

10.1 Official Act— Defined (18 U.S.C. § 201(a)(3))

“Official act” means any decision or action on a [question] [matter] [cause] [suit] [proceeding] [controversy] involving the formal exercise of governmental power. The [question] [matter] [cause] [suit] [proceeding] [controversy] must be pending, or be able by law to be brought, before a public official, and the [question] [matter] [cause] [suit] [proceeding] [controversy] must be something specific and focused, rather than a broad policy objective.

[The official’s decision or action may include using [his] [her] official position to exert pressure on another official to perform an official act, or to advise another official, knowing or intending that such advice will form the basis for an official act by another official. The bribe recipient need not be the final decisionmaker.]

The government does not need to prove that the defendant ever actually intended to perform an official act or that the defendant ever did, in fact, perform an official act, provided that [he] [she] agreed to do so.

[Merely arranging a meeting, hosting an event, or giving a speech, do not qualify as the taking of a specific action.]

Comment

This instruction is based on 18 U.S.C. § 201(a)(3) as construed in *McDonnell v. United States*, 136 S. Ct. 2355 (2016).

The question or matter at issue need not currently be pending or capable of being brought before a public official. *United States v. Kimbrew*, 944 F.3d 810, 815 (9th Cir. 2019).

When using this instruction with Instruction 9.7 (Hobbs Act—Extortion or Attempted Extortion Under Color of Official Right), change the term “official act” to “official action.”

Revised May 2020