE-3420369-GJ 0000005.pdf	T-Mobile search returns
0176-DE-3449816 0000022 1A0000008 0000001.pptx	Photos of Mlynarek and Balhorn inside the Capitol
0176-DE-3449816 0000026.pdf	Record of attempted interview of Balhorn
0176-DE-3449816 0000027.pdf	Parler video content from January 6, 2021
0176-DE-3449816 0000038 1A0000041 0000001.jpg	Photo of Balhorn and Mlynarek outside the Capitol
0176-DE-3449816 0000042 1A0000014 0000002.zip	Collection of Balhorn and Mlynarek photos
0176-DE-3449816 0000043 1A0000015 0000005.jpg	Photo of Mlynarek near Ellipse
0176-DE-3449816 0000049.pdf	Review of YouTube videos showing Balhorn and Mlynarek
0176-DE-3449816 0000049 1A0000019 0000001.PNG	Photo of Mlynarek on the Terrace
0176-DE-3449816 0000049 1A0000018 0000001.PNG	Photo of Balhorn and Mlynarek near MPD officers
0176-DE-3449816 0000049 1A0000018 0000002.PNG	Photo of Balhorn and Mlynarek getting into the crowd
0176-DE-3449816 0000049 1A0000018 0000003.PNG	Mlynarek pushing
0176-DE-3449816 0000049 1A0000019 0000003.PNG	Photo of the altercation on the terrace
0176-DE-3449816 0000049 1A0000018 0000004.PNG	Photo of Balhorn and Mlynarek together
0176-DE-3449816 0000058 1A0000055 0000001.PNG	Image of Balhorn getting a towel

0176-DE-3449816 0000058 1A0000054 0000003.PNG	Photo of Mlynarek turning around
0176-DE-3449816 0000058 1A0000055 0000003.PNG	Photo of Balhorn wiping his face
0176-DE-3449816 0000058 1A0000055 0000004.PNG	Photo of Balhorn wiping his face
0176-DE-3449816 0000062.pdf	Review of search of residence
0176-DE-3449816 0000068.pdf	Record of interview with Balhorn
Balhorn Search Photos	Evidence from the search of Balhorn's residence
Mlynarek Phone Notes	Records from a review of Mlynarek's phone
Balhorn retrieves stick before entering senate wing (Clip_1_2)_0926_USCG_00_Upper_Terrace_West_-_2021-01-06_19h20min01s.mp4	MPD BWC of Balhorn retrieving stick before entering Senate Wing
Mlynarek and Balhorn enter senate wing (part_1)(Clip_1_1)_0926_USCG_00_Upper_Terrace_West_-_2021-01-06_19h00min01s.mp4	MPD BWC of Balhorn and Mlynarek shortly before entering Senate Wing
Mlynarek and Balhorn potentially engaging with officers	MPD BWC of Balhorn and Mlynarek engaging with officers
Mlynarek and Balhorn pushing against the line	MPD BWC of Balhorn and Mlynarek pushing against the line
Mlynarek and Balhorn scuffle with MPD platoon	MPD BWC of Balhorn and Mlynarek scuffling with MPD platoon
Mlynarek and Balhorn walk toward Senate Wing prior to entry -_0612_USCG_00_North_Screening_Egress_-_2021-01-06_19h00min01s.mp4	MPD BWC footage of Balhorn and Mlynarek walking towards Senate Wing
((@NIGROTIME2021) Capitol Riots Raw Footage - Journalistic Purposes Only.mp4	Third party footage of Balhorn and Mlynarek on West Terrace
0102 I USCS 01 Senate Wing Door near S139-2021-01-06_14h22min00s000ms.asf	CCTV footage of the Senate Wing door (2:22 PM)
0102 I USCS 01 Senate Wing Door near S139-2021-01-06_14h46min00s000ms.asf	CCTV footage of the Senate Wing door (2:46 PM)
0171 I USCH 01 Memorial Door-2021-01-06_14h27min00s000ms.asf	CCTV footage of Memorial door (2:27 PM)
0259 I USCH 02 Statuary Hall Connector-2021-01-06_14h31min00s000ms.asf	CCTV footage of Statutory Hall Connector (2:31 PM)
0262 I USCH 02 Statuary Hall-2021-01-06_14h30min00s000ms.asf	CCTV footage of Statutory Hall (2:30 PM)
0262 I USCH 02 Statuary Hall-2021-01-06_14h45min00s000ms.asf	CCTV footage of Statutory Hall (2:45 PM)

0959 I USCD 02 Rotunda South-2021-01-06 14h46min00s000ms.asf	CCTV footage of Rotunda South (2:46 PM)
0960 I USCD 02 Rotunda North-2021-01-06 14h46min00s000ms.asf	CCTV footage of Rotunda North (2:46 PM)
0964 I USCH 02 Statuary Hall West-2021-01-06 14h30min00s000ms	CCTV footage of Statuary Hall West (2:30 PM)
0964 I USCH 02 Statuary Hall West-2021-01-06 14h45min00s000ms.asf	CCTV footage of Statuary Hall West (2:345 PM)
David Jones Facebook Video.jpg	Third party photo of defendants
Extended Footage YouTube Video Screenshot.jpg	Third party photo of defendants
Insurrection YouTube Video Screenshot.jpg	Third party photo of defendants
Interview of Livonia PD Detective.pdf	Third party photo of defendants
LA Times Screenshot.jpg	Third party photo of defendants
Livonia Police Report.pdf	Third party photo of defendants
Mlynarek Ellipse from Mary Justice FB.jpg	Third party photo of defendants
Mob of Trump Loyalists 1.GIF	Third party photo of defendants
Mob of Trump Loyalists 2.jpg	Third party photo of defendants
PBS Statuary Hall Screenshot.jpg	Third party photo of defendants
Review of Images and Videos Provided by CHS 5.pdf	Third party photo of defendants
Russian News Report Screenshot.jpg	Third party photo of defendants
Washington Post YouTube Screenshot.jpg	Third party photo of defendants
Image 206	Map of Restricted Perimeter
Image 207	Photograph of Area Closed sign
Image 208	Photograph of Area Closed sign
Image 209	Photograph of Area Closed sign 1
Image 210	Photograph of Area Closed sign 2
Image 211	Photograph of Capitol
Image 212	Area Closed Sign

Image 213	Zoomed Capitol 3D Map – zoomed to West Front, aerial
Image 206	Map of Restricted Perimeter
Image 207	Photograph of Area Closed sign
Image 208	Photograph of Area Closed sign
Image 209	Photograph of Area Closed sign 1
Image 210	Photograph of Area Closed sign 2
Image 211	Area Closed Sign
Image 212	Zoomed Capitol 3D Map – zoomed to West Front, aerial
Image 516	Area Closed – Peace Circle
Image 517	Restricted Perimeter Map
Image 522	3D Pic of Capitol – aerial West
Image 523	Capitol Building 3D Map (front)
Image 524	Capitol First Floor Map
Image 525	Capitol Second Floor Map
Image 526	Capitol Third Floor Map
Image 527	Closure of West Front Police Order
Image 528	Ground Closure Announcement
Image 529	Head of State Cover Email
Image 530	Head of State Worksheet

Mr. Mlynarek intends to introduce 16 stills taken from the 6 second video interaction on the terrace the Government alleges constitutes Count 1.

X. Proposed Verdict Form

Verdict Form

U.S. v. Mlynarek et al., 1:23-CR-114

Count One (as to Kyle Alan Mlynarek): Civil Disorder, in violation of 18 U.S.C. § 231(a)(3)

Guilty

Not Guilty

Count One (as to Ronald Michael Balhorn): Civil Disorder, in violation of 18 U.S.C. § 231(a)(3)

Guilty

Not Guilty

Count Two (as to Kyle Alan Mlynarek): Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1)

Guilty

Not Guilty

Count Three (as to Kyle Alan Mlynarek): Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2)

Guilty

Not Guilty

Count Four (as to Ronald Michael Balhorn): Entering or Remaining in a Restricted Building or Grounds with a Deadly or Dangerous Weapon, in violation of 18 U.S.C. § 1752(a)(1) and (b)(1)(A)

Guilty

Not Guilty

Count Five (as to Ronald Michael Balhorn): Disorderly and Disruptive Conduct in a Restricted Building or Grounds with a Deadly or Dangerous Weapon, in violation of 18 U.S.C. § 1752(a)(2) and (b)(1)(A)

Guilty

Not Guilty

Count Six (as to Kyle Alan Mlynarek): Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D)

Guilty

Not Guilty

Count Six (as to Ronald Michael Balhorn): Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D)

Guilty

Not Guilty

Count Seven (as to Kyle Alan Mlynarek): Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G)

Guilty

Not Guilty

Count Seven (as to Ronald Michael Balhorn): Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G)

Guilty

Not Guilty

Date: _____

Jury Foreperson

XI. Attachments

- Exhibit A: Plea offer to Kyle Alan Mlynarek
- Exhibit B: Plea offer to Ronald Michael Balhorn

DATED: September 8, 2023

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Respectfully submitted,

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