

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA, :
:
- v. - :
:
ADEDAYO ILORI, :
:
Defendant. :
:
-----X

S1 21 Cr. 746 (MKV)

THE PARTIES' PROPOSED REQUESTS TO CHARGE

DAMIAN WILLIAMS
United States Attorney
Southern District of New York

Daniel G. Nessim
Juliana N. Murray
Assistant United States Attorneys
Of Counsel

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Pursuant to Federal Rule of Criminal Procedure 30, the Parties respectfully requests that the Court include the following in its charge to the jury.

REQUEST NO. 1.

General Requests

The Parties respectfully requests that the Court give its usual instructions to the jury on the following matters:

- a. Function of Court and Jury
- b. Indictment not Evidence
- c. Statements of Court and Counsel not Evidence
- d. Burden of Proof and Presumption of Innocence
- e. Reasonable Doubt
- f. Jury's Recollection Controls
- g. Government Treated Like Any Other Party
- h. Definitions and Examples of Direct and Circumstantial Evidence
- i. Inferences
- j. Credibility of Witnesses
- k. Interest in Outcome
- l. Right to See Exhibits and Have Testimony Read During Deliberations
- m. Sympathy: Oath as Jurors
- n. Punishment Is Not to Be Considered by the Jury
- o. Verdict of Guilt or Innocence Must Be Unanimous
- p. Duties of Foreperson and Return of Verdict Form

REQUEST NO. 2.

The Indictment

The defendant, ADEDAYO ILORI, has been formally charged in what is called an Indictment. An Indictment is simply an accusation. It is no more than the means by which a criminal case is started. It is not evidence. It is not proof of the defendant's guilt. It creates no presumption, and it permits no inference that the defendant is guilty. You are to give no weight to the fact that an Indictment has been returned against the defendant.

The Indictment charges ADEDAYO ILORI, the defendant, with six counts.

Count One of the Indictment charges that, from at least in or about August 2020 through at least in or about October 2021, in the Southern District of New York and elsewhere, the defendant committed, or attempted to commit, major fraud against the United States.

Count Two of the Indictment charges that, from at least in or about August 2020 through at least in or about October 2021, in the Southern District of New York and elsewhere, the defendant conspired to commit wire and bank fraud.

Count Three of the Indictment charges that, from at least in or about August 2020 through at least in or about October 2021, in the Southern District of New York and elsewhere, the defendant committed wire fraud.

Count Four of the Indictment charges that, from at least in or about August 2020 through at least in or about October 2021, in the Southern District of New York and elsewhere, the defendant committed bank fraud.

Count Five of the Indictment charges that, from at least in or about August 2020 through at least in or about October 2021, in the Southern District of New York and elsewhere, the defendant committed aggravated identity theft.

Count Six of the Indictment charges that, from at least in or about August 2020 through at least in or about October 2021, in the Southern District of New York and elsewhere, the defendant conspired to commit money laundering.

REQUEST NO. 3.

Count One—Major Fraud Against the United States: General Instructions

Count One charges the defendant, ADEDAYO ILORI, with committing major fraud against the United States. Specifically, Count One charges ILORI with fraudulently obtaining and attempting to obtain more than \$1 million in government-guaranteed loans intended to assist small businesses during the COVID-19 pandemic. The Indictment reads that:

[The Court is respectfully requested to read the Statutory Allegation of Count One of the Indictment]

In order to prove the defendant, ADEDAYO ILORI, guilty of committing major fraud against the United States, the Government must establish the following four elements beyond a reasonable doubt:

First, that there was a scheme to defraud the United States (or a scheme to obtain money or funds from the United States Government by means of materially false or fraudulent pretenses, representations or promises) as charged in the Indictment.

Second, that the defendant executed or attempted to execute the scheme with the intent to defraud the United States Government;

Third, that the scheme took place with respect to a loan, guarantee, or other form of federal assistance extended by the United States government; and

Fourth, that the value of that loan, guarantee, or other form of federal assistance was at least \$1,000,000.¹

¹ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 18-9.

Now let us separately consider these four elements.

REQUEST NO. 4.

Count One—Major Fraud Against the United States: First Element—Fraud

The first element that the Government must prove beyond a reasonable doubt is that there was a scheme to defraud the United States and/or a scheme to obtain money or property from the United States Government through false or fraudulent pretenses, representations, or promises.

A “scheme to defraud” is defined as a pattern or course of conduct concerning a material matter designed to deceive the federal government into releasing money or property with the intent to cause the government to suffer a loss.

A representation is fraudulent if it was falsely made with the intent to deceive. Deceitful statements of half-truth, the concealment of material facts, and the expression of an opinion not honestly entertained may constitute false or fraudulent representations under the statute.

The deception need not be premised upon spoken or written words alone. The arrangement of the words, or the circumstances in which they are used may convey a false and deceptive appearance. If there is intentional deception, the manner in which it is accomplished does not matter.

A fraudulent representation must relate to a material fact or matter. A material fact is one which would reasonably be expected to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision. This means that if you find a particular statement of fact to have been false, you must determine whether that statement was one that a reasonable person might have considered important in making his or her decision. The same principle applies to fraudulent half-truths or omissions of material facts.

Although it is not necessary for the Government to prove an actual loss of funds by the Government, the Government must prove beyond a reasonable doubt that by executing or attempting to execute the scheme alleged in the Indictment, the defendant placed the Government at a risk of loss and that the Government did not knowingly accept such a risk.²

² Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 18-10.

REQUEST NO. 5.

Count One—Major Fraud Against the United States: Second Element—Intent

The second element the government must prove beyond a reasonable doubt is that the defendant executed or attempted to execute the scheme knowingly, willfully, and with specific intent to defraud the government.

“Knowingly” means to act voluntarily and deliberately, rather than mistakenly or inadvertently.

“Willfully” means to act knowingly and purposely, with an intent to do something the law forbids, that is to say, with bad purpose either to disobey or to disregard the law.

To act with intent to defraud means to act willfully and with the specific intent to deceive, for the purpose of causing some financial loss to another.

The question of whether a person acted knowingly, willfully, and with intent to defraud is a question of fact for you to determine, like any other fact question. This question involves one’s state of mind.

Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he committed an act with fraudulent intent. Such direct proof is not required.

The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based upon a person’s outward manifestations, his words, his conduct, his acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn therefrom. Circumstantial evidence, if believed, is of no less value

than direct evidence. In either case, the essential elements of the crime charged must be established beyond a reasonable doubt.

In order to prove that the defendant attempted to execute the scheme, the government must prove beyond a reasonable doubt that (1) the defendant intended to execute the scheme alleged in the Indictment, and (2) that the defendant did some overt act that was a substantial step in an effort to execute the scheme. Merely preparing to commit a crime is not a substantial step. The defendant must go beyond mere preparation, and his act must strongly confirm that he intended to execute the scheme. However, the government does not have to prove that the defendant did everything except the last act necessary to complete the scheme. A substantial step beyond mere preparation is enough.³

³ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 18-11.

REQUEST NO. 6.

Count One—Major Fraud Against the United States: Third Element—Federal Program

The third element that the Government must prove beyond a reasonable doubt is that the scheme took place with respect to a loan, guarantee, or other form of federal assistance, including through an economic stimulus, recovery, and rescue plan provided by the federal Government.⁴

⁴ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 18-12.

REQUEST NO. 7.

Count One— Major Fraud Against the United States: Fourth Element—Dollar Value

The fourth element that the Government must prove beyond a reasonable doubt is that the value of the loan, guarantee, or other form of federal assistance was at least \$1,000,000.⁵

⁵ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 18-13.

REQUEST NO. 8.

Count Two—Wire/Bank Fraud Conspiracy: General Instructions

Count Two of the Indictment charges ADEDAYO ILORI with participating in a conspiracy to commit wire fraud and bank fraud. The Indictment reads that:

*[The Court is respectfully requested to read the Statutory
Allegation of Count Two of the Indictment]*

A conspiracy is a kind of criminal partnership—a combination or agreement of two or more persons to join together to accomplish some unlawful purpose.

The crime of conspiracy to violate a federal law is an independent offense. It is separate and distinct from the actual violation of any specific federal laws, which the law refers to as “substantive crimes.”

In order to satisfy its burden of proof with respect to the allegation of conspiracy, the Government must prove beyond a reasonable doubt the following two elements:

First, that the conspiracy charged in Count Two of the Indictment existed; that is, that there was an agreement or understanding between two or more people to commit wire fraud and/or bank fraud, as charged in the Indictment; and

Second, that the defendant knowingly and willfully became a member of the alleged conspiracy.⁶

⁶ Adapted from the jury charges given by the Honorable Valerie E. Caproni in *United States v. Christopher Campos*, 16 Cr. 396 (VEC) (June 22, 2017); Honorable John F. Keenan in *United States v. Rasheen Jordan*, 03 CR 399 (JFK) (2004), and from Sand, *Modern Federal Jury Instructions*, Instr. 19-3; *see also United States v. Svoboda*, 347 F.3d 471, 476-77 (2d Cir. 2003) (discussing three elements of conspiracy).

REQUEST NO. 9.

Count Two—Wire/Bank Fraud Conspiracy: First Element—Agreement

The first element you must find is that the conspiracy charged in Count Two of the Indictment existed. There are two parts to the first element of the crime of conspiracy: (i) an agreement, and (ii) an illegal goal or goals. The actual commission of the crime that is the object of the conspiracy is not required. In this case, Count Two of the Indictment alleges what is called a “multi-object conspiracy,” which charges that the objectives of the conspiracy were to commit wire fraud and bank fraud.

a. Agreement

A conspiracy is just an agreement. To meet its burden of proof on this element, the Government must prove, beyond a reasonable doubt, that there was an agreement to engage in the criminal object I will describe to you in a moment. The Government is not, however, required to prove that the alleged conspirators stated in words or writing what the scheme was, its object or its purpose, or every precise detail of the scheme, or the means by which its object or purpose was to be accomplished. It is enough if two or more people, in some way or manner, expressly, impliedly, or tacitly came to a mutual understanding to violate the law.

You may find that the existence of the agreement has been established by direct proof. However, since conspiracy is by its very nature characterized by secrecy, you may also infer its existence from the circumstances of this case and conduct of the parties involved. In the context of a conspiracy charge, actions often speak louder than words. In this regard, you may, in determining whether an agreement existed here, consider the actions and statements of all of those

whom you found to or find to be participants as proof that a common design existed on the part of the persons involved in the conspiracy to act together to accomplish an unlawful goal.

b. Object of the Conspiracy

The second part of the first element is an illegal goal. The Government alleges that the conspiracy charged in Count Two had the goals of committing wire fraud and committing bank fraud. In order to satisfy its burden, the Government must prove that the conspiracy involved a plan to commit at least one or both of those separate, substantive crimes. The Government does not have to prove both of the objects charged beyond a reasonable doubt. In other words, to find the defendant guilty of Count Two, you do not need to find that the defendant agreed to accomplish both wire fraud and bank fraud. Rather, an agreement to accomplish either the objective of wire fraud, or the objective of bank fraud, is sufficient. Thus, if you find that the defendant agreed to commit either wire fraud or bank fraud, the illegal purpose element of conspiracy will be satisfied. You must, however, be unanimous that the Government has proven beyond a reasonable doubt at least one of these two alleged objectives of the conspiracy. You must also be unanimous as to which of the two types has been proven.

Substantive wire fraud and bank fraud are charged in Counts Three and Four, respectively, and I will explain the elements of those substantive offenses to you in a few moments.⁷

⁷ Adapted from jury charges given by the Honorable Sidney H. Stein in *United States v. Duncan, et al.*, 18 Cr. 289 (SHS) (May 6, 2019); by the Honorable Katherine B. Forrest in *United States v. Wedd*, 15 Cr. 616 (KBF) (S.D.N.Y. 2017); and Sand, *Modern Federal Jury Instructions*, Instrs. 19-4, 44-4.

REQUEST NO. 10.

**Count Two—Wire/Bank Fraud Conspiracy: Second Element— Membership in the
Conspiracy**

If you conclude that the Government has proven beyond a reasonable doubt that the conspiracy charged in Count Two existed, and that the conspiracy had as its object at least one of the unlawful purposes charged in the Indictment – that is, wire fraud or bank fraud – then you must next determine whether the defendant knowingly and willfully participated in the conspiracy with knowledge, and in furtherance, of one or both of its unlawful purposes.

I have already instructed you on what the terms knowingly and willfully mean in my instruction for the second element of Count One, and you should apply that instruction here as well.

Again, direct proof of state of mind is not required. The ultimate facts of knowledge and criminal intent are subjective and may be established by circumstantial evidence based on someone's outward manifestations, words, conduct, acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn therefrom.

In the context of a conspiracy, it is not necessary that the defendant be fully informed as to all the details of the conspiracy, or have known the identities of each and every member of the conspiracy, or be apprised of all of the co-conspirators' activities, in order to justify an inference of knowledge on his part. To have guilty knowledge, the defendant need not have known the full extent of the conspiracy or all of its activities or all of its participants.

Nor is it necessary that the defendant receive any monetary benefit from participating in a conspiracy, or that he have a financial stake in the outcome, so long as he, in fact, participated in

the conspiracy in the manner I have explained. However, you are instructed that, while proof of a financial interest in the outcome of a scheme is not essential, if you find that the defendant had such an interest, that is a factor which you may properly consider in determining whether or not the defendant was a member of the conspiracy charged in the Indictment.

The duration and extent of the defendant's participation has no bearing on the issue of the defendant's guilt. A conspirator's liability is not measured by the extent or duration of his or her participation. Indeed, each member of the conspiracy may perform separate and distinct acts and may perform them at different times. Some conspirators may play major roles while others play minor roles in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw the defendant within the ambit of the conspiracy.

I want to caution, however, that the defendant's mere presence at the scene of the alleged crime does not, by itself, make him a member of the conspiracy. Similarly mere association with one or more members of the conspiracy does not automatically make the defendant a member. A person may know, or be friendly with, a criminal, without being a criminal himself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish membership in the conspiracy.

I also want to caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. Moreover, the fact that the acts of the defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make the defendant a member. More is required under the law. What is necessary is that the defendant must have participated with knowledge of at least some of the purposes or objectives of the conspiracy and with the intention of aiding in the accomplishment of those unlawful ends.

In sum, the defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged, advised or assisted in it with the purpose of furthering an illegal undertaking. The defendant thereby becomes a knowing and willing participant in the unlawful agreement, that is to say, a conspirator.

If you find a conspiracy existed and that the defendant was a member, you may take into account against the defendant any acts or statements made during and in furtherance of the conspiracy by any of his co-conspirators, even though such acts or statements were not made in the presence of the defendant or even if they were made without his knowledge.⁸

⁸ Adapted from the jury charges given by the Honorable Sidney H. Stein in *United States v. Duncan*, 18 Cr. 289 (SHS) (S.D.N.Y. May 6, 2019); and Sand, *Modern Federal Jury Instructions*, Instr. 19-6.

REQUEST NO. 11.

Count Three—Wire Fraud: General Instructions

Count Three charges the defendant, ADEDAYO ILORI, with committing wire fraud. The Indictment reads that:

[The Court is respectfully requested to read the Statutory Allegation of Count Three of the Indictment]

In order to prove the defendant, ADEDAYO ILORI, guilty of committing wire fraud, the Government must establish the following three elements beyond a reasonable doubt:

First, the existence of either (a) a scheme or artifice to defraud or (b) a scheme or artifice to obtain money or property by means of materially false and fraudulent pretenses, representations, or promises;

Second, that the defendant participated in the scheme or artifice to defraud with knowledge of its fraudulent nature and with specific intent to defraud; and

Third, in the execution of the scheme, the defendant used, or caused to be used, interstate wires.

REQUEST NO. 12.

Count Three—Wire Fraud: First Element—Existence of Scheme or Artifice

As to the first element, a “scheme or artifice” is simply a plan for the accomplishment of an object. Fraud is a general term. It includes all the possible means by which a person seeks to gain some unfair advantage over another person by false representations, false suggestion, false pretenses, or concealment of the truth. Thus, a scheme to defraud is merely a plan to deprive another of money or property by trick, deceit, deception, or swindle.

Apart from proving a scheme or artifice to defraud, as I have just explained to you, the wire fraud statute alternatively provides that it can be satisfied by the existence of a scheme or artifice to obtain money or property by means of false or fraudulent pretenses, representations, or promises. A pretense, representation, statement, or document is fraudulent if it was made falsely and with intent to deceive. A representation, statement, claim, or document may also be fraudulent if it contains half-truths or if it conceals material facts in a manner that makes what is said or represented deliberately misleading or deceptive.

The deception need not be premised on spoken or written words alone. The arrangement of words, or the circumstances in which they are used may convey the false and deceptive appearance. If there is deception, the manner in which it is accomplished does not matter.

This element does not require that any particular person actually relied on, or actually suffered damages, as a consequence of any fraudulent representation or concealment of facts. Nor need you find that the defendant profited from the fraud. It is enough that a false statement, or a statement omitting material facts that made what was said deliberately misleading, was made as part of a fraudulent scheme in the expectation that it would be relied on. You must concentrate on

whether there was such a scheme, not on the consequences of the scheme. Of course, proof concerning the accomplishment of the goals of the scheme may be the most persuasive evidence of the existence of the scheme itself.

In addition, the false or fraudulent representation (or failure to disclose) must relate to a material fact or matter. A material fact is one which would reasonably be expected to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision. That means that, if you find a particular statement or representation false, you must determine whether that statement or representation was one that a reasonable person might have considered important in making his or her decision. The same principle applies to fraudulent half-truths or omissions, that is, failures to disclose facts.

A scheme to defraud need not be shown by direct evidence, but may be established by all the circumstances and facts in the case.⁹

⁹ Adapted from *Sand, et al., Modern Federal Jury Instructions, Instr. 44-3, 44-4, 44-13, 44-14, 44-15, 44-16*; Adapted from the Jury Charge of Hon. Sidney H. Stein in *United States v. Duncan et al.*, 18 Cr. 289 (SHS) (May 6, 2019); Hon. J. Paul Oetken, *United States v. Middendorf*, 18 Cr. 0036 (S.D.N.Y. 2019); Jury Charge of Hon. Lewis A. Kaplan, *United States v. Blaszcak*, 17 Cr. 357 (S.D.N.Y. 2018); Jury Charge of the Hon. Vincent L. Briccetti in *United States v. Lowe*, 13 CR. 985 (S.D.N.Y. 2014); *Carpenter v. United States*, 484 U.S. 19, 25 (1987); *United States v. Yip*, 930 F.2d 142, 146 (2d Cir. 1991)

REQUEST NO. 13.

Count Three—Wire Fraud: Second Element—Knowledge

Second, the Government must establish beyond a reasonable doubt is that the defendant devised or participated in the fraudulent scheme knowingly, willfully, and with the specific intent to defraud.

The words “devised” and “participated” are words that you are familiar with and, therefore, I do not need to spend much time defining them for you. To “devise” a scheme to defraud is to concoct or plan it. To “participate” in a scheme to defraud means to associate oneself with it with a view and intent toward making it succeed. While a mere onlooker is not a participant in a scheme to defraud, it is not necessary that a participant be someone who personally and visibly executes the scheme to defraud.

The Government must prove that the defendant knowingly and willfully participated in the charged scheme with the intent to defraud. I have already defined those terms for you and they apply here as well.

In order to satisfy this element, it is not necessary for the Government to establish that the defendant originated the scheme to defraud. It is sufficient if you find that a scheme to defraud existed, even if originated by another, and that the defendant, while aware of the scheme’s existence, knowingly participated in it.

It is also not required that the defendant participate in or have knowledge of all of the operations of the scheme. The guilt of the defendant is not governed by the extent of his participation.

It also is not necessary that the defendant have participated in the alleged scheme from the beginning. A person who comes in at a later point with knowledge of the scheme's general operation, although not necessarily all of its details, and intentionally acts in a way to further the unlawful goals, becomes a member of the scheme and is legally responsible for all that may have been done in the past in furtherance of the criminal objective and all that is done thereafter. Even if the defendant participated in the scheme to a lesser degree than others, he is nevertheless equally guilty, so long as that defendant became a member of the scheme to defraud with knowledge of its general scope and purpose.¹⁰

¹⁰ Adapted from the Jury Charge of Hon. J. Paul Oetken, *United States v. Middendorf*, 18 Cr. 0036 (S.D.N.Y. 2019); Jury Charge of Hon. Shira A. Scheindlin in *United States v. Vasilevsky*, 08 Cr. 903 (SAS) (S.D.N.Y. 2009); *United States v. Yip*, 930 F.2d 142, 146 (2d Cir. 1991); *United States v. McGinn*, 787 F.3d 116, 122-23 (2d Cir. 2015) (*mens rea* requirement for wire fraud is fraudulent intent, or “conscious knowing intent to defraud”); *United States v. Rybicki*, 354 F.3d 124, 151 (2d Cir. 2003) (Raggi, J., concurring, collecting cases holding that mail fraud *mens rea* requirement is specific intent defraud); *United States v. Porcelli*, 865 F.2d 1352, 1358 (2d Cir. 1989) (specific intent required for mail fraud statute is intent to defraud). Jury Charge of the Hon. Vincent L. Briccetti in *United States v. Lowe*; see also *United States v. Koh*, 199 F.3d 632 (1999 (upholding use of “no ultimate harm” type instruction).

REQUEST NO. 14.

Count Three—Wire Fraud: Third Element—Interstate Wire

The third and final element that the Government must establish beyond a reasonable doubt as to Count Three is that interstate wires (for example, phone calls, e-mail communications, or text messages) were used in furtherance of the scheme to defraud.

The wire communication must be an interstate wire—that is, it must pass between two or more states. The use of the wire need not itself be a fraudulent representation. It must, however, further or assist in some way in carrying out the scheme to defraud.

It is not necessary for the defendant to be directly or personally involved in any wire communication, as long as the communication is reasonably foreseeable in the execution of the alleged scheme to defraud in which the defendant is accused of participating. In this regard, it would be sufficient to establish this element of the crime if the evidence justifies a finding that the defendant caused the wires to be used by others; and this does not mean that the defendant himself must have specifically authorized others to execute a wire communication. When one does an act with knowledge that the use of the wires will follow in the ordinary course of business, or where such use of the wires can reasonably be foreseen, even though not actually intended, then he causes the wires to be used. Incidentally, this wire communication requirement is satisfied even if the wire communication was done by a person with no knowledge of the fraudulent scheme, including a victim of the alleged fraud.

Let me also add the following: only the wire communication must be reasonably foreseeable, not its interstate component. Thus, if you find that the wire communication was reasonably foreseeable, and the interstate wire communications actually took place, then this

element is satisfied even if it was not foreseeable that the wire communication would cross state lines.¹¹

¹¹ Adapted from the jury charges given by the Honorable Sidney H. Stein in *United States v. Duncan*, 18 Cr. 289 (SHS) (S.D.N.Y. May 6, 2019); and Sand, *Modern Federal Jury Instructions*, Instr. 44-7.

REQUEST NO. 15.

Count Four—Bank Fraud: General Instructions

Count Four charges the defendant, ADEDAYO ILORI, with committing bank fraud. The Indictment reads that:

[The Court is respectfully requested to read the Statutory Allegation of Count Three of the Indictment]

In order to prove the defendant, ADEDAYO ILORI, guilty of committing wire fraud, the Government must establish the following three elements beyond a reasonable doubt:

First, the existence of either (a) a scheme or artifice to defraud a bank or (b) a scheme or artifice to obtain money owned by or under the custody or control of a bank, by means of material false or fraudulent pretenses, representations, or promises;

Second, that the defendant knowingly and willfully engaged in the scheme or artifice – that is, that he acted with knowledge of the fraudulent nature of the scheme and with the specific intent to defraud the bank or to obtain, by deceiving the bank, money owned or controlled by that bank; and

Third, that the bank involved was federally insured.

REQUEST NO. 16.

Count Four—Bank Fraud: First Element—Existence of Scheme or Artifice

The first element requires that the Government prove that the defendant either (a) executed or attempted to execute a scheme or artifice to defraud a bank; or (b) executed or attempted to execute a scheme or artifice to obtain money owned by, or under the custody and control of, a bank by means of material false or fraudulent pretenses, representations, or promises.

I have already defined these terms to you in the context of Count One and Count Three, and those definitions apply here too. Here the scheme or artifice must be directed toward a bank.¹²

¹² Adapted from the jury charges given by the Honorable Valerie E. Caproni in *United States v. Christopher Campos*, 16 Cr. 396 (VEC) (June 22, 2017) and from Sand, *Modern Federal Jury Instructions*, Instr. 44-10.

REQUEST NO. 17.

Count Four—Bank Fraud: Second Element—Knowledge

The second element that the Government must prove, beyond a reasonable doubt, is that the defendant participated in the scheme knowingly, willfully, and with specific intent to defraud. I have already defined those terms for you and those definitions apply here as well.

REQUEST NO. 18.

Count Four—Bank Fraud: Third Element—Financial Institution

The third element of the crime of bank fraud is that the deposits of at least one of the banks that was the target of the scheme were federally insured. I instruct you, as a matter of law, that banks insured by the Federal Deposit Insurance Corporation, or “FDIC” are federally insured.

It is not necessary for the Government to prove that the defendant knew the identity of the particular financial institution or that the defendant knew that the deposits of the institution were federally insured.¹³

¹³ Adapted from the jury charges given by the Honorable Valerie E. Caproni in *United States v. Christopher Campos*, 16 Cr. 396 (VEC) (June 22, 2017) and Sand, *Modern Federal Jury Instructions*, Instr. 44-11.

REQUEST NO. 19.

Count Five—Aggravated Identity Theft: General Instructions

Count Three charges the defendant, ADEDAYO ILORI, with aggravated identity theft.

That Indictment reads that:

[The Court is respectfully requested to read the Statutory Allegation of Count Three of the Indictment]

To sustain its burden of proof, the Government must prove each of the following three elements beyond a reasonable doubt:

First, that the defendant knowingly used, transferred, or possessed a means of identification of another person;

Second, that the defendant used the means of identification during and in relation to Count Two, the conspiracy to commit wire fraud; and

Third, that the defendant acted without lawful authority.¹⁴

Or, in the alternative, that the defendant aided and abetted others to do the same.

¹⁴ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 39A-51, and the jury charges given by the Honorable Sidney H. Stein in *United States v. Jimenez*, 18 Cr. 879 (SHS); Honorable Lewis A. Kaplan in *United States v. Dumitru*, 18 Cr. 243 (LAK) (S.D.N.Y. Nov. 6, 2018); and *United States v. Sanders*, 12 Cr. 574 (LAK) (S.D.N.Y. April 1, 2013).

REQUEST NO. 20.

Count Five—Aggravated Identity Theft: First Element—Use of Means of Identification

The first element which the Government must prove is that the defendant knowingly used, transferred, or possessed a means of identification of another person.

The term “means of identification” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any name, signature, social security number, date of birth, official state or government issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.

In addition, the Government must prove both that the means of identification was that of an actual person (living or dead), and that the defendant knew that the means of identification was that of an actual person.

To act knowingly means to act voluntarily and intentionally and not by mistake or accident. I instructed you earlier on the manner of proof you may consider when making a decision about the defendant’s state of mind. Those same instructions apply to your decision here in determining whether the defendant acted knowingly with respect to her use, transfer, or possession if any, of a means of identification of another person.¹⁵

¹⁵ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 39A-51, and the jury charges given by the Honorable Sidney H. Stein in *United States v. Jimenez*, 18 Cr. 879 (SHS); Honorable Lewis A. Kaplan in *United States v. Dumitru*, 18 Cr. 243 (LAK)(S.D.N.Y. Nov. 6, 2018); and *United States v. Sanders*, 12 Cr. 574 (LAK) (S.D.N.Y. April 1, 2013).

REQUEST NO. 21.

Count Five—Aggravated Identity Theft: Second Element—Predicate Offense

As you will have noticed, the charge of aggravated identity theft requires proof of guilt on at least one of Counts One, Two, Three, and Four. If you find the defendant not guilty on all four of those counts, then you must find the defendant not guilty on this Count Five.

All this is relevant because the second element which the government must prove is that the defendant used, transferred, or possessed the means of identification during and in relation to at least one of the offenses charged in Counts One, Two, Three, and Four. The phrase “during and in relation to” means that the Government must prove that the use, transfer, or possession of the means of identification facilitated or had the potential to facilitate the offense in question.¹⁶

¹⁶ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 39A-51, and the jury charges of the Honorable Sidney H. Stein in *United States v. Jimenez*, 18 Cr. 879 (SHS); Honorable Lewis A. Kaplan in *United States v. Dumitru*, 18 Cr. 243 (LAK) (S.D.N.Y. Nov. 6, 2018); and *United States v. Sanders*, 12 Cr. 574 (LAK) (S.D.N.Y. April 1, 2013).

REQUEST NO. 22.

Count Three—Aggravated Identity Theft: Third Element—Without Lawful Authority

The third element which the Government must prove is that the defendant acted without lawful authority.

“Lawful authority” means authorization recognized by statute or regulation. Thus, “without lawful authority” means without authorization recognized by statute or regulation. To prove the “without lawful authority” element, the Government need not prove that the means of identification were stolen. However, proof that means of identification were stolen would satisfy the “without lawful authority element.”

“Without lawful authority” includes situations in which the defendant comes into lawful possession of identifying information and had the lawful authority to use that information for a lawful purpose, but used the information for an unlawful purpose. The term also includes situations where the person whose identity was used in furtherance of a crime consented to or gave permission for that use.¹⁷

¹⁷ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 39A-51, and the jury charges given by the Honorable Sidney H. Stein in *United States v. Jimenez*, 18 Cr. 879 (SHS); Honorable Lewis A. Kaplan in *United States v. Dumitru*, 18 Cr. 243 (LAK) (S.D.N.Y. Nov. 6, 2018).

REQUEST NO. 23.

Count Six—Conspiracy to Commit Money Laundering: General Instructions

Count Six charges the defendant, ADEDAYO ILORI, with conspiracy to commit money laundering. That count reads that:

[The Court is respectfully requested to read the Statutory Allegation of Count Six of the Indictment]

I have already instructed you on the elements of a conspiracy charge generally and those instructions apply to Count Six, which charges a money laundering conspiracy. The elements of money laundering conspiracy are:

First, that two or more persons entered into an unlawful agreement to violate specified laws of the United States prohibiting money laundering; and

Second, that the defendant knowingly and willfully entered into the agreement.

In other words, the elements of the conspiracy charged in Count Six are the same elements the Government is required to prove with respect to the conspiracy alleged in Count Two—namely, the existence of an agreement to violate the law and knowing and willful entry of the defendant into that agreement.¹⁸

¹⁸ Adapted from the Jury Charge given by the Honorable Loretta A. Preska in *United States v. Adelekan*, No. 19 Cr. 291 (LAP) (S.D.N.Y. Oct. 26, 2021).

REQUEST NO. 24.

Count Six—Money Laundering: First Element—Criminal Agreement

Count Six charges the defendant with participating in a conspiracy whose object was to engage in financial transactions involving the proceeds of wire and/or bank fraud in order to conceal or disguise the nature, location, source, ownership, or control of those criminal proceeds. You do not need to find that the defendant actually committed this crime of concealment money laundering. You must only find that he agreed with others to commit it.

Concealment money laundering has four elements:

First, that the defendant conducted a financial transaction.

The term “conducts” includes the action of initiating, concluding, or participating in initiating or concluding a transaction.

A “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition of property.

The term “financial transaction” means a transaction involving a financial institution that is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree, or a transaction that in any way or degree affects interstate or foreign commerce and involves the movement of funds by wire or other means, or involves one or more monetary instruments. A “transaction involving a financial institution” includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution by whatever means.

Interstate commerce includes any transmission, transfer or transportation of goods or services, both tangible and intangible, communications, and/or persons, between persons, places, or entities located in one state (including the District of Columbia) and persons, places, or entities located in another state, regardless of whether done for a business purpose or otherwise. Foreign commerce means the same thing, except it is between a person, place, or entity in the United States and a person, place, or entity in a foreign country.

In determining whether someone is engaged in, or whether his activities affect interstate or foreign commerce, the involvement in interstate or foreign commerce can be minimal. Any involvement at all will satisfy this element.

You do not have to decide whether the effect on interstate or foreign commerce was harmful or beneficial to a particular business or to commerce in general. The Government satisfies its burden of proving an effect on interstate or foreign commerce if it proves beyond a reasonable doubt any effect, whether it was harmful or not.

In addition, it is not necessary for the Government to show that the defendant actually intended or anticipated an effect on interstate or foreign commerce by his actions or that commerce was actually affected. All that is necessary is that the natural and probable consequences of the acts the defendant agreed to take would affect interstate or foreign commerce.

The second element of concealment money laundering, is that the financial transactions must involve the proceeds of “specified” unlawful activity. Here, the “specified” unlawful activity is wire fraud and bank fraud, in violation of Title 18, United States Code, Sections 1343 and 1344.

I instruct you, as a matter of law, that the term “specified unlawful activity” includes wire fraud and bank fraud. However, it is for you to determine whether the funds were the proceeds of that unlawful activity. Count Three charges wire fraud and Count Four charges bank fraud, and I have instructed you on the elements for those offenses in my earlier instructions.

The term “proceeds” means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity. Proceeds can be any kind of property, not just money.

The third element of concealment money laundering, is that the defendant knew that the financial transactions at issue involved the proceeds of some form, though not necessarily which form, of unlawful activity. The defendant must have known that the property involved in the transactions represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state, federal, or foreign law. Thus, to satisfy this element, the Government does not have to prove that the defendant specifically knew that the property involved in the transactions represented the proceeds of wire fraud, bank fraud, or any other specific offense, or that the defendant personally participated in the wire fraud and bank fraud schemes. The Government only has to prove that the defendant knew that the property involved in the transactions represented the proceeds of some illegal activity that was a felony. I instruct you as a matter of law that wire fraud and bank fraud are felonies under federal law.

The fourth and final element of concealment money laundering concerns the knowledge and the intent of the transaction.

Specifically, the Government must prove beyond a reasonable doubt that the defendant conducted financial transactions with knowledge and intent that the transactions were designed in

whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the specified unlawful activity.

As I have previously instructed, to act knowingly means to act purposely and deliberately and not because of mistake or accident, mere negligence, or other innocent reason. That is, the acts must be the product of the defendant's conscious objective. If you find that the evidence establishes beyond a reasonable doubt that the defendant knew the purpose of the particular transaction in issue and that the transaction was either designed to conceal or disguise the true origin of the property in question, then this element is satisfied. Intent to disguise or conceal need not be the sole motivating factor. However, if you find that the defendant knew of the transaction, but did not know that it was either designed to conceal or disguise the true origin of the property in question, but instead thought that the transaction was intended to further an innocent transaction, you must find that this element has not been satisfied and find the defendant not guilty. Again, as I instructed you earlier, proof of knowledge and intent of the purpose of the financial transaction may be established by circumstantial evidence or reasonable inference from evidence of the defendant's words, actions, or other acts of outward manifestation.

For the fourth element to be satisfied, the defendant need not know which "specified unlawful activity" he was agreeing to help conceal. He need only know that a purpose of the financial transaction was concealing the nature, location, source, ownership, or control of the funds.¹⁹

¹⁹ Adapted from the jury charges given by the Honorable Loretta A. Preska in *United States v. Adelekan*, No. 19 Cr. 291 (LAP) (S.D.N.Y. Oct. 26, 2021) and *United States v. Tanner et al.*, 17 Cr. 61 (LAP) (S.D.N.Y. May 3, 2018); the Honorable Katherine B. Forrest in *United States v.*

Wedd, 15 Cr. 616 (KBF) (S.D.N.Y. Dec. 13, 2017); and from Sand *et al.*, *Modern Federal Jury Instructions*, Instrs. 50A-7 – 50A-10.

REQUEST NO. 25.

Counts One, Three, Four, and Five—Aiding and Abetting

Now, in addition to charging the defendant with the substantive counts of major fraud against the United States, wire fraud, bank fraud, and aggravated identity theft, all four of these counts also charge the defendant with what is called aiding and abetting.

Aiding and abetting a crime is one manner of committing that crime. The defendant can be convicted of committing a crime if he helps someone else to commit the crime. For example, if the Government proves beyond a reasonable doubt that the defendant committed the aggravated identity theft alleged in, just as an example, Count Five, then you need not consider aiding and abetting with respect to that count. If, however, you find that the Government did not prove beyond a reasonable doubt that the defendant engaged in aggravated identity theft, to continue using Count Five as an example, you should consider whether the Government has nonetheless proved beyond a reasonable doubt that the defendant aided and abetted someone else in the commission of aggravated identity theft as alleged in that count.

The concept of aiding and abetting is alleged in all four substantive counts, that is Counts One, Three, Four, and Five. Counts Two and Six are the conspiracy counts. You will see this in the verdict sheet.

Under the federal aiding and abetting statute, whoever “aids, abets, counsels, commands, induces or procures” the commission of an offense is punishable as a principal. A person who aids and abets another to commit a substantive crime is just as guilty of that crime as if he had personally committed it. You may thus find the defendant guilty if you find beyond a reasonable doubt that the Government has proven that someone committed the substantive offense, and that the

defendant helped or assisted that person in the commission of the offense. The first requirement of aiding and abetting liability is that somebody else has committed the crime at issue. The defendant cannot be convicted of aiding and abetting if nobody committed the underlying crime. But if you do find that the underlying crime at issue was committed by someone other than the defendant, you should consider whether the defendant aided or abetted the person who actually committed the crime.

To aid and abet another to commit a crime, the defendant must have willfully and knowingly associated himself in some way with the crime, and he must have willfully and knowingly sought by some act to help make the crime succeed. Participation in a crime is willful if action is taken voluntarily and intentionally.

The mere presence of the defendant in a place where a crime is being committed, even coupled with knowledge that a crime is being committed, is not enough to make him an aider and abettor. The defendant's acquiescence in the criminal conduct of others, even with guilty knowledge, is not enough to establish aiding and abetting. An aider and abettor must have his own affirmative interest in the criminal venture.

To determine whether the defendant aided and abetted the commission of the crime, ask yourself these questions:

Did someone other than the defendant commit the crime at issue? If no, please go on to the next count.

Did the defendant participate in the crime charged as something that he wished to bring about?

Did he associate himself with the attempt to commit the crime by other people knowingly and willfully?

Did he seek by his actions to make their criminal venture succeed?

If so, the defendant is an aider and abettor, and therefore he is guilty of the offense under consideration. If not, then he is not an aider and abettor, and he is not guilty of the offense under consideration.²⁰

²⁰ Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 11-2, and jury charges given by the Honorable Sidney H. Stein in *United States v. Duncan*, 18 Cr. 289 (SHS) (S.D.N.Y. May 6, 2019); and the Honorable Colleen McMahon in *United States v. Cherico*, 08 Cr. 786 (CM) (S.D.N.Y. October 31, 2011).

REQUEST NO. 26.

Conscious Avoidance

[If Applicable]

As I have explained, all six counts charged in the Indictment require the Government to prove that the defendant acted knowingly. In determining whether the defendant acted knowingly, you may consider whether the defendant deliberately closed his eyes to what otherwise would have been obvious.

I would like to point out that the necessary knowledge on the part of the defendant with respect to any particular charge cannot be established by showing that that defendant was careless, negligent, or foolish. However, one may not willfully and intentionally remain ignorant of a fact material and important to his conduct in order to escape the consequences of criminal law. The law calls this “conscious avoidance” or “willful blindness.” In other words, the Government can prove either that the defendant actually knew the goal of a given crime or he consciously avoided knowledge of that goal.

Thus, if you find beyond a reasonable doubt that the defendant was aware that there was a high probability a crime was being committed, but that the defendant deliberately and consciously avoided confirming this fact, such as by purposely closing his or her eyes to it or intentionally failing to investigate it, then you may treat this deliberate avoidance of positive knowledge as the equivalent of knowledge, unless you find that the defendant actually believed that he was not engaged in such unlawful behavior. In other words, the defendant cannot avoid criminal responsibility for his own conduct by “deliberately closing his eyes,” or remaining purposefully ignorant of facts which would confirm to him that he was engaged in unlawful

conduct. Put another way, a person cannot look at all sorts of things that make it obvious to any reasonable person what is going on and then claim in court that, because he deliberately avoided learning what was explicitly obvious, he did not know the incriminating fact.

You must also keep in mind that there is an important difference between knowingly and intentionally taking part in a crime—which I just explained to you—and knowing the specific goal of the crime on the other. You may consider conscious avoidance in deciding whether the defendant knew the objective of the conspiracy, that is, whether he reasonably believed that there was a high probability that a goal of the conspiracy was to commit the crime charged as objects of the conspiracy and took deliberate and conscious action to avoid confirming that fact but participated in the conspiracy anyway. But conscious avoidance cannot be used as a substitute for finding that the defendant knowingly and intentionally joined the conspiracy in the first place. It is logically impossible for the defendant to intend and agree to join a conspiracy if he or she does not actually know it exists. However, if you find beyond a reasonable doubt that the defendant knowingly chose to participate in such a joint undertaking, you may consider whether the defendant took deliberate and conscious action to avoid confirming otherwise obvious facts about the purpose of that undertaking.

In sum, if you find that the defendant believed there was a high probability that a fact was so and that the defendant took deliberate and conscious action to avoid learning the truth of that fact, you may find that the defendant acted knowingly with respect to that fact. However, if you

find that the defendant actually believed the fact was not so, then you may not find that he acted knowingly with respect to that fact.²¹

²¹ Adapted from the jury charges given by the Honorable Loretta A. Preska in *United States v. Tanner et al.*, 17 Cr. 61 (S.D.N.Y. May 3, 2018); the Honorable P. Kevin Castel in *United States v. William Walters*, 16 Cr. 338 (S.D.N.Y. April 6, 2017); and Sand, et al., *Modern Federal Jury Instructions*, Instr. 3A-2.

REQUEST NO. 27.

Venue

With respect each count in the Indictment, the Government, in addition to proving the essential elements of that charge, must also prove that at least one act in furtherance of the charge occurred in the Southern District of New York. This is called establishing venue.

The Southern District of New York includes all of Manhattan and the Bronx, as well as Westchester, Rockland, Putnam, Dutchess, Orange, and Sullivan Counties.

The Government does not have to prove that a completed crime was committed within the Southern District of New York, or that the defendant was ever in the Southern District of New York. It is sufficient to satisfy the venue requirement if any act in furtherance of the crime charged occurred in this District. The act itself may not be a criminal act. And the act need not have been taken by the defendant, so long as the act was part of the crime that you find the defendant committed.

Unlike the elements of the offenses which must be proven beyond a reasonable doubt, the Government is only required to prove venue by a preponderance of the evidence. A preponderance of the evidence means that it is more probable than not that some act in furtherance of the crime you are considering occurred in this District.²²

²² Adapted from Jury Charge of Hon. Laura T. Swain in *United States v. Stewart*, 15 Cr. 287 (S.D.N.Y. 2016); Jury Charge of Hon. Gregory Woods in *United States v. Chow*, 17 Cr. 667 (S.D.N.Y. 2018).

REQUEST NO. 28.

Offenses Committed While Released on Bail

The Indictment charges that the defendant committed the offenses charged in Counts One Through Six when he was released on bail, in violation of Section 3147 of Title 18 of the United States Code.

Therefore, if you find the defendant guilty of any of Counts One through Six, you must make one additional finding: whether the Government has proven beyond a reasonable doubt that the defendant committed those offenses while he was released on bail. There is a place on the verdict form you will receive where you can record your findings on this question for each count.²³

²³ Based on the charge of the Honorable Mary Kay Vyskocil in *United States v. Fishman*, 20 Cr. 160 (MKV). *See* 18 U.S.C. § 3147; *see also* *United States v. Gowing*, 683 F.3d 406, 410 (2d Cir. 2012) (Per Curiam) (“We thus conclude that § 3147 does apply to enhance the sentence of a person who continues to commit, while on release, the same crime for which he is awaiting trial. Such a person, in the plain language of the statute, has been ‘convicted of an offense committed while released’ pending trial.”).

REQUEST NO. 29.

Negligence of a Victim Not a Defense

It is unimportant whether a victim might have discovered the charged fraud schemes had the victim probed further. If you find that a scheme or artifice to defraud existed, it is irrelevant whether you believe that a victim was careless, gullible, or even negligent.

Negligence, carelessness, or gullibility on the part of the victims is no defense to a charge of fraud.²⁴

²⁴ Adapted from the jury charge given by the Honorable Loretta A. Preska in *United States v. Adelekan*, No. 19 Cr. 291 (LAP) (S.D.N.Y. Oct. 26, 2021)

REQUEST NO. 30.

Variance in Dates

The Indictment alleges that the defendant, ADEDAYO ILORI, engaged in the charged offenses from at least in or about August 2020 through at least in or about October 2021. It is not essential that the Government prove that the defendant committed the charged offenses during these exact time frames. The law only requires a substantial similarity between the dates alleged in the Indictment and the date or dates established by the evidence.²⁵

²⁵ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 3-12, and the jury charges given by the Honorable Colleen McMahon in *United States v. Omar Gonzalez*, 10 Cr. 588 (CM) (S.D.N.Y. Nov. 19, 2010).

REQUEST NO. 31.

Particular Investigative Techniques Not Required

[If Applicable]

You have heard reference, [*If applicable*: in the arguments of defense counsel in this case,] to the fact that certain investigative techniques were or were not used by law enforcement authorities. There is no legal requirement that law enforcement agents investigate crimes in a particular way or that the Government prove its case through any particular means. While you are to carefully consider the evidence presented, you need not speculate as to why certain techniques were used or why others were not used. The Government is not on trial. Law enforcement techniques are not your concern.

Your concern is to determine whether or not, based on the evidence or lack of evidence, the guilt of the defendant has been proven beyond a reasonable doubt.²⁶

²⁶ Adapted from the jury charges given by the Honorable William H. Pauley III in *United States v. Meregildo, et al.*, 11 Cr. 576 (S.D.N.Y. Nov. 28, 2012); the Honorable Pierre N. Leval in *United States v. Mucciante*, 91 Cr. 403 (S.D.N.Y. 1992); and the Honorable John F. Keenan in *United States v. Medina*, 91 Cr. 894 (S.D.N.Y. 1992).

REQUEST NO. 32.

Use of Evidence Obtained Pursuant to Searches and Seizures

You have heard testimony about evidence seized in connection with certain searches or seizures conducted by law enforcement officers, and in particular, of email and other electronic evidence obtained pursuant to court-approved search warrants. Evidence obtained from these searches and seizures was properly admitted in this case, and may be properly considered by you. Such searches and seizures were entirely appropriate law enforcement actions. Whether you approve or disapprove of how evidence was obtained should not enter into your deliberations, because I instruct you that the Government's use of the evidence is entirely lawful.

You must, therefore, regardless of your personal opinions, give this evidence full consideration along with all the other evidence in the case in determining whether the Government has proven the defendant's guilt beyond a reasonable doubt.²⁷

²⁷ Adapted from the Jury Charge given by the Honorable Jesse M. Furman in *United States v. Avenatti*, No. 19 Cr. 373 (JMF) (S.D.N.Y. Feb. 2, 2022) (Tr. 1732-33).

REQUEST NO. 33.

Stipulations

[If Applicable]

You have heard evidence in the form of stipulation[s] of testimony. A stipulation of testimony is an agreement among the parties that, if called as a witness, the person would have given certain testimony. You should accept as true the fact that the witness would have given that testimony. It is for you, however, to determine the effect to be given that testimony.

You have also heard evidence in the form of stipulations of fact. A stipulation of fact is an agreement among the parties that a certain fact is true. You should regard such agreed facts as true. It is for you, however, to determine the effect to be given to any stipulated fact.²⁸

²⁸ Adapted from the jury charges given by the Honorable Sidney H. Stein in *United States v. Pierre*, 19 Cr. 783 (SHS) (S.D.N.Y. May 17, 2021); *see also* Sand, *Modern Federal Jury Instructions*, Instr. 5-6.

REQUEST NO. 34.

Law Enforcement and Government Employee Witnesses

[If Applicable]

You have heard testimony from law enforcement officers and employees of the United States Department of Justice, Office of the Inspector General [and/or the FBI and/or HSI and/or NYPD (as applicable)]. The fact that a witness may be employed by the DOJ-OIG [and/or the FBI and/or HIS and/or NYPD (as applicable)] does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

In this context, defense counsel is allowed to try to attack the credibility of such a witness on the ground that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement officer or employee witness and to give to that testimony the weight you find it deserves.²⁹

²⁹ Adapted from Sand et al., Modern Federal Jury Instructions, Instr. 7-16.

REQUEST NO. 35.

Preparation of Witnesses

[If Applicable]

You heard evidence during the trial that witnesses had discussed the facts of the case and their testimony with the lawyers before the witnesses appeared in court.

Although you may consider that fact when you are evaluating a witness's credibility, I should tell you that there is nothing unusual or improper about a witness meeting with lawyers before testifying so that the witness can be aware of the subjects he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without such consultation.

Again, the weight you give to the fact or the nature of the witness's preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.³⁰

³⁰ Adapted from the jury charges given by the Honorable Richard J. Sullivan in *United States v. Peirce*, 06 Cr. 1032 (S.D.N.Y. Feb. 22, 2008).

REQUEST NO. 36.

Uncalled Witnesses—Equally Available

[If Applicable]

There are individuals whose names you have heard during the course of the trial but who did not appear here to testify. I instruct you that each party had an equal opportunity, or lack of opportunity, to call any of these witnesses. Therefore, you should not draw any inferences or reach any conclusions as to what they would have testified to had they been called. Their absence should not affect your judgment in any way.

You should, however, remember my instruction that the law does not impose on the defendant in a criminal case the burden or duty of calling any witness or producing any evidence.³¹

³¹ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 6-7; see *United States v. Super*, 492 F.2d 319, 323 (2d Cir. 1974) (proper to instruct jury that no inference should be drawn from the absence of a witness who was equally unavailable to both sides); accord *United States v. Brown*, 511 F.2d 920, 925 (2d Cir. 1975).

REQUEST NO. 37.

Persons Not on Trial

You may not draw any inference, favorable or unfavorable, towards the Government or the defendant from the fact that any person other than the defendant is not on trial here. You also may not speculate as to the reasons why other persons are not on trial. Those matters are wholly outside your concern and have no bearing on your function as jurors.³²

³² Adapted from the jury charges given by the Honorable J. Paul Oetken in *United States v. Block*, 16 Cr. 595 (S.D.N.Y. June 29, 2017); and the Honorable Gregory Woods in *United States v. Chow*, 17 Cr. 667 (S.D.N.Y. April 10, 2018).

REQUEST NO. 38.

Limiting Instruction – Similar Act Evidence

[If Applicable]

The Government has offered evidence tending to show that on different occasions, the defendant, ADEDAYO ILORI, engaged in conduct similar to the charge in the Indictment.

In that connection, let me remind you that the defendant is not on trial for committing acts not alleged in the Indictment. Accordingly, you may not consider this evidence of similar acts as a substitute for proof that the defendant committed the crime charged. Nor may you consider this evidence as proof that the defendant has a criminal personality or bad character. The evidence of the other, similar acts was admitted for a much more limited purpose of [provide explanation if applicable], as I instructed you at the time that evidence was admitted, and you may consider it only for that limited purpose and to provide background for the charges in the Indictment.

If you determine that the relevant defendant committed the acts charged in the Indictment and similar acts as well, then you may, but need not, draw an inference that in doing the acts charged in the Indictment, the defendant under consideration acted [provide specific explanation if applicable]. However, evidence of similar acts may not be considered by you for any other purpose. Specifically, you may not use this evidence to conclude that because the defendant committed the other act or acts he must also have committed the act charged in the Indictment.³³

³³ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 5-25, and the jury charges given by the Honorable Loretta A. Preska in *United States v. Tanner et al.*, 17 Cr. 61 (S.D.N.Y. May 3, 2018).

REQUEST NO. 39.

Expert Witnesses

[If Applicable]

In this case, I permitted certain witnesses to express opinions about certain matters that are at issue. Such testimony, which we refer to as “expert testimony,” was presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing expert testimony, you may consider that witness’s qualifications, his opinions, the reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness’s testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of all of the evidence in this case. You should not, however, credit the opinion testimony just because I allowed the witness to testify as an expert. Nor should you substitute the expert’s opinion for your own reason, judgment, and common sense. The determination of the facts in this case rest solely with you.³⁴

³⁴ Adapted from the jury charges given by the Honorable Valerie Caproni in *United States v. Riley*, 13 Cr. 339 (S.D.N.Y. Sept. 8, 2014).

REQUEST NO. 40.

Charts and Summaries (In Evidence)

[If Applicable]

Now, some of the exhibits that were admitted into evidence were in the form of charts and summaries. For these charts and summaries that were admitted into evidence, you should consider them as you would any other evidence.³⁵

³⁵ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 5-12. *See also* Fed. R. Evid. 1006.

REQUEST NO. 41.

Charts and Summaries (Not In Evidence)

[If Applicable]

There have been summary charts and exhibits that were shown to you but not admitted into evidence. For these charts and exhibits, they serve merely as summaries and analyses of testimony or documents in the case and are here to act as visual aids for you. It is the underlying evidence and the weight which you attribute to it that gives value and significance to these charts. To the extent that the charts conform to what you determine the underlying facts to be, you should accept them. To the extent that the charts differ from what you determine the underlying evidence to be, you may reject them.³⁶

³⁶ Adapted from the jury charges given by the Honorable Richard J. Sullivan in *United States v. Peirce*, 06 Cr. 1032 (S.D.N.Y. Feb. 22, 2008), and Sand, *Modern Federal Jury Instructions*, Instr. 5-13.

REQUEST NO. 42.

Defendant's Testimony

[If Applicable]

The defendant in a criminal case never has any duty to testify or come forward with any evidence. This is because, as I have told you, the burden of proof beyond a reasonable doubt remains on the Government at all times, and the defendant is presumed innocent. In this case, the defendant did testify and he was subject to cross-examination like any other witness. You should examine and evaluate the testimony just as you would the testimony of any other witness.³⁷

³⁷ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 4-7. See *United States v. Gaines*, 457 F.3d 238, 249 & n.9 (2d Cir. 2006).

REQUEST NO. 43.

Defendant's Right Not to Testify

[If Applicable and Requested By Defense]

The defendant did not testify in this case. Under our Constitution, the defendant has no obligation to testify or to present any evidence, because it is the Government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the Government throughout the entire trial and never shifts to the defendant. The defendant is never required to prove that he is innocent.

You may not attach any significance to the fact that the defendant did not testify. No adverse inference against him may be drawn by you because he did not take the witness stand. You may not consider this against the defendant in any way in your deliberations in the jury room.³⁸

³⁸ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 5-21.

REQUEST NO. 44.

Character Witness

[If Applicable]

You have heard testimony that the defendant has a good reputation for [to be completed as appropriate]. This testimony is not to be taken by you as the witness's opinion as to whether the defendant is guilty or not guilty. That question is for you alone to determine.

Along with all the other evidence you have heard, you may take into consideration what you believe about the defendant's reputation for [to be completed as appropriate] when you decide whether the Government has proven, beyond a reasonable doubt, that the defendant committed the crime.³⁹

³⁹ Adapted from Sand, *Modern Federal Jury Instructions*, Instr. 5-15. See *United States v. Pujana-Mena*, 949 F.2d 24, 27-31 (2d Cir. 1991).

REQUEST NO. 45.

Redaction of Evidentiary Items

[If Applicable]

We have, among the exhibits received in evidence, some documents that are redacted. “Redacted” means that part of the document or recording was taken out. You are to concern yourself only with the part of the item that has been admitted into evidence. You should not speculate as to any reason why the other part of it has been redacted.⁴⁰

⁴⁰ Adapted from the jury charges given by the Honorable Shira A. Scheindlin in *United States v. DiTomasso*, 14 Cr. 160 (S.D.N.Y. Mar. 7, 2016).

REQUEST NO. 46.

Conclusion

Members of the jury, that about concludes my instructions to you. You are about to go into the jury room to begin your deliberations. If during those deliberations you want to see any of the exhibits, you may request to see them and we will either send them into the jury room or we will bring you back out to the courtroom to see them. If you want any of the testimony read back or any of the recordings played again, you may also request that. Please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in requesting exhibits or portions of the testimony. If you want any further explanation of the law as I have explained it to you, you may also request that from the Court. If there is any doubt or question about the meaning of any part of this charge, you should send me a note asking for clarification or for a further explanation. Your requests for exhibits or testimony—in fact any communications with the Court—should be made to me in writing, signed by your foreperson, and given to one of the marshals. In any event, do not tell me or anyone else how the jury stands on any issue until after a unanimous verdict is reached.

Many of you have taken notes periodically throughout this trial. I want to emphasize to you, as you are about to begin your deliberations, that notes are simply an aid to memory. Notes that any of you may have made may not be given any greater weight or influence in determination of the case than the recollections or impressions of other jurors, whether from notes or memory, with respect to the evidence presented or what conclusions, if any, should be drawn from such evidence. Any difference between a juror's recollections and another juror's notes should be settled by asking to have the court reporter read back the transcript, for it is the court record rather than any juror's notes upon which the jury must base its determination of the facts and its verdict.

Your verdict must be based solely upon the evidence developed at trial or the lack of evidence. It would be improper for you to consider, in reaching your decision as to whether the Government sustained its burden of proof, any personal feelings you may have about any defendant's race, religion, national origin, sex, or age. The parties in this case are entitled to a trial free from prejudice and our judicial system cannot work unless you reach your verdict through a fair and impartial consideration of the evidence.

Your function now is to weigh the evidence in this case and to determine the guilt or innocence of the defendant with respect to each count of the Indictment.

You must base your verdict solely on the basis of the evidence and these instructions as to the law, and you are obliged on your oath as jurors to follow the law as I instruct you, whether you agree or disagree with the particular law in question.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to the verdict. Your verdict must be unanimous. It is your duty, as jurors, however, to consult with one another, and to deliberate with a view to reaching an agreement, if you can possibly do so without violence to individual judgment. Each of you must decide the case for him or herself, but do so only after an impartial discussion and consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change an opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors.

Remember at all times, you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

You should by your own vote select one of you to sit as your foreperson. The foreperson will send out any notes, and when the jury has reached a verdict, he or she will notify the marshal that the jury has reached a verdict, and when you come into open court, the foreperson will be asked to state what the verdict is.

We have prepared a verdict form for you to use in recording your decisions. After you have reached a verdict, the foreperson should fill in the verdict sheet, sign and date it, and then give a note to the marshal outside your door stating that you have reached a verdict. Do not specify what the verdict is in your note. Instead, the foreperson should retain the verdict sheet, and hand it to us in open court when you are all called in. If you are divided, do not report how the vote stands.

I will stress again that each of you must be in agreement with the verdict that is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

In conclusion, Ladies and Gentlemen, I am sure that if you listen to the views of your fellow jurors and if you apply your own common sense you will reach a fair verdict here. Remember that your verdict must be rendered without fear, without favor, and without prejudice or sympathy.

* * *

The Government respectfully reserves the right to submit additional or modified requests at or near the close of evidence.

Dated: New York, New York
June 22, 2022

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney
Southern District of New York

By: /s/
Daniel G. Nessim
Juliana N. Murray
Assistant United States Attorneys
(212) 637-2486 / -2314