## **8.15 Threatening to Assault, Kidnap, or Murder a**[**United States Official**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=18-USC-1245028788-1886505497&term_occur=999&term_src=title:18:part:I:chapter:7:section:115)**,** [**United States Judge,**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=18-USC-999640918-1886505498&term_occur=999&term_src=)[**Federal Law Enforcement Officer**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=18-USC-2102689483-1886505500&term_occur=999&term_src=title:18:part:I:chapter:7:section:115)**, or Other Official**

## **(18 U.S.C. § 115(a)(1)(B))**

 The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with threatening to [assault] [kidnap] [murder] [*name of United States official, judge, federal officer, or other official or member of the immediate family]* a [United States Official] [United States Judge] [federal law enforcement officer] [other official] in violation of Section 115(a)(1)(B) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

 First, the defendant threatened to [assault] [kidnap] [murder] [*name of United States official, judge, federal officer or other official or member of the immediate family*]; [and]

 [Second, the defendant did so with intent to [impede] [intimidate] [interfere] with [*name of United States official, judge, federal officer or other official*] while [he] [she] was engaged in the performance of official duties]

or

 [Second, the defendant did so with intent to retaliate against [*name of United States official, judge, federal officer or other official*] on account of the performance of [his] [her] official duties.]

**Comment**

 “’[Federal law enforcement officer](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=18-USC-2102689483-1886505500&term_occur=999&term_src=title:18:part:I:chapter:7:section:115)’ means any officer, agent, or employee of the United States authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law.” 18 U.S.C. § 115(c)(1).

“‘[United States judge](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=18-USC-999640918-1886505498&term_occur=999&term_src=title:18:part:I:chapter:7:section:115)’ means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate judge.” 18 U.S.C. § 115(c)(3).

“‘[United States official](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=18-USC-1245028788-1886505497&term_occur=999&term_src=title:18:part:I:chapter:7:section:115)’ means the President, President-elect, Vice President, Vice President-elect, a Member of Congress, a member-elect of Congress, a member of the executive branch who is the head of a department listed in [5 U.S.C. § 101](https://www.law.cornell.edu/uscode/text/5/101), or the Director of the Central Intelligence Agency.” 18 U.S.C. § 115(c)(4).

### “Other officials” are those “whose killing would be a crime under 18 U.S.C. § 1114.” *United States v. Anderson,* 46 F.4th 1000, 1007 (9th Cir. 2022) (holding that threats to private security guard contracted by Federal Protective Service at Social Security Office violated § 115).

The instruction may be modified to identify any person who formerly served as a United

States official, a United States judge, a federal law enforcement officer, or an official, or a

member of the immediate family of any person who formerly served in any of these positions. See 18 U.SC. § 115(a)(2).

For an instruction defining “official duties,” *see United States v. Ornelas*, 906 F.3d 1138, 1149 (9th Cir. 2018) (upholding “official duties” instruction stating that test for determining whether officer is “[e]ngaged in the performance of official duties” is “whether the officer is acting within the scope of his employment, that is, whether the officer’s actions fall within his agency’s overall mission, in contrast to engaging in a personal frolic of his own”). *See also United States v. Juvenile Female*, 566 F.3d 943, 950 (9th Cir. 2009) (describing official duties test as “whether [the officer] is acting within the scope of what he is employed to do, as distinguished from engaging in a personal frolic of his own”)*.*