APPENDIX

TABLE OF APPENDICES

Appendix A: Opinion by the U.S. Court of Appeals for the Eleventh Circuit (Jan. 16, 2024) 1a

Appendix B: Parties' Proposed Jury Instructions (May 26, 2022) 18a

Appendix C: District Court's Jury Instructions (June 29, 2022) 45a

Appendix D: Judgment entered by the U.S. District Court for the Southern District of Florida (Apr. 24, 2023) 59a

APPENDIX A

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 23-11423

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SUZANNE ELLEN KAYE,
a.k.a. Muckbang01,
a.k.a. suzannekaye3,
a.k.a. agent of Angry Patriot Hippie,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

D.C. Docket No. 9:21-cr-80039-RLR-1

Before ROSENBAUM, NEWSOM, and LUCK, Circuit Judges.

PER CURIAM:

Suzanne Kaye was convicted by a jury of one count of violating 18 U.S.C. § 875(c) for making threats to shoot an FBI agent in videos she posted to her social-media accounts. On appeal, Kaye argues that the district court erred by excluding her expert and failing to adopt three of her requested jury instructions. After careful consideration, we affirm.

I.

We take the facts below from the evidence adduced at trial.

Kaye, under her username "Angry Patriot Hippie," began posting videos on social media in 2020 to "get famous." Among the content she shared, Kaye posted videos with political content.

On January 16, 2021, ten days after the events at the Capitol on January 6, 2021, the FBI received a tip about Kaye and January 6th. The FBI referred the tip to its office in West Palm Beach, Florida, which assigned Agent Arthur Smith to interview Kaye. After attempting to visit Kaye at her last known address, Agent Smith eventually connected with Kaye over the phone. Kaye told Agent

Smith that she wasn't at the Capitol on January 6th.[1] Still, she invited Agent Smith to visit her home to chat with her, and she gave him her home address.

Agent Smith told Kaye he would visit her residence later that day, but as it turned out, he was ultimately unable to do so. Instead, Agent Smith called Kaye and left a voicemail message to let her know that he would not be coming, but he never heard back from her. For her part, Kaye did not receive the message. So, she testified, when nobody showed up, she concluded that the call had been a "joke."

Kaye took this "joke" as an idea for a post for her social-media accounts, and she wrote a script for a video "parody[ing]" her experience with Agent Smith. According to Kaye, "[t]he video was supposed to have shown a nervous person taking a swig of whiskey[2] out of a bottle and then retelling the story of what happened on the telephone." Kaye made several different takes of the video, publicly posting two versions to different social-media accounts on the evening of January 31, 2021.

In a 50-second video posted on Facebook entitled, "Fuck the FBI," Kaye stated the following:

---

[1] At trial, the district court informed the venire that Kaye was not alleged to have been present at the Capitol for the events of January 6th, and she was not charged with any events related to January 6th.

[2] According to Kaye, the whiskey bottle contained iced tea.

> Hello my TikTok patriot friends. Gotta have a drink. [Drinks from the whiskey bottle] Just got a call from the FBI. They want to come talk to me about my visit to D.C. on January 6th. I told them: you can't come and talk to me unless I have counsel. And being that I can't afford counsel, you'll have to arrest me so I can use my right of counsel. You guys just spent four years persecuting a three-star general with no evidence.[3] You think I'm gonna let you come fucking talk to me? You're out your motherfucking mind, bro. That's not gonna happen. I'm a fucking patriot. And I exercise my First Amendment right on my freedom of speech, and my Second Amendment right to shoot your fucking ass if you come here.

Kaye also posted this video to Instagram. This video formed the basis for Count One.

The second video at issue in this case, a 59-second video Kaye also posted on Instagram, was likewise titled "Fuck the FBI." But in this longer take, Kaye's tone was noticeably angrier:

> Friends. I'm here to let you know I need a drink. [Drinks from the whiskey bottle] Just got a call from the FBI. They want to come talk to me about my visit to D.C. on January 6th. I told them: Bro, I ain't gonna talk to you unless I have counsel. And being that I can't afford counsel right now, you're gonna have to arrest me so I can exercise my right to counsel. And

[3] Kaye testified that she was referring to Michael Flynn, whom she viewed as having been persecuted by the FBI.

> being that you don't even know where I live and you have to ask me, I ain't talking to you either. You just spent four years persecuting a three-star general with no evidence. You think I'm gonna fucking let you come talk to me? I'm an American. I know my fucking rights. My First Amendment right to free speech. My Second Amendment right to carry a gun, to shoot your fucking ass if you come to my house. So fuck you. Fuck you following me. I don't fucking care. I'm glad you know who I am, motherfucker.

Kaye posted this same video on her TikTok account as well. In the TikTok version of the second video, Kaye added a cover of the Police song "Every Breath You Take" as background music because, she said, the FBI was "watching" Kaye, like the lyrics in the song. This second video formed the basis for Count Two. While Agent Smith acknowledged the videos related to each count were similar, he distinguished the two videos by the angle at which they were shot, the "tone" of each video, and the inclusion of music in the second video.

Kaye testified that she did not intend to threaten the FBI, and that the video was just "a freaking TikTok." She also testified that she did not own any guns because she has a marijuana license, and she'd "rather smoke than shoot." Kaye did not tag or otherwise direct the videos to the FBI or Agent Smith's attention.

Unaware of the videos, Agent Smith went to Kaye's address unannounced on February 2, 2021. When no one answered the door, Agent Smith called Kaye. But she did not answer. At that

point, Agent Smith left, and he and his supervisor decided to "close down" the lead related to Kaye.

On February 8, 2021, a second tip alerted the FBI about Kaye's videos. Because of the perceived threat to an agent's life, the FBI sent the tip and the videos to the West Palm Beach Office with priority status. After receiving the video from his supervisor, Agent Smith understood the video as "a threat to shoot me if I go [to Kaye's house]."

Law enforcement arrested Kaye, and a grand jury charged her with two counts of violating § 875(c), one for each video. The district court found that whether Kaye's statements constituted a "true threat" and were therefore unprotected by the First Amendment presented a question for the trier of fact, so Kaye's case proceeded to trial.

Before trial, the district court issued several rulings that Kaye now appeals.

First, the district court granted the government's motion to exclude Kaye's media law and policy expert, Dr. Brooks Fuller. *United States v. Kaye*, No. 21-80039-CR, 2022 WL 860380 (S.D. Fla. Mar. 23, 2022). Kaye gave notice of her intent to call Dr. Fuller to "testify to the historical and contemporary protection afforded to controversial political expression" and to opine that the videos "likely do[] not articulate a true threat in violation of 18 U.S.C. § 875(c)."

After a *Daubert* hearing, the district court granted the government's motion to exclude Dr. Fuller's testimony on three

grounds. *Kaye*, 2022 WL 860380, at *2–5. First, the court found that Dr. Fuller's case-specific testimony took the form of a legal conclusion, which Federal Rule of Evidence 704 bars. *Id.* at *4–5 ("Whether or not a true threat existed is central to the first element of 875(c) and remains solely within the jury's province."). Second, the court determined that the remaining testimony (both case-specific and about media generally) was not helpful under Rule 702(a) because the jury was capable of evaluating how a reasonable person would view the video and its context in social media without the testimony of an expert. *Id.* at *3–4. And third, the court concluded that the testimony created a risk of confusing the issues for the jury under Rule 403 because the jury might conflate Dr. Fuller's evaluation and understanding of the law with the jury's task and the court's instructions. *Id.* at *3–5. For example, the court reasoned, Dr. Fuller's expert testimony could confuse the jury about "the very nature of the reasonable person standard," which "presupposes non-expertise." *Id.* at *4. In short, the court was concerned that Dr. Fuller's testimony would "distract the jurors from applying the law to the facts of this case." *Id.*

Second, the court declined to adopt three of Kaye's proposed jury instructions. Kaye requested, and the government opposed, a modified § 875(c) offense instruction, a defense-theory instruction, and an instruction informing the jury that it could not convict Kaye based on her political views.

For the offense instruction, the government asked for the Eleventh Circuit's pattern instruction, which defines "true threat"

as "a serious threat—not idle talk, a careless remark, or something said jokingly—that is made under circumstances that would place a reasonable person in fear of being injured." *United States v. Elonis*, 575 U.S. 723 (2015); 11th Cir. Crim. Pattern Instr. O30.3 at 215 (Mar. 10, 2022). Kaye's proposed modified instruction removed the pattern instruction's definition of "true threat" and added two paragraphs about "protected political speech."[4] The court rejected the modification and gave the pattern instruction instead.

---

[4] Kaye's modified instruction proposed omitting the pattern instruction's definition of "true threat" and replacing it with the following:

> An issue in this case is whether the defendant's speech was constitutionally protected political speech or whether it constituted a "true threat." "True threats" encompass statements in which the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. A "true threat" is not the same as crude, reactionary, unpleasant, or offensive language. Speech that merely advocates force or violence, when it does not incite imminent lawless action, is protected under the First Amendment.
>
> In considering whether speech was a "true threat," you must also consider the entire context in which her speech was made. For example, the Supreme Court has found that telling a group of protestors at an anti-draft political rally at the height of the Vietnam war that "if they ever make me carry a rifle the first man I want to get in my sights" is the president was constitutionally protected political speech and not a true threat. In so doing, the Court considered the entire context in which the statement was made and not solely the defendant's words.

Kaye also requested a defense-theory instruction that contrasted "true threats" with "vehement, caustic, and sometimes unpleasant sharp attacks on public officials" protected by the First Amendment. Although the court gave a defense theory instruction, it cut much of the language Kaye suggested. The court's defense-theory instruction stated that "Kaye contends that her statements were not 'true threats,' but rather, political speech protected by the First Amendment." The instruction did not define political speech, but it again defined a "true threat" as "a serious threat—not idle talk, a careless remark, or something said jokingly—that is made under circumstances that would place a reasonable person in fear of being kidnapped, killed, or physically injured." And the court directed that if the jury had a reasonable doubt as to whether Kaye's statements were "true threats," it must find Kaye not guilty. In declining to use Kaye's instruction, the court emphasized its view that although it found Kaye's proposed language to be inappropriate for a jury instruction, "[i]t doesn't mean that the Defense can't make that argument in its closing arguments."

The defense also proposed instructing the jury that it could not "find the Defendant guilty because you disagree with or find distasteful her political views." [5] The court declined to give the

[5] Kaye's proposed instruction provided,

> You have just heard testimony and actually observed some exhibits related to what might be considered the Defendant's political views. You must treat this evidence with caution. This evidence alone cannot be used to find the Defendant guilty of the offense charged in the Indictment. It may, however, be

instruction, again opining that the argument was appropriate for closing but not for a jury instruction. While the court did not give Kaye's proposed political-views instruction, it did instruct the jury "not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government."

After a three-day jury trial, the jury acquitted Kaye on Count One (for the shorter Facebook/Instagram video) but convicted her on Count Two (for the longer Instagram/TikTok video). The district court sentenced Kaye to 18 months in prison, a downward variance from the guideline range of 27–33 months.

II.

We begin with Kaye's challenge to the district court's exclusion of her expert. We review the district court's rulings on the admissibility of expert testimony for abuse of discretion. *United States v. Frazier*, 387 F.3d 1244, 1258 (11th Cir. 2004) (en banc).[6] So

> considered by you for limited purposes, such as considering the context in which statements attributed to the Defendant were made, what the Defendant's intent was in making the statement, and her expectation regarding the effects of her statement. You cannot find the Defendant guilty because you disagree with or find distasteful her political views.

[6] To the extent that Kaye argues that *de novo* review applies to the challenged district-court decisions because her defense involves the First Amendment, she is incorrect. To be sure, "we review district court decisions of constitutional issues—the most important issues of law—not for abuse of discretion but *de novo*." *United States v. Shamsid-Deen*, 61 F.4th 935, 944–45 (11th Cir. 2023). But this appeal does not require the court to resolve any constitutional questions. So review for abuse of discretion is appropriate.

we will not reverse the decision to exclude an expert "unless the ruling is manifestly erroneous," *id.* (quoting *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 142 (1997)) and it resulted "in a substantial prejudicial effect," *United States v. Machado*, 886 F.3d 1070, 1085 n.14 (11th Cir. 2018). Here, the district court did not abuse its discretion when it excluded Kaye's expert.

Kaye argues that the district court was obligated to allow her expert to educate the jury or to instruct the jury on the concepts of protected political speech and the First Amendment. We disagree.

The district court properly excluded Kaye's expert for all the reasons it listed in its thorough opinion, including the one Kaye challenges on appeal: that Dr. Fuller's testimony about "a long American tradition protecting political speech invoking violence" created a risk of confusing the issues for the jury. *Kaye*, 2022 WL 860380, at *2–5. The district court's discretion is "particularly broad" with respect to Rule 403 determinations. *Bhogaita v. Altamonte Heights Condo. Ass'n, Inc.*, 765 F.3d 1277, 1291 (11th Cir. 2014). And it was well within the district court's discretion to conclude that admitting Dr. Fuller's testimony would create "an unjustifiable risk that the jury would substitute the expert's evaluation of the video for their own." *Kaye*, 2022 WL 860380, at *3. The district court similarly acted within its discretion in determining that Dr. Fuller's testimony included an explanation of "contextual factors of political speech" that might confuse the jury as to what law it was supposed to apply. *Id.* at *4. Given the "talismanic

significance" that jurors may assign to expert testimony, the district court did not abuse its discretion in excluding all of Dr. Fuller's testimony, including the historical testimony Kaye explicitly challenges on appeal. *See Frazier*, 387 F.3d at 1263. And that is especially so because Dr. Fuller's proposed testimony included impermissible legal conclusions. *Kaye*, 2022 WL 860380, at *2–3, *5 ("Whether or not a true threat existed is central to the first element of 875(c) and remains solely within the jury's province.").

III.

We next consider Kaye's challenges to the district court's rulings on jury instructions.

"We review the legal correctness of jury instructions *de novo*, but the district court has 'wide discretion as to the style and wording employed.'" *United States v. Caldwell*, 81 F.4th 1160, 1175 (11th Cir. 2023). In other words, so long as the instruction is not inaccurate or misleading, "[w]e apply a deferential standard of review to a trial court's jury instructions." *United States v. Puche*, 350 F.3d 1137, 1148 (11th Cir. 2003).

We review "a district court's refusal to give a proposed jury instruction" for abuse of discretion, *United States v. Watkins*, 42 F.4th 1278, 1282 (11th Cir. 2022), *cert. denied*, 143 S. Ct. 1754 (2023), and we "defer on questions of phrasing absent an abuse of discretion," *United States v. Prather*, 205 F.3d 1265, 1270 (11th Cir. 2000). A district court's failure to give an instruction is reversible error only where the requested instruction "(1) was correct, (2) was not substantially covered by the charge actually given, and (3) dealt with

some point in the trial so important that failure to give the requested instruction seriously impaired the defendant's ability to conduct his defense." *United States v. Eckhardt*, 466 F.3d 938, 947–48 (11th Cir. 2006). "Under this standard, we will only reverse if we are left with a substantial and eradicable doubt as to whether the jury was properly guided in its deliberations." *Id.* at 947–48.

The district court did not abuse its discretion in instructing the jury.

A.

We begin with the district court's decision not to give Kaye's proposed offense instruction instead of the pattern instruction and not to provide the entirety of Kaye's proposed defense-theory instruction. At the first consideration, Kaye's proposed instructions fail because her proffered "true threat" instructions were not complete. Although they included the subjective *mens rea* requirement (that the person transmitted the communication for the purpose of issuing a threat, or with knowledge that the communication would be viewed as a threat), they omitted the objective part of the offense: that is, that a reasonable person would regard the communication as a threat. *Elonis*, 575 U.S. at 726, 740; 11th Cir. Crim. Pattern Instr. O30.3 at 216 (Mar. 10, 2022) ("'The Court's opinion [in *Elonis*] did not foreclose the possibility that both an objective and a subjective standard be used in determining whether the defendant knowingly sent a threat. . . . Thus, . . . the objective person standard remains useful in the determination of whether the defendant's statement actually constitutes a 'true threat[.]'"). Kaye's

instructions about "true threats" were not correct because they eliminated this objective component.

Not only were Kaye's proposed "true threat" instructions incomplete, but the instructions the district court gave covered the substance of Kaye's requested instructions: that the jury could convict Kaye "only if" it found a true threat, that political speech is protected by the First Amendment, and that the jury should consider the political-speech exception in this case. And while Kaye may have preferred her proposed version of the instructions, "we afford district courts 'wide discretion to decide on the style and wording of [an] instruction' so long as it 'accurately reflect[s] the law.'" *United States v. Fleury*, 20 F.4th 1353, 1373 (11th Cir. 2021). The purpose of jury instructions "is to give the jury a clear and concise statement of the law applicable to the facts of the case," and that is what the district court did here. *Pesaplastic, C.A. v. Cincinnati Milacron Co.*, 750 F.2d 1516, 1525 (11th Cir. 1985).

The district court's decision not to give Kaye's proposed instructions also did not "substantially impair" Kaye's ability to present an effective defense that her speech was political and protected by the First Amendment. *Eckhardt*, 466 F.3d at 947–48. Kaye herself testified that her statements were not true threats, but "parody" for "shock value." And in closing, her counsel argued extensively that her speech was political and protected by the First Amendment. *See Booth v. Pasco Cnty.*, 757 F.3d 1198, 1209 (11th Cir. 2014) (finding no prejudicial harm where the district court refused to give a jury instruction but permitted the plaintiff to make the

same point during closing: "While this solution was unorthodox, it mitigated any prejudice that may have otherwise resulted.").

To the extent that Kaye argues that the court's instructions as a whole were misleading or inaccurate because they did not include a definition of "political speech," Kaye does not cite any cases requiring the court to include such a definition. When a court properly defines "true threat," as the district court did in this case, the court need not also define what a "true threat" is not. The jury could convict "only if" Kaye's speech constituted a "true threat" made with knowledge or intent to threaten. And if the speech satisfied the elements of a true threat, as the jury decided it did in Kaye's case, it was not protected political speech.

The jury reviewed the videos and heard Kaye testify. After doing so, it rejected the Government's argument that Kaye's first video was a "true threat" but agreed with the Government that Kaye's second, longer video—the one with the angrier tone and more targeted profanity—was a true threat, not a political parody. If anything, we think the split verdict here suggests the jury's careful application of the jury instructions on true threats to the evidence. As we've noted, the videos have a different quality to them, and the jury was free to reject Kaye's contention that the second video was not a true threat, especially given the repeated nature of the threat. *See United States v. Brown*, 53 F.3d 312, 314 (11th Cir. 1995) ("[W]e have said that, when a defendant chooses to testify, he runs the risk that if disbelieved 'the jury might conclude the opposite of his testimony is true.'").

In short, the district court did not abuse its discretion in refusing to adopt Kaye's proposed offense instruction and proposed instruction related to true threats and political speech.

B.

Next, we address Kaye's proposed instruction directing the jury that it could not convict her based on her "political views." We again conclude that the district court did not abuse its discretion in declining to give the instruction as Kaye requested it.

Instead, the district court instructed the jury that it could not convict Kaye based on prejudice against her: "You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government." "[P]rejudice against the Defendant" includes prejudice against Kaye for her political beliefs. And Kaye cannot demonstrate that her defense was impaired or that the jury was otherwise misguided by the instructions given.

Indeed, both Kaye and the Government argued in closing that the jury could not convict Kaye for her political beliefs, with Kaye's attorneys asking the jury "to step away" from their political "tribes" in considering the evidence, and the Government stating that "Ms. Kaye is not on trial . . . . because she expressed her political views."

And though not a part of the jury instructions, before trial began, the court asked the venire, "Is there anyone who cannot be fair and impartial in rendering judgment based on the evidence and the law that I instruct you on if you learn that any of the parties or the witnesses hold political beliefs either contrary to or consistent

with your own political beliefs?" No one raised their hand. Though not an instruction, this was nonetheless an affirmative representation by the jurors that they would not render a judgment based on differences in political views.

The court instructed the jury not to consider its personal prejudice, and we must presume that it followed that instruction. *United States v. Almanzar*, 634 F.3d 1214, 1222 (11th Cir. 2011). At bottom, we are not "left with a substantial and eradicable doubt" that the jury convicted Kaye based on her political beliefs. *Eckhardt*, 466 F.3d at 947–48.

IV.

For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 21-CR-80039-RLR(s)

UNITED STATES OF AMERICA

vs.

SUZANNE ELLEN KAYE,
a/k/a "muckbangXX,"
a/k/a "suzannekaye3,"
a/k/a "Angry Patriot Hippie,"

Defendant.
_____/

JOINT PROPOSED JURY INSTRUCTIONS

COURT'S INSTRUCTIONS TO THE JURY

Members of the Jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. After I've completed these instructions, you will go to the jury room and begin your discussions – what we call your deliberations.

You must decide whether the Government has proved the specific facts necessary to find the Defendant guilty beyond a reasonable doubt.

B2.1
Duty to Follow Instructions and the Presumption of Innocence

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The indictment or formal charge against a defendant isn't evidence of guilt. The law presumes every defendant is innocent. The Defendant does not have to prove his innocence or produce any evidence at all. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

B2.2
Duty to Follow Instructions and the Presumption of Innocence when a Defendant does not Testify

Your decision must be based only on the evidence presented during the trial. You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The indictment or formal charge against a Defendant isn't evidence of guilt. The law presumes every Defendant is innocent. The Defendant does not have to prove his innocence or produce any evidence at all. A Defendant does not have to testify, and if the Defendant chooses not to testify, you cannot consider that in any way while making your decision. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

B3
Definition of "Reasonable Doubt"

The Government's burden of proof is heavy, but it doesn't have to prove a Defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any "reasonable doubt" concerning the Defendant's guilt.

A "reasonable doubt" is a real doubt, based on your reason and common sense after you've carefully and impartially considered all the evidence in the case.

"Proof beyond a reasonable doubt" is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

B4
Consideration of Direct and Circumstantial Evidence; Argument of Counsel; Comments by the Court

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

B5
Credibility of Witnesses

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

B6.1
Impeachment of Witnesses because of Inconsistent Statements

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

B8
Introduction to Offense Instructions

The indictment charges two separate crimes, called "counts," against the Defendant. Each count has a number. You'll be given a copy of the indictment to refer to during your deliberations.

Both counts charge that the Defendant did knowingly transmit in interstate commerce a communication containing any threat to injure the person of another. I will explain the law governing this substantive offense in a moment.

B9.2
On or About a Particular Date; Knowingly

You'll see that the indictment charges that a crime was committed "on or about" a certain date. The Government doesn't have to prove that the offense occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

The word "knowingly" means that an act was done voluntarily and intentionally and not because of a mistake or by accident.

10.2
Caution: Punishment
(Single Defendant, Multiple Counts)

Each count of the indictment charges a separate crime. You must consider each crime and the evidence relating to it separately. If you find the Defendant Guilty or not guilty of one crime, that must not affect your verdict for any other crime.

I caution you that the Defendant is on trial only for the specific crimes charged in the indictment. You're here to determine from the evidence in this case whether the Defendant is guilty or not guilty of those specific crimes.

You must never consider punishment in any way to decide whether the Defendant is guilty. If you find the Defendant guilty, the punishment is for the Judge alone to decide later.

B11
Duty to Deliberate

Your verdict, whether guilty or not guilty, must be unanimous – in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

B12
Verdict

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and will speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it, date it, and carry it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the marshal. The marshal will bring it to me and I'll respond as promptly as possible – either in writing or by talking to you in the courtroom. But I caution you not to tell me how many jurors have voted one way or the other at that time.

S5
Note-taking

You've been permitted to take notes during the trial. Most of you – perhaps all of you – have taken advantage of that opportunity.

You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

O30.3
Interstate Transmission of Threat to Kidnap or Injure
18 U.S.C. § 875(c)[1]

It's a Federal crime to knowingly send in interstate commerce a true threat to injure any person.

The Defendant can be found guilty of this crime only if the following facts are proved beyond a reasonable doubt:

---

[1] *The United States objects to any additions or deletions to the Eleventh Circuit Pattern Jury Instruction, Offense Instruction 30.3 (hereinafter "Pattern Instruction"). See Pattern Instruction, Attached hereto as Exhibit A. As the Annotations and Comments to the Pattern Instruction makes clear, it is based on the Supreme Court's decision in United States v. Elonis, 575 U.S. 723, 135 S.Ct. 2001 (2015). It was crafted thoughtfully post-Elonis to accurately reflect the elements of the charged crime and the pertinent definitions. As such, it requires no additions or deletions. It has been affirmed in multiple Eleventh Circuit cases. See, e.g., United States v. Fleury, 20 F.4th 1353 (11th Cir. 2021) (affirming defendant's conviction where the Pattern Instruction was used). It has also been used by multiple judges in this district post-Elonis. See, e.g., United States v. Hussaini, Case No. 19-60387-cr-Altman; United States v. Fleury, Case No. 18-cr-60056-Ruiz; United States v. Key, Case No. 18-cr-14053-Graham; United States v. Henry (Case No. 15-cr-20930-Graham.*

Defendant's proposed additions and deletions to the Pattern Instructions also should be rejected because they contain misstatements of law or argument; or rely upon pre-Elonis cases and out-of-district cases. For example, defendant relies heavily on Virginia v Black, 538 U.S. 343 (2003), a pre-Elonis case, to support her proposed changes, but cites no post-Elonis case law that has accepted the kind of changes she is requesting.

Finally, the defendant seeks to add in language to the pattern instructions without citing any legal support for her request. For example, she requests that court instruct the jury that they "must consider evidence of her intent and mental state in deciding whether her speech was a 'true threat'" and that they "can consider whether she had the means to carry it out." Defendant cites case law to support these propositions. In fact, the jury certainly is permitted to consider many factors in determining whether the defendant made a "true threat," such as her tone of voice, her demeanor, and her language, including whether she used profanity. None of these considerations is contained in the Pattern Instruction. To single out only those contextual factors that the defendant wants the jury to focus on is inappropriate.

Defense response: While the pattern jury instructions are "generally considered 'a valuable resource, reflecting the collective research of a panel of distinguished judges,' they are not binding; Eleventh Circuit case law takes precedence." *United States v. Dohan*, 508 F.3d 989, 994 (11th Cir. 2007) *quoting United States v. Polar*, 369 F.3d 1248, 1252–53 (11th Cir.2004). *See also* Judicial Council of the Eleventh Circuit Resolution ("[T]he content of such instructions ... must await case by case review by the Court."). It follows then that Supreme Court decisions and other accurate statements of the law must take precedence.

Additionally, there is no basis for suggesting that *Elonis* somehow overruled *Black*; to the contrary, *Elonis* re-affirmed the importance of subjective intent for 875(c) prosecutions.

(1) the Defendant knowingly sent a message in interstate commerce containing a true threat to injure the person of another; and

(2) the Defendant sent the message with the intent to communicate a true threat or with the knowledge that it would be viewed as a true threat. **To constitute a true threat, the speaker must have subjectively intended to convey a threat; it is not enough that a reasonable person might have understood the words as a threat.**[2]

To transmit something in "interstate commerce" means to send it from a place in one state to a place in another state.

While the government does not have to prove that the Defendant intended to carry out the threat**, you must consider evidence of her intent and mental state in deciding whether her speech was a "true threat." For example, you can consider whether she had a plan or the means to carry out the threat, or whether she took any substantial step toward carrying out the threat.**[3]

---

[2] Several courts have read *Virginia v. Black*, 538 U.S. 343 (2003), as requiring subjective intent to make a true threat. *See*, e.g., *Commonwealth v. Knox*, 190 A.3d 1146, 1156-57 (Pa. 2018); *United States v. Heineman*, 767 F.3d 970, 975-82 (10th Cir. 2014); *United States v. Bagdasarian*, 652 F.3d 1113, 1117-18 (9th Cir. 2011); *United States v. Cassel*, 408 F.3d 630-33 (9th Cir. 2005); *see also Perez v. Florida*, 137 S. Ct. 853, 855 (2017) (Sotomayor, concurring in the denial of certiorari) (opining that *Black* and *Watts* "strongly suggest that it is not enough that a reasonable person might have understood the words as a threat—a jury must find that the speaker actually intended to convey a threat"). *This additional language is unnecessary and not supported by the Eleventh Circuit Pattern Instruction. The Pattern Instruction already states that the defendant must intend to communicate a true threat or with the knowledge that it would be viewed as a true threat. This language, which was drafted post-Elonis, sufficiently informs the jury of the mental state required to commit the crime.*

[3] The government objects to the court singling out any contextual factor for the jury to consider. The attorneys will argue to the jury in closing arguments that context matters. Each side will address the factors that it believes supports its position. It would be inappropriate for the court to instruct the jury that they may consider the factors that the defendant wants them to focus on, without addressing the factors that are favorable to the government. Since the Pattern Instructions do not address any such factors, the government requests that no factors be included in the instructions.

Moreover, the law does not require the government to prove that the defendant took a substantial step toward carrying

An issue in this case is whether the defendant's speech was constitutionally protected political speech or whether it constituted a "true threat."[4] ~~A "true threat" is a serious threat – not idle talk, a careless remark, or something said jokingly – that is made under circumstances that would place a reasonable person in fear of being injured.~~[5] **"True threats" encompass statements in which the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.**[6] **A "true threat" is not the same as crude, reactionary, unpleasant,**

---

out the threat. To the contrary, the law does not require the government to prove that she intended to carry out the threat. As the Second Circuit has cautioned, "[w]hether a threat is ultimately carried out is, at best, of marginal relevance to whether the threat was made in the first place; indeed, the speaker need not even have intended or been able to carry out the threat..." for the crime to apply. United States v. Turner, 720 F.3d 411, 429 (2d Cir. 2013). Thus, it would be confusing to the jury for the court to tell them that they can consider a fact that the government does not have to prove. There is no authority for adding this element to the crime.
Defense response: As described in the motion to dismiss litigation, the government frequently introduces evidence of defendants' taking such steps in order to show the *Elonis* and *Baker* requirements that the defendant subjectively intended to threaten and as 404(b) evidence. In this instance, the reverse is true and such evidence is relevant to show a lack of intent. Furthermore, the Second Circuit opinion cited above has likely been abrogated by *Elonis*, which requires the defendant intend to threaten.

[4] *The government objects to the court instructing the jury as to the issues of the case. As the finder of fact, the jury decides what issues it needs to focus on. The court simply provides them with the law. The law does not define the issues for the jury.*

[5] The jury instruction's objective standard used to define "true threats" does not comport with the intent requirement of *Elonis v. United States*, 575 U.S. 723 (2015)("a 'reasonable person' standard," the Court noted, "is inconsistent with 'the conventional requirement for criminal conduct—*awareness* of some wrongdoing.'") As such, defendant requests the standard articulated by the Supreme Court in *Virginia v. Black*, 538 U.S. 343, 359 (2003). *The government objects to the removal of this sentence. As indicated in the Annotations and Comments to the Pattern Instruction, the Pattern Instruction is based on Elonis. Therefore, the defendant's assertion that it does not comport with the intent requirement of Elonis is clearly false. Moreover, defendant does not cite a single case in support of her position that this sentence should be removed from the Pattern Instruction, because, of course, the law is clear that this definition of "true threat" is accurate.*

[6] *Virginia v. Black*, 538 U.S. 343, 359 (2003). *While defendant's proposed definition of true threats here is a correct definition, it is not the only correct definition and thus, should not be included in the jury instructions. See United States v. Fleury, 20 F.4th Cir. 1353, 1373 (11th Cir. 2021) (affirming the district court's rejection of the defendant's proposed language). As the Eleventh Circuit recognized last year, Black stated that "true threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals… [T]he Court never stated that the category of true threats is limited to such statements, only that the category 'encompass[es]' them." Id. Thus, the Eleventh Circuit held that*

or offensive language.[7] Speech that merely advocates force or violence, when it does not incite imminent lawless action, is protected under the First Amendment.[8]

In considering whether speech was a "true threat," you must also consider the entire context in which her speech was made.[9] For example, the Supreme Court has found that telling a group of protestors at an anti-draft political rally at the height of the Vietnam war that "if they ever make me carry a rifle the first man I want to get in my sights" is the president was constitutionally protected political speech and *not* a true threat.[10] In so doing,

---

the trial court's refusal to give the jury the same definition of true threats as requested in the instant case was not improper. Like the defendant in Fleury, the defendant in the instant case has not shown that the definition of true threats in the Pattern Instruction is an incorrect statement of the law.
Defense response: In *Fleury*, the Eleventh Circuit noted that the defendant's proposed instruction based on *Black* was a correct statement of the law. The *Fleury* instruction omitted the "encompass" language from *Black*, and so his definition was arguably incomplete; our proposed instruction, however, takes the *Black* language verbatim. In *Fleury*, there was an additional subjective intent instructions given on the cyberstalking counts (which is where the issue came up) that will not be given in this case, and such, necessitates the court clarify the subjective intent requirement. Finally, the Eleventh said Fleury failed to show why the court's instruction was an incorrect statement of the law; but as to this 875(c) charge, the defense has explained why the standard instruction is incorrect and that is because *Black* requires a purely subjective test, and the "reasonable person" language in the pattern is inconsistent with that subjective standard.

[7] ***See Watts v. United States*, 394 U.S. 705, 708 (1969).** *The defendant's reliance on cases that pre-date Elonis to override the will of the Eleventh Circuit by adding language to the Pattern Instruction is unpersuasive. The Eleventh Circuit has considered the state of law since Elonis and chose not to include this language. Therefore, the government objects to its inclusion.*

[8] ***Brandenburg v. Ohio*, 395 U.S. 444, 449 (1969).** *The Government objects for the same reason set forth in footnote 7.*

[9] ***Watts*, 394 U.S. at 705; *Black*, 538 U.S. at 367; *United States v. Alaboud*, 347 F.3d 1293, 1296 (11th Cir. 2003).** *The government objects to the court singling out any contextual factors for the jury to consider. The attorneys will argue to the jury in closing arguments that context matters. Each side will address the factors that it believes supports its position. It would be inappropriate for the court to instruct the jury that they may consider the factors that the defendant wants them to focus on, without addressing the factors that are favorable to the government. Since the pattern instructions do not address any such factors, the government requests that no factors be included in the instructions.*

[10] ***Watts*, 394 U.S. at 708.** *The Government objects for the same reason set forth in footnotes 7 and 8.*

the Court considered the entire context in which the statement was made and not solely the defendant's words.

If you have no reasonable doubt that the defendant's speech was a true threat, then you should find her guilty. On the other hand, if you have a reasonable doubt whether Ms. Kaye's speech was a "true threat" or protected, political speech, then you must find her not guilty.[11]

[11] *This paragraph misstates the law and is already covered by Pattern Instructions. To tell the jury that they "should" find the defendant guilty if they have no reasonable doubt, but "must" find her not guilty if they do is not an accurate statement of the law. Basic Instruction 2.1 correctly describes the Government's burden of proof by stating that "the Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty."*

Defense response: It is important that the jury understands that the First Amendment and true threats requirement is not an affirmative defense. Therefore, if the jury has a reasonable doubt about whether the speech is a true threat, they must acquit. An alternative would be to simply use the last sentence of the instruction to avoid the "should" and "must" issue: if you have a reasonable doubt whether Ms. Kaye's speech was a "true threat" or protected, political speech, then you must find her not guilty.

Theory of Defense Instruction[12]

The First Amendment of the United States Constitution protects the content of speech and only permits restrictions in a few, well-defined

---

[12] *The government objects to this entire instruction. Defendant relies solely on pre-Elonis and sister circuit cases in support of this instruction. For example, the defendant relies on Virginia v. Black to alter the Pattern Instruction by providing a definition of "true threat" that is encompassed within the phrase but not as accurate as the one used in the Pattern Instruction. As stated in footnote 6, Fleury recognized that the Court in Virginia v. Black never stated that the category of true threats is limited to its definition, only that the category "'encompass[es]' them." Fleury, 20 F.4th Cir at 1373. Thus, the Court should use the definition of "true threats" that the Eleventh Circuit has chosen in the Pattern Instructions. See id. (rejecting defendant's request to use the "true threats" language from Virginia v. Black, but instead relied on the Pattern Instruction).*

The remaining requested language should not be given because it is not necessary for the defendant's ability to present an effective defense. See id. at 1373-74. While a criminal defendant is entitled to a theory-of-defense instruction where there is a foundation for the instruction in the evidence, United States v. Lively, 803 F.2d 1124, 1126 (11th Cir. 1986), the Court is not obligated to adopt the precise wording of a defendant's proposed instruction. Fleury, 20 F.4th Cir at 1373. In Fleury, the defendant requested a theory of defense instruction that was much less broad than the defendant's request in the instant case, although it did discuss the First Amendment. Specifically, Fleury's instruction focused mostly on the definition of "true threat" as articulated in Virginia v. Black. The court provided the jury with the following modified version of the defendant's proposed theory of defense instruction:

> *The First Amendment of the United States Constitution permits restrictions upon the content of speech in only a few well-defined and narrow classes of speech. The only exception relevant here is for "true threats." A "true threat" is a serious threat—not idle talk, a careless remark, or something said jokingly—that is made under circumstances that would place a reasonable person in fear of being kidnapped, killed, or physically injured. Mr. Fleury contends that his statements were not "true threats." If you have a reasonable doubt as to whether the Instagram messages were "true threats," you must find Mr. Fleury not guilty as to all counts.*

Id. at 1372.

On review, the Eleventh Circuit held that the modified instruction given by the court, coupled with the charge as a whole, was proper because it adequately "cover[ed] the gist" of Fleury's proposed instruction and the failure to give the instruction as defense requested did not substantially impair the defendant's ability to present an effective defense. Id. at 1373-1374.

In the instant case, if the Court is included to give a theory of defense instruction, an instruction similar to what was given in Fleury, coupled with the pattern jury instructions, would suffice. The court does not have to give the jury examples of constitutionally protected speech, as the defendant has requested in her proposed theory of defense instruction, for the jury to understand the definition it has provided. Certainly, the Pattern Instructions contain no such language. Regardless, the defendant will be permitted in its closing argument to provide the jury with the same type of examples from its requested charge to argue the limited scope of non-protected speech. The Court does not have to provide examples of constitutionally protected speech to allow the defendant to present an effective defense, just like it does not have to provide the jury with examples of non-protected speech to guarantee the government a fair trial. The pattern jury instructions are more than sufficient to unsure a fair trial for both sides.

exceptions. The only possible exception, which may be relevant to this case, is a "true threat," in which the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.[13] The First Amendment protects vehement, caustic, and sometimes unpleasantly sharp attacks on public officials, including members of the Federal Bureau of Investigation (FBI), unless that speech is a "true threat."[14] Indeed, the freedom to verbally oppose or challenge police officers without risk of arrest is one of the principal characteristics distinguishing our free nation from a police state.[15] As such, law enforcement must tolerate coarse criticism and exercise greater restraint in their response than the average citizen.[16] "The language of the political arena…is often insulting, abusive, and inaccurate and the First Amendment protects very crude offensive method[s]

---

[13] ***Virginia v. Black***, **538 U.S. 343, 359 (2003).**

[14] ***Watts v. United States***, **at 708 ("debate on public issues should be uninhibited, robust, and wideopen, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials") quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 273 (1964) (The right to criticize the government is the "central meaning of the First Amendment.")**

[15] ***City of Houston, Tex. v. Hill***, **482 U.S. 451, 462–63 (1987)**

[16] ***Wood v. Eubanks***, **25 F.4th 414, 423 (6th Cir. 2022); *Kennedy v. City of Villa Hills, Ky.,* 635 F.3d 210, 216 (6th Cir. 2011)("Indeed, because the First Amendment requires that police officers tolerate coarse criticism, the Constitution prohibits states from criminalizing conduct that disturbs solely police officers.") citing *City of Houston v. Hill,* 482 U.S. 451, 461–63 (1987) ("[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.... The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."); *Lewis v. City of New Orleans,* 415 U.S. 130, 135 (1974) (Powell, J., concurring) ("[A] properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen, and thus be less likely to respond belligerently to fighting words." (internal quotation marks omitted)).**

of stating political opposition.[17] Cursing, when used in connection with political speech[18], and the use of hurtful speech pertaining to public issues is protected under the First Amendment to ensure that we do not stifle public debate.[19] Indeed, speech on public issues is afforded greater protection than speech involving solely private matters because of the need to safeguard free and robust debate of public issues.[20] The First Amendment protection of speech also applies to the internet because it has become the modern public square.[21]

If you have a reasonable doubt whether Ms. Kaye's speech was protected by the First Amendment, then you must find her not guilty.

---

[17] *Watts*, 394 U.S. at 708 ("The language of the political arena…is often vituperative, abusive, and inexact." The First Amendment protects "very crude offensive method[s] of stating political opposition.")

[18] *Cohen v. California*, 403 U.S. 15 (1971); *Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 141 S. Ct. 2038, 2047 (2021).

[19] *Snyder v. Phelps*, 562 U.S. 443, 461 (2011)("this Nation has chosen to protect even hurtful speech on public issues to ensure that public debate is not stifled"); *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)("debate on public issues should be uninhibited, robust, and wideopen").

[20] *Snyder*, 562 U.S. at 452.

[21] *Packingham v. North Carolina*, 137 S. Ct. 1730, 1732 (2017) quoting *Reno v. Am. C.L. Union*, 521 U.S. 844, 870 (1997) ("Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox.")

CONSIDERATION OF POLITICAL VIEWS[22]

You have just heard testimony and actually observed some exhibits related to what might be considered the Defendant's political views. You must treat this evidence with caution. This evidence alone cannot be used to find the Defendant guilty of the offense charged in the Indictment. It may, however, be considered by you for limited purposes, such as considering the context in which statements attributed to the Defendant were made, what the Defendant's intent was in making the statement, and her expectation regarding the effects of her statement. You cannot find the Defendant guilty because you disagree with or

---

[22] *After conducting a thorough Westlaw search of all federal cases, the Government has located only one case in which the court has provided an instruction similar to this requested instruction – an unpublished decision from a district court in New York. See United States v. Hunt, --- F.Supp.3d ---, 2021 WL 5399986 (E.D.N.Y. Nov. 18, 2021). However, Hunt is factually dissimilar to the instant case. In Hunt, the defendant was charged with threatening to assault and murder members of the United States Congress, in violation of 18 U.S.C. 115(a)(1)(B). Defendant allegedly made four statements on social media websites that threatened, or incited others, to murder members of Congress. By doing so, the Government alleged that the defendant intended "to impede, intimidate, or interfere with [the federal officials] while engaging in the performance of official duties," as required to convict under the charged statute. The defendant's alleged threats referenced, for example, "want[ing] actual revenge on democrats," "a rigged election," "go[ing] back to the U.S. Capitol when all of the Senators and a lot of Representatives are back there," and the "so called inauguration" of President Biden. Defendant called for the "public execution" of the House Majority Leader Nancy Pelosi and the Senate Minority Leader Chuck Schumer. The defendant also expressed support for former President Trump in text messages. Clearly, the defendant's threats were motivated by his political views. The Court likely believed that the Consideration of Political Views was necessary to prevent the jury from convicting the defendant based on his political views, which may have been different from most members of the jury in New York. In the instant case, the defendant allegedly threatened to kill law enforcement if they came to her house to interview her about whether she knew anyone who had been at the Capitol on January 6, 2021. At no time in her video posts does she reference the President, any member of Congress, or any political party. Although she references her "patriot friends" and the persecution of a three-star general, the instant case is not fraught with politics like as in Hunt. Rather, the threat is directed toward law enforcement officers.*

In fact, even though a 2019 trial in this district involved alleged threats made to the U.S. Congressman because of the defendant's dissatisfaction with his political views, a "consideration of political views" instruction was not given to the jury. See United States v. Key, Case No. 18-14053-CR-Graham. No such instruction is necessary here either, particularly given the attenuated relationship with politics.

find distasteful her political views.[23]

[23] **To convict Mrs. Kaye based on her political beliefs would be a miscarriage of justice. This Court should instruct the jury not to do so, and the government should welcome a jury decision based only on the evidence in the case and not an improper consideration. Additionally, because the government will introduce evidence related to Mrs. Kay and January 6, it is important for the jury to receive a cautionary instruction regarding that evidence and her other political statements, which will be introduced by both parties. This court gave the jury a similar admonition in the statement of the case in *Tracy v. Florida Atlantic University Board of Trustees et al*, 16-cv-80655-RLR. This political views instruction was taken, verbatim, from the instruction given by the district court in *United States v. Hunt*, 21-CR-86 (PKC), (EDNY) at DE 92.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 21-cr-80039-RLR(s)

UNITED STATES OF AMERICA

vs.

SUZANNE ELLEN KAYE,
a/k/a "muckbangXX,"
a/k/a "suzannekaye3,"
a/k/a "Angry Patriot Hippie,"

Defendant.
_____/

VERDICT

1. As to Count One of the Indictment, Interstate Transmission of a Threat to Injure, we, the Jury, unanimously find by proof beyond a reasonable doubt, the Defendant, Suzanne Ellen Kaye,

_____ Guilty _____ _____ Not guilty_____

2. As to Count Two of the Indictment, Interstate Transmission of a Threat to Injure, we, the Jury, unanimously find by proof beyond a reasonable doubt, the Defendant, Suzanne Ellen Kaye,

_____ Guilty _____ _____ Not guilty_____

SO SAY WE ALL.

Date:_____ _____
Foreperson

O30.3
Interstate Transmission of Threat to Kidnap or Injure
18 U.S.C. § 875(c)

It's a Federal crime to knowingly send in [interstate] [foreign] commerce a true threat to [kidnap] [injure] any person.

The Defendant can be found guilty of this crime only if the following facts are proved beyond a reasonable doubt:

1. the Defendant knowingly sent a message in [interstate] [foreign] commerce containing a true threat to [kidnap any person] [injure the person of another]; and

2. the Defendant sent the message with the intent to communicate a true threat or with the knowledge that it would be viewed as a true threat.

The Government doesn't have to prove that the Defendant intended to carry out the threat.

[To transmit something in "interstate commerce" means to send it from a place in one state to a place in another state.]

[To transmit something in "foreign commerce" means to send it from a place in the United States to anyplace outside the United States.]

A "true threat" is a serious threat – not idle talk, a careless remark, or something said jokingly – that is made under circumstances that would place a reasonable person in fear of [being [kidnapped] [injured]] [another person being [kidnapped] [injured]].

ANNOTATIONS AND COMMENTS

18 U.S.C. § 875(c) provides that:

> Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both [shall be guilty of an offense against the United States].

Maximum Penalty: Five (5) years imprisonment and applicable fine.

This instruction is based on *Elonis v. United States*, 575 U.S. __, 135 S. Ct. 2001 (2015). In *Elonis*, the Supreme Court rejected a district court's instruction that failed to consider the defendant's subjective mental state. The Supreme Court held that an objective standard requiring that "liability turn on whether a 'reasonable person' regards the communication as a threat—regardless of what the defendant thinks—reduces culpability on the all-important element of the crime to negligence." *Id.* at 2011 (citation omitted). The Court specifically held that the mental state requirement of § 875(c) "is satisfied if the defendant transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat." *Id.* at 2012. The Court declined, however, to determine whether a finding of recklessness on the part of the defendant would be sufficient. *Id.* at 2012-13.

The Court noted that the defendant's conviction could not be "premised solely" on a reasonable person standard and that it was an error for the Government to "prove *only* that a reasonable person would regard [the defendant's] communications as threats." 135 S. Ct. at 2011-12 (emphasis added). The Court's opinion did not foreclose the possibility that both an objective and a subjective standard be used in determining whether the defendant knowingly sent a threat. *Id.* at 2012 ("Federal criminal liability generally does not turn *solely* on the results of an act *without considering* the defendant's mental state." (emphasis added)). Thus, although the Supreme Court has made clear that the defendant's subjective mental state must be taken into account, the objective person standard remains useful in the determination of whether the defendant's statement actually constitutes a "true threat," as that term has been defined in prior case law. *See e.g., United States v. Martinez*, 736 F.3d 981, 984-86 (11th Cir. 2013), *overruled on other grounds*, __ F.3d __, 2015 WL 5155225 (11th Cir. Sept. 3, 2015) (discussing *Watts v. United States*, 394 U.S. 705 (1969) as the origin of the "true threats" doctrine).

In *United States v. Evans*, 478 F.3d 1332 (11th Cir. 2007), the Court of Appeals considered and rejected the argument that the "threat to injure" language contained in 18 U.S.C. § 876(c) (which deals with mailing threatening communications) included only future threats. The Eleventh Circuit joined the Second, Third, and Fifth Circuits in holding that a future threat is not necessary and that the statute also applied to immediate threats of harm.

This subsection, as distinguished from § 875(a) (implicitly), and § 875(b) and § 875(d) (explicitly), does not require an intent to extort.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 21-CR-80039-RLR(s)

UNITED STATES OF AMERICA

vs.

SUZANNE ELLEN KAYE,
a/k/a "muckbangXX,"
a/k/a "suzannekaye3,"
a/k/a "Angry Patriot Hippie,"

Defendant.
_____/

JURY INSTRUCTIONS

Members of the Jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. After I've completed these instructions, you will go to the jury room and begin your discussions – what we call your deliberations.

You must decide whether the Government has proved the specific facts necessary to find the Defendant guilty beyond a reasonable doubt.

Duty to Follow Instructions and the Presumption of Innocence

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The indictment or formal charge against a defendant isn't evidence of guilt. The law presumes every defendant is innocent. The Defendant does not have to prove his innocence or produce any evidence at all. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

Definition of "Reasonable Doubt"

The Government's burden of proof is heavy, but it doesn't have to prove a Defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any "reasonable doubt" concerning the Defendant's guilt.

A "reasonable doubt" is a real doubt, based on your reason and common sense after you've carefully and impartially considered all the evidence in the case.

"Proof beyond a reasonable doubt" is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

Consideration of Direct and Circumstantial Evidence; Argument of Counsel; Comments by the Court

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

Credibility of Witnesses

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

Impeachment of Witnesses because of Inconsistent Statements

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

Introduction to Offense Instructions

The indictment charges two separate crimes, called "counts," against the Defendant. Each count has a number. You'll be given a copy of the indictment to refer to during your deliberations.

Both counts charge that the Defendant did knowingly transmit in interstate commerce a communication containing any threat to injure the person of another. I will explain the law governing this substantive offense in a moment.

On or About a Particular Date; Knowingly

You'll see that the indictment charges that a crime was committed "on or about" a certain date. The Government doesn't have to prove that the offense occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

The word "knowingly" means that an act was done voluntarily and intentionally and not because of a mistake or by accident.

Interstate Transmission of Threat to Kidnap or Injure
18 U.S.C. § 875(c)

It's a Federal crime to knowingly send in interstate commerce a true threat to injure any person.

The Defendant can be found guilty of this crime only if the following facts are proved beyond a reasonable doubt:

(1) the Defendant knowingly sent a message in interstate commerce containing a true threat to injure the person of another; and

(2) the Defendant sent the message with the intent to communicate a true threat or with the knowledge that it would be viewed as a true threat.

To transmit something in "interstate commerce" means to send it from a place in one state to a place in another state.

The government does not have to prove that the Defendant intended to carry out the threat.

A "true threat" is a serious threat – not idle talk, a careless remark, or something said jokingly – that is made under circumstances that would place a reasonable person in fear of being injured.

Theory of Defense Instruction

The First Amendment of the United States Constitution permits restrictions upon the content of speech in only a few well-defined and narrow classes of speech. The only exception relevant here is for "true threats." As I said before, a "true threat" is a serious threat—not idle talk, a careless remark, or something said jokingly—that is made under circumstances that would place a reasonable person in fear of being kidnapped, killed, or physically injured. Ms. Kaye contends that her statements were not "true threats," but rather, political speech protected by the First Amendment. If you have a reasonable doubt as to whether the statements made in the videos were "true threats," you must find Ms. Kaye not guilty as to all counts.

Caution: Punishment
(Single Defendant, Multiple Counts)

Each count of the indictment charges a separate crime. You must consider each crime and the evidence relating to it separately. If you find the Defendant Guilty or not guilty of one crime, that must not affect your verdict for any other crime.

I caution you that the Defendant is on trial only for the specific crimes charged in the indictment. You're here to determine from the evidence in this case whether the Defendant is guilty or not guilty of those specific crimes.

You must never consider punishment in any way to decide whether the Defendant is guilty. If you find the Defendant guilty, the punishment is for the Judge alone to decide later.

Duty to Deliberate

Your verdict, whether guilty or not guilty, must be unanimous – in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

Note-taking

You've been permitted to take notes during the trial. Most of you – perhaps all of you – have taken advantage of that opportunity.

You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

Verdict

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and will speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it, date it, and carry it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the marshal. The marshal will bring it to me and I'll respond as promptly as possible – either in writing or by talking to you in the courtroom. But I caution you not to tell me how many jurors have voted one way or the other at that time.

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

UNITED STATES OF AMERICA

v.

SUZANNE ELLEN KAYE

JUDGMENT IN A CRIMINAL CASE

Case Number: **9:21-CR-80039-RLR(1)**
USM Number: **30400-509**

Counsel for Defendant: **Kristy Militello**
Counsel for United States: **Mark Dispoto**

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☒	was found guilty on count(s) after a plea of not guilty	**2s of the Indictment**

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
18:875(C) - Interstate Communications - Threats	04/24/2023	2s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on count(s) 1s

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

April 21, 2023
Date of Imposition of Judgment

Robin L. Rosenberg
Signature of Judge

ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

April 24, 2023
Date

DEFENDANT: SUZANNE ELLEN KAYE
CASE NUMBER: 9:21-CR-80039-RLR(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

18 months as to count 2s.

☒ The court makes the following recommendations to the Bureau of Prisons:
That the defendant be incarcerated in a medical facility

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons: by noon on 7/13/2023 or to the United States Marshals in Miami.

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: SUZANNE ELLEN KAYE
CASE NUMBER: 9:21-CR-80039-RLR(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **two (2) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: SUZANNE ELLEN KAYE
CASE NUMBER: 9:21-CR-80039-RLR(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: SUZANNE ELLEN KAYE
CASE NUMBER: 9:21-CR-80039-RLR(1)

SPECIAL CONDITIONS OF SUPERVISION

Mental Health Treatment: The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Permissible Search: The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

No Contact with Victims: The defendant shall have no personal, mail, telephone, or computer contact with the Federal Bureau of Investigations or with the victims in this offense.

DEFENDANT: SUZANNE ELLEN KAYE
CASE NUMBER: 9:21-CR-80039-RLR(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	$.00	$.00		

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **$.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of $25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.
** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: SUZANNE ELLEN KAYE
CASE NUMBER: 9:21-CR-80039-RLR(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payments of $100.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of $100.00 for Count 2s, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.