FTB:CWE/AA/JB
F. #2020R00955

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA

- against -

Criminal Docket No. 22-20 (FB)

ANULI OKEKE,

Defendant.

- X

THE GOVERNMENT'S REQUESTS TO CHARGE

BREON PEACE
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PRELIMINARY STATEMENT

Pursuant to Rule 30 of the Federal Rules of Criminal Procedure, the government respectfully requests that the Court include the following instructions in its charge to the jury. In addition, the government reserves the right to offer additional instructions as they become necessary during the course of the trial.

REQUEST NO. 1
General Requests

The government respectfully requests that the Court charge the jury in its usual manner on the following subjects:

a. The Role of the Court and the Duties of the Jury;

b. Equality of the Parties Before the Court;

c. Jury Communications with Lawyers and the Court;

d. Presumption of Innocence;

e. Burden of Proof and Reasonable Doubt;

f. Circumstantial Evidence and Direct Evidence;

g. Permissible Inferences Drawn from the Evidence;

h. Stipulations and Objections;

i. Charts and Summaries;

j. Credibility of Witnesses;

k. Law Enforcement Witnesses;

l. Discrepancies in Testimony;

m. No Inference to Be Drawn from a Defendant's Failure to Testify (if applicable);

n. Testimony of a Defendant (if applicable);

o. The Meaning of "and" in the Indictment;

p. Dates Approximate;

q. Deliberations;

r. Right to See Exhibits and Have Testimony Read During Deliberations;

s. Questioning Wisdom of Law and Basing Verdict on Sympathy or Prejudice Prohibited;

t. Verdict Must Be Unanimous; and

u. Punishment Not the Province of the Jury.

REQUEST NO. 2
Summary of the Charges

The defendant is formally charged in an Indictment. As I instructed you at the outset of this case, an indictment is a charge or accusation. The Indictment is merely a statement of charges and is not evidence. The Indictment in this case contains four counts on which you will be called to render a verdict.

Count One charges the defendant with participating in a conspiracy to commit wire fraud.

Count Two charges the defendant with committing the substantive offense of wire fraud.

Count Three charges the defendant with committing the substantive offense of bank fraud.

Count Four charges the defendant with participating in a conspiracy to commit money laundering.

You must consider each count of the Indictment separately, and you must return a separate verdict as to each count. Whether you find the defendant guilty or not guilty as to one offense should not affect your verdict as to any other offense charged.

I will now explain to you the law that applies to each of the counts in the Indictment.

REQUEST NO. 3

Count Two: Wire Fraud

I am going to begin with the law related to the substantive wire fraud and bank fraud charges—Counts Two and Three—before instructing you on the law related to the wire fraud and bank fraud conspiracy charges.

Count Two charges the defendant with committing wire fraud as follows:

> In or about and between March 2020 and August 2020, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant ANULI OKEKE, together with others, did knowingly and intentionally devise a scheme and artifice to defraud and to obtain money and property from [Popular Bank] and the United States Small Business Administration by means of one or more materially false and fraudulent pretenses, representations and promises, and for the purpose of executing and attempting to execute such scheme and artifice did transmit and cause to be transmitted, by means of wire communications in interstate commerce, writings, signs, signals, pictures and sounds, to wit: electronic submission of applications and supporting documentation.

Wire Fraud: Definition and Elements

I will now explain the elements of wire fraud so you can understand what the government must prove beyond a reasonable doubt about the defendant. The relevant statute regarding wire fraud is Section 1343 of Title 18 of the United States Code, which provides that:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio or television communication in interstate or foreign commerce, any writings, signs, signals, pictures or sounds for the purpose of executing such scheme or artifice shall be [guilty of an offense]."

The elements of the offense are:

First, that there was a scheme or artifice to defraud or to obtain money or property by materially false and fraudulent pretenses, representations or promises, as alleged in the Indictment;

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

Third, that in the execution of the scheme, the defendant used or caused the use of wire communications in interstate or foreign commerce.

First Element: Scheme or Artifice to Defraud

The first element of wire fraud is that there was a scheme or artifice to defraud or to obtain money or property by means of materially false or fraudulent pretenses, representations or promises.

A "scheme or artifice" is simply a plan for the accomplishment of an object. A scheme to defraud is any plan, device or course of action designed to obtain money or property by means of false or fraudulent pretenses, representations or promises reasonably calculated to deceive persons of average prudence.

"Fraud" is a general term that embraces all the various means that an individual can devise and that are used by an individual to gain an advantage over another by false representations, suggestions, suppression or omission of the truth, or deliberate disregard for the truth.

So, putting this all together, a "scheme to defraud" is simply a plan to deprive another of money or property by trick, deceit, deception or swindle.

The government is not required to prove that the defendant personally originated the scheme to defraud. Nor is it necessary that the government prove that the defendant actually realized any gain from the scheme or that the intended victim actually suffered any loss.

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

The scheme to defraud in this case is alleged to have been carried out by making false or fraudulent statements and representations. A representation or statement is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made, and is fraudulent for purposes of the wire fraud statute if it was falsely made with the intention to deceive and to obtain money or property from another.

False and fraudulent statements under the statute may include the concealment of material facts in a manner that makes what is said or represented deliberately misleading. An estimate or expression of an opinion may also constitute false or fraudulent statements under the statute, but only if the government proves beyond a reasonable doubt that it was not honestly believed by the person making the statement when it was made and that it related to a material fact or matter as I will shortly define that term to you.

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

The false or fraudulent representation or failure to disclose must relate to a material fact or matter. A material fact is one that reasonably would 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 would be expected to consider important in making his or her decision. The same principle applies to fraudulent half-truths or omissions of material facts.

In addition to proving that a statement was false or fraudulent and related to a material fact, in order to establish a scheme to defraud, the government must prove that the alleged scheme contemplated depriving another of money or property. But it is not necessary that the government prove that the defendant actually realized any gain from the scheme or that the intended victim actually suffered any loss.

Second Element: Participation in Scheme

The second element of the offense of wire fraud is that the defendant participated in the scheme to defraud knowingly, intentionally and with the specific intent to defraud.

An act is done "knowingly" if it is done voluntarily and intentionally, and not because of ignorance, mistake, accident, negligence, or carelessness. Whether the defendant acted knowingly may be proven by her conduct and by all of the facts and circumstances surrounding the case and knowledge may be inferred from a secretive or irregular manner in which activities are carried out.

A person acts "intentionally" when she acts deliberately and purposefully. That is, the defendant's acts must have been the product of her conscious objective decision rather than the product of a mistake or accident.

For the purposes of wire fraud, "intent to defraud" means to act knowingly and with specific intent to deceive for the purpose of causing some financial or property loss to another, that is for the purpose of obtaining money or property of another.

The question of whether a person acted knowingly and with intent to defraud is a question of fact for you to determine. As I said before, 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 she committed an act with fraudulent intent. Such direct proof is not required. The ultimate facts of knowledge and criminal intent may be established by circumstantial evidence, based on a person's outward manifestations, her words, her conduct, her acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them. Circumstantial evidence, if believed, is of no less value than direct evidence.

Since an essential element of the crime charged is intent to defraud, it follows that good faith on the part of the defendant is a complete defense to a charge of wire fraud. Under the wire fraud statute, even false representations or statements, or omissions of material facts, do not amount to fraud unless done with fraudulent intent. However misleading or deceptive a plan may be, it is not fraudulent if it was devised or carried out in good faith. An honest belief in the truth of the representations made by a defendant is a complete defense, however inaccurate the statements may turn out to be. A defendant, however, has no burden to establish a defense of good faith. The burden is on the government to prove fraudulent intent and consequent lack of good faith beyond a reasonable doubt.

A belief by the defendant, however, that ultimately everything would work out so that no one would lose any money does not require that you find she acted in good faith. No amount of honest belief on the part of a defendant that the scheme will ultimately make a profit will excuse fraudulent actions or false representations by her to obtain money or property.

As a practical matter, then, in order to sustain a charge of wire fraud, the government must establish that the defendant knew that her conduct as a participant in the scheme was calculated to deceive and, nonetheless, she associated herself with the fraudulent scheme for the purpose of causing some loss to another.

The government can also meet its burden of showing the defendant knew the falsity of the statements if the government establishes beyond a reasonable doubt that the defendant was aware of a high probability that the statements were false and acted with deliberate disregard of the facts – that is, a conscious purpose to avoid learning the truth. The government does not meet its burden of proving knowledge by demonstrating that the defendant was merely negligent or foolish. If the government establishes that the defendant acted with deliberate disregard for the truth, the knowledge requirement would be satisfied, unless the defendant actually believed the statements to be true.

Third Element: Use of Interstate Wires

The third and final element of wire fraud is the use of an interstate or international wire communication in furtherance of the scheme. The wire communication must pass between two or more states, or it must pass between the United States and a foreign country. You are instructed that a wire communication includes a wire of funds between banks in different states, and emails and text messages.

The wires themselves need not be a fraudulent representations. They must, however, further or assist in the carrying out of the scheme to defraud. It is not necessary for a defendant to be directly or personally involved in the wire communication, as long as the communication was reasonably foreseeable in the execution of the scheme to defraud.

In this regard, it is 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. This does not mean that the defendant must specifically have authorized others to make or cause the transfer of funds or other 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 reasonably can be foreseen, even though not actually intended, then she causes the wires to be used.

Aiding and Abetting Liability

The indictment also charges the defendant with aiding and abetting the wire fraud crime charged in Count Two. This means that the government can meet its burden of proof either by proving that the defendant herself did the acts charged, or by proving that she aided and abetted another person in doing so. In relevant part, the aiding and abetting statute, section 2(a) of Title 18 of the United States Code provides that:

> Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

Under this provision, it is not necessary for the government to show that the defendant herself physically committed the crime with which she is charged in order for the government to sustain its burden of proof. A person who aids or abets another to commit an offense is just as guilty of that offense as if she committed it herself.

Accordingly, you may find the defendant guilty of the offense charged in Count Two if you find beyond a reasonable doubt that the government has proven that another person actually committed the offense with which the defendant is charged, and that the defendant aided or abetted that person in the commission of the crime.

In order for the defendant to be found guilty of aiding and abetting a crime, the government must prove each of the following two elements beyond a reasonable doubt:

First, that another person actually committed the crime with which the defendant is charged; and

Second, that the defendant aided and abetted that person in the commission of the offense.

With regard to the first element, the government must prove, beyond a reasonable doubt, that another person has committed the crime charged. Obviously, no one can be convicted of aiding and abetting the criminal acts of another if no crime was committed by another person in the first place. But if you do find that a crime was committed, then you must consider whether the defendant aided or abetted the commission of that crime.

In order to aid or abet someone to commit a crime, it is necessary that the defendant willfully and knowingly associate herself in some way with the crime and that she participate in it by doing some act with the desire to help the crime succeed. That is, a defendant must have the specific intent of furthering the criminal offense through some action on her part. An aider and abettor must have some interest in the criminal venture. That interest need not be a financial one, but you may consider the presence or absence of a financial interest in making your determination.

To establish that the defendant knowingly associated herself with the crime, the government must establish beyond a reasonable doubt that the defendant knew and intended that wire fraud would take place.

The mere presence of the defendant where a crime is being committed, even coupled with knowledge that a crime is being committed, or merely associating with others who were committing a crime, is not sufficient to establish aiding and abetting. One who has no knowledge that a crime is being committed or is about to be committed but inadvertently does something that aids in the commission of that crime is not an aider and abettor. An aider and abettor must know that the crime is being committed and act in a way which is intended to bring about the success of the criminal venture.

To determine whether the defendant aided and abetted the commission of the crime charged in Count Two, ask yourselves these questions:

- Did the defendant participate in the crime charged as something she wished to bring about?

- Did the defendant associate herself with the criminal venture knowingly and willfully?

- Did the defendant seek by her actions to make the criminal venture succeed?

If she did, then the defendant is an aider and abettor and, therefore, responsible for wire fraud and guilty of the offense charged just as if she had committed the act or offense herself. If, on the other hand, your answer to these questions is "no," then the defendant is not an aider and abettor and you must conclude that she is not guilty as such.

Authority

Adapted from the charges in United States v. Shkreli, No. 15-CR-637 (KAM) (E.D.N.Y.); United States v. Full Play Group, S.A., et al., 15-CR-252 (PKC) (E.D.N.Y.); United States v. Johnson, 16-CR-457 (NGG) (E.D.N.Y.); United States v. Korchevsky, et al., 15-CR-381 (RJD) (E.D.N.Y.); see also United States v. Novis, No. 20-CR-335 (JMA), 2023 WL 4746541, at *22 (E.D.N.Y. July 24, 2023) ("willfulness is simply not an element of mail and wire fraud"); United States v. Middendorf, No. 18-CR-36 (JPO), 2019 WL 4254025, at *7 (S.D.N.Y. Sept. 9, 2019); United States v. O'Sullivan, et al., 20-CR-272 (PKC) (E.D.N.Y.).

REQUEST NO. 4

Count Three: Bank Fraud

I will now instruct you on the bank fraud charge. Count Three charges the defendant with committing bank fraud in connection with the PPP loan fraud.

Count Three of the Indictment charges the defendant with bank fraud as follows:

> In or about and between March 2020 and August 2020, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant ANULI OKEKE, together with others, did knowingly and intentionally execute and attempt to execute a scheme and artifice to defraud [Popular Bank], the deposits of which were insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits and other property owned by, and under the custody and control of, [Popular Bank] by means of one or more materially false and fraudulent pretenses, representations and promises.

Bank Fraud: Definition and Elements

I will now explain the elements of bank fraud so you can understand what the government must prove beyond a reasonable doubt about the defendant. The relevant statute regarding bank fraud is Section 1344 of Title 18 of the United States Code, which provides that:

> Whoever, knowingly executes, or attempts to execute, a scheme or artifice— (1) to defraud a financial institution; or (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall [have committed an offense].

The elements of the offense are:

First, that there was either a scheme to defraud a bank (or a scheme to obtain money or funds owned or under the custody or control of a bank by means of materially false or fraudulent pretenses, representations or promises) as charged in the Indictment.

Second, that the defendant executed a scheme with the intent to defraud the bank.

Third, that at the time of the execution of the scheme, the bank had its deposits insured by the Federal Deposit Insurance Corporation.

First Element: Scheme to Defraud

The first element that the government must prove is that there was a scheme or artifice to defraud or to obtain money or other property, owned by or under the custody or control of a bank by means of false or fraudulent pretenses, representations or promises.

I have already instructed you as to the meaning of "scheme or artifice." You should apply that definition here.

A statement, representation, or claim is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made.

A representation is fraudulent if it was falsely made with 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 law.

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.

The 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 bank, the government must prove beyond a reasonable doubt that by executing the scheme alleged in the Indictment, the defendant placed the bank at a risk of loss and that the bank did not knowingly accept such a risk.

The statute says that a scheme to defraud a financial institution of "money" is a crime. In this case, the Indictment charges the defendant with executing a scheme to fraudulently obtain loan proceeds from banks. The government is not required to establish that the defendant realized any personal gain from the scheme.

Similarly, you need not find that the bank suffered any actual financial loss. It is only necessary for the government to prove beyond a reasonable doubt that the scheme alleged in the Indictment placed the bank at a risk of loss and that it did not knowingly accept such a risk.

It is sufficient that the bank was placed at some risk, even if it was not the target of the fraudulent activity, and even if the degree of risk appears to be minimal.

Second Element: Intent to Defraud

The second element that the government must prove beyond a reasonable doubt as to Count Three is that the defendant intended to defraud the bank.

I have already instructed you as to the meaning of "knowingly." You should apply that definition here.

To act "willfully" means to act knowingly and purposely, with an intent to do something the law forbids, that is to say, with a bad purpose either to disobey or to disregard the law.

To act with "intent" is to act deliberately and purposefully, with a conscious objective.

To "execute" means to complete, to make, to sign, to perform, to do.

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. However, a defendant acts with intent to defraud a bank if she acts with reckless disregard for the truth or if she deliberately closed her eyes to what would otherwise have been obvious to her. No one can avoid responsibility for a crime by deliberately ignoring what is obvious. Thus, you may find that the defendant acted with the intent to defraud based on evidence that proves that: (1) the defendant was aware of a high probability of the scheme to defraud a bank, and (2) acted with a reckless disregard for the truth, or consciously and deliberately tried to avoid learning about the scheme to defraud the bank. It is not enough that the defendant may have been stupid or foolish, or may have acted out of inadvertence or accident. You must find that the defendant was actually aware of a high probability of the scheme to defraud the bank, deliberately avoided learning about it, and did not actually believe that it did not exist.

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.

As I said before, 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 she committed an act with fraudulent intent. Such direct proof is not required. The ultimate facts of knowledge and criminal intent may be established by circumstantial evidence, based on a person's outward manifestations, her words, her conduct, her acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them. Circumstantial evidence, if believed, is of no less value than direct evidence.

Good faith on the part of a defendant is a complete defense to the charge of bank fraud, since an essential element of the crime charged is intent to defraud. A defendant, however, has no burden to establish a defense of good faith. The burden is on the government to prove fraudulent intent. Consequently, the government must prove the defendant's lack of good faith beyond a reasonable doubt.

Under the bank fraud statute, even false representations or statements of material facts do not amount to a fraud unless done with fraudulent intent. However misleading or deceptive a plan may be, it is not fraudulent if it was devised or carried out in good faith. An honest belief in the truth of the representations made by a defendant is a valid defense, however inaccurate the statements may have turned out to be.

There is another consideration to bear in mind in deciding whether or not a defendant acted in good faith. If you find that the defendant believed that everything would work out so that no one would lose any money, that finding would not require you to find that she acted in good faith. If the defendant participated in the scheme for the purpose of causing some financial or property loss to another, then her fraudulent actions or false representations would not be excused by her honest belief that the scheme would not ultimately result in a loss to the bank.

The bank's negligence, carelessness or gullibility is no defense to a charge of bank fraud. If you find that the defendant acted with the intent to defraud, the bank's own negligence, carelessness, or gullibility is not relevant.

To conclude with this element, if you find that a defendant was not a knowing participant in the scheme or that she lacked the intent to deceive, you must find the defendant not guilty. On other hand, if you find that the government has established beyond a reasonable doubt the first two elements, you should consider the third and final element of the bank fraud charge.

Third Element: Bank was Federally Insured or Chartered

The last element the government must prove beyond a reasonable doubt is that the bank at issue was insured by the Federal Deposit Insurance Corporation at the time the defendant was alleged to have attempted to execute the scheme to defraud. As you heard, the parties have stipulated that Popular Bank is a financial institution insured by the FDIC and has been an FDIC institution since 1999.

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 institution was insured by the Federal Deposit Insurance Corporation. The government must prove, however, that the defendant intended to defraud a financial institution.

Aiding and Abetting Liability

I have already instructed you as to the meaning of “aiding and abetting.” You should apply that definition here.

REQUEST NO. 5
Count One: Wire Fraud and Bank Fraud Conspiracy

Count One: Conspiracy to Commit Wire Fraud and Bank Fraud

I will now instruct you on the wire fraud and bank fraud conspiracy charge. Count One of the Indictment charges the defendant with conspiracy to commit wire fraud and bank fraud. The Indictment reads, in relevant part, as follows:

> In or about and between March 2020 and August 2020, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant ANULI OKEKE, together with others, did knowingly and intentionally conspire to execute a scheme and artifice, to wit: (a) to defraud and to obtain money and property from Bank I, an entity the identity of which is known to the Grand Jury, which was a federally-insured financial institution, and the United States Small Business Administration by means of one or more materially false and fraudulent pretenses, representations and promises, and to transmit and cause to be transmitted by means of wire communications in interstate commerce, writings, signs, signals, pictures and sounds, for the purpose of executing the scheme to defraud, contrary to Title 18, United States Code, Section 1343; and (b) to defraud [Popular Bank], a financial institution, and to obtain money, funds, credits and other property owned by and under the custody and control of [Popular Bank], by means of one or more materially false and fraudulent pretenses, representations and promises, contrary to Title 18, United States Code, Section 1344.

I have already explained to you the crimes of wire fraud and bank fraud. To find the defendant guilty of Count One, you must find that she conspired to commit the wire fraud and bank fraud charged in Count Two and Count Three.

For Count One, the government need not prove that the defendant actually committed wire fraud and bank fraud, the unlawful acts charged as the objects of the conspiracy in Count One. However, you must find beyond a reasonable doubt, that the defendant conspired with one or more individuals to commit wire fraud and bank fraud.

Conspiracy in General

I will now instruct you on conspiracy. A conspiracy is a kind of criminal partnership—a combination or agreement between two or more persons to join together to violate other laws. You should understand that a conspiracy is an entirely separate and different offense from the underlying crimes that the conspirators intended to commit. That is because the formation of a conspiracy, of a partnership for criminal purposes, is in and of itself a crime.

Thus, if a conspiracy exists, even if it should fail to achieve its purposes, it is still punishable as a crime. In other words, for the defendant to be guilty of conspiracy, there is no need for the government to prove that she or any other conspirator actually succeeded in their criminal goals or even that they could have succeeded as to the underlying substantive crime.

Elements of Conspiracy to Commit Wire Fraud and Bank Fraud

As a reminder, the government need not prove that the defendant actually committed the unlawful acts charged as the objects of the conspiracy in Count Two and Count Three, that is, wire fraud and bank fraud. Rather, the government must prove the following two elements beyond a reasonable doubt:

First, that two or more persons entered into an agreement to commit wire fraud and bank fraud; and

Second, that the defendant knowingly and intentionally became a member of the conspiracy.

First element: Existence of the agreement

The first element the government must prove beyond a reasonable doubt for Count One is that two or more persons entered into the charged agreement to commit wire fraud and bank fraud. One person cannot commit a conspiracy alone. Rather, the proof must convince you that at least two persons joined together in a common criminal scheme.

The government need not prove that members of the conspiracy met together or entered into any express or formal agreement. You need not find that the alleged conspirators stated, in words or writing, what the scheme was, its object or purpose, or the means by which the scheme was to be accomplished. It is sufficient to show that the conspirators tacitly came to a mutual understanding to accomplish an unlawful act by means of a joint plan or common design.

You may, of course, find that the existence of an agreement between two or more people to violate the law has been established by direct proof. But since, by its very nature, a conspiracy is characterized by secrecy to conceal the unlawful agreement, direct proof may not be available. Therefore, you may infer such an agreement—or conspiracy—from the circumstances and conduct of the parties. In a very real sense, then, in the context of conspiracy cases, actions often speak louder than words. In determining whether an agreement existed here, you may consider the actions and statements of all those you find to be participants in the conspiracy as proof that a common design existed to act together for the accomplishment of the unlawful purpose stated in the indictment.

Second element: Membership in the Conspiracy

The second element that the government must prove is that the defendant knowingly and intentionally became a member in the charged conspiracy. I have explained to you what it means to act knowingly and intentionally. A person acts knowingly and intentionally if she acts voluntarily, deliberately, and purposefully, and not because of ignorance, mistake, accident, negligence or carelessness. In other words, did the defendant participate in the conspiracy with knowledge of its unlawful purposes and with the specific intention of furthering its business or objectives? Knowledge and intent may be inferred from a secretive or irregular manner in which activities are carried out. Whether a defendant acted knowingly may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case.

In order for a defendant to be deemed a member of a conspiracy, she need not have had a stake in the venture or its outcome. While proof of a financial or other interest in the outcome of a scheme is not essential, if you find that a defendant did have such an interest, it is a factor you may properly consider in determining whether or not the defendant was a member of the conspiracy charged in the Indictment.

A defendant's participation in the conspiracy must be established by independent evidence of her own acts or statements, as well as those of any of the other individuals you find were coconspirators, and the reasonable inferences that may be drawn from them.

A defendant's knowledge may be inferred from the facts proved. In that connection, I instruct you that, to become a member of the conspiracy, a defendant need not have been apprised of all of the activities of all members of the conspiracy. Moreover, a defendant need not have been fully informed as to all of the details, or the scope, of the conspiracy in order to justify an inference of knowledge on her part. In addition, a defendant need not have joined in all of the conspiracy's unlawful objectives.

In considering whether a defendant participated in a conspiracy, be advised that a conspirator's liability is not measured by the extent or duration of her participation as she need not have been a member of the conspiracy for the entire time of its existence. In addition, each member of the conspiracy may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. Even a single act may be sufficient to draw a defendant within the ambit of the conspiracy. The key inquiry is simply whether a defendant joined the conspiracy charged with an awareness of at least some of the basic aims and purposes of the unlawful agreement and with the intent to help it succeed.

I caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. Moreover, the fact that the acts of a 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 required is that a 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, a defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged, advised, or assisted in it for the purpose of furthering the illegal undertaking.

The Indictment alleges two objects of the conspiracy charged in Count One – wire fraud and bank fraud – and I have previously instructed you on the elements of both of those offenses. Thus, the conspiracy in Count One has alleged more than one objective, that is, multiple ways in which the members conspired to commit fraud. If the government fails to prove that at least one of these two objectives was an object of the conspiracy, then you must find the defendant not guilty of Count One. The government need not prove that the defendant entered into an agreement to accomplish both of the unlawful objectives alleged. If you find unanimously that the defendant agreed to commit either of these two objectives, then this element would be proved.

Authority

Adapted from the charge in United States v. Shkreli, No. 15-CR-637 (KAM) (E.D.N.Y.); United States v. Petrossi, 16-CR-234 (BMC) (E.D.N.Y.); United States v. Korchevsky, et al., 15-CR-381 (RJD) (E.D.N.Y.); and United States v. Hwa, No. 18-CR-538 (MKB) (E.D.N.Y.).

REQUEST NO. 6
Count Four: Money Laundering Conspiracy

Count Four: Money Laundering Conspiracy

Count Four charges the defendant with participating in a conspiracy to engage in money laundering.

Count Five of the indictment reads, in relevant part:

> In or about and between March 2020 and August 2020, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant ANULI OKEKE, together with others, did knowingly and intentionally conspire to engage in one or more financial transactions in and affecting interstate commerce, to wit: deposits, withdrawals and transfers of funds and monetary instruments, in and affecting interstate and foreign commerce, by, though and to one or more financial institutions; in criminally derived property that was of a value greater than $10,000 and that was derived from specified unlawful activity, to wit: wire fraud, in violation of Title 18, United States Code, Section 1343, and bank fraud, in violation of Title 18, United States Code, Section 1344, contrary to Title 18, United States Code, Section 1 957(a).

Money Laundering Conspiracy

I already instructed you on the law of conspiracies in connection with my instructions concerning Count One. You should apply those instructions here.

As a reminder, the two elements the government must prove beyond a reasonable doubt are:

First, that the defendant and at least one other person entered into an agreement to engage in money laundering, a crime I will define for you; and

Second, that the defendant knowingly and intentionally was or became a member of the conspiracy.

I have already instructed you on what it means to act "knowingly" and on what it means to act "intentionally."

I remind you, the government need not prove that the defendant actually committed money laundering, but, in order for you to find her guilty of Count Four, the government must prove beyond a reasonable doubt that she conspired with at least one person to commit that crime.

Money Laundering: Definition and Elements

The unlawful plan charged in Count Four is alleged to have had one object: money laundering. In this case, money laundering means knowingly engaging in a monetary transaction in criminally-derived property of a value greater than $10,000.

The relevant statute regarding transactions in criminally-derived property is Section 1957(a) of Title 18 of the United States Code, which provides that:

> Whoever . . . knowingly engages . . . in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity [and does so either] in the United States . . . [commits a crime].

The elements of the offense are as follows:

First, that the defendant engaged in a monetary transaction in or affecting interstate commerce;

Second, that the monetary transaction involved criminally-derived property of a value greater than $10,000;

Third, that the property was derived from specified unlawful activity;

Fourth, that the defendant acted knowingly, that is, with knowledge that the transaction involved proceeds of a criminal offense; and

Fifth, that the transaction took place in the United States.

First Element: Engaging in a Monetary Transaction

The first element that the government must prove beyond a reasonable doubt is that the defendant engaged in a monetary transaction in or affecting interstate commerce.

The term "monetary transaction" means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument by, through, or to a financial institution.

The term "interstate or foreign commerce" means commerce between any combination of states, territories, or possessions of the United States, or between the United States and a foreign country.

You must find that the transaction affected interstate commerce in some way, however minimal. This effect on interstate commerce can be established in several ways.

First, any monetary transaction with a financial institution insured by the FDIC affects interstate commerce, so if you find that Popular Bank was insured by the FDIC that is enough to establish that a transaction involving that bank affected interstate commerce.

Second, if you find that the source of the funds used in the transaction affected interstate commerce, that is sufficient as well.

Third, if you find that the transaction itself involved an interstate transfer of funds, that would also be sufficient.

Second Element: Transaction Involved Criminally-Derived Property

The second element that the government must prove beyond a reasonable doubt is that the monetary transaction involved criminally-derived property having a value in excess of $10,000.

The term "criminally derived property" means any property constituting, or derived from, proceeds obtained from a criminal offense.

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.

The government is not required to prove that all of the property involved in the transaction was criminally derived property. However, the government must prove that more than $10,000 of the property involved was criminally derived property.

Third Element: Property Derived From Unlawful Activity

The third element that the government must prove beyond a reasonable doubt is that the defendant knew that the property involved in the transaction was the proceeds of some form of unlawful activity.

I instruct you that this element refers to a requirement that the defendant knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a criminal offense under state or federal law. In this case, the government alleges that the funds involved in the monetary transactions were obtained through wire fraud and bank fraud. I instruct you as a matter of law that wire fraud and bank fraud are criminal offenses under federal law.

Fourth Element: Knowledge

The fourth element which the government must prove beyond a reasonable doubt is that the defendant knowingly engaged in an unlawful monetary transaction as defined above.

I instruct you that in a prosecution for an offense under this section, the government is not required to prove that the defendant knew the particular offense from which the criminally derived property was derived. However, the government must prove beyond a reasonable doubt that the defendant knew that the transaction involved criminally-derived property, which I remind you, means any property constituting, or derived from, proceeds obtained from a criminal offense.

If you find that the government has established, beyond a reasonable doubt, that the defendant knew that the transaction involved property derived from unlawful activity or by proving beyond a reasonable doubt that the defendant knew of a high probability that the property involved in the transaction was the proceeds of some form of unlawful activity and that he deliberately avoided confirming the fact, then this element is satisfied.

Fifth Element: Transaction Took Place in the United States

The fifth element which the government must prove beyond a reasonable doubt is that the transaction took place in the United States.

Authority

Adapted from the charge in United States v. Chartier, 17-CR-342 (JS) (E.D.N.Y.); United States v. Darius Xavier Johnson, 15-CR-227 (ENV) (E.D.N.Y.); United States v. Petrossi, 16-CR-234 (BMC) (E.D.N.Y.); United States v. Valasquez, 11-CR-639 (JFB) (E.D.N.Y.).

REQUEST NO. 7
Conscious Avoidance

As I have instructed you, the government must prove beyond a reasonable doubt that the defendant knew that certain statements, representations or omissions were false or misleading. In determining whether the defendant acted knowingly, you may consider whether the defendant deliberately closed her eyes to what would have been obvious to her. If you find beyond a reasonable doubt that the defendant acted with a conscious purpose to avoid learning the truth that the claims that she or her coconspirators made were false or misleading, then this element may be satisfied. However, guilty knowledge may not be established by demonstrating that the defendant was merely negligent, foolish or mistaken.

If, for example, you find beyond a reasonable doubt that the defendant was aware that there was a high probability that false or misleading statements, representations or omissions were being made, and that the defendant acted in deliberate disregard of the facts, you may find that the defendant acted knowingly. However, if you find that the defendant actually believed that she was not acting in furtherance of a conspiracy to defraud, she may not be convicted.

Authority

United States v. Goffer, 721 F.3d 113, 128 & n.11 (2d Cir. 2013);
Sand, Instruction No. 56-8.

REQUEST NO. 8
Co-Conspirator Statements and Liability

Some of the charges against the defendant allege that she participated in a conspiracy. In that regard, I admitted into evidence against the defendant the acts and statements of others because these acts and statements were committed by persons who, the government charges, were also confederates or co-conspirators of the defendant on trial.

The reason for allowing this evidence to be received against the defendant has to do with the nature of the crime of conspiracy. A conspiracy is often referred to as a partnership in crime. Thus, as in other types of partnerships, when people enter into a conspiracy to accomplish an unlawful end, each and every member becomes an agent for the other conspirators in carrying out the conspiracy.

Accordingly, the reasonably foreseeable acts, declarations, statements and omissions of any member of the conspiracy and in furtherance of the common purpose of the conspiracy, are deemed, under the law, to be the acts of all of the members, and all of the members are responsible for such acts, declarations, statements and omissions and may be considered against the defendant. This is true even if such acts were done and statements were made in the defendant's absence and without their knowledge.

Authority

Adapted from the charges in United States v. Skyers, No. 16-CR-377 (MKB) (E.D.N.Y.); United States v. Rivera, 13-CR-149 (KAM) (E.D.N.Y.); United States v. Scalisi, 10-CR-46 (SJ) (E.D.N.Y.) and United States v. Barret, 10-CR-806 (KAM) (E.D.N.Y).

REQUEST NO. 9

All Available Evidence Need Not Be Produced

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matter in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned during the course of the trial.

Authority

Adapted from E. Devitt & C. Blackmar, Federal Jury Practice and Instructions, § 72.11 (3d ed. 1977); charge in United States v. Mazella, 11-CR-300 (CBA) (E.D.N.Y.).

REQUEST NO. 10
Particular Investigative Techniques Not Required

Although the government bears the burden of proof, and although a reasonable doubt can arise from a lack of evidence, I instruct you that the law does not require that any particular investigative techniques be used by law enforcement authorities to uncover or prosecute a crime. Law enforcement techniques are not your concern. Your concern is to determine whether or not, based upon all the evidence presented in the case, or the lack of evidence, the government has proven that the defendant is guilty beyond a reasonable doubt.

Authority

Adapted from the charges in United States v. Wilson, 08-CR-690 (BMC) (E.D.N.Y.) and United States v. Breheney, 94-CR-244 (ILG) (E.D.N.Y.); Sand, Modern Federal Jury Instructions, Instr. 4-4.

REQUEST NO. 11
Jury to Consider Only Defendant on Trial

You have heard evidence about the involvement of certain other people in the crimes charged. You may not draw an inference, favorable or unfavorable, towards the government or the defendant from the fact that certain persons are not on trial before you. That these other individuals are not on trial before you is not your concern. You should neither speculate as to the reason these other people are not on trial before you nor allow their absence as parties to influence in any way your deliberations in this case. Nor should you draw any inference from the fact that another person is not present at this trial. Your concern is solely with the defendant on trial before you.

Authority

Adapted from the charge in United States v. Rivera, 13-CR-149 (KAM) (E.D.N.Y.); Sand, Modern Federal Jury Instructions, Instr. 2-18.

REQUEST NO. 12
Uncalled Witness Equally Available to Both Sides

In this regard, I also charge you that all persons who may have been present at any time or place mentioned in the case, or who may appear to have some knowledge of the issues in this case, need not be called as witnesses. Both the government and the defense have the same power to subpoena witnesses to testify on their behalf. There is no duty on either side, however, to call a witness whose testimony would be merely cumulative of testimony already in evidence, or who would merely provide additional testimony to facts already in evidence. Nor does the law require that all things mentioned during the course of the trial be produced as exhibits. I remind you, however, that because the law presumes the defendant to be innocent, the burden of proving the defendant's guilt beyond a reasonable doubt is on the government throughout the trial. The defendant never has the burden of providing his innocence or of producing any evidence or calling any witnesses at all.

Authority

Adapted from the charge in United States v. Shkreli, No. 15-CR-637 (KAM) (E.D.N.Y.)

REQUEST NO. 13
Interviews of Witnesses (if applicable)

There was testimony at trial that the attorneys for the government and defense interviewed witnesses when preparing for and during the course of the trial. You must not draw any unfavorable inference from that fact. To the contrary, the attorneys were obliged to prepare their case as thoroughly as possible and, in the discharge of that responsibility, properly interviewed witnesses before trial and as necessary throughout the course of the trial.

Authority

Adapted from the charges in United States v. Brady, 92-CR-792 (ILG) (E.D.N.Y.); United States v. Mazella, 11-CR-300 (CBA) (E.D.N.Y.); United States v. Mendoza, et al., 09-CR-292 (JG) (E.D.N.Y.).

REQUEST NO. 14
Accomplice Testimony (if applicable)

You also heard from witnesses who testified that they were themselves involved in one or more of the charged crimes with the defendant. Experience will tell you that the government sometimes must rely on the testimony of witnesses who admit participating in criminal activity. For that reason, the law allows the use of such testimony. It is the law in the federal courts that testimony of a single witness may be enough, standing alone, for conviction if the jury finds that the testimony establishes guilt beyond a reasonable doubt.

However, because of the interest a cooperating witness may have in testifying, the testimony should be scrutinized with special care and caution. The fact that the witness may benefit from his cooperation may be considered by you as bearing upon his credibility.

Like the testimony of any other witness, cooperating witness testimony should be given such weight as it deserves in light of the facts and circumstances before you, taking into account the witness's demeanor and candor, the strength and accuracy of the witness's recollection, his background and the extent to which his testimony is or is not corroborated by other evidence in the case.

You may consider whether a cooperating witness has an interest in the outcome of the case and, if so, whether that interest has affected his testimony. You should ask yourselves whether the witness would benefit more by lying or by telling the truth. Was his testimony made up in any way because he believed or hoped that he would somehow receive favorable treatment by testifying falsely, or did he believe that his interest would be best served by testifying truthfully?

If you believe that that witness was motivated by hopes of personal gain, was the motivation one that would cause him to lie or was it one that would cause him to tell the truth? Did this motivation color his testimony?

If you think the witness's testimony was false, you should reject it. However, if after a cautious and careful examination of the cooperating witness's testimony you are satisfied that the witness told the truth, you should accept it as credible and act upon it accordingly.

As with any other witness, let me emphasize that the issue of credibility need not be decided in an all-or-nothing fashion. Even if you find that a witness testified falsely in one part, you still may accept the witness's testimony in other parts, or you may disregard all the testimony. That's a determination entirely for you, the jury.

You heard evidence that certain of these government witnesses have pleaded guilty to charges arising out of some of the same facts that are at issue in this case. That evidence is before you solely to assist you in evaluating the credibility of that witness. You are instructed that you are to draw no conclusions or inferences of any kind about the guilt of the defendant on trial before you from the fact that a prosecution witness pled guilty to related or similar charges. The decision of that witness to plead guilty was a personal decision that witness made about his own guilt. It may not be used by you in any way as evidence against or unfavorable to the defendant.

Now you've also heard testimony in this case about who will decide the sentence of such witnesses. Again, the question of punishment of a cooperating witness is a duty that rests exclusively upon the sentencing court, and you should not think about that except as it may affect the witness's credibility.

Authority

Adapted from the charge of the Hon. Brian M. Cogan, United States v. Nadeem, E.D.N.Y., 13 CR 424 (BMC); United States v. Petrossi, 16 CR 234 (S-2)

REQUEST NO. 15
(English-Language Translations)

The government has also presented evidence in the form of English-language translations of foreign-language documents and communications. The translations are evidence for you to consider so that you can understand this evidence. You should consider these translations like any other evidence in this case.

Authority

Adapted from the jury charges of the Hon. Pamela K. Chen in United States v. Juan Angel Napout, et al., 15-CR-252 (E.D.N.Y. 2017); see United States v. Bahadar, 954 F.2d 821, 830 (2d Cir. 1992) (approving similar instruction with respect to translations of foreign-language recordings).

REQUEST NO. 16
(Venue)

The Indictment alleges that the crimes charged in Counts One through Four occurred in part in this judicial district, the Eastern District of New York. You must determine whether the crimes charged in Counts One and Three did in fact occur in part in this district. This concept is known as "venue."

The Eastern District of New York includes the counties of Kings (also known as Brooklyn), Queens, Richmond (also known as Staten Island), Nassau, and Suffolk. It also includes the waters within New York and Bronx Counties, which include the waters surrounding the island of Manhattan that separate Manhattan from Brooklyn, Queens, and the other boroughs of New York City and from the State of New Jersey, as well as the air space above the district.[1]

A defendant need not himself have ever been physically present in a district for there to be venue.[2] Instead, to establish venue for Count One and Count Four, the government must prove that some act in furtherance of the conspiracies charged in those counts took place in the Eastern District of New York. This means that even if other acts were committed outside this district or if the crime was begun or completed elsewhere, there is venue in the Eastern District of New York so long as some act in furtherance of the relevant conspiracy took place in this district. The act need not be an unlawful act; it can be any act, innocent or illegal, as long as it is done in

[1] See 28 U.S.C. § 112(c); see also United States v. Kirk Tang Yuk, 885 F.3d 57, 71 (2d Cir. 2018) (finding the evidence of travel over the concurrent waters "undoubtedly sufficient" to support venue); United States v. Rutigliano, 790 F.3d 389 (2d Cir. 2015) (venue proper where wire in furtherance of scheme traveled through or over waters of Eastern District of New York, which are statutorily defined to be "also be part" of the Southern District).

[2] United States v. Rommy, 506 F.3d 108, 120 (2d Cir. 2007) ("a defendant need not himself have ever been physically present in a district for a conspiracy charge against him to be venued there").

furtherance of the object or purpose of the conspiracy.[3] The act does not need to be taken by the defendant; instead, it may be an act taken by a co-conspirator or an act that the defendant or co-conspirators caused others to take—even innocent third parties who are not members of the conspiracy—to further the ends of the conspiracy, so long as it was reasonably foreseeable to the defendant that such an act would occur in the Eastern District of New York.[4]

In determining whether some act in furtherance of the conspiracy you are considering occurred in the Eastern District of New York, you may consider a number of things. Venue can be conferred based on physical presence or conduct. Passing through a district, including through or over waters, is sufficient to confer venue. Venue can also be properly based on electronic transfers of funds, such as banking transfers, passing through a district.[5] Venue lies

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[3] United States v. Kim, 246 F.3d 186, 193 n.5 (2d Cir. 2001) ("[i]n a conspiracy prosecution, 'venue is proper in any district in which an overt act ... was committed by any of the coconspirators" (quotation marks omitted)); United States v. Svoboda, 347 F.3d 471, 483 (2d Cir. 2003) ("[V]enue is proper in any district in which an overt act in furtherance of [a] conspiracy was committed by any of the coconspirators"); see also United States v. Lange, 834 F.3d 58, 70 (2d Cir. 2016) ("The act need not be unlawful; it can be any act, innocent or illegal, as long as it is done in furtherance of the object or purpose of the conspiracy."); Yates v. United States, 354 U.S. 298, 334 (1957) (an overt act need not "be criminal in character").

[4] United States v. Naranjo, 14 F.3d 145, 147 (2d Cir. 1994); United States v. Royer, 549 F.3d 886, 896 (2d Cir. 2008); see also United States v. Abdullaev, 761 F. App'x 78, 84 (2d Cir. 2019) (Summary Order) ("We have repeatedly found venue proper where an out-of-district defendant causes an overt act to be committed by an innocent third party within the district of venue.") (collecting authorities); Lange, 834 F.3d at 70 (venue proper based on "not just acts by co-conspirators, but also acts that the conspirators caused others to take" within the district). In accordance with controlling precedent, the government requests that the jury be instructed that venue must be foreseeable, but the government preserves an objection to that requirement. See United States v. Kirk Tang Yuk, 885 F.3d 57, 70 n.2 (2d Cir. 2018) (noting that "other circuits have not adopted such a requirement").

[5] Rutigliano, 790 F.3d at 397 ("[V]enue lies where a wire in furtherance of a scheme begins its course, continues or ends.").

in any district where electronic communications are sent or received.[6] Venue is also proper where a telephonic communication in furtherance of a crime was made or where it was received.[7] The government need not prove all of these bases of venue; any one is sufficient.

Unlike the elements I just explained to you that the government must prove beyond a reasonable doubt, a standard that I have already explained to you, venue—and only venue—need only be proved by the lesser standard of "preponderance of the evidence." To prove something by a preponderance of the evidence means simply to prove that the fact is more likely true than not true. A preponderance of the evidence means the greater weight of the evidence, both direct and circumstantial.

If you find that the government has failed to prove by a preponderance of the evidence that any act in furtherance of either Count One or Count Four occurred within this district, you must find the defendant not guilty on that count.

Finally, you need to consider venue with respect to Count Two and Count Three, which charge that parts of each of the crimes occurred within the Eastern District of New York.

Authority

Adapted from the jury charges of the Hon. Pamela K. Chen in United States v. Juan Angel Napout, et al., 15-CR-252 (E.D.N.Y. 2017); the jury charge of the Hon. Margot K. Brodie in United States v. Ng, 18-CR-538 (E.D.N.Y. 2022); and the jury charge of

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[6] Lange, 834 F.3d at 70; Kim, 246 F.3d at 192-93; United States v. Royer, 549 F.3d 886, 895 (2d Cir. 2008); United States v. Teman, 465 F. Supp. 3d 277, 314 (S.D.N.Y. 2020); United States v. Kenner, 2019 WL 6498699, at *9 (E.D.N.Y. Dec. 3, 2019); United States v. Kubitshuk, 2017 WL 3531553, at *4 (S.D.N.Y. Aug. 17, 2017).

[7] See Lange, 834 F.3d at 70; United States v. Abdallah, 528 F. App'x 79, 83 (2d Cir. 2013); United States v. Christo, 413 F. App'x 375, 376 (2d Cir. 2011); Rommy, 506 F.3d 108, 120 (2d Cir. 2007); Naranjo, 14 F.3d at 147 ("'phone calls alone' [can] establish[] venue" (quoting *United States v. Friedman,* 998 F.2d 53 (2d Cir.1993)); United States v. Gilboe, 684 F.2d 235, 239 (2d Cir. 1982); Kenner, 2019 WL 6498699, at *5.

the Hon. Loretta A. Preska in United States v. Chi Ping Patrick Ho, 17-CR-779 (S.D.N.Y. 2018).

CONCLUSION

The government respectfully requests that the Court include the foregoing in its instructions to the jury. In addition, the government requests the opportunity to submit further instructions or amend those submitted as appropriate.

Dated: Brooklyn, New York
May 24, 2024

Respectfully submitted,

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