Chapter 19

Civil Rights Offenses

Introduction

The pattern instructions cover the offenses codified in 18 U.S.C. §§ 241 and 242 with two instructions:

19.01 Conspiracy Against Civil Rights (18 U.S.C. § 241)

19.02 Deprivation of Civil Rights (18 U.S.C. § 242)

19.01 Conspiracy Against Civil Rights (18 U.S.C. § 241)

(1) Count ___ of the indictment charges the defendant with conspiring against the civil rights of any person. For you to find the defendant guilty of this offense, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the conspiracy to [injure] [oppress] [threaten] [intimidate] [*insert name of victim*] charged in Count ___ existed;

(B) Second, that the purpose of the conspiracy was to [injure] [oppress] [threaten] [intimidate] [*insert name of victim*] in the exercise or enjoyment of [*describe right*] which is guaranteed under the Constitution [laws] of the United States;

(C) Third, that the defendant knowingly agreed to become a member of the conspiracy;

(D) Fourth, that the defendant specifically intended to [injure] [oppress] [threaten] [intimidate] [*insert name of victim*] in the exercise or enjoyment of [*describe right*];

(E) Fifth, that [*insert name of victim*] was in a [State] [Territory] [Commonwealth] [Possession] [District] of the United States.

(2) Now I will give you more detailed instructions on some of these terms.

[(A) *Insert further detail on the right(s) in question if necessary.*]

(B) To prove a conspiracy, the government must prove that two or more persons conspired, or agreed, to cooperate with each other to [injure] [oppress] [threaten] [intimidate] [*insert victim's name and right*].

(1) This does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the government has proved an agreement. But without more they are not enough.

(2) What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to [injure] [oppress] [threaten] [intimidate] [*insert victim's name and right*]. This is essential.

(3) An agreement can be proved indirectly, by facts and circumstances which lead to a conclusion that an agreement existed. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

[(4) One more point about the agreement. The indictment accuses the defendant(s) of conspiring to interfere with several federal rights. The government does not have to prove that the defendant(s) agreed to interfere with all of these rights. But the government must prove an agreement to interfere with at least one of these rights for you to return a guilty verdict on the conspiracy charge.]

(C) The defendant acts "knowingly" if he has knowledge of the facts which make up the offense.

(D) However, to "knowingly agree" to become a member of the conspiracy does not require that a defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that a defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough. [You must consider each defendant separately in this regard.]

(1) But proof that a defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that a defendant joined a conspiracy. But without more they are not enough.

(2) A defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew of the conspiracy and its [objects] [aims] [goals]. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

(3) If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on count _____. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

Use Note

This instruction does not cover offenses under the second paragraph of the statute ("If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured . . . .")

In paragraph (1), the court may choose to use a single term from the bracketed four options of [injure] [oppress] [threaten] [intimidate].

For paragraph (1)(E) (providing that the victim was in a [State] [Territory]

[Commonwealth] [Possession] [District] of the United States), the parties may stipulate or ask the court to take judicial notice of the fact. As an option, the court may just identify the state or territory the victim was in.

Section 241 provides increased penalties if death results from the offense or if the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill. If the indictment alleges any of these enhancements, the question must be presented to the jury and decided by the standard of beyond a reasonable doubt. See Apprendi v. New Jersey, 120 S. Ct. 2348 (2000).

Brackets indicate options for the court; bracketed italics are notes to the court.

Committee Commentary
(current as of October 12, 2026)

Title 18 U.S.C. § 241 provides:

§ 241. Conspiracy against rights

> If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . . . [t]hey shall be fined . . . or imprisoned . . . or both . . . .

To identify the offense conduct, the text of this instruction uses the four verbs from the statute in brackets, *i.e.*, [injure] [oppress] [threaten] [intimidate]. However, the Committee sometimes uses the verb "interfere" as an informal summary term representing the four verbs in the statute. The Supreme Court has often used the term "interfere" in this way. *See* U.S. v. Kozminski, 108 S. Ct. 2751, 2755 (1988); Anderson v. U.S., 94 S. Ct. 2253, 2262 (1974); U.S. v. Guest, 86 S. Ct. 1170, 1179 note 17 (1966); U.S. v. Price, 86 S. Ct. 1152, 1159 & 1161 (1966).

In paragraph (1)(A), the element that the conspiracy to interfere with rights existed is based on the statute; *see also* Seventh Circuit Inst. 18 U.S.C. § 241 Conspiracy Against Civil Rights – Elements.

In paragraph (1)(B), the language "the purpose of the conspiracy was to [injure] [oppress] [threaten] [intimidate] [*insert name of victim*] in the exercise or enjoyment of a right guaranteed under the Constitution [laws] of the United States" is based on the statute, quoted above.

The question of whether a particular right qualifies as one that is guaranteed under the Constitution or laws of the United States is a question of law for the court. United States v. Lanier, 117 S. Ct. 1219, 1224 (1997) ("[I]n lieu of describing the specific conduct it forbids, [§

241's] general terms incorporate constitutional law by reference.") (*citing* United States v. Kozminski, 108 S. Ct. 2751, 2759 (1988) and United States v. Price, 86 S. Ct. 1152, 1158-1159, 1162-1163 (1966)); United States v. Classic, 61 S. Ct. 1031, 1037-1043 (1941) (analyzing as a question of law whether the right of qualified Louisiana voters to have their ballots counted is a right secured by the Constitution for §§ 241 and 242, and concluding that it is).

The phrase in paragraph (1)(B) suggesting that the court "[*describe right*]" is based on Supreme Court cases requiring that the particular federal right in issue be recognized and defined by the time of the charged conduct. *See* United States v. Kozminski, 108 S. Ct. 2751, 2759 (1988) (stating that the § 241 right must be "made specific either by the express terms of the Federal Constitution or laws or by decisions interpreting them.") (citing United States v. Price, 86 S. Ct. at 1163 note 20 and United States v. Guest, 86 S. Ct. at 1176); *see also* United States v. Lanier, 117 S. Ct. 1219, 1226 (1997) (stating that *Screws* limited § 242's coverage to rights fairly warned of, having been "made specific" by the time of the charged conduct, and citing *Kozminski*, 108 S. Ct. 2751, 2759 as establishing "a parallel construction of § 241."). Several other circuits' pattern instructions use the [*describe right*] approach. *See, e.g.*, Seventh Circuit Inst. 18 U.S.C. § 241 Conspiracy Against Civil Rights —Elements; Eighth Circuit Inst. 6.18.241 Conspiracy to Deprive a Person of Civil Rights (18 U.S.C. § 241); Tenth Circuit Inst. 2.16 Conspiracy to Deprive Person of Civil Rights 18 U.S.C. § 241.

In paragraph (1)(C), the element that the defendant "knowingly agreed" to become a member of the conspiracy is based on United States v. Robinson, 813 F.3d 251, 256, 258 (6th Cir. 2016); United States v. Lanham, 617 F.3d 873, 885 (6th Cir. 2010); and United States v. Epley, 52 F.3d 571, 575-576 (6th Cir. 1995).

In paragraph (1)(D), the element that the defendant "specifically intended" to interfere with the described federal right is based on Supreme Court case law. See Anderson v. United States, 94 S. Ct. 2253, 2262, 2263 (1974) (stating that for § 241, "the prosecution must show that the offender acted with a specific intent to interfere with the federal rights in question."); United States v. Guest, 86 S. Ct. 1170, 1179 (1966) ("A specific intent to interfere with the Federal right must be proved, and . . . defendants are entitled to a jury instruction phrased in those terms."); and United States v. Price, 86 S. Ct. 1153, 1163 note 20 (1966) (stating that § 242 requires specific intent and there is no basis to distinguish it from § 241). *But see* United States v. Kozminski, 108 S. Ct. 2751, 2759 (1988) (stating that the Court has construed § 241 to prohibit only "intentional" interference with the rights made specific under federal law). Sixth Circuit authority further supports the element of "specific intent." See United States v. Robinson, 813 F.3d 251, 256 (6th Cir. 2016) ("the government must prove that . . . there was specific intent to commit the deprivation.") (*quoting Lanham* at 885 and *Epley* at 575-576).

In paragraph (1)(E), the element that the victim "was in a [State] [Territory] [Commonwealth] [Possession] [District] of the United States" is based on the statute; *see also* Seventh Circuit Inst. 18 U.S.C. § 241 Conspiracy Against Civil Rights – Elements. The statutory language "was in" was substituted in 1994 when Congress amended § 241 to broaden its coverage from persons who were "inhabitants of" a state, or territory to persons who were "in" a state, territory, etc. See Pub.L. 103-322, Title XXXII, § 320201(a) EXTENSION OF

PROTECTION OF CIVIL RIGHTS STATUTES, CONSPIRACY AGAINST RIGHTS ("Section 241 of title 18, United States Code, is amended by striking 'inhabitant of' and inserting 'person in'.").

Bracketed paragraph (2)(A) is included for cases where the court wants to provide further detail on the right(s) in question.

In paragraph (2)(B) defining conspiracy, subparagraphs (1)-(4) are based on the general conspiracy instruction, Inst. 3.02 Agreement. Subparagraph (2)(B)(4) is bracketed for use when the government alleges multiple deprivations of rights.

In paragraph (2)(C), the definition of "knowingly" is based on U.S. v. Singh, 147 F.4th 652 (6th Cir. 2025), stating that the mental state of knowingly "requires only proof of knowledge of the facts that constitute the offense . . . ." *Singh* at 658, *quoting* Bryan v. U.S., 524 U.S. 184, 193, 118 S. Ct. 1939 (1998) and Ratzlaf v. U.S., 510 U.S. 135, 137, 114 S.Ct. 655 (1994)) (cleaned up).

Paragraph (2)(D) and subparagraphs (1)-(2) provide further guidance on the definition of "knowingly agree." They are derived from the general conspiracy instruction, Inst. 3.03 Defendant's Connection to the Conspiracy.

This pattern instruction does not include an overt act as an element of § 241 conspiracies. The statute does not mention an overt act, and Supreme Court authority does not establish an overt act as an element. In the most recent case on § 241, United States v. Kozminski, 108 S. Ct. 2751, 2756 (1988), the trial court instructed that an overt act was required, and the Supreme Court eventually affirmed reversal of the convictions under § 241, but the Court's opinion did not address whether the overt act instruction was correct. In an earlier case, United States v. Classic, the district court sustained a demurrer to counts under §§ 241 and 242, and the Supreme Court reversed. 61 S. Ct. 1031 (1941). The Court held that the rights of qualified Louisiana voters to vote in a primary was a right protected under §§ 241 and 242. Early in the opinion, in the course of describing the indictment, the Court stated, "The overt acts alleged were that the appellees altered eighty-three ballots cast for one candidate and fourteen cast for another, marking and counting them as votes for a third candidate, and that they falsely certified the number of votes cast . . . ." 61 S. Ct. 1031, 1034. The Court did not mention overt acts again, and the § 241 statute in effect at the time did not mention one. 61 S. Ct. 1031, 1041 note 4.

For Sixth Circuit authority, the court stated in United States v. Brown, 49 F.3d 1162, 1165 (6th Cir. 1995) that an overt act was an element of § 241 conspiracies, but this authority has been undermined. First, in U.S. v. Conatser, 514 F.3d 508, 519 and note 4 (6th Cir. 2008), the court declined to rule on whether a conspiracy to violate civil rights requires proof of an overt act because any such requirement was satisfied on the facts of the case. Then, in U.S. v. Rosser, 2023 WL 4080095, 3-4 (6th Cir. 2023) (unpublished), the panel elaborated at some length on the issue and dismissed the *Brown* language as dicta that "does not govern whether a § 241 conspiracy charge requires an overt act." Furthermore, the *Brown* statement that an overt act is required has been compromised because the Sixth Circuit has handed down three reported

decisions after the 1995 *Brown* decision that recount the elements of § 241 conspiracies without mention of an overt act. See United States v. Robinson, 813 F.3d 251, 256 (6th Cir. 2016); United States v. Lanham, 617 F.3d 873, 885 (6th Cir. 2010); United States v. Epley, 52 F.3d 571, 575-576 (6th Cir. 1995). Finally, the authority the *Brown* court cited for requiring an overt act, the statute and Anderson v. United States, 417 U.S. 211, 94 S.Ct. 2253 (1974), does not support the proposition.

As noted above, § 241 includes no overt act language, and the courts generally hold that conspiracy statutes without an overt act reference are interpreted not to include such an element. *See, e.g.*, United States v. Shabani, 513 U.S. 10 (1994) (holding proof of an overt act is not required to prove conspiracy under § 846); United States v. Hills, 27 F.4th 1155, 1190 (6th Cir. 2022) (holding proof of an overt act is not required to prove conspiracies under the Hobbs Act § 1951); United States v. Rogers,769 F.3d 372, 379-382 (6th Cir. 2014) (holding proof of an overt act is not required to prove conspiracy under § 1349).

In the other circuits, most conclude that an overt act is not required for § 241 conspiracies. The Seventh, Eighth, and Tenth Circuits have adopted pattern instructions that do not require an overt act; the circuits acknowledge this and cite the underlying authority in their commentaries. See Seventh Circuit Inst. 18 U.S.C. § 241 CONSPIRACY AGAINST CIVIL RIGHTS—ELEMENTS, Commentary; Eighth Circuit Inst. 6.18.241 CONSPIRACY TO DEPRIVE A PERSON OF CIVIL RIGHTS (18 U.S.C. § 241), Notes on Use, Note 2; and Tenth Circuit Inst. 2.16 CONSPIRACY TO DEPRIVE PERSON OF CIVIL RIGHTS 18 U.S.C. § 241, Comment.}

Section 241 provides increased penalties "if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill . . . ." 18 U.S.C. § 241. If the indictment alleges any of these enhancements, the question must be presented to the jury and decided by the standard of beyond a reasonable doubt. See Apprendi v. New Jersey, 120 S. Ct. 2348 (2000).

19.02 Deprivation of Civil Rights (18 U.S.C. § 242)

(1) Count ___ of the indictment charges the defendant with acting under color of law to willfully deprive a person of rights protected by the Constitution or laws of the United States. For you to find the defendant guilty of this offense, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant deprived [*insert name of victim*] of [*describe right*], a right which is guaranteed under the Constitution or laws of the United States;

(B) Second, that the defendant acted under color of law;

(C) Third, that the defendant acted willfully;

(D) Fourth, that [*insert name of victim*] was in any [State] [Territory] [Commonwealth] [Possession] [District] of the United States;

[(E) Fifth, that [bodily injury resulted from the offense] [the offense included the use, attempted use, or threatened use of [a dangerous weapon] [explosives] [fire]]].

(2) Now I will give you more detailed instructions on some of these terms.

[(A) *Insert further detail on the right(s) in question if necessary*.]

(B) Acting "under color of law" means

[that a public official possessed authority to take the actions at issue, and that he purported to act under that authority on the specific occasion].

or

[an act done by a private person if that person willfully participates in joint activity with someone who is a public official].

(C) A defendant acts "willfully" if he had the purpose to do something the law forbids, that is, to deprive [*insert name of victim*] of a right to [*describe right*]. You may find that the defendant acted willfully if he acted either in open defiance of, or with reckless disregard for, that right. It is not sufficient that the defendant had a generally bad purpose. However, the government need not prove that the defendant was aware of the specific provision of the law that he is charged with violating. In determining whether the defendant acted willfully, you may consider any facts or circumstances you deem relevant to shed light on the defendant's state of mind.

(3) If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on count _____. If you have a reasonable doubt about any one of these

elements, then you must find the defendant not guilty of this charge.

Use Note

Paragraph (1)(E) is bracketed for use when the government alleges enhancements that render § 242 a felony. These enhancements are if the offense included either bodily injury or the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire. If paragraph (1)(E) is not included, the § 242 offense is a misdemeanor.

If the indictment alleges that death resulted from the acts committed in violation of this section or if the offense included kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, the sentence is further enhanced. These options are not included in the text of the instruction, so if they are raised by the facts, these elements must be presented to the jury in the instruction and decided by the standard of beyond a reasonable doubt. See Apprendi v. New Jersey, 120 S. Ct. 2348 (2000).

Brackets indicate options for the court; bracketed italics are notes to the court.

Committee Commentary

(current as of October 12, 2026)

Title 18 U.S.C. § 242 provides:

§ 242. Deprivation of rights under color of law

> Whoever, under color of any law . . . or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights . . . protected by the Constitution or laws of the United States, shall be fined under this title or imprisoned not more than one year, or both . . . .

In paragraph (1), the elements are based on the statute. *See also* United States v. Lanier, 117 S. Ct. 1219, 1224 (1997) (stating that § 242 is a . . . "civil rights statute making it criminal to act (1) 'willfully' and (2) under color of law (3) to deprive a person of rights protected by the Constitution or laws of the United States.") (footnote omitted).

In paragraph (1)(A), the element that the defendant deprived the victim of a right protected by the Constitution or laws of the United States is based on the statute and *Lanier; see also* United States v. O'Dell, 462 F.2d 224, 229-231 (6th Cir. 1972) (holding jury instruction erroneous because it referred to rights protected by Tennessee state law rather than by federal law or the constitution).

The question of whether a particular right qualifies as one that is guaranteed under the Constitution or laws of the United States is a question of law for the court. The *Lanier* Court

explained:

> The general language of § 242, referring to "the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States," is matched by the breadth of its companion conspiracy statute, § 241 . . . . Thus, in lieu of describing the specific conduct it forbids, each statute's general terms incorporate constitutional law by reference . . . .

Lanier, 117 S. Ct. 1219, 1224 (1997) (footnotes omitted), *citing* United States v. Kozminski, 108 S. Ct. 2751, 2759 (1988) and United States v. Price, 86 S. Ct. 1152, 1158-1159, 1162-1163 (1966)). *See also* United States v. Classic, 61 S. Ct. 1031, 1037-1043 (1941) (analyzing as a question of law whether the right of qualified Louisiana voters to have their ballots counted was a right secured by the Constitution for §§ 241 and 242, and concluding that it was).

The language in bracketed italics at the end of the first sentence of paragraph (1)(A) indicating that the court should "[*describe right*]" takes the same approach as Inst. 19.01 Conspiracy Against Civil Rights in characterizing the question of whether a right qualifies as one that is guaranteed under the Constitution or laws of the United States as a question of law for the court. The "[*describe right*]" phrase is also supported by cases requiring that the federal right in issue be recognized and defined by the time of the charged conduct for purposes of notice to the defendant. See United States v. Lanier, 117 S. Ct. 1219, 1226 (1997) (stating that *Screws* limited § 242's coverage to rights fairly warned of, having been "made specific" by the time of the charged conduct.).

Bracketed paragraph (2)(A) is included for cases where the court wants to provide further detail on the right(s) in question.

In paragraph (2)(B), the definition of acting "under color of law" is based on case law under § 242 and cases construing "state action" under 42 U.S.C. § 1983. See *Price*, 86 S. Ct. 1152, 1157 note 7 (1966) (" 'Under color' of law means the same thing in [§ 242] that it does in the civil counterpart of [§ 242], 42 U.S.C. § 1983."). The instruction offers two bracketed options for the definition, one for public officials and one for private persons.

The first bracketed option in paragraph (2)(B) states the definition for when a public official acts under color of law. It is based on Lindke v. Freed, 44 S. Ct. 756 (2024) and Mackey v. Rising, 106 F.4th 552 (6th Cir. 2024).

In *Lindke*, the Court held that when a government official posts about job-related topics on social media, that official is acting under color of law only if he meets a two-part test, *i.e.*, that "the official (1) possessed actual authority to speak on the State's behalf, and (2) purported to exercise that authority when he spoke on social media." Lindke v. Freed, 44 S. Ct. 756, 762 (2024). The Court further explained, "The first prong of this test is grounded in the bedrock requirement that 'the conduct allegedly causing the deprivation of a federal right be *fairly attributable to the State*.' " *Id*. at 767, *quoting Lugar*, 457 U.S. at 937, 102 S.Ct. 2744 (emphasis added). The Court vacated the judgment below and remanded for proceedings based on the two-

part test it articulated.

In Mackey v. Rising, 106 F.4th 552 (6th Cir. 2024), the Sixth Circuit applied this *Lindke* standard. After identifying the two-part test quoted above, the court stated:

> Outside the social-media context, our court—and the Supreme Court—have long followed a similar two-part test. When asking whether a challenged action qualified as state action, we described the "the controlling issue" as whether an official "possessed state authority" to take the action "and whether [the official] purported to act under that authority" on the specific occasion.

Mackey, *supra* at 559, *quoting* Dean v. Byerley, 354 F.3d 540, 553 (6th Cir. 2004) and *citing* Griffin v. Maryland, 378 U.S. 130, 135, 84 S.Ct. 1770, 12 L.Ed.2d 754 (1964). The Sixth Circuit concluded that the defendant, who had previously served as a part-time city commissioner, was not involved in state action when he called plaintiff's mother and allegedly threatened her. The court ruled that the defendant was not acting under color of law because as a city commissioner, the city did not give him any authority to use (or threaten) physical force on its behalf, so he had no actual authority and did not meet the first step of the test. Mackey v. Rising, 106 F.4th 552, 561-562, 564 (6th Cir. 2024).

The second bracketed option in paragraph (2)(B) defining when a private person acts under color of law is based on United States v. Price, 86 S. Ct. 1152, 1156-1157 (1966). In *Price*, the Court stated:

> Section 242 applies only where a person indicted has acted "under color" of law. Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents.

In paragraph (2)(C) defining the term "willfully," the first sentence requires that the defendant "had the purpose to do something the law forbids, that is, to deprive [*insert name of victim*] of a right to [*describe right*]." This language is based on Screws v. United States, 325 U.S. 91 (1945) (plurality). The *Screws* plurality explained the meaning of willfulness in some detail:

> [I]f we construe "willfully" in [§ 242] as connoting a purpose to deprive a person of a specific constitutional right, we would introduce no innovation. The Court, indeed, has recognized that the requirement of a specific intent to do a prohibited act may avoid those consequences to the accused which may otherwise render a vague or indefinite statute invalid. The constitutional vice in such a statute is . . . [that it places the defendant on trial for an offense which the statute does not define] and hence gives no warning.
> *Screws, supra* at 101.

> * * *
> This requirement [of fair warning] is met when a statute prohibits only "willful" acts in the sense we have explained. One who does act with such specific intent is aware that what he does is precisely that which the statute forbids.
> *Id.* at 104.
>
> * * *
> [T]he specific intent required by the Act is an intent to deprive a person of a right which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them.
> *Id.*

The second sentence in paragraph (2)(C) (that defendant acted willfully if he acted in open defiance of, or with reckless disregard for, that right) is drawn from *Screws*, *id.* at 105. Some Sixth Circuit panel decisions discuss reckless disregard as a mens rea to violate § 242. *See* United States v. Dukes, 779 Fed. Appx. 332, 335 (6th Cir. 2019) (unpublished) (finding admission of expert testimony was harmless error and affirming § 242 conviction); United States v. Corder, 724 Fed. Appx. 394, 403-405 (6th Cir. 2018) (unpublished) (finding instruction that defined willfully to include recklessly disregarding a constitutional right was not plain error and affirming § 242 conviction).

The third sentence (that it is not sufficient that the defendant had a generally bad purpose) is based on *Screws*, *supra* at 107. The fourth sentence (that the government need not prove the defendant was aware of the specific provision he is charged with violating) is based on Bryan v. United States, 524 U.S. 184 (1998); *see also* United States v. O'Dell, 462 F.2d 224, 233 n.10 (1972) (quoting *Screws*). The fifth sentence (that the jury may consider any facts or circumstances it deems relevant) is drawn from *Screws, supra* at 107.

In United States v. Mooney, 135 F.4th 486 (6th Cir. 2025), the defendant was a deputy sheriff convicted of two counts under § 242 for strapping an arrestee into a restraint chair at the sheriff's office and then pepper spraying and punching him multiple times. The court held that the evidence the defendant acted willfully to deprive the victim of his constitutional rights was sufficient, based on (1) defendant's testimony on knowing his legal duty, (2) the testimony of six other deputies, and (3) surveillance footage of the defendant's use of force that showed "two rounds of pepper spray and three rounds of punching that spanned around 37 minutes of time." The court characterized the evidence of willfulness as "substantial," 135 F.4th at 495.

The Sixth Circuit has occasionally recognized limits on the detail the defendant must have in mind to satisfy the willfulness mens rea. In United States v. Epley, 52 F.3d 571, 576 (6th Cir. 1995), the defendants set up a false arrest in which they planted drugs and an illegal firearm on the victim. The court identified the constitutional rights at issue as the right to be free from seizure without probable cause in violation of the Fourth Amendment, and the right under the due process clause to be free from arrest without probable cause and to be free from having false evidence presented against him. When the defendant argued that the jury must have believed that he knew specifically of the plan to plant drugs and an illegal weapon on the victim, the court

rejected the argument:

> While a conviction under either § 241 or § 242 requires specific intent to violate the victim's constitutional rights, it does not, in this context, require that [the defendant] knew beforehand of the plan to plant drugs and a gun on [the victim]. A rational jury could weigh the evidence, judge the credibility of the various witnesses, and determine that [the defendant] had the specific intent to violate [the victim's] Fourth and Fifth Amendment rights by executing a false arrest.

Epley, supra at 576. *See also* United States v. Couch, 59 F.3d 171 at 3 (6th Cir. 1995) (unpublished) (affirming instruction on willfulness). The *Couch* instruction stated that the defendant need not be "thinking in constitutional terms at the time of the incident" if he had the specific intent to deprive a person of those rights. The *Couch* instruction also omitted any requirement that the defendant have a "bad or evil intent." The panel explained:

> The trial court's willfulness instruction begins, "I instruct you that an act is done willfully if it is done voluntarily *and intentionally, and with the specific intent to do something which the law forbids; that is, with an intent to violate a specific protected right.* " This language, coupled with the detailed charge cited earlier, more than satisfies the requirements developed in the relevant case law. No further instruction that the accused acted with "bad or evil intent" is necessary.

Couch, supra, at 4 (emphasis in opinion).

As the Use Note states, § 242 provides various enhanced penalties. If the government alleges no enhanced penalties, the offense is a misdemeanor. If the government alleges certain enhanced penalties, the offense becomes a felony. The instruction assumes the prosecution is for a felony, and the enhancements that increase the offense a felony are bracketed in paragraph (1)(E). In addition, other enhanced penalties in the statute increase the sentence as follows:

> if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, [the defendant] shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

These enhanced penalties are not covered in the text of instruction but may be added as needed. If any of these latter enhancements is charged in the indictment, it must be submitted to the jury and proved beyond a reasonable doubt. Apprendi v. New Jersey, 120 S. Ct. 2348 (2000); *see also* United States v. Lanham, 617 F.3d 873, 885-888 (6th Cir. 2010) (affirming § 242 conviction with enhancement for aggravated sexual abuse).