

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

UNITED STATES OF AMERICA )  
 )  
 v. ) Case No. 4:22-CR-084  
 )  
 BERNARD OKOJIE )

**GOVERNMENT'S CITATION OF AUTHORITY IN SUPPORT OF  
ITS PROPOSED SPECIAL VERDICT FORM**

On March 14, 2023, the Court conducted a pretrial conference in this case. *See* ECF No. 93. At the conference, the Court ordered the parties to provide citations to applicable legal authority supporting their proposed verdict form. The Government hereby submits the following in support of its proposed verdict form, attached hereto as an exhibit.<sup>1</sup>

**I. Count One:** *Conspiracy to Commit Wire Fraud and Bank Fraud*  
18 U.S.C. § 1349

Count One charges that Defendant committed conspiracy to commit wire fraud and bank fraud in violation of 18 U.S.C. § 1349. *See* ECF No. 3, ¶ 22-29. Accordingly, Defendant is charged with conspiring to commit two separate substantive crimes. Eleventh Circuit Pattern Jury Instruction (Criminal) 13.2 requires the following instruction in the case of multiple-object conspiracies:

In this case, regarding the alleged conspiracy, the indictment charges that the Defendants conspired to commit [first crime] and to commit [second crime]. In

<sup>1</sup> The Government's attached special verdict form differs slightly in format than its initial form submitted on March 7, 2023, ECF No. 84. The Government requests that the court use the attached version.

other words, the Defendants are charged with conspiring to commit two separate substantive crimes.

The Government does not have to prove that the Defendant willfully conspired to commit both crimes. It is sufficient if the Government proves beyond a reasonable doubt that the Defendant willfully conspired to commit one of those crimes. But to return a verdict of guilty, you must all agree on which of the two crimes the Defendant conspired to commit.

Eleventh Circuit Pattern Jury Instruction (Criminal) 13.2 (citing *United States v. Ballard*, 663 F.2d 534, 544 (5th Cir. Unit B, 1981)).

The Government's requested verdict form is consistent with this pattern instruction. The Government's verdict form gives the jury the option of finding the Defendant guilty or not guilty of the conspiracy charged in Count One, and further requires the jury to determine unanimously which object of the conspiracy—wire fraud or bank fraud—was committed. This verdict form, along with instruction 13.2, assures that the jury return a unanimous verdict when a single conspiracy embraces multiple alleged objects. *See United States v. Grigorian*, No. 05-60203-CR, 2007 WL 9628325, at \*3 (S.D. Fla. Jan. 3, 2007) (“The Eleventh Circuit has already clearly settled this issue stating that ‘[w]here an indictment charges in the conjunctive several means of violating a statute, a conviction may be obtained on proof of only one of the means, and accordingly the jury instruction may properly be framed in the disjunctive.’”) (citing *United States v. Simpson*, 228 F.3d 1294, 1300 (11th Cir. 2000)); *see also United States v. Woodard*, 459 F.3d 1078, 1084 (11th Cir. 2006).

The Defendant's proposed verdict form is inconsistent with the Eleventh Circuit pattern instructions and precedent. It should be rejected. Unlike the Government's proposed form, Defendant's verdict form would require the jury to determine, on a paragraph-by-paragraph basis, various overt acts and conspiratorial facts alleged in the manner-and-means section of the indictment. *See* ECF No. 70 (requiring a check next to eighteen different boxes that correspond to the manner-and-means paragraphs in the indictment). Defendant's verdict form is inconsistent with the law. The Supreme Court has made clear that, while the Sixth Amendment requires a jury to be unanimous on each element of the offense to convict, "jurors need not unanimously agree on the underlying facts that make up a particular element of the offense, such as which of several possible means a defendant used to commit that element, so long as they unanimously agree that the government has proven the element beyond a reasonable doubt." *United States v. Weiss*, 539 F. App'x 952, 956 (11th Cir. 2013) (citing *Schad v. Arizona*, 501 U.S. 624, 631–32 (1991) and *Richardson v. United States*, 526 U.S. 813, 817 (1999)).

Defendant's verdict form, which seeks to have the jury agree as to specific conspirators and their corresponding overt acts, is also inconsistent with Eleventh Circuit Pattern Instruction (Criminal) 13.6. This instruction provides as follows:

The Government does not have to prove that all the people named in the indictment were members of the plan, or that those who were members made any kind of formal agreement. The heart of a conspiracy is the making of the unlawful plan itself, so the Government does not have to prove that the conspirators succeeded in carrying out the plan.

The Government does not have to prove that the members planned together all the details of the plan or the “overt acts” that the indictment charges would be carried out in an effort to commit the intended crime.

Contrary to these instructions, Defendant’s verdict form would require the jury to make determinations on a conspirator-by-conspirator and loan-by-loan basis, and check any number of eighteen different boxes. Defendant’s verdict form should be rejected as inconsistent with the law.

**II. COUNT TWO:**            *Wire Fraud and Bank Fraud*  
18 U.S.C. § 1343 and 2

The parties’ verdict forms are the same as to Count Two.

**III. COUNT THREE:**      *Conspiracy to Commit Money Laundering*  
18 U.S.C. § 1956(h)

Count Three alleges that Defendant committed conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). *See* ECF No. 3, ¶ 32-36. Count Three alleges three objects of this money laundering conspiracy: (1) to conceal or disguise the nature, location, source, ownership or the control of the proceeds of fraud schemes involving COVID-19 programs (18 U.S.C. § 1956(a)(1)(B)(i)); (2) to avoid a transaction reporting requirement under state or federal law (18 U.S.C. § 1956(a)(1)(B)(ii)); and (3) to engage in monetary transactions with a financial institution in proceeds of fraud schemes involving COVID-19 programs, in amounts of more than \$10,000 (18 U.S.C. § 1957). Accordingly, like Count One, Count Three alleges a multiple-object conspiracy. Accordingly, the same analysis applies. The special verdict form should require unanimity as to the objects of the conspiracy,

but the form should not require any specific factual finding regarding the underlying facts pertinent to the conspiratorial agreement that makes up an element of the offense. To do so would be inconsistent with the pattern instructions and Eleventh Circuit precedent.

For the foregoing reasons, the Governments requests that the Court use its proposed special verdict form and reject Defendant's proposed special verdict form.

Respectfully submitted this 23<sup>rd</sup> day of March 2023.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that I have on this day served all parties in this case in accordance with the notice of electronic filing (“NEF”) which was generated as a result of electronic filing in this Court.

Respectfully submitted this 20th day of March 2023.

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