UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	**CRIMINAL NUMBER:**
vs.	**2:24-cr-99-MEF**
RAHEEL NAVIWALA,	**JURY TRIAL**
Defendant.	**VOL X, PGS. 2175 - 2412**

Frank R. Lautenberg Post Office and U.S. Courthouse
Two Federal Square
Newark, New Jersey 07101
February 24, 2025

B E F O R E: **THE HONORABLE MICHAEL E. FARBIARZ, UNITED STATES DISTRICT COURT JUDGE, AND A JURY.**

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(PROCEEDINGS held in open court before the HONORABLE MICHAEL E. FARBIARZ, United States District Court Judge, on February 24, 2025.)

THE DEPUTY CLERK: All rise.

THE COURT: We are here for *U.S. vs. Raheel Naviwala*. The assistant United States attorneys are present as is the defendant, along with each of his defense lawyers.

Mr. Naviwala, you're still there for a reason?

THE DEFENDANT: They exiled me.

MS. SOLANO: He's taking your admonishment seriously that he not communicate with us.

THE COURT: The record can reflect that Mr. Naviwala is seated in a different place and, indeed, further away from his lawyers than he has been throughout the proceedings.

Ms. Solano, thank you for that explanation.

Good letters, everyone. Good work. I greatly appreciate it all.

Mr. Webman, I was true to what I said. I looked at everything from 801, so fear not. No moss was gathered and I barely noticed that your filing came in just after eight o'clock, so don't worry about it.

MR. WEBMAN: Your Honor, I believe it was due at 9:00.

THE COURT: At 9:00.

MR. WEBMAN: It was.

THE COURT: That's funny. We've all revealed something

about ourselves.

Let's go through it. Good work, everyone, and much appreciated.

First of all, the papers are very good. I don't think there's any need for kind of real argumentation given how good they are uniformly from everybody.

The first thing I just want to understand before we get to the question of the right instruction to give to the jury with respect to testimony that, in the United States' telling, should be Mr. Quindoza's testimony and, in the defendant's telling, should be something broader.

There was a representation made Friday by the United States that the United States would not be coming back to argue in summation, and I assume also in rebuttal, about violations of the rules of either a so-called face-to-face rule -- I'm making up that term -- or a telemedicine rule.

I assume that remains the United States' representation.

MR. WEBMAN: Yes, Your Honor. We have a jury instruction that says that.

THE COURT: I just want to make sure, because it's relevant to how I think about things that that's still where we're at.

So here is where I see things: I have gone through --

Do you need to be heard, Ms. Solano?

MS. SOLANO: Your Honor, maybe I'm not understanding the position because what was in writing to me was that they are going to argue about violations of the rules.

Is this a different issue?

MR. WEBMAN: We're not talking about violations of the rules as violations of the criminal statute. I think we're on common ground there.

THE COURT: So let me just tell you how I understand it and then you'll correct, Mr. Webman, and Ms. Solano will get clarity based on that.

No one, neither Mr. Specht nor Ms. Lou, are going to stand up in closing and say part of how you know that the submitted claims were not medically necessary was that they violated Medicare's face-to-face rules; or neither Mr. Specht nor Ms. Lou will argue that part of how you know the claims were not medically necessary is that they violated Medicare's telehealth rules.

I assume that's right.

Do I have that right?

MR. WEBMAN: Your Honor, there's -- in consulting over the weekend with my fraud section colleagues, I think there's just one refinement that comes from --

THE COURT: So all of that is right, subject to what you're about to say?

MR. WEBMAN: Yes, Your Honor.

THE COURT: Say what you're going to say, then.

MR. WEBMAN: I think there are two points I wanted to make in response to the defendant's letter --

THE COURT: No, no. I want to just understand what's gonna be said in summation and rebuttal.

MR. WEBMAN: So this goes from my response to the letter. I think that there is -- in the regulation, we have been very focused on one portion of the regulation, which is 410.38(g)(2)(i), which is the line that brings in that list of codes that are covered as specified covered items in the reg.

There is then a 410.38(g)(2)(ii), which says that the list of specified items includes, among other things, in (b) under that section, any item of durable medical equipment that appears on the DME POS fee schedule with a price ceiling at or greater than $1,000.

I couldn't print out the fee schedule to bring in this morning, Your Honor, because it's a big Excel file. But if you look at the Medicare data in evidence, we can see that the two main braces in this case -- the back brace, 0650, and the knee brace, 1851 -- are both routinely reimbursed for over a thousand dollars, meaning that this ceiling in the fee schedule is a thousand dollars or above.

So based on that and based on that reading of the reg, which is already in evidence, and based on other material that's already in evidence, I think there's a fair inference

that the full panoply of requirements --

THE COURT: I'm not quite following that, just because it's the first time I'm hearing of it.

MR. WEBMAN: Sorry.

THE COURT: So, is there an affirmative indication from a regulation that is in evidence that braces above a certain cost during this the relevant period required -- an affirmative requirement -- that those required a face-to-face visit?

MR. WEBMAN: Yes, it requires the full panoply of requirements that are in subsection (g).

THE COURT: But what's the answer to my question?

MR. WEBMAN: Yes, that includes face-to-face, Your Honor.

THE COURT: Okay. So the United States' position is now that face-to-face visits were required for much of the DME?

MR. WEBMAN: For these two brace types, this is something, again, I learned overnight, Your Honor --

THE COURT: Mr. Webman, this is -- among the many other things that might be said, it's a little tricky in terms of basic fairness to decide this overnight and now expect that you can close on it today.

I mean, this is the kind of thing that -- I appreciate that you don't have a discovery obligation as to the law and,

indeed, we're talking about the substance in the defense exhibit.

But I thought that your position, the United States' position, was much more sympathetic, the way I understood it, based on the letter of yesterday, which is -- and based on the representation of Friday, which is that we, the United States, are not going to argue in closing and in rebuttal that something was not medically necessary because it violated Medicare rules or regs, period, full stop.

The effort this morning to walk back the Friday reg and what was described Friday morning is, at a minimum, awfully complicating.

MR. WEBMAN: I understand, Your Honor.

I think there is a distinction, though. We still are not planning to argue -- the representation I made on Friday, I think still holds, which is we are not going to argue -- and we agreed to a jury instruction that says this: that the violation of the face-to-face requirement is a violation of the law. The argument --

THE COURT: Hang on.

That's not what the jury instruction says. It does not say the violation of face-to-face --

MR. WEBMAN: The violation of any particular regulation --

THE COURT: Is not.

MR. WEBMAN: -- is not in and of itself a violation of the law.

THE COURT: You left out the word "not." Keep going.

MR. WEBMAN: Sorry. We're not planning to argue the fact that a face-to-face interaction didn't happen for a knee brace, for example, this goes to the knee laxity issue. We're not going to say that the failure to do --

THE COURT: Ms. Solano, have a seat.

MR. WEBMAN: -- the failure to do a face-to-face visit for a knee before prescribing this brace that is over a thousand dollars, we're not gonna argue that the failure to do that thing was in and of itself --

THE COURT: I guess what I don't understand is, why are you mentioning this to me? What is the -- I'm asking you whether the United States will argue, whether because there was an alleged violation of a Medicare rule or reg or there was a violation of the criminal law.

What you told me was, no, we will not argue that. You also wrote me a letter that said: We have not argued that. You're now creating space for something else.

What is the something else you're creating space for?

MR. WEBMAN: Your Honor, the purpose of bringing this up is that I think the curative instruction that we proposed is a little bit too broad and --

THE COURT: But that doesn't matter to me. We're not

there yet. We're talking about something else, and the something else we're talking about is what the United States is gonna argue in closing and summation because, as your letter yesterday suggests, it's important to the curative instruction I might give to understand what you might argue.

MR. WEBMAN: Yes, Judge.

THE COURT: So I am trying only to find out what the United States is going to argue.

MR. WEBMAN: So what the United States is going to argue, I believe, and Mr. Specht, who is going to give the summation, will correct me if I have this a little bit wrong, but what the United States is going to argue is that the whole scheme was designed to produce doctors' orders without regard to medical necessity, that didn't make the effort to figure out whether patients actually needed the brace.

THE COURT: Stop right there. I've understood that from the moment this case began and, candidly, the record doesn't suggest anything different.

What I don't understand is what, Mr. Webman, you are standing up to do now is to say, and also, by the way, Mr. Specht and/or Ms. Lou will say that, and there needed to be a face-to-face consultation for the expensive braces, and that is part of what the jury should consider in evaluating the argument.

MR. WEBMAN: We're not going to say that, Your Honor.

THE COURT: So then that's it. That's the only -- I appreciate you're helping me understand.

Ms. Solano, sit, sit. I'm talking to someone else.

I appreciate you telling me about the full body of what you discovered overnight with respect to the reg. I got it, appreciate it. It's helpful.

But the key point that I took from Friday's representation from the United States, and the letter from the United States yesterday, was that there will not be an argument from the United States that violation -- there will not be an argument from the United States, in closing or summation, that violation of a particular rule or reg is part of the way the jury can infer that claims submitted were not indeed medically necessary.

I understand you to be saying now that that is how the United States will close and rebut.

MR. WEBMAN: That's right, Your Honor. We will talk only about the co-conspirators' and, perhaps the defendant's, understanding and belief how that informs -- but not that the violation was itself a violation of the law, but that they understood that they lived in a world where these things were required and that the failure to do them shows that they weren't taking care to make sure that there was medical necessity.

I believe those things are different and that it's

consistent with our representation on Friday.

THE COURT: Okay. Ms. Solano.

MS. SOLANO: Yes, Your Honor. Thank you.

I have two points in response.

On 9:51 p.m., I received a representation in writing from the Government that said: The Government --

THE COURT: What day is this?

MS. SOLANO: I'm sorry, Your Honor, on February 22nd, so on Saturday night, I received a representation from the Government in writing that said:

(Reading:)

The Government is likely to argue that the defendant and his co-conspirators' attempts to obtain prescriptions for knee braces that they believe required an in-person consultation with a doctor are indicia of the defendant and his co-conspirators' intent to defraud, as well as their complete or reckless disregard for medical necessity, leading to their participation in a fraudulent Medicare billing scheme that did not account for medical necessity at all.

The Government may further argue that the jury can conclude that, as a result, Medicare claims submitted for orthotic braces as part of the scheme were not medically necessary.

What I understand from the representations here is that they still intend to argue this and they still intend to argue about the co-conspirators' understanding of the laws and the regs.

They put on wrong testimony about those laws and the regs, and so under those circumstances, they cannot then suggest to the jury that they should rely on that completely inappropriate testimony in determining any of the issues in this case.

So that is point 1.

THE COURT: Let's stay on point 1 for a second.

What I understand from that, maybe I'm wrong, is that what the United States is gonna get up and say is, duh, it's really strange to prescribe a brace that kinda makes sense only if you moved around on somebody, if you haven't moved around on somebody. And they're gonna make that argument -- it's how I understand it, at least, they're gonna make that argument without citing any rule or reg or anyone's understanding of the rule or reg.

Do I have that right?

MR. WEBMAN: Yes, Your Honor. Sorry, Your Honor. I think the understanding of what Medicare required generally, not anybody's specific interpretation of the regulation.

THE COURT: You have to just be very clear here. Everyone understands that this case is about medical

necessity. We all understand, you don't have to carve out room for that.

Both sides are gonna get up and discuss medical necessity as they have throughout the trial. The point is, are you gonna cite someone's -- are you gonna cite a regulation or a rule or are you gonna cite someone's understanding of a rule or regulation? Answer each of those questions separately.

MR. WEBMAN: We are not gonna cite any regulation or a rule. We will cite the co-conspirators' understanding of what the rule --

THE COURT: Are you really sure you want to go down that road? I mean, the import of that -- given the record that's been created here, there is a little bit of a fine line, as I'm sure everyone understands between these things. This is a hill you're trying to die on and I candidly don't get it. I mean, you're preserving something very small and -- whose -- what conspirator testimony are you trying to save here?

Mr. Specht wrote this closing argument last week.

Mr. Specht, what co-conspirator's understanding of the rules do you need to cite here or are you planning to cite? "Need" is your question. "Plan" is mine.

MR. SPECHT: Your Honor, there are communications about knee laxity in which members of the conspiracy talk about

trying to convince RediDoc to write prescriptions for knee laxity, and then RediDoc doesn't do that and then members of the conspiracy say: We really need to push to get someone to write tests for knee laxity.

THE COURT: Right.

MR. SPECHT: I think that's the boundary and I think it speaks to a few facts. I think it speaks --

THE COURT: Hang on for a second.

Is that the only instance in your closing where there's going to be a reference to rules or regs?

MR. SPECHT: If I could have a moment.

THE COURT: Yeah, sure.

(Brief pause.)

MR. SPECHT: Your Honor, I think it is, and I think this point is largely --

THE COURT: Mr. Specht, hang on.

Ms. Lou, this applies to the rebuttal as you kind of understand it roughly now. You can't know for sure.

MS. LOU: Obviously it depends on what is said in counsel's summation but largely it's the same thing.

If Ms. Solano, for example, gets up and says the reg doesn't require X, Y, Z, we intend to then respond by saying again -- and I believe Your Honor's curative instruction about how the testimony came in as to the regs and that it should only be used for the purpose of the co-conspirators'

understanding of what the regs were is in line with us --

THE COURT: Ms. Solano, I need you to sit down.

MS. LOU: In line with this --

THE COURT: Hang on a sec.

It's just, we don't wait in line. This is like being in a school where kids go like this raising their hand. Don't do that. It's just, I don't want them to stand while I'm talking to you because I respect you. I'm listening to you. Don't do that to them.

Do you understand?

MS. SOLANO: Yes, Your Honor.

MS. LOU: Again, it's not that whether or not the actual reg required it or not. It's that everybody shared understanding that that was required and then their blatant disregard for it and then not implementing any change -- they did try to push but then still continued to bill knee braces even after they didn't get the joint laxity test. Right? The evidence has showed that.

THE COURT: Let's go back to what Mr. Specht was saying, then.

Mr. Specht, in making that argument, are you gonna be citing any rules or regs?

MR. SPECHT: No.

THE COURT: I don't remember that testimony perfectly.

Does that testimony itself cite any rules or regs?

MR. SPECHT: Not that I can recall, and in any of the excerpts of testimony that would be showed, there's no citation to a rule or reg and in any excerpt from an e-mail or an exhibit, I don't believe there to be a reference to a rule or reg.

THE COURT: Okay. I think that part of the complexity -- Ms. Solano made a further complexity that she only made the first of the two points she wanted to make; but I think part of the problem is that the way that 9:51 p.m., February 22nd, e-mail was apparently written, it just conveys something different than what you just conveyed.

Okay, Ms. Solano.

MS. SOLANO: Thank you, Your Honor.

There are several issues that we have with the Government's proposal here.

First, the knee laxity -- this idea that they want to argue that a co-conspirator's understanding that there was a requirement for a knee laxity test and they want to argue to the jury that there was, in fact, that requirement is incredibly misleading. It is a very misleading argument and there is no evidence in this case --

THE COURT: But the problem is they're not saying either thing anymore. They're not saying that they're going to put on evidence that somebody thought the rules and regs were violated and they're not gonna say that the rules

and regs were violated.

Mr. Specht just represented that.

MS. SOLANO: Your Honor, what I understand is that they are going to say that the co-conspirators thought that the knee laxity test was required and as a result they were told that it couldn't happen --

THE COURT: But stop there.

What Mr. Specht has just said is, in making that argument of something being required, they're not gonna cite a Medicare rule and they're not gonna cite a Medicare reg.

What they're gonna, I assume, argue is -- forgive me for being colloquial -- but they're going to make the commonsense argument. That's the duh argument. Duh. There's no way to think this is medically necessary if you're not testing somebody in a kind of halfway bona fide way. That's gonna be their commonsense argument.

If that argument doesn't run through Medicare rules or regs as to certain tests being required, what's the issue?

MS. SOLANO: Your Honor, I think there are several issues.

First, I don't believe that there's any evidence that their doctors' orders, what was actually prepared or submitted, falsely put in the knee laxity test.

THE COURT: So you should argue that.

MS. SOLANO: In addition, Your Honor, Ms. Lou stood up

and she, when asking the question, suggested that there is a regulation involving knee laxity and my understanding is that is not true.

And so right now what the jury has heard is that there is a regulation requiring knee laxity and that is very, very damaging if they are going to say -- if they're going to argue that the co-conspirators not intended but knew that there was in fact this knee laxity requirement, and I think the probative value is vastly outweighed by its prejudicial effect, under the circumstances where they have said that the regulation requires joint laxity and they put somebody on to talk about what regulations require, including an in-person consultation, when none of that applied to DME.

The second problem that is presented by this is knee laxity -- and I don't know all of it, but my understanding is any sort of knee laxity and there need to be a particular test comes from -- it doesn't come from any source of this; it comes from like a local coverage determination, which is some other piece of paper, and the Government did not produce that to us. And we kept asking for these types of things and they didn't produce it.

And so if they are now gonna rely on the co-conspirators' understanding of when or if a particular test was performed and they didn't produce the actual materials of like how did they know -- like, what is it? Where does it

come from? What does it actually say, so that I could cross-examine their co-conspirators on that, then I believe that there is a Rule 16 violation here, especially where we kept asking for it so that we could -- it was material to our defense. Now they're going to argue it in their closing.

THE COURT: But they're not saying that. I think you're not hearing the representation they're making.

What they're saying is that they're not gonna argue from the rules and regs as to proving up the falsity of certain claims.

And what I also just heard Mr. Specht saying is that even when they're taking about the knowledge of alleged co-conspirators, they're not gonna invoke rules and regs. What they're gonna invoke is a commonsense understanding that not doing a laxity test, it can't be consistent with a bona fide effort to check medical necessity.

Neither of those arguments are running through rules and regs. They're just different. Those are just different ways. They may be missing an argument that could help them and you may be missing an argument that could help you, but that doesn't mean that the United States' desire or decision to argue this on a commonsense basis, which is to say just from a commonsense perspective, it can't be medically necessary; that doesn't make it a violation of -- it doesn't make it a discovery failure. They're not relying on the

documents that you say they need.

By the way, these documents, I'm pretty confident are on the Internet.

MS. SOLANO: But, Your Honor, telling us in advance, identifying, we're gonna make knee laxity an issue here, you need to know this local coverage determination, we're gonna say this applied to the conduct.

Whether it's available on the Internet or not, knowing that that's what they're going to use as a part of their case in chief is something that was material to our defense, because then I would have known what they were going to rely on.

THE COURT: But they're not using it. That's sort of the whole point is Mr. Specht just got up and said they're not gonna argue from that.

I have to say, reading the trial transcript, they're not arguing from it -- there's an area for Mr. Quindoza but they're not arguing that a certain rule or reg was violated.

Mr. Specht, am I misunderstanding your closing?

MR. SPECHT: No, Your Honor.

THE COURT: Ms. Solano, I think that -- if Mr. Specht crosses the line he has just laid down, there's gonna be a problem and we'll all take it from there.

If he doesn't, you know, through a -- there's been some complexity here because there's been belated discoveries of

certain aspects of the rules and regs, but the basic truth is that had the United States discovered the accurate understanding of things with respect to what Mr. Webman says he discovered overnight, they would have a stronger case.

So all we're talking about is Mr. Webman, if he tried to say, well, gee, I want to argue from what I discovered overnight, we would have that conversation. And part of that conversation would run through unfairness to the defendant of a belated legal theory and we'd have a conversation about it. I don't know what the answer would be.

But where we are today is, given the way Mr. Specht has represented he's gonna close, given my read of the trial transcript, what we're left with is a need to correct -- we're left with a need to be sure that nobody confuses a co-conspirator's sense of certain things with falseness and we need to correct what Mr. Quindoza said but I don't think there's anything much further needed.

Ms. Solano, do you have anything else on this you want to say?

MS. SOLANO: Just two points.

THE COURT: Sure.

MS. SOLANO: If the Government would have identified this for us, this knee laxity issue, I would have been in a position to cross-examine their witnesses on their understanding of the joint laxity test, and I was not in a

position to do that because they failed to disclose it to me.

THE COURT: What did you need them to disclose?

MS. SOLANO: That they were going to say that there was a joint -- that part of what they were going to do in their presentation of the case in trying to prove medical necessity or lack thereof is that they were going to rely on whatever document in existence purportedly required a knee laxity test in order for the claim to be reimbursable.

THE COURT: But what they're saying is they're not gonna rely on that.

MS. SOLANO: But their witnesses testified that they understood that there was a rule, and they did that them eliciting that testimony. And if I understood the rule beforehand, I understood that this was actually a local coverage determination, and it actually has -- here is this whole thing about how those are different than a reg or here is what you would need to know to find those things, I could have crossed Quindoza on it and I could have crossed the cooperators on it.

THE COURT: I'm struggling to see the point. If a cooperator thinks something is illegal -- I've just never heard of anything remotely like this; that a cooperator thinking that moving cocaine is illegal triggers an obligation from the United States to produce in discovery statutes and regs that speak to the illegality of cocaine. That's just

really far afield.

And especially given -- that's not even Rule 16 material, especially given that the United States is saying that they're not gonna be relying on it. That is the faintest possible theory, so to the extent there's an argument from a Rule 16 violation, I don't see it.

Anything else?

MS. SOLANO: I would just say -- I don't know if I followed what the Government was saying about this price fixing list. I don't believe that they produced the price fixing list, and it's certainly not in evidence in this case.

I know that when we pulled the list that was in effect at the time, we had to do so by capturing it by the Wayback Machine. It wasn't something that was publicly available that anyone could find.

I don't believe that the price fixing list that's in effect that's being discussed in this reg is in evidence in this case or is in -- I don't believe it's in Rule 16.

THE COURT: I don't know if it's in evidence or not. It certainly hasn't been published. Even if I don't know if it's in evidence I've been doing what I'm supposed to do which is I'm looking at all the exhibits.

The thing that gives me pause is Mr. Webman said it's such a big Excel spreadsheet that maybe I didn't understand the import of a piece of it or something.

I don't think this was in evidence.

Was this in evidence, Mr. Webman?

MR. WEBMAN: It's not, Your Honor. I didn't know about it until last night.

THE COURT: So it's not in evidence and it's not going to be argued from.

Mr. Webman, is this a rule or reg? Is this a schedule attached to a rule or reg?

MR. WEBMAN: It's a schedule that is referred to in the reg.

THE COURT: This was obtained from CMS's website?

MR. WEBMAN: Last night, yes. It's publicly available. We can get it today.

THE COURT: I'm not sure what the -- if Mr. Webman knew about that four weeks ago, that would have been -- there would have been -- either it would have been produced or not or argued from or not. At this point it hasn't been produced. It hasn't been argued from. It's not gonna be part of the closing or rebuttal. I still don't know what the issue is.

MS. SOLANO: The only thing I have to say about -- if it's not gonna be in and they're not gonna argue from it, I understand. I just want the record to be clear that I don't believe it's in evidence.

My final point is that if the Court is going to permit this understanding of joint laxity argument, particularly in

light of the comment to, like, while my client was on the stand that the joint laxity was a regulation and a requirement, I believe there needs to be a specific curative instruction.

THE COURT: I heard you say that and that's not in the papers, but understandably so. Why don't I give you my limiting instruction and then show me, Ms. Solano, because I appreciate that might be at a different place.

MS. SOLANO: It actually is in my motion in limine, Your Honor.

THE COURT: I'm sorry I missed it, then. I apologize. It seems like I didn't bring it.

MS. SOLANO: I have a copy.

THE COURT: Would you mind passing it.

MS. SOLANO: Of course. (Tendered document.)

THE COURT: Ms. Solano, do you know where in the letter?

MS. SOLANO: Yes. I'm trying to find it. It is on page 3 and the paragraph that starts on Friday:

Ms. Lou said: You knew that Medicare wouldn't pay for knee braces because of regulations --

THE COURT: I'm sorry. I see that. Okay.

Ms. Lou, I'm sure you'll agree that the jury needs to be instructed that statements that are buried within the lawyer's questions cannot be considered, et cetera.

MS. LOU: Of course, Your Honor, that's a standard instruction. Also if you look in the transcript, Your Honor, Ms. Solano rightfully objected, assumes facts not in evidence and you sustained it.

THE COURT: I'm sorry I missed this in my memory.

MS. LOU: So the defendant was not permitted to answer. It is a misstatement. The question was a misstatement, but Ms. Solano rightfully objected and that was the end of that.

THE COURT: Right. Okay. I get it.

MS. SOLANO: Your Honor, I just think given the sensitivity of this and the high likelihood that it's misleading under -- and what the Government is gonna argue, it needs to be a curative instruction that is stronger than "don't listen to the lawyers."

THE COURT: Let me take you through my thinking on this real quick. I've played a little bit with the instruction and I'll read to you what I'm planning on doing.

Look, first of all, in thinking all of this stuff through, I've read all your papers which, as I've said, are excellent and much appreciated. I have also been actively and attentively present and also have been reviewing the transcript, and so I have a very close sense of how the case has been tried.

The United States' basic theory here is twofold. The basic theory is that fraudulent claims were being sent off to

Medicare, which is taken here to mean three different programs, because the doctors' orders -- I thought the United States put this very well in one of its letters of yesterday, that they were not provided through a process -- this is to use their language -- that was calculated to make a bona fide determination that these were needed or useful.

I think that's the way they have tried this case. And part of the proof of that is that some people got braces they didn't want. That theory of the case does not run through citation of a particular Medicare rule or reg. It just doesn't. It didn't purport to.

Then there's -- the other part of their theory is related to the Anti-Kickback Statute, and that one is that the DME companies were paying kickbacks to marketers for doctors' orders that were -- for doctors' orders.

Again, a theory that has been suffusing the case that operates a level of common sense that does not lean on particular Medicare rules or regs except in the most background sort of way, which is to say to establish that Medicare exists.

The reason I started off with wanting to get the United States' representations as to closing and, to a lesser extent, rebuttal is because that's how I read the trial transcript, and I wanted to confirm that the United States was not reading it and, therefore, attempting to use it in a

different way. And it's not.

That was Mr. Webman's representation on Friday. That's how I took his letter of yesterday, and that's how I take the United States' representations of today. That's a very important part of the background here.

I also think that it's probably important -- in fact it is important -- that there is excising of the indictment that will go back to the jury of certain references to rules and regulations which could insert rules and regs in a more direct way into the case.

There is just simply no theory from the United States here that claims submitted were fraudulent because they violated a rule or because they violated a regulation. That wasn't in their opening. It will not be, as represented, in their closing. It's not how they have tried the case.

The way they have tried the case, putting aside the anti-kickback part of it, has been about trying to show that there is a kind of utter indifference to medical necessity.

The reason we're kind of needing to fix this is that there's no doubt that the testimony of Mr. Quindoza had a misstatement in it, maybe more than one misstatement; and the misstatement would allow, if it were left alone, the jury to make an inference as to why Mr. Naviwala might be guilty that is separate and apart from how the United States has argued this whole case.

Now, in looking back at Mr. Quindoza's testimony, I have to say I think, in reading it, it can be over-read. Ms. Solano just complete -- the cross was devastating on this point. It completely forced Mr. Quindoza to walk away and to accede to the way Ms. Solano was seeing things. It was an extremely effective line of cross.

I don't even know if what is left behind afterward is any meaningful statement from Mr. Quindoza. Mr. Quindoza essentially agreed with the key point that Ms. Solano pushed him to.

Having sat in the room, there's nothing about the way she did it, in my judgment, that would cause a jury to believe the way Mr. Quindoza spoke about it on direct versus the way she did it on cross -- versus the way he said it on cross.

Ms. Solano was not engaged in a tricky cross. She was not engaged in a belligerent cross. It was a straightforward and highly effective cross. And the impression, I think for everyone in the room, was that what Mr. Quindoza said on this point to Ms. Solano on cross was right, not the somewhat contrary thing he had said on direct.

Look, there's also a little bit of complexity and confusion here. There's slightly equivocal statements that you can look at in isolation, and to deal with those and to deal with the possibility that a jury disbelieved what Mr. Quindoza said in the face of cross but agreed with what he

said on direct, I think we need a limiting instruction.

For the little bit of confusion and for the statement on direct, there's some need for a limiting instruction. I don't want to overstate it.

There's also, as has been discussed, some references from the co-conspirators about what they thought was legal or illegal. And to an extent that I can barely remember and barely saw glimpses of in reviewing the trial transcript, some of those are not generic invocations of civil or criminal liability being on their horizon.

Some of those are something different. Some of those are a tiny bit of indications of particular rules and regs and that, arguably, also needs a little bit of correction.

The reason I say "arguably" is that the United States has argued the case in a certain way, it's put on the evidence in a certain way, and there's been a representation made about how they will close.

Given all this, the question is: Can a limiting instruction work to solve any problem that exists? And, first, the answer is yes in my judgment.

The first reason is what I have already covered. the need for a limiting instruction here is very faint. It presumes that Mr. Quindoza didn't walk away from his key testimony in cross.

It presumes that the somewhat lightly, lightly, lightly

confusing testimony that Mr. Quindoza offered on cross means a very particular thing. I don't know if it does. And it also requires a view that when the co-conspirators spoke about illegality, there was boring in on a particular rule and reg, which they did hardly at all, if ever.

So, first of all, there's not much to correct.

Second of all, in terms of the efficacy of a limiting instruction, I would just note a couple things. First of all, there's certain kinds of things that are impossible to put back in to -- pick your cliché.

There are certain bells that are impossible to un-ring, a very gory murder scene photo that was improper. This is not that. This is bloodless testimony of a kind that is easily corrected by a legal instruction.

Second of all, I have a strong impression it's a good jury. They're attentive. They're focused. They're locked in. I asked them two questions in their questionnaire about their ability to follow legal instructions. All of these people answered that they had no issues with that.

So I have every reason to think that they are perfectly comfortable with following my instructions. In addition, this is not a case in which I have given a lot of instructions. The limiting instruction I give them is gonna stand out and, therefore, it's another reason to think it will be efficacious.

Finally, my plan is to give the limiting instruction in a freestanding way separate from the jury instructions so it stands out even more.

The limiting instruction in my plan is to give -- and I'm just going to read it to you. This is what I'm planning to give. It's gonna be a little long. It is drawn largely from what I previously said I would give plus what the United States has proffered (Reading:)

> You have heard testimony from certain witnesses about their understanding of various rules and requirements of Medicare. That testimony, other than from Stephen Quindoza, was introduced for a limited purpose.
>
> The limited purpose was explaining those witnesses' understanding of the rules and requirements, not to prove the truth of what those rules and requirements were.
>
> You are not permitted to infer anything about the content of Medicare rules and regulations from what those witnesses said. As you know, the Medicare rules and regulations in place in one year may have been different than the ones in place in another year.
>
> Stephen Quindoza is different. He testified directly about various statutes and regulations

related to Medicare. Among those were 42CFR Section 410.38 entitled, "Durable Medical Equipment, Scope and Conditions," which is the regulation that sets forth circumstances under which Medicare Part B pays for durable medical equipment or DME.

This regulation was admitted in evidence as Defense Exhibit 9068. I instruct you that 42CFR Section 410.38 was the Medicare regulation applicable to the reimbursement of durable medical equipment from 2017 to 2019.

During this his direct examination, Stephen Quindoza testified at one point that, under this regulation, a doctor cannot make a determination of medical necessity for DME in the absence of an in-person visit or a valid telehealth visit.

This testimony was inaccurate as applied to the DME at issue in this case. Under 42CFR 410.38, the requirement that a doctor have an in-person visit or a valid telehealth visit before prescribing apply to only certain types of DME and do not apply to the orthotic braces at issue in this case.

I instruct you to disregard entirely and completely any suggestion from Mr. Quindoza that,

as to the braces at issue here, a medical necessity determination could be made only based on an in-person visit or a valid telehealth visit. Put that entirely out of your mind in your deliberations. Do not rely on it.

I think that's a very strong instruction and I have no doubt that that cures any potential issues that are left over.

Is there anything in this language that the United States would like to comment on?

MR. WEBMAN: Yes, Your Honor.

Just based on, again, what I discovered last night, I think that part of this instruction is not entirely accurate. I think that the sentence that starts this testimony -- sorry, reads right now: "This testimony was inaccurate as applied to the DME at issue in this case," I would ask that that be revised to say "certain of the DME at issue in this case."

THE COURT: No. No, because the testimony -- it's hooked to the testimony that was offered in court.

MR. WEBMAN: Your Honor, I believe that certain -- that the back brace and the knee brace, the two main braces in this case, were -- what he said was accurate with respect to those is that the --

THE COURT: It wasn't because he was -- his testimony was bundled with an understanding of the source of the face-to-face obligation and it wasn't bundled with that

understanding.

So I appreciate the point, which is that there are certain parts of his testimony that may have turned out to be correct, but the testimony offered was based on the reg and to the extent he was testifying from that reg, that testimony was inaccurate.

MR. WEBMAN: Understood.

THE COURT: Any comments on the wording, Ms. Solano?

MS. SOLANO: Your Honor, we would ask for one addition.

THE COURT: Yeah.

MS. SOLANO: Stephen Quindoza testified extensively that the reg required it be a treating physician, that it had to be a treating physician. This went throughout his cross, this went throughout much of the examination, and it also was elicited by the Government. And as I thought effectively showed on cross, the portion that discusses it needing to be with a treating physician doesn't apply to DME; it applied to wheelchairs.

THE COURT: Hang on for a second.

MR. WEBMAN: Your Honor, again, this is another place where we have this complexity where Mr. Quindoza was -- during this our January 24th pre-trial hearing, the pre-trial conference, we were told that Mr. Quindoza could testify to background about how generally Medicare works.

THE COURT: Right.

MR. WEBMAN: This is part of generally how Medicare works. It comes from policy guidance, not from this particular reg as it applies to this DME.

To the extent Your Honor had said, on January 24th, that he could talk generally about background, this is true and the defendant has not put on any evidence to rebut it.

And so, Your Honor, even though this particular reg does not say that the treating physician needs to be the one to write the order, there are other policy documents that say it.

THE COURT: Hang on. Is the United States gonna say in closing anything about a treating physician?

MR. WEBMAN: I don't believe so, Your Honor. Not about the definition of the treating physician as it's in the --

THE COURT: Is the United States going to say anything about a treating physician?

MR. SPECHT: No. The word "treating physician" will not be spoken.

THE COURT: So why does this matter? I'm just not sure I get it.

I understand what Mr. Specht is -- look, the treating physician thing was --

MS. SOLANO: Can I respond, Your Honor?

THE COURT: Yeah. Just hang on for one second.

What are the parties' views -- I'm going to re-read you

with a slight change. This is the end of the proposed instruction:

(Reading:)

I instruct you to disregard entirely and completely any suggestion from Mr. Quindoza that as to the braces at issue here a medical necessity determination can be made only based on an in-person visit with a treating physician or a valid telemedical visit with the treating physician.

MR. WEBMAN: Your Honor, the Government is fine with that.

THE COURT: That seems to solve the issue, Ms. Solano.

MS. SOLANO: Yes, Your Honor.

As long as the Government -- the Government opened on, these were not their real doctors.

THE COURT: Let me make sure I have this right.

It would say: A medical necessity determination can be based only on an in-person visit with the treating physician.

MS. SOLANO: Or a valid telemedicine visit with a treating physician?

THE COURT: Yeah. That seems to address the issue.

Ms. Solano, I cut you off. Continue. You're okay with that but you wanted to add something else. Do I have that right?

MS. SOLANO: Yes, Your Honor. The Government opened on this was -- the Government opened on they weren't their real doctors, they weren't their true doctors. They elicited testimony from all the beneficiaries these weren't their real doctors.

Mr. Specht hesitated and said, "I'm not going to use the word treating physician."

THE COURT: It wasn't much of a hesitation. He was just thinking but --

Look, I think we're back to the same thing. The curative instruction makes clear that the reg is not gonna be brought to bear. Again, the United States has opted to try this case in a common-sensy way, which is to say they're just gonna get up and say no one ever heard of these doctors and so, therefore, this isn't a bona fide effort to generate a doctor's order that could comport with medical necessity.

Your point, which you've argued very well, is that in making that argument, they can't bootstrap -- they can't grab onto the idea that that's also a violation of Medicare rules and regs. And I think you've just solved that.

MS. SOLANO: I just want to make sure that they're not going to say that Medicare required it being a treating physician -- being a real doctor, a treating physician, their own doctors.

THE COURT: But they have already represented they're

not gonna invoke Medicare rules and regs at all, so that's implicit in that representation.

Mr. Specht, do I have that right? Implicit in that representation is that the treating physician point is not gonna be there.

MR. SPECHT: Correct, Your Honor. Of course the Government will talk about that these are not their real doctors. They hadn't heard of them.

THE COURT: Here is an example. I don't speak French. If I consulted with a doctor in French, someone could argue that's not a real consultation, regardless of what Medicare rules and regs say or don't say. That's just a different sort of argument.

The French argument is a commonsense argument that might be strengthened, might be yeasted up by a rule or reg, but the United States is saying they're not gonna do that.

Do I have that right, Mr. Specht?

MR. SPECHT: Yes, Your Honor.

THE COURT: Any other comments on these words, Ms. Solano?

MS. SOLANO: No, Your Honor. Thank you for the addition.

THE COURT: For the United States, any additional comments on the words?

MR. WEBMAN: No, Your Honor.

THE COURT: So I'm gonna go through the jury instructions and I'm gonna go through the track change version I got. This is ECF155 supplied by the defendant yesterday evening. It is dated 2/23/2025.

I appreciate the creation of this document. It makes this a lot easier.

So I just want to -- what I'm gonna do is I'm gonna tick through what I understand to be the parts of this that are still contested and the track changes makes that pretty easy to see.

Is there an issue, Mr. Webman?

MR. WEBMAN: I think there were -- I had discussed this with Ms. Brown this morning. After our charge conference on Thursday, I went back and -- or maybe it was on Friday, I went back and implemented some of the changes Your Honor told us, for example, for request 4, we had each made a proposal, Your Honor gave a different one. I put that in. That's not reflected in here. I just wanted to make sure Your Honor understood --

THE COURT: I got it. Mr. Webman and Ms. Brown, let's say this: What I'm gonna say now is subject to you all agreeing together as to other changes we've made as to which there's no dispute and those will get imported into the final document.

Does that work for you?

MR. WEBMAN: Yes, Your Honor. What Ms. Brown and I discussed was me going back, as much as I would like to see the end of the defendant's cross, was going back with one of the attorneys from the defendant's team and ticking through that together and making sure we have a version we all agree to.

THE COURT: Ms. Brown, that works for you?

MS. BROWN: Yes, Your Honor.

THE COURT: Separate and apart from that cluster of things, what I'm gonna do is, I'm gonna read off what I take to be still in play, and unless someone objects now, I'm gonna treat everything else as having been consented to by the parties.

So here are the things that I understand there's still to be disputation about.

Page 47, request X; request 35, page 56; request 41, page 63; request 45A, pages 68 to 71.

There will be some of these that I think there's an issue on that you may not.

Request 47, page 75; request 48, page 76; request 65, page 105; and request 69, pages 106 to 107.

Everything else is fine by the United States?

MR. WEBMAN: Sorry, Your Honor. That was very fast.

THE COURT: So here are the ones. Ready? Request X, page 47; request 35, page 56; request 41, page 63; request

45A, page 68 to 71; request 47, page 75; request 48, page 76; request 65, page 105; request 69, pages 106 to 107.

MR. WEBMAN: Your Honor, I think some of those may have already been resolved but I don't think that you've left out any that are not resolved.

THE COURT: Aside from that which I have mentioned, the United States consents that the jury instruction at ECF155 is all 100 percent fine?

MR. WEBMAN: Yes.

THE COURT: For the defendant. Same question.

MS. SOLANO: Yes, Your Honor.

THE COURT: So let's just move through these and we'll do it relatively quickly.

Page 47, request X. This is a defense request.

Do I have that right?

MS. SOLANO: Yes, Your Honor.

THE COURT: I assume no one has an issue with the first sentence.

MR. WEBMAN: No, Your Honor.

THE COURT: I assume no one has an issue with the second sentence.

MR. WEBMAN: No, Your Honor.

THE COURT: And I assume no one has an issue with the third sentence.

MR. WEBMAN: No, Your Honor.

THE COURT: Okay. There is a lacing in here of the concept of objective interpretation of the term "medical necessity." I appreciate that there is case law that says that when there is an ambiguity, there are obligations on the United States to make a proof with respect to every objective interpretation of the potentially ambiguous statement.

There is nothing ambiguous about the term "medical necessity." It is a straightforward, commonsensical, plain-spoken phrase. It is not hard to understand.

By comparison with all of the other words that are in criminal statutes, this is just not technical. It's not hard. It's not big words. They don't come together in unusual ways. It doesn't have a term-of-art meaning, so far as I can tell. It's not encumbered with a common law that is complicated or strange.

It's not borrowed from a weird place. None of the things that suggest ambiguity are here. There is just no linguistic complexity or ambiguity here.

There was a little bit of discussion last week where, for a moment, the United States suggested that this term was ambiguous. I expressed immediate puzzlement and, indeed, shock that the United States was taking that position.

And what became clear immediately was that the United States was not actually taking that position. The United States was engaged in a horse-trading approach to the

jury instructions, and as part of that, to move things along, was treating it as ambiguous for the purpose of triggering the objective reasonableness way of thinking about things.

I am not bound in what I say about the law by that, and the United States walked away from its momentary assertion that medical necessity is ambiguous within probably 2 1/2 minutes.

The assistant United States attorneys bind the United States; but one assistant United States attorney making a statement that is corrected two minutes later does not bind the United States in a meaningful way. It certainly does not bind my understanding of what the law is, and it certainly created no reliance interests of any kind that require some sort of estoppel.

So I do not proceed here on the understanding that medical necessity is ambiguous, such that there's a need to trigger the case law that runs to proof of all objective interpretations required by the United States.

This is just not an ambiguous term in my judgment. I'll also note that I have done a bunch of case law research. I haven't seen anything that suggests it is. In addition, I haven't seen anything from the defendant or from the United States that sheds any light on the idea that this term is ambiguous.

I have seen, and I appreciate the defendant citing,

case law that speaks to when a term is ambiguous and when there is a false statement as to that term. The objective interpretation way of thinking about things controls, but there has been no effort to show me that that term is ambiguous and, as I've noted, I don't find that it is in any way.

So here is how I will plan to give the fourth sentence at page 47, request number X: (Reading:)

> To prove that the claim was false, the Government must prove that the prescription was not medically necessary, semicolon, that term was not defined by any Medicare regulation.

That's the fourth sentence I plan to give.

As to the fifth sentence, I plan to give it as follows: (Reading:)

> I am instructing you that making a false statement and the mental states associated with making a false statement are separate things. The element of falsity and the element of mental state are not the same thing.
>
> Therefore, the United States must prove that the claim of medical necessity was false and that the claim was made willfully and with an intent to defraud, as I have defined those terms.

Then the sixth -- then I think the sixth line, I don't

think is necessary, although I'm open to hearing differently from either party.

Any comments on the particular words I have chosen for the fourth and fifth sentences from the United States?

MR. WEBMAN: No, Your Honor.

THE COURT: From the defendant?

MS. SOLANO: No, Your Honor.

THE COURT: With respect to that sixth sentence, my inclination is just to get rid of it. I think it actually confuses the point Ms. Solano was trying to make at this point.

Do you want me to get rid of it, Ms. Solano?

MS. SOLANO: Yes, Your Honor.

THE COURT: I assume the United States is fine with me getting rid of it?

MR. WEBMAN: Yes, Your Honor.

THE COURT: That's that.

I'm gonna ask Mr. Webman and Ms. Brown, when you give me the final, reflect these words if you could.

Is that doable?

MR. WEBMAN: Yes, Your Honor. I was not at all able to take it all down in real time. I would ask Ms. Larsen to do what she did the other day and send us the snippet, if that's possible. It was probably easier when Ms. Witte was the court reporter and Ms. Larsen was --

THE COURT: I see Ms. Larsen nodding.

Now we'll go to page 56, which is request 35. This has now been covered by --

Ms. Solano, you agree this is no longer --

MS. SOLANO: This is not a part of the case at all.

THE COURT: So that's out.

And then Ms. Solano just withdrew request 35, and that was her request.

Do I have that right, Mr. Webman?

MR. WEBMAN: Yes, Your Honor.

THE COURT: Request 41, page 63. This was just a question. I thought that everyone agreed that request 41, running from page 63 to 64, was just fine.

MR. WEBMAN: I think that's correct, Your Honor. I think that was one of the things I mentioned at the outset that we had resolved but is not reflected --

THE COURT: I thought so. You all said that on Friday. I just wasn't sure. I wanted to confirm, that's all.

MS. SOLANO: Yes, Your Honor. I think we used a Word document from the Government, and I think that this was in there.

THE COURT: All right. Request 45A. This is at pages 68, 71. As to this, I have looked at the case law. I don't think there's any ambiguity that the safe harbor obligation is an affirmative defense.

The United States' instruction, which runs pages 68 to 69, is the instruction that is legally correct, in part, because it is squarely and simply premised on the idea that this is an affirmative defense and works that way.

I think the precise words that have been used by the United States are absolutely correct in terms of the statement of the law. I think there was a couple of changes that need making for a little bit of clarity.

So at page 68, the second sentence: The defendant contends his conduct exempted from criminal liability under -- instead of "under the personal services contract safe harbor and the Anti-Kickback Statute," I would say, "The defendant contends his conduct is exempted" --

MR. WEBMAN: Your Honor, I don't mean to interrupt you, but I believe that, given Your Honor's ruling that this is the appropriate instruction, just to save time, Your Honor, I think the defendant is -- intends to withdraw the request for safe harbor instruction, in which case the Government doesn't want one either, so I think we can strike that.

THE COURT: Got it.

So in other words -- so, Ms. Solano, you have preserved your objection to the idea that the safe harbor -- the United States' position is the safe harbor is an affirmative defense. The defendant's position is that the safe harbor is not an affirmative defense.

Is that right?

MS. SOLANO: Yes, Your Honor.

THE COURT: Fair enough. I agree with the United States. You know, the Fifth Circuit, the Eleventh Circuit, that case law is strong and simple, but the objection is preserved.

So, then, there's no request 45A at pages 67 to 71 to discuss. It's withdrawn.

Page 75, request 47, the paragraph -- the big paragraph at the beginning is already covered by the freestanding limiting instruction I would give, and then I think the second paragraph at page 75 is fine.

Any issues with proceeding that way from the United States?

MR. WEBMAN: No, Your Honor.

THE COURT: Ms. Solano?

MS. SOLANO: Your Honor, I just want to make sure I understand what you're saying is fine.

THE COURT: I mean, it's obviated by the limiting instruction we discussed at the top, and my plan is to have that limiting instruction be given before these jury instructions so it stands out more rather than sticking it in here.

MS. SOLANO: So the only issue, the only thing that I don't believe is covered by your limiting instruction,

Your Honor, is this requirement -- whether there was a requirement that they have a written order as a condition of payment.

The regulation makes clear that these items did not require a written order as a condition of payment, and that is something that I think is important, because if they're talking about, well, they tried to create these fake orders and they tried to keep them because this was part of the fraud, then I think it's important that the jury knows that, under that regulation, there wasn't even an order required.

MR. WEBMAN: Your Honor, if I may respond?

THE COURT: Sure.

MR. WEBMAN: Again, I don't want to rehash what I've already said. I think that, first of all, on the face of the regulation, that requirement does apply to the two main braces, the 0650 and 1851.

Also, I think that to say those were not required would be misleading to the jury because there is a body of policy documents that -- again, we have hashed out, we have gone through this -- but there's a body of policy documents that do require it. So I think it's misleading to say that they're not required at all. I'll leave it at that.

THE COURT: Where does this come up in the case? I'm just not sure I -- where does this come up?

MS. SOLANO: Well, Your Honor, they have spent a lot of

time on how they were trying -- this whole thing with the joint laxity issue is that they made it to be in the doctor's order and written that they had the joint laxity test performed, which -- even though many of the orders don't make that representation at all.

And so for the jury to understand that, under the regs, there wasn't even a requirement that there be a doctor's order at all, they're going to -- I think it's important for them to know. Because what they're going to say is, well, the marketers filled out these forms and then the forms were copied over by the doctors and then --

There's going to be process -- there's going to be, I believe, argument on that process, and so I think it's important for the jury to know that this regulation didn't even require a doctor's order.

THE COURT: But you're making an argument that can be criticized on obvious sword and shield grounds. I mean, on the one hand, you want to preclude the United States from arguing that violations of rules and regs yields a criminal violation, and they're not gonna do that. They haven't charged the case that way and they haven't tried the case that way.

On the other hand, you want to say the exact opposite. Well, the fact that there isn't a rule or reg as to orders, whether that's true or not, is exonerating or dissipating of

mens rea or something.

So that's a problem. People, though, can make sword and shield arguments. I just don't see anything in this case that's meaningful about the rules and regs as to written orders, and it would just be very confusing.

The simple fact of the matter is that what we have seen proof of is that people wrote down that certain things happened.

And if the United States is gonna just argue from a commonsense perspective that what was written down was just kind of made up or not realistically true or not -- or just deeply implausible, that just doesn't run through the question, which is pretty technical, of whether Medicare required a writing in the first place.

There's no obligation that a statement be legally compelled at time one for the content of that statement at time two to have been illegal, under the criminal law. And the United States is not suggesting anything one way or another about the written order being legally compelled to time one.

Mr. Specht, are you gonna mention anything in closing that says that there had to be a written order under a Medicare rule or reg or otherwise?

MR. SPECHT: No.

THE COURT: I just think that's not -- there are

triggers as to the context in which a statement is made, a statement under 1001 is to be made in the jurisdiction of the United States.

A statement under a perjury statute has to be made under oath.

But there's no suggestion here that a fraudulent statement needs to have been made in a required order. It hasn't come up in the evidence. It would confuse the jury to suggest something along those lines, and it's not legally necessary.

MS. SOLANO: Yes, Your Honor. I just want to make clear, so the record is clear, this language in here where it's highlighted, the regulation is silent as to whether the types of orthotic braces were subject of the claims, that was put in by the Government. We disagree with that language.

THE COURT: I'm just getting rid of that whole paragraph.

MS. SOLANO: I just want to be clear that as we read it and which I think is correct, is the regulation isn't just silent; the regulation affirmatively says that there's no order required for these types of things.

THE COURT: But you've sort of put them on notice, and I'm assuming the assistant United States attorneys have heard that, that you're not gonna, God forbid, make an argument that is premised on an erroneous understanding of the law.

Ms. Solano has put you on notice. That paragraph page 47, the first one, is gone. The second paragraph will simply be left alone as it is.

Ms. Solano.

MS. SOLANO: Thank you, Your Honor.

THE COURT: Is there any issue with that, Ms. Solano?

MS. SOLANO: No, Your Honor. I thought that they opened on this idea that there was a requirement for a written doctor, they needed these doctors' orders, so if they're not going to --

THE COURT: I don't recall that on the opening. Did you open on that?

MR. WEBMAN: Your Honor, I did say that they needed prescriptions in order to bill. I believe that that is true. I think that it's not in this specific regulation but I think that -- and it's evidenced by the fact that they went to great lengths to get doctors' orders.

THE COURT: But the point of this is simply whether or not -- we're having the same discussion over and over again because it's pretty obvious that you need a prescription in order to bill.

What Mr. Webman is saying is he didn't point to a reg that says you need one and so it's not telling that you might turn around, Ms. Solano, and say that actually there's no reg that says you need it because the prescriptions were sent in.

MS. SOLANO: Your Honor, I just want -- the Government has now several times argued that, well, it's because of the policy statements, it's because of these, it's because of these. They walked that back as a part of when they decided to have Quindoza as a fact expert.

And so to the extent they intend to argue something to the jury that's based on the things that were not disclosed to us, which we asked for several times, we would object to that on a Rule 16 basis.

THE COURT: But they just said they're not going to argue that so I think it's okay.

MS. SOLANO: Thank you, Your Honor.

MR. WEBMAN: Just on the Rule 16 point, because he was not an expert there was no requirement that we hand these things over. We are, as I've said over and over again, not relying on the policies.

THE COURT: So now let's go to request 48.

Does anyone still want this instruction? I don't know whose this is. Does anyone still want this, given everything that we discussed?

MS. SOLANO: Yes, Your Honor. I believe -- is this still an issue?

MR. WEBMAN: My understanding is that when we discussed this last week it was agreed that we would include it, I think everyone was okay with it, with certain changes.

THE COURT: So I just want to understand this. So here is how I would change this. I would change it as follows:

(Reading:)

During this trial, there was some testimony about Medicare's audit rules, civil penalties, and other guidelines. A violation of these rules, civil penalties, and other guidelines, is not in and of itself a crime, nor does it necessarily mean that a crime has been committed.

Even if you find that the claims -- I'm sorry. Let me just read to you the whole thing as I would do it.

(Reading:)

During this trial, there was some testimony about Medicare's audit rules, civil penalties, and other guidelines. A violation of these rules, civil penalties, and other guidelines is not in and of itself a crime, nor does it necessarily mean that a crime has been committed.

A defendant cannot be convicted of a crime merely for breaching these types of audit rules, civil penalties, or other guidelines.

I think that's a simpler way of being protective of the problem Mr. Naviwala is trying to protect against. It's clearer and more protective.

Any issues with that from either side?

MS. SOLANO: No, Your Honor.

MR. WEBMAN: Not from the Government. I would ask again that Ms. Larsen provide us that language. I don't write as quickly as she types.

THE COURT: Okay. I'm going to read again, request 48.

(Reading:)

During this trial, there was some testimony about Medicare's audit rules, civil penalties, and other guidelines. A violation of these rules, civil penalties, and other guidelines is not in and of itself a crime, nor does it necessarily mean that a crime has been committed.

A defendant cannot be convicted of a crime merely for breaching these types of audit rules, civil penalties, or other guidelines.

Fine?

MR. WEBMAN: Yes, Your Honor.

THE COURT: Ms. Solano?

MS. SOLANO: Yes, Your Honor.

THE COURT: Request 105 -- excuse me. Request 65, excuse me, at page 105.

I just had a question on this. Is this the model rule?

Here is why I just think it's a little strange. I would have thought the instruction was: You should examine

and evaluate the defendant's testimony just as you would the testimony of any witness, and just leave it at that.

I'm not sure why there is a discussion of the defendant's constitutional right to testify or not to testify.

What difference does that make?

MR. WEBMAN: I believe it is the model rule, Your Honor, but I don't -- if the defendant doesn't take a strong position on it, I don't think the Government does either.

MS. SOLANO: I mean we thought it was the model rule. If there's a question --

THE COURT: It might be the model rule. Fundamentally, I just don't get why we're talking about he didn't have to testify but he did.

MS. SOLANO: Right. I agree with Your Honor.

THE COURT: It just seems like it should just be: You should examine and evaluate the defendant's testimony as you would the testimony of any witness, and just leave it alone.

MS. SOLANO: We would prefer that, Your Honor.

MR. WEBMAN: Yes, Your Honor. We can confirm that it is the model instruction, but we are fine with leaving it as Your Honor and the defense counsel have discussed.

THE COURT: The problem with it is that I think if you have all the stuff in the beginning, it makes the jury say, well, gee, what about other evidence he could have put on? I

think the better way to do it is just to say that you should evaluate his testimony as you would the testimony of any witness.

The United States is fine with that also?

MR. WEBMAN: Yes, Your Honor.

THE COURT: In request 65 at page 105 it's simply and solely gonna be the last sentence.

Venue. Venue is a little complicated here I think. Here is why venue is complicated, in my judgment. This is a terribly abstract context and it's abstract because, as I held last week under *Perez*, I do not believe -- *Perez* has a three-part test. It is in the conjunctive, not in the disjunctive, and I do not believe that clause 2 of *Perez* has been satisfied. Ms. Lou echoed that point in her letter of yesterday.

So we are talking about in abstraction and I simply do not believe that clause 2 -- excuse me, prong 2 of the *Perez* test has been satisfied, so the defendant is not actually entitled at this point to a venue instruction.

On the other hand, I have two comments.

First, the United States has consistent as it's noted with general practice put forward a venue instruction solely based on the defendant's request for one and I understand why the United States has done so.

There is risk in not acceding to such a request. The

other reason -- so that's that. I'll leave it at that. So I'm going to give a venue instruction, based on what the United States wants, and understanding that that is something of a standard practice here.

I think that the core problem here looks something like this: Ms. Solano has argued from Chief Judge Chagares' opinion, and for reasons we discussed last week, that decision is, on its face, appears to be of limited utility.

It appears, to me, that it aims to focus just on a setting which the United States Congress has not come in and itself said where venue should be applied.

That would seem to suggest that there is no place here for complicated discussions of where the essential core of a crime took place, because the United States Congress has a continuing crime statute, and as various circuits have held, the substantive offenses here are continuing crimes.

And they clearly are, in general, because they require someone to do something, and then someone to do something almost always later, almost always in a different place.

And there are continuing crimes on the facts of this case where that is precisely how it allegedly went; that people in different places worked together to do crimes that were continuing, both temporally, and importantly for these purposes, spatially.

So it looks like we're in a continuing crime zone and

for a continuing crime zone there is a venue statute that is on point. And indeed, the line before the one that Ms. Solano has quoted to me from Chief Judge Chagares seems to carve out things in precisely this way.

The problem is that the cases over and over again say that there is a carveout for congressional statutes, but then seem not to apply the carveout.

So, for example, Chief Judge Chagares' opinion notes the idea of a continuing crime carveout, but then does not analyze whether the Computer Fraud Act is indeed a continuing crime act.

Similarly, Justice Ginsburg's opinion for the United States Supreme Court in *Caballes* perceives in a little bit the same way.

Ms. Lou, did I quote the name wrong?

MS. LOU: No, Your Honor. I was just marveling at your recall of the Supreme Court.

THE COURT: But Justice Ginsburg's case decision for United States Supreme Court in *Caballes* does the same thing: it invokes the concept of the carveout but then doesn't go down that road.

It's fundamentally a little difficult to know why. One explanation as to why might be that the statutory carveout in the venue statute talks, for example, about the use of mails, and the Computer Fraud Act discussed by the Third Circuit or

the money laundering statute discussed by the Supreme Court through Justice Ginsburg, are focused on statutes that themselves do not talk about the mails. Okay.

But the problem is, is that even when we are talking about something that surely looks like a continuing crime and that has mailing in the elements, mail fraud being the obvious example, there is Third Circuit precedent that does not allow venue to be based solely on where mail is received in those contexts.

So the difficulty becomes the case law, on its face, has a carveout for when congress has set a venue statute, but the way that the case law proceeds does not look to that carveout. It doesn't look to it in cases like Judge Chagares' and Justice Ginsburg's where the statutes don't have mailing as an element.

But, indeed, the Third Circuit has suggested a number of times that the statute -- the venue statute for continuing crimes -- also doesn't control when mailing is an element, which is to say the mail fraud statute.

So we are left in a very complicated position, one where, under *Perez*, there's no need for a venue instruction, and, number two, where the venue instructions as to the substantives are complicated.

Where I think that leaves us is that there is something like the need to do a little bit of a lex delicti kind of

analysis, but not one that is as technical, in my judgment, as Ms. Solano mentioned.

When we first raised this issue, I kind of brought up the first restatement of choice of law, and I brought it up because there was associated with that regime an extraordinarily artificial and formalistic sense of what is the core of an offense or -- excuse me -- in that context of a civil wrong that then triggers the choice of a body of law.

I think that Ms. Solano's proposed jury instructions with respect to venue partake of that problem. They do not -- they pick out very small and very random aspects of the crime charged and elevate them in a substantial way.

On the other hand, it's not clear how to proceed, because something needs to be found if we are to assume that the statute does not simply control, that is, at the core of the offense as to which venue is sought.

I don't mean to lay down any systematic thinking on that subject for the simple reason that it would be doubly advisory. Advisory because the *Perez* standard hasn't been met and advisory in addition because there's no reason for it to be in play.

And the reason that it doesn't need to be in play is that, in looking to what is central enough to an alleged crime, that there's venue based on the location of such an activity, the courts have generally looked to the substance of

the crime as it's been written down in a congressional statute.

Here, though, the particular substantive offenses -- and that's where the fight is about venue -- the particular substantive offenses, both the health care fraud and the anti-kickback, run through ideas about the delivery/provision of medical items.

And so rather than trying to figure out all of the different ways in which venue might be satisfied here, I think it makes a lot more sense to instruct the jury on a venue theory that is clearly at the core of both health care fraud substantive and anti-kickback substantive, and that venue theory is about the delivery of the relevant medical stuff into New Jersey.

So what I'm gonna do is I'm gonna read the proposed venue instruction, and then everyone can react to it and see what you think, in practice, and see if it works. That's a kinda long intro to what will be a pretty short thing.

I'll read the first paragraph, and I'm reading off the United States' instruction.

(Reading:)

> The superseding indictment alleges that some act in furtherance of each of the offenses charged occurred here in the District of New Jersey. There is no requirement that all aspects of each

of the offenses charged or that the entire conspiracy takes place here in the District of New Jersey.

But for you to return a guilty verdict, the Government must convince you that, for each count, some meaningful act in furtherance of that count took place here in the District of New Jersey.

So far, I have made only one change to what the United States has proposed in its first paragraph, which is in the final sentence. It reads as follows:

(Reading:)

But for you to return a guilty verdict, the Government must convince you that, for each count, some meaningful act in furtherance of that count took place here in the District of New Jersey.

That's the first one.

Then simply an additional sentence: The substantives -- let me just ask you all, the substantives here are Two, Three, Four, Eight, and Nine.

Do I have that right?

MS. LOU: Your Honor, it's Counts 2, 3, 4 and 6, 7, 8.

THE COURT: Okay. So then the next sentence would read:

(Reading:)

In addition, as to Counts 2, 3, 4, 6, 7, and 8,

the meaningful act in furtherance of that count must have been the delivery of DME into New Jersey.

Must have been the delivery of DME into New Jersey.

I'll read you that again.

(Reading:)

In addition, as to Counts 2, 3, 4, 6, 7, and 8, the meaningful act in furtherance of that count must have been the delivery of DME into New Jersey.

Then from there, it would simply continue with the remaining two paragraphs, the one that begins "unlike" and the one that begins "remember."

For the United States, thoughts?

MS. LOU: Yes, Your Honor. I believe there's also been evidence from which the jury can infer that the doctors' orders were also signed in New Jersey for these beneficiaries.

Just looking at Friday's testimony, for example, in the cross, Mr. Naviwala admitted that, if the domicile criteria that one of his clients insisted on was being implemented, he would expect that the doctors for New Jersey patients also would be based in New Jersey, and we have doctors' orders that support that. So not just the delivery of the DME --

THE COURT: I got it.

Here is the complexity: I think the complexity is if

what we're doing is going off the statutory language, that argument is a much stronger argument for venue of the Anti-Kickback Statute than it is for the substantives of health care fraud. I think it's potentially confusing.

So right now, what we have is a conspiracy venue theory and then we have, for all the substantives, the meaningful act has to be -- must have been the delivery.

If we do it your way, then there's an argument that we have to say the meaningful act must have been the delivery of DME for the health care fraud statutes. And then, for the anti-kickback, either the delivery of the DME or the writing of doctors' orders in New Jersey.

I'm open to that, but it's a pretty complicating wrinkle to follow.

MS. LOU: I understand, Your Honor. I don't feel as though we're hampered by the way that you asked -- the evidence supports that and we're able to argue that, and so we take your point.

THE COURT: Just reflect on it some more.

Let me hear from Ms. Solano.

MS. SOLANO: Thank you, Your Honor.

I'll start with the kickback substantive charges first. We don't believe that the kickback -- the substantive kickback charges, as charged here, are continuing offenses. What the Government charged was a specific act: the receipt of payment

on a specific day.

THE COURT: Right.

MS. SOLANO: And unlike a wire fraud statute or a money laundering circumstance, it doesn't prohibit or even discuss a transfer. It's very specific to receipt. And the kickback statute itself doesn't contain -- the elements of the kickback statute doesn't contain any sort of language about delivery. And so I believe that --

THE COURT: Here is the problem with the latter argument. I'm just flipping to the indictment.

I'm presuming that the United States -- excuse me -- that the indictment, this is Count Eight, page 20, is quoting the statute. It says:

(Reading:)

> Knowingly solicited and received remuneration directly or indirectly, overtly and covertly, in cash and in kind, that is kickbacks and bribes, in the manner specified below in return for referring an individual to a person for the furnishing... of any item...

That is why, at the center under any arguable theory of lex delicti, the key essential -- "element" is the wrong word, but the key essential concept that links together both the Anti-Kickback Statute and health care fraud piece is what the health care fraud statute calls "delivering" and what the

kickback statute calls "furnishing an item."

So that's why I've hit on this particular thing. It strikes me as getting to anyone's concept of what might be essential if essentiality is indeed necessary, and it's right there in the statute.

MS. SOLANO: I understand Your Honor's position.

Our position is that only the two actus reuses of the Anti-Kickback Statute would support venue here, and so here, what is the actus reus that the Government charged was receipt on a particular point in time, and receipt, obviously, is the end of the line.

And so that is what we think would be appropriate for venue. And perhaps if it would be possible to include -- I believe that the way in which the proposed instruction reads, the focus is on delivery; and I think for the Anti-Kickback Statute, it should, if Your Honor wants to include delivery, it should also include the receiving the remuneration.

THE COURT: I don't think so. I think there are, there are a bunch of different things that are central to this, but I think the way the case law looks is it just looks to the statute to figure out what's at the core of the offense.

And I think it's a little strange to imagine -- it's a little strange to imagine that furnishing an item, which is what the statute said, is not at the core of the offense. And it's also a little strange to imagine that it's not part of

the actus reus.

You agreed to a jury instruction that makes furnishing -- that then makes the provision of an item part of the offense, and that was the right thing to do.

MS. SOLANO: Yes, Your Honor. I didn't want to interrupt you.

THE COURT: I just think this is clearly at the heart of the allegation, of the crime.

MS. SOLANO: But what the Government charged and the act that is actually criminal here, the delivery, from the jury instruction is the -- I'm sorry, I'm trying to say two different things.

The delivery of the purchase of the item, that is subsumed in what the purpose of the remuneration is; but the actus reus of an anti-kickback crime, as reflected in how the Government charged it in this case, is the receipt of the money. The Government doesn't make any reference in any of their substantive AKS counts about delivery of the braces that were purportedly induced by these -- this illegal remuneration.

THE COURT: It's a very -- essentially what you're saying -- I don't think this is right -- well, let's assume it's right. What you're essentially saying is that the actus reus generates venue or not. And although the statute on your read requires that mens rea be directed toward the furnishing

of an item, which necessarily has a physical location, only the actus reus can supply venue; but the physically, spatially directed mens rea cannot supply venue.

But why?

MS. SOLANO: Well, Your Honor, I believe that, one, I do think that the actus reus has to be included in where proper venue would be. And here, I don't believe that the proposed instruction includes that it could be also where the -- I'm sorry, where the remuneration was received.

But as I understand the way that an anti-kickback charge would be is at the point in time when a defendant or anyone receives remuneration with the purpose of these other things, the anti-kickback charge would be a completed act.

And so it wouldn't matter whether the delivery of an item actually did go forth. The act, at that point when the person receives the illegal remuneration with the intent, is a completed offense at that point.

THE COURT: That may -- everything you have just said may or may not be right, but let's assume it is right. If it is right, it still falls back on the implicit legal principle that I just mentioned, which is what you're saying is that mens rea directed a particular place, i.e., the place where an item is furnished doesn't matter. And I'm asking you why.

MS. SOLANO: Well, Your Honor, because at that point

the crime is complete.

THE COURT: Right. But at that moment when the crime is complete, I have given money to someone in Massachusetts for something that, the next day, is gonna be delivered in New Jersey. And you're saying that it's complete upon the provision of the money in Massachusetts and my thought process as to New Jersey doesn't matter. Okay.

But why are you right, that the thought process focused on New Jersey and the furnishing into New Jersey is irrelevant for venue purposes? That's the question.

MS. SOLANO: Well, Your Honor, I think that the reason why it doesn't matter at that point is because in determining the -- where venue can occur, you have to look at the nature of the crime and you have to look at where it begins and where it ends.

And if the crime is complete upon receipt of illegal remuneration, which I believe it is, then any acts that happen thereafter -- which are the facts of this case, right, that the money was sent before there were orders shipped out, and so at that point the act is done. The act that could confer venue is finished.

And we cited to, for example, a Second Circuit case in which they discussed that, for example, the intent for the scheme to defraud can't supply venue. So if something about the intended scheme to defraud can't supply venue because it's

tied to a mens rea, then what you're talking about --

THE COURT: I see the point. But there is a body of law that I think supports the intuition behind what you're saying which is the body of law about events after the completion of the crime. This is a little bit what Justice Ginsburg is getting to in terms of money laundering being done.

I think it's bundled together much more tightly here. I just do. I hear what you're saying but, on balance, unless we're gonna be formalistic in a choice of law first re-statementy sort of way, the question is, what is -- given the words congress has chosen -- the core of the thing of the crime, not that which happens afterward.

It may be -- although I see no distinction like this in the case law. I understand the Second Circuit case you're talking about. But the sharp divide between actus reus and mens rea I think is not really there, and I think there is no conceivable way to think about an anti-kickback violation without this part that congress has picked out which is that it's furnishing an item.

Any other comments on the venue instruction?

MS. SOLANO: Your Honor, we would request that for the anti-kickback charges, that in addition to the delivery piece that the actus reus would be included.

THE COURT: I assume the United States is opposed to

that but let's hear from the United States.

MS. LOU: Your Honor, is the proposal that it would be an "or" rather than an "and"?

THE COURT: Ms. Solano?

MS. SOLANO: I think the proposal would be that the jury can decide what they think -- they have to decide venue. It's a factual issue for them.

And so I think for the kickback charges, the offense would discuss that jury could be proper regarding the delivery of services; it could also be proper regarding where the payment was received.

THE COURT: So, then, the way you would -- so your answer to Ms. Lou's question is yes, it's "or." What you want it to say is in addition -- we're reading the second paragraph of the venue instruction: In addition, as to Counts 2, 3, 4, 6, 7, and 8, the meaningful act in furtherance of that count must have been causing delivery of DME into New Jersey or making a payment into New Jersey.

Do I have that right?

MS. SOLANO: I think it has to be "receipt."

THE COURT: Or receiving a payment in New Jersey.

MS. SOLANO: Yes.

THE COURT: Okay.

MS. SOLANO: Just so the record is clear, we are standing by our requested venue instruction.

THE COURT: I got it but just --

MS. SOLANO: Yes, Your Honor.

THE COURT: The question of what's preserved and what's not preserved, I don't presume to say anything about that.

But the question, Ms. Lou, how do you feel about that? So just to: In addition, as to Counts 2, 3, 4, 6, 7, and 8, the meaningful act in furtherance of that count must have been either causing the delivery of DME into New Jersey or receiving a payment into New Jersey.

MS. LOU: Your Honor, given how we have charged it, not just -- I think everybody in this room knows that no payments were received in New Jersey, but we have also alleged that they were sent through New Jersey via Fedwire. It's right here in the indictment.

So to leave that out -- if we're going to include discussion about payments and where they're being received and also -- excuse me, Your Honor -- we have also charged aiding and abetting and so it also has to include the sending, too, not just the receiving.

So if we're talking about all the places in which the payment has been initiated or received, I think we should also include that being passed through.

THE COURT: I think the problem becomes, that begins to run afoul of the case law here being averse to --

Look, the reading of the continuing crimes statute I

think would support what you're saying, but that's not how it's been read, for example, by the Circuit in the Computer Fraud Act case which doesn't want purely incidental things. So I'm a little hesitant about that.

So I appreciate your point, which is, oh, my gosh, says Ms. Lou, I know for the United States that I am not gonna be able to argue from that second venue prong. But you can argue from the first one, so what difference does it make?

MS. LOU: Right. Then my point would be, Your Honor, the earlier point that I made about the doctors having signed -- you know, the -- in return for the kickback payment what's being exchanged is not just the medical items being shipped and the furnishing of that item but the furnishing of the item also being doctors' orders that were signed by doctors in New Jersey.

THE COURT: I assume you're okay with that, Ms. Solano.

MS. SOLANO: Your Honor, I don't believe that there's evidence that would support that.

THE COURT: That's a different question, though. If Ms. Lou is proposing a -- there's many things here that you're going to argue the evidence doesn't support. That's a different point.

MS. SOLANO: I just want to make sure that it is --

THE COURT: So --

MS. SOLANO: -- perhaps phrased a different way.

Because I think if you assume that there are doctors' orders signed in New Jersey, then --

THE COURT: So I think that it would say something like --

MS. SOLANO: Your Honor, just one point.

THE COURT: Go on.

MS. SOLANO: What we're arguing with respect to this receipt is it only applies to the AKS charges. It does not apply to --

THE COURT: That's the problem I was trying to avoid by not going down this road. I was trying to provide a single solution to the substantive venue issue. It does not require two venue charges -- that requires only two venue charges instead of three.

MS. SOLANO: Your Honor, we don't believe a venue charge is necessary for a conspiracy. We are not arguing that.

THE COURT: But that's too complicated. You sorta can't have this both ways. You can't ask for venue on some things where you like it and not where you don't. There has to be some -- I don't want to leave the jury with a question mark of, gee, what the heck happened to venue on a certain count? That's too weird.

Look, here is where the rubber meets the road: As to -- Ms. Solano has a general objection, the scope of which

is in the record and it speaks for itself, as to the way venue is being handled here.

Can someone remind me of the health care fraud charges, the substantives are Two, Three, and Four? I keep getting this wrong.

MS. LOU: Yes, Your Honor.

THE COURT: The substantives under Anti-Kickback Statute are Six, Seven, and Eight?

MS. LOU: Correct, Your Honor.

THE COURT: I think where we are is that, putting aside the general objections Ms. Solano has, it would read like this: I'm gonna start again. Page 106.

(Reading:)

The superseding indictment alleges that some act in furtherance of each of the offenses charged occurred here in the District of New Jersey. There is no requirement that all aspects of each of the offenses charged or that the entire conspiracies take place here in the District of New Jersey. But for you to return a guilty verdict, the Government must convince you that for each count some meaningful act in furtherance of that count took place here in the District of New Jersey. Period. New paragraph.

In addition, as to Counts 2, 3, and 4, the

meaningful act in furtherance of those counts must have been causing the delivery of DME into New Jersey. Period. New paragraph.

As to Counts 6, 7, and 8, the meaningful act in furtherance of those counts must have been either causing the delivery of DME into New Jersey, or receiving a payment into New Jersey, or the signing of a doctor's order in New Jersey.

Ms. Solano?

MS. SOLANO: Yes, Your Honor. I don't -- well, with respect to the -- I just want to be clear.

With respect to the health care fraud offense, I believe that an actus reus for that would be submission of the false claim itself.

THE COURT: Ms. Solano, I just disagree with you on that but let's just stick with the language here.

MS. SOLANO: With Your Honor's rulings, we are fine with that language.

THE COURT: Ms. Lou, what do you think?

MS. LOU: Your Honor, I'm fine with that language. Bottom line, I just want to correct my misstatement earlier as to the furnishing of the items serviced being the doctors' orders. We still believe it's appropriate to add that third prong.

THE COURT: That's why I said it with respect to

Counts 6, 7, and 8. It's now three -- it's "or" not "and," it's "or." Three things under 6, 7, and 8.

MS. LOU: Understood.

THE COURT: So that's that.

We're at the end of our list. I think probably the most useful thing to do, if I might, is for those who have the task of putting this into a final state, which also, you know, is just ready for me to read, it's probably going to make sense for us to stop now and deal with that. The jury is gonna be ready, one hopes, in 32 minutes and we'll be ready to go then.

So that's my preference.

Ms. Solano made a filing yesterday that seeks discovery with respect to grand jury minutes.

The United States' plan is to respond to that by when?

MS. SOLANO: Your Honor, I actually haven't made that application. I made the request to make the application.

THE COURT: Well, didn't you file like a long letter about that?

MS. SOLANO: It was a long sentence but it was a one-sentence request to have permission to make the application.

THE COURT: So here is the question on that. Is there anything else that's an open issue?

MS. SOLANO: Your Honor, I have two open issues but we

can address --

THE COURT: Just tell me what they are. One is grand jury minutes. What's the second one?

MS. SOLANO: Yes, Your Honor. The other one is the -- I think we need a curative instruction regarding Ms. Lou's statement that the joint laxity thing was a regulation.

THE COURT: But her answer is fully satisfactory. We have said over and over again that -- I've said over and over again lawyers' questions are not statements.

And that question -- Ms. Lou is right -- that question was objected to by you and I sustained the objection. The question wasn't answered, so if it goes back to the jury they're not even gonna see that. I think we can move on.

It presumes that the jury is not following the law and not following my instructions to give them an instruction on that and there's no reason to presume that.

What's the next issue?

MS. SOLANO: The next issue is we want to -- at the beginning of this case, Your Honor I'm sure remembers, we raised the -- in the motion to dismiss the superseding indictment, we raised the issue that an -- I'm sorry, that the portions of the indictment that say that the conduct was -- something was submitted to Medicare without regard to medical necessity, that that was outside the scope of what the fraud statute actually criminalizes and that it was a due process

violation for fair notice.

Your Honor I think addressed that by saying that if we wanted to re-urge that towards the end of trial we could do so to strike out those portions, and so I'm making that application that I do believe that charging something that could be medically necessary but was submitted without regard to medical necessity is outside the scope of the fraud statutes and I'm renewing our due process argument.

THE COURT: But is the argument about -- I mean, I'm not -- I don't think it's weird to pull things out of the indictment, if that's what's going on. I mean, there is just -- if someone had asked me not to send the indictment back, I don't know what I would have done. I don't love sending indictments back.

Does the United States have an issue with just excising those words from the indictment? We're just talking about what's in the indictment.

MS. LOU: Rather than what is required to be proven; is that what Your Honor is saying?

THE COURT: Yeah. Ms. Solano's argument is no longer about the jury instructions. We're done with that. This is just about whether those words are gonna appear in the indictment that the parties have assumed goes back to the jury.

MS. LOU: Your Honor, the issue with excising those

words is that, without our ability to argue that, for example, that something is not actually medically required without reference to regulations or rules, what we're left with, as Your Honor noted on Friday, is the -- in Your Honor's words, I believe the mountain of evidence that the whole scheme was set up to medical necessity.

I believe that one of our core theories is that, given the scheme that was set up in an absence of, you know, attending to the medical necessity, that amounted to medical unnecessariness itself. So to cut that out is really cutting the leg out from under us in terms of what we can argue.

THE COURT: I agree. I'm not going to do that.

First of all, there's no fair notice violation. I just don't think that's what's going on here. There's no need to excise it. So I'm denying the motion.

I think what Ms. Solano is really aiming to argue is, candidly, not for now. It's an argument she's gonna want to make if there's a conviction, to me and/or to the court of appeals.

And the argument is basically, the United States needs to prove -- I think what Ms. Solano is envisioning and I'm expressing no opinion on -- there's no fair notice problem. There's no due process problem. I think what Ms. Solano is envisioning is, let's imagine that the process for deciding whether someone gets a brace is throwing a dart against the

wall.

In the United States' telling, that's total reckless disregard for medical necessity and, therefore, is enough.

Ms. Solano's point is, if you threw the dart against the wall and it turned out it landed on the precise brace a patient actually needed, that's not fraud. That's an argument she can opt to make after the trial.

The problem you're gonna have with that argument, Ms. Solano, even if you're legally right, probably -- I suspect this is how, and you have heard it over and over again how the United States is gonna argue it, that there are people here who have put in themselves affirmative evidence. They got something they didn't want, didn't need.

So it functions ex ante as maybe a fair notice argument. I find that it's not, for obvious reasons, related to the thickness of the discovery, the speakingness in the indictment, et cetera, et cetera, et cetera. It hardly needs discussion. Fair notice problems with criminal law are very rare.

The problem ex post you're gonna have, I suspect, runs through the fact that, even on the dart theory, it looks like there has been some affirmative evidence in this case that it didn't all work out in a just-so way that people didn't get what they wanted. But that's an argument that you can take up later if you'd like to.

MS. SOLANO: Yes, Your Honor. Just to put a bit of a finer point on it, I think that the argument is not -- I do think the dart example is a good one, but the argument is also that they have created something where it's not a false statement because it's without regard to medical necessity; but it's also creating, I think, confusion on confusing an intent to defraud versus some sort of affirmative obligation to investigate medical necessity, which I don't believe is here.

He's not a doctor, and the idea that somebody could be charged with health care fraud because a claim was submitted, even if a claim was submitted over and over and over again, without regard to medical necessity, assumes that there is some sort of duty to undertake a sort of inquiry that is separate and apart from whether something was submitted with the intent to deceive and defraud because it was medically unnecessary.

THE COURT: There could be a case in which that's a live issue and there could be a case in which that presents a fair notice-type problem. It's just that the indictment here, and supplemented by the evidence you've received, doesn't make this even remotely like that case.

There's -- I don't believe I used the word "mountain," but there is a large volume of evidence that is very affirmative on this and has been affirmatively presented as

allegations from a much earlier time. So I don't think there's a fair notice problem.

I think that there could be a case in which there is a fair notice problem, but my intuition is this is not that case. If the jury comes back a certain way, you can argue it ex post, ex ante. I don't think there's anything like that.

MS. SOLANO: Thank you, Your Honor.

In our papers we wrote that it was a fair notice problem, and it's also just the due process issue that we have raised and briefed several times with respect to that standard as what due regard you must undertake for medical necessity is a vague standard.

THE COURT: I don't see that. Okay. I have it.

So Ms. Solano's third point, got it.

The curative instruction, I have already ruled on, which is to say as to the statement built into Ms. Lou's question that was never answered because it was objected to and the objection was sustained, I've said there was no need for a curative instruction because the need for a curative instruction there presumes that the jury is not already following instructions, and as I outlined toward the beginning of today's proceeding, I think this jury is not that kind of jury at all. I'm not worried about it.

Then there is the permission to make a motion for inspection of grand jury minutes, and the permission for that

is granted.

Anything else?

MS. LOU: Your Honor, just to clarify on the venue instruction. After your rider insertion, is it your intention to read the rest of --

THE COURT: Yeah.

MS. LOU: I just wanted to clarify.

THE COURT: Yes. I think the rest has to be there; otherwise --

MS. LOU: Of course, the burden --

THE COURT: Yeah, it has to be there to protect the defendant.

Ms. Lou, anything else?

MS. LOU: No, Your Honor.

THE COURT: Ms. Solano?

MS. SOLANO: Just a housekeeping point, Your Honor.

If the defendant gets off of the stand today and we rest, it's my understanding that the Government will do whatever it's gonna do; but if the Government also rests, I believe that I need to make an application at that point. I need to renew my application. I don't think you want me to do that in front of the jury, so I'm just raising that as a --

THE COURT: Do you need to make an application that is anything other than just making an application to preserve it, or do you actually want to have argumentation at that point?

MS. SOLANO: It wasn't going to be long, but I was going to say certain things. I could do it at sidebar. That would be fine, too. I wanted to know your preference --

THE COURT: I just don't want you to do in it front of the jury. I just also want to move quickly. Why don't we have a sidebar at that point.

MS. SOLANO: I want to remind that I do need -- it may not be an issue today, but in the event -- we'll raise --

THE COURT: This jury instruction is going to take a while. You're talking about getting to your closing. There's no way. Ms. Lou is gonna take whatever. Then there's gonna be jury charge and then Mr. Specht is gonna spend whatever it is --

MS. SOLANO: I'm not arguing with you.

THE COURT: There's no way we're getting there.

MS. SOLANO: Thank you, Your Honor.

THE COURT: And then we're going to have a couple days to prepare.

Anything else?

We will be back in 20 minutes. Thank you, all.

Good luck preparing this charge and, please, as soon as you have -- as soon as you have it, e-mail it to my courtroom deputy and also bring a hard copy because I will hope to read it to the jury today. Thank you.

(Recess taken.)

THE DEPUTY CLERK: All rise.

(Witness Raheel Naviwala resumes the witness stand.)

(Jury enters the courtroom at 11:10 a.m.)

(Whereupon, the following proceedings were held in the presence of the jury:)

THE DEPUTY CLERK: All rise.

THE COURT: Ladies and gentlemen of the jury, good morning to each of you. As you know, we started a little late and later yet by two minutes. I saw you in the hallway as we were passing each other. Sorry I didn't get here the moment before you did, but here we are. Welcome back.

To the witness, I'll remind you that you remain under oath.

Please continue.

MS. LOU: Thank you, Your Honor.

RAHEEL NAVIWALA,

having been previously duly sworn, testified as follows:

CROSS-EXAMINATION

(Resumed)

By Ms. Lou:

Q. Good morning.

A. Good morning.

Q. On Friday, if you recall, I showed you an e-mail between you and Nelly Petrosyan.

Do you recall that?

A. Yes.
Q. I can pull it up, but do you recall that e-mail was dated, I believe, June 13th of 2018?
A. Yes.
Q. You dealt with Ms. Petrosyan and US Orthopedics Corp, her company, after that time; correct?
A. Yes, I believe so.
Q. And you communicated with her, among other ways, using theprudentgroup@gmail.com e-mail address?
A. I think it was primarily through text, and then Amman handled that account, primarily.
Q. Theprudentgroup@gmail.com account?
A. Just Nelly in general.
Q. The account with US Orthopedics; is that what you're saying?
A. Yes.
Q. I'm going to show you what's not been admitted into evidence, marked for identification as Government Exhibit 4801.

MS. LOU: Just for the witness and the parties, please.

Q. Do you see this e-mail?
A. Yes.
Q. Do you recognize it?
A. I don't recognize it exactly, no.
Q. Is it an e-mail between Ms. Petrosyan at US Ortho Group

and theprudentgroup@gmail.com?

A. Yes.

MS. LOU: Your Honor, I move to offer this e-mail into evidence.

MS. SOLANO: Your Honor, can we just scroll out. Is this one page?

MS. LOU: Yes. This is the whole document.

MS. SOLANO: No objection.

THE COURT: Government Exhibit 4801 is admitted.

(Government's Exhibit No. 4801 was received in evidence.)

BY MS. LOU:

Q. Looking at the second e-mail from Nelly Petrosyan, do you see the date of that?

A. Yes.

Q. That's June 20th, 2018. Correct?

A. Yes.

Q. Do you see where she writes (Reading:)

Raheel, I hope to see some clients coming over tomorrow.

A. Yes.

Q. And the response from The Prudent Group e-mail, June 21st, 2018.

Do you see that?

A. Yes.

Q. And it says (Reading:)

We just sent over your orders. Thanks.

A. Yes.

Q. Is there anywhere in this e-mail that mentions John Fusco at all?

MS. SOLANO: Objection.

THE COURT: Basis?

MS. SOLANO: Speaks for itself.

THE COURT: Overruled.

THE WITNESS: No.

BY MS. LOU:

Q. You never told Nelly Petrosyan or US Orthopedics that John Fusco was using this Prudent Group at Gmail.com address, did you?

A. No, I probably told her Amman was using it. I don't know about John.

Q. To your recollection, not John; is that right?

A. I don't think so.

MS. LOU: Thank you. You can take that down.

Q. On Friday, you said that you didn't profit from Elite after February 1st of 2019; is that accurate?

A. Yes.

Q. But before then, you did?

A. Yes.

Q. And, in fact, there are wires that were sent to you at

your direction from the Elite bank account; is that accurate?
A. Yes.
Q. And that those wires totaled something like 8.75 million?
A. Probably around there. It was to my entity before any of my expenses.
Q. And that's Raheel Naviwala, PA?
A. Yes.
Q. Again, you had directed John Fusco to send those wires. Right?
A. Yes.
Q. Also on Friday -- withdrawn.

On Thursday, I believe you said that you ran into Kareem for the first time in ten years before getting into the DME business. Right?
A. Yes.
Q. You said that he was driving a nice car?
A. Yes.
Q. And you asked what he was doing because you wanted to know how he could afford such a nice car?
A. Yes.
Q. And you jumped into that business with him because you also wanted to make money?
A. He reached out to me about a business opportunity and after doing a little bit of research it seemed appealing.
Q. You knew that he had prior experience in the call center

business with regard to pain creams; right?

A. With pharmacy for sure. I don't know if it was pain creams exactly.

Q. And Kareem had told you that he left that pharmacy business because of arrests being made?

A. No, not at that time.

Q. That's something he told you later on?

A. Way later on after all of this was over and I ran into him, I expressed that I was very upset with him.

Q. You recall during Armani's testimony text messages between you and Armani where Armani sent you a video of a Ferrari he had purchased.

A. Yes.

Q. You were jealous of that Ferrari?

MS. SOLANO: Objection. 401, 403.

THE COURT: Sustained.

BY MS. LOU:

Q. At some point between 2017 and 2019, did you buy your own Ferrari?

A. I did.

Q. And you also bought jewelry?

MS. SOLANO: Objection. 401, 403.

THE COURT: Overruled.

THE WITNESS: Yes.

MS. LOU: Mr. Klimaski, if you could pull up Government

Exhibit 6017d, like David, which is already in evidence, page 45. Then we can zoom in on the front of the check, please.

BY MS. LOU:

Q. This is the check from the Elite Healthcare Solutions account; right?

A. Yes.

Q. It's dated 10/10/18?

A. Yes.

Q. It's a check to Babylon Jewelry; correct?

A. Yes.

Q. For $39,390?

A. Yes.

Q. It's signed using John Fusco's stamp; right?

A. Looks like it, yes.

MS. LOU: If we could turn to the next page, please.

Q. Same thing, another check to Babylon Jewelry. I believe it says 10/18/18 for $50,000?

THE COURT: Hold on a second.

MS. SOLANO: Objection. 401, 403.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MS. LOU:

Q. Again, using John Fusco's stamp?

A. Looks like it, yes.

Q. That's the stamp that you had; right?

A. A few people had access to the stamp.

Q. On Friday, I believe you said that you had the stamp; is that not accurate?

A. It was in our office but it was used by a few people.

Q. But in this case you signed this check using the stamp; right?

A. I'm not sure if I was the one that actually did it but I know about the transaction.

Q. In fact, there's a series of checks is --

MS. LOU: Mr. Klimaski, if you can scroll slowly. This is page 46, I believe. Page 47, page 48, page 49, page 50, 51, 52.

Stop there for a second. Go back to 52.

Q. This is a check for $120,000 and this one is November 28th, 2018; right?

MS. SOLANO: Objection. The way that it's just compounded and narrative in its current form of the question.

THE COURT: Rephrase solely as to form.

BY MS. LOU:

Q. This is a check that we're looking on page 52 of 6017d dated 11/28/18 to Babylon Jewelry; correct?

A. Yes.

Q. And for $120,150?

A. Yes.

Q. Also using John Fusco's stamp?

A. Looks like it.

Q. We had just looked at a series of checks all to Babylon Jewelry; correct?

A. Yes.

Q. All for the same roughly two-month time period?

A. Yeah, it looks like it. This would have all been accurately reported on my financials.

MS. LOU: You can take that down. Thank you.

Q. You bought Rolexes for the people you worked with; right?

A. Yes.

Q. Including Amman Majid; right?

A. Yes.

Q. John Fusco?

A. Yes.

Q. And your brother?

A. Yes.

Q. But others, also?

A. Yes. Pretty much everybody on the Navtek team, because I was trying to incentivize them to work as hard as possible.

Q. In December of 2017, you paid a $5,000 retainer to Brown & Fortunato; correct?

A. Yes.

Q. You talked to Armani on the day that search warrants were executed on his businesses in April 2019?

A. I don't know if they're search warrants. I know that his bank accounts were frozen.

Q. You talked to him on that day?

A. He called me, yes.

Q. And you told him that it was your worst nightmare; right?

A. No, I don't recall saying that, actually. I just remembered him laughing.

And that was, like: What are you laughing about?

And he was like: We didn't do anything wrong.

That's all I can remember.

Q. Didn't he say, I'm laughing instead of crying?

A. What's that?

Q. Didn't Armani say, I'm laughing so as not to cry?

A. No. All I remember was him saying we didn't do anything wrong.

Q. But you were still selling completed doctors' orders on a per-brace basis to Armani until his bank accounts were frozen in April of 2019; right?

A. I told you I'm not a hundred percent sure after February. A lot of changes were implemented in February so I'm not exactly a hundred percent sure.

Q. But wires from Armani continued to come in from his individual DME businesses past February as they had been before; right?

A. Yes. It was just limited to I think four or five that

were consistently sending the same amounts weekly. And he hired that quality control team, I mentioned.

Q. We talked on Friday about the reason why they were consistently sending the same; it's because there was an expectation as to the volume of business that you and Armani would do; right?

A. Kind of. I mean, he was sending payments consistently and I just remember that he was saying that I or we owed him a lot of money at the same time but he was still sending payments so... I'm not sure. That's why at the end of it I think he said I owe him millions of dollars or something, but he was consistently sending payments.

But, yeah, February, March is really like -- I can't remember too much because I was so focused on Navtek.

Q. The consistent payments he was sending were for completed doctors' orders; correct?

A. They would have involved completed doctors' orders, for sure.

MS. LOU: Mr. Klimaski, you could please pull up Government Exhibit 5404 which is in evidence, page 31, please.

Q. Do you see this?

A. Yes.

Q. Is this a text message chain between you and Armani?

A. Yes.

Q. And you see there at the bottom, March 12th, 2019?

A. Yes.

MS. LOU: If we could turn to the next page of this exhibit, please.

Q. Do you understand this to be a continuation of the text messages we saw on the prior page?

A. Yes.

Q. The bottom message above March 12th, 2019, at 9:45 p.m.?

A. Yes.

Q. Do you see that?

A. Uh-huh.

Q. That's a message from you; right?

A. Yes.

Q. And it says: Got 2,000 elbows ready to go?

A. Yeah. I remember elbows and hip braces were two new braces implemented on the software, and they weren't getting caught in the system so that was, like, one of the glitches I was referring to because we weren't used to those braces.

Q. But, again, this is because you're selling doctors' orders for those braces to Armani; right?

A. I think he was supposed to get them. I don't know if -- I doubt you see a $2,000 transaction. I'd be surprised but -- yeah, I mean, we always used it as a metric I guess, no matter what, so...

Does that answer the question?

MS. LOU: Can we pull up Government Exhibit 6017i,

please, and scrolling to the statements in March of 2019. I'm sorry I don't have the page.

129. Thank you.

If we could zoom in on the March 18 through all of the incoming wire transfers, please.

Q. These are all wire transfers from Armani's individual DME companies; right?

A. Yes.

Q. It's for doctors' orders?

A. It would have been for doctors' orders and the services we're providing, as well, as the intermediary.

MS. LOU: You can take that down. Thank you.

Q. What happened in April 2019 not just to Armani, scared you; right?

A. Yes.

Q. And John Fusco couldn't reach you a few days after he received a subpoena?

A. I don't know when he received the subpoena. I don't know if I was aware he couldn't reach me but that's what he said.

Q. And Michael Underdue couldn't reach you as well; right?

A. I'm not sure if he was trying to reach out to me.

Q. You went to meet Fusco several days after he received a subpoena in front of his house; right?

A. Yes.

Q. Michael Underdue was also there?

A. I don't think he was originally there but, like, maybe like 5, 10 minutes into the meeting he pulled up in his car.

Q. And you were surprised that he showed up?

A. Not too surprised. I mean, all three of us were partners in the Deerfield office so not too surprising.

Q. During that meeting, you told Fusco to get a lawyer; right?

A. I don't know if I told him to get a lawyer or to, like, be prepared to get a lawyer if anything was to happen.

Q. You told him to use the money in the Elite account to pay the taxes on Elite.

A. Yes.

Q. And you told him not to rat you out.

A. I don't recall that.

Q. You were worried that you were next.

A. No.

Q. Did you keep tabs of who was arrested on the Department of Justice website as arrests were being made in this?

A. I would look every so often.

Q. You were arrested, but not until March of 2023; right?

A. Yes, four years later.

Q. And after that time, you were voluntarily interviewed by law enforcement agents?

A. Yes.

Q. And you recall that you were interviewed at the U.S.

Attorney's Office on May 9th, 2023; right?

A. Yes.

Q. And you had two lawyers with you?

A. Yes.

Q. One in person and one virtually?

A. They were actually both there in person.

Q. That's Daniel Rashbaum and Jeff Marcus?

A. Yes.

Q. Before the interview began, you were shown an agreement; right?

A. Yes.

Q. And that's an agreement called a proffer letter?

A. I believe so.

Q. And it's a contract with the Government that sets out the ground rules on the interview; right?

A. Yes.

Q. And the agreement states in paragraph 1 that no statements will be used against you in the Government's case in chief.

Is that your recollection?

THE COURT: Hold on for a second.

MS. SOLANO: I object to counsel reading from a document not in evidence.

THE COURT: Overruled.

THE WITNESS: What was the question?

MS. LOU: I'll withdraw the question.

Mr. Klimaski, can you please pull up what's been marked for identification as Government Exhibit 8051.

Q. Is this that proffer letter?

A. Yes.

MS. LOU: If we could turn to the last page, please.

Q. Did you sign this proffer letter?

A. Yes.

MS. LOU: Your Honor, I move to admit Government Exhibit 8051 into evidence.

MS. SOLANO: 401 and 403.

THE COURT: Sustained.

BY MS. LOU:

Q. Do you recall that the agreement said that any statements you made during the interview wouldn't be used against you in the Government's case in chief?

MS. SOLANO: Objection, assumes facts not in evidence.

THE COURT: Overruled.

THE WITNESS: I don't recall the specifics. I just know that the attorney told me to sign off on it.

BY MS. LOU:

Q. Would it help to refresh your recollection if I showed you the proffer letter?

A. Yeah, sure.

MS. LOU: If we could please pull up the agreement

again, please.

THE WITNESS: What number are you talking about?

MS. LOU: Paragraph 1. You can read that to yourself.

THE WITNESS: Yes.

BY MS. LOU:

Q. Does that refresh your recollection as to --

MS. LOU: You can take that down.

Q. -- as to whether, in the proffer letter, you agreed and the Government agreed that no statements made by you during the interview would be used against you in the Government's case in chief?

MS. SOLANO: Objection. 401, 403.

THE COURT: Overruled.

THE WITNESS: Yes. I think there's more to it.

BY MS. LOU:

Q. In fact, there's an exception, right, that the Government can use the statements against you during cross-examination?

Do you recall that in the letter?

A. Yes.

Q. And you reviewed that agreement with your attorneys before the interview started; right?

A. Briefly.

Q. And you've already said that you signed that agreement?

A. Yes.

Q. And that you understood what it said; correct?

A. Yes.

Q. And so you knew that the Government could cross-examine you with your statements if the case ever went to trial and you testified; right?

A. Yes.

Q. So, again, it was important to be accurate during that interview?

A. Yes, I think so.

Q. Because you might some day be confronted with those statements in court; right?

A. Yeah. I didn't think so at the time, but yes.

Q. That is the exact situation we're in today and Friday; right?

MS. SOLANO: Objection. 401, and this is a statement, not a question.

THE COURT: Sustained.

BY MS. LOU:

Q. You've been on cross-examination since Friday; is that accurate?

A. Yes.

Q. At the interview, you already said that you were voluntarily interviewed by federal law enforcement agents, but the federal prosecutor was also there; right?

A. Yes.

Q. I'd like to go over some of the things you said during

this interview, during this proffer.

MS. SOLANO: Objection.

THE COURT: Basis?

MS. SOLANO: Can we have a sidebar, Your Honor?

THE COURT: There wasn't a question put yet.

MS. SOLANO: I believe she said she's going to go through some of the statements. I have an objection to that under the terms of the proffer.

THE COURT: Okay. Sidebar.

(Sidebar conference held on the record in the presence of the Court and counsel.)

THE COURT: Objection?

MS. SOLANO: My objection is the scope of the proffer is that the Government can use statements to rebut the defendant, but there hasn't been any -- I have no idea what she's going to ask.

THE COURT: But I have made a ruling that the door has been opened. I imagine that Ms. Lou understands that that which she can elicit here is subject to the ruling I have made as to door-opening.

If she goes beyond it, then you'll have an objection and, indeed, I would trust and hope that Ms. Lou, if she's gonna go beyond my prior ruling, is gonna seek permission outside of the hearing of the jury first.

Do I have that right, Ms. Lou?

MS. LOU: Actually, Your Honor, I'm glad we're clarifying because I understood you were ruling as to the door-opening to be our ability to use the proffer during our case in chief.

Now that he has testified, I intend to impeach him with statements from the proffer that are outside Your Honor's ruling, but that directly contradict his testimony.

THE COURT: Can I see the proffer agreement?

MS. LOU: (Tendered document.)

THE COURT: Thanks.

(Brief pause.)

THE COURT: Okay. I appreciate that point, I see it. What's your issue there?

MS. SOLANO: So --

THE COURT: It says it very directly. This says any information provided by your client to cross-examine your client and to rebut any evidence. Cross-examine your client.

MS. SOLANO: My only concern is that I have no idea what she's going to ask.

THE COURT: But Ms. Lou has just made a pretty good point, which I hadn't been focused on -- my fault -- that there's two separate things in paragraph 4 of the May 9, 2023, proffer agreement.

The second part, which has been the focus until now, which has been to rebut any evidence or arguments, that's been

the focus of door-opening. But the prior piece is about using his statements to cross-examine him.

What could be objectionable?

MS. SOLANO: Your Honor, I'm sorry. I'm trying to look.

THE COURT: These are just separate prongs.

MS. SOLANO: Yes, Your Honor.

THE COURT: So I can't imagine there's an objection.

MS. SOLANO: No, Your Honor. I just -- she's going to say that she's using the --

I'm sorry, thank you.

If she's going to say she's using it to impeach, then I think that the proper process needs to go through with impeachment instead of her just saying: You said all of these statements.

THE COURT: We can take every question as it comes, but -- we'll just take the questions as they come, but I appreciate why and that you have, Ms. Solano, your objection to this line, anything here being violative of the proffer agreement. It's not. It's just being used to cross-examine him.

MS. SOLANO: Yes, Your Honor.

THE COURT: We'll take objections as they come.

MS. SOLANO: Thank you, Your Honor.

THE COURT: All right.

(Sidebar discussion is concluded.)

BY MS. LOU:

Q. A few minutes ago we were talking about your conversation with Adams in April of 2019.

Do you recall that?

A. Yes.

Q. Then I asked you whether you told him it was your worst nightmare.

A. Yes.

Q. Correct me if I'm wrong, but you said that you don't recall saying that?

A. All I remember from that conversation was him telling me that the accounts were frozen and he was laughing.

And I asked him: What are you laughing about?

And he said: We didn't do anything wrong.

Q. But after that time, after that conversation in April of 2019, everything ended; correct?

A. Yeah. I mean, in theory, we could have continued, but I was, I guess just shooken up because everything was tailored for him, and it would be difficult. I think the company did continue for like a month because we built such a strong team. We were trying to figure out how to move forward.

Q. But during our proffer, didn't you say that everything ended when you received the phone call from Adams in April of 2019?

A. Everything ended, yeah, in the DME space, yes. I mean, eventually nothing worked out and we dissolved it.

Q. And you had only perfected the software right before that April 2019 time frame; right?

A. I said perfected, but I don't know if that's the right word because we had more plans with it; but as far as getting the bugs out so those glitches would stop.

Q. Underdue was not involved in the DME fraud; right?

A. Underdue? I mean, he wanted to be part of Parra, but like I said, we stopped billing, so there was not really much to be a part of.

Q. And you only used his name on the account and the business?

A. He wanted to be a partner, and I think that he actually ended up taking the entity on his own, and I saw that he opened up another bank account without me.

Q. But in your proffer, you said that he didn't become a part of Parra Health; right?

A. That's because there was nothing to become a part of.

Q. And that you only used his name. That's what you said during your proffer; right?

A. I'm pretty sure that in my proffer I said that he wanted a piece and he wanted Parra to be billing and he was kind of disappointed. I don't think that part is in there, but he wanted a piece of DME.

Q. You didn't say that during your proffer; right?

A. I did say that. There's some inconsistencies between the 302 you guys wrote up and the written notes. Maybe it's worth looking at the written notes.

Q. But the report of the proffer doesn't say that; right?

MS. SOLANO: Objection.

THE COURT: Overruled.

THE WITNESS: There's actually a lot of inaccuracies between the written notes and the typed report so...

You just stated how important it was for me to be accurate in that interview. I could argue the same, that it would be really important to be accurate from the written notes to the written report.

MS. LOU: Your Honor, move to strike the witness's commentary about the accuracy.

THE COURT: The motion is granted.

Mr. Naviwala, when a question is put to you, answer the question that was put to you. Okay?

THE WITNESS: Okay.

THE COURT: Continue.

BY MS. LOU:

Q. You knew that receiving kickbacks for doctors' orders on a per-brace basis was illegal; right?

A. At a certain point, definitely not in the beginning.

Q. But you continued to, even after knowing that point,

receive kickbacks for doctors' orders while knowing it was illegal; right?

A. Yes, while I was building the software, between when I went to Armani and told him I wanted out and before the software was live.

Q. But while you were building the software, you continued to receive kickbacks for doctors' orders on a per-brace basis?

A. Yes.

Q. And you worked with the Alberinos; correct?

A. Yes.

Q. And their company was Atlantic Power & Gas?

A. That was one of them.

Q. And that was shortened to APGE on some documents.

Do you recall that?

A. Yes.

Q. And you had a straight kickback arrangement with them; right?

A. Yes. But I would also -- the way Armani made it seem legit was if you change the prices every quarter, so I would do that with him too.

Q. Even when you changed the prices, that was still a kickback arrangement; right?

MS. SOLANO: Objection.

THE COURT: Basis?

MS. SOLANO: Calls for speculation.

THE COURT: Overruled.

THE WITNESS: What was that? Sorry.

BY MS. LOU:

Q. Even when Armani would change the prices quoting, that was still a kickback arrangement; right?

A. Yes, I learned later. Like I said, eventually he was put on flat fee.

Q. While you were at Elite, I believe you testified on Friday that you were acting as a broker during that time; right?

A. Yes.

Q. While you were acting as a broker at Elite, you were still profiting from the difference between what Armani paid you and then what you were paying to the Alberinos; right?

A. Yes.

Q. Going back to your time at Prudent, you were surprised that all the leads that Prudent submitted to RediDoc went through; right?

A. I don't know if it was actually all the leads, but my experience with them compared to the previous two telemedicines that we were using, it was a much better conversion rate.

Q. You said that that was crazy; right?

A. I mean, just based off of my limited experience before. I was only in the industry for a few months and only dealt

with two other telemedicines and they weren't converting or turning around as quick as RediDoc would.

Q. But just based on your experience at the time, it appeared to you that RediDoc was both turning them around quickly and you were getting a very high percentage of completed signed doctors' orders; correct?

A. In comparison to the other two telemedicines, yes.

Q. Mr. Naviwala, you've been charged with crimes. That's why you're here; correct?

A. Yes.

Q. Being charged criminally is very serious?

A. Yes.

Q. You're testifying here in your defense; right?

A. Yes.

Q. And you're claiming your innocence; is that accurate?

MS. SOLANO: Objection.

THE COURT: Basis.

MS. SOLANO: It's assuming facts not in evidence.

THE COURT: Sustained.

BY MS. LOU:

Q. You're testifying here in the hopes of not being found guilty; is that accurate?

A. Yes.

Q. And so you would say anything to try to prove that you are not guilty?

A. No. You have my proffer.
Q. You've been present throughout this trial; right?
A. Yes.
Q. And you've been paying close attention?
A. Been trying to. It's been quite exhausting.
Q. And you heard Haas testify that she committed conspiracy to commit health care fraud; right?
A. Yes.
Q. And you heard Ken Pitter testify that he committed crimes with you; right?

MS. SOLANO: Objection.

THE COURT: Basis.

MS. SOLANO: 401 and 403 and to...

THE COURT: Overruled.

THE WITNESS: What was the question again?

BY MS. LOU:

Q. You heard Ken Pitter testify that he committed crimes with you; right?
A. Yes.
Q. And you heard Armani Adams testify that he committed crimes with you; right?
A. Yes. I can't remember how much knowledge they said I had of everything at the time but, yes, that's what they're saying so they could get reduced sentences.
Q. Same thing you heard Kareem Memon testify that he

committed crimes with you; right?

A. Yes.

Q. And you heard Nadia Levit testify that she committed crimes with you; right?

A. Yes.

Q. And you heard David Laughlin testify that he committed crimes with you; right?

A. Yes.

Q. You heard some of those individuals I just named testify about conversations they said they had with you; right?

MS. SOLANO: Objection. 401 and 403.

THE COURT: Overruled.

THE WITNESS: Yes. They were all, already been indicted and have much bigger roles in all of this.

MS. LOU: Your Honor, move to strike as not responsive.

THE COURT: Overruled. Motion denied.

Continue, please.

BY MS. LOU:

Q. You heard some of them testify about text messages, e-mails they exchanged with you; right?

A. Yes.

Q. You saw some of those texts and e-mails up on the screen; right?

A. Yes.

Q. And admitted into evidence?

A. Yes.

Q. You heard each of these people testify that as part of their cooperation agreements with the Government they were required to tell the truth; correct?

MS. SOLANO: Objection. 401, 403, and counsel is just making statements.

THE COURT: Sustained.

BY MS. LOU:

Q. Is it your testimony that all of these individuals lied when they said they committed crimes with you?

MS. SOLANO: Objection.

THE COURT: Overruled.

THE WITNESS: What was the question?

BY MS. LOU:

Q. Is it your testimony that all of these people lied when they said they were committing crimes with you?

A. I think I have a different answer for each of them, but did all of them lie?

I mean, am I supposed to go through each one and tell you what my perspective is on each?

Q. I'm just asking a yes-or-no question.

MS. SOLANO: Objection.

THE COURT: Overruled.

THE WITNESS: Yeah, sure. Ken lied about ever talking to me about compliance or telling me anything was wrong.

Kareem was the worst of this whole thing. He is just lying, like -- I was shocked. I was thrown back by some of that stuff.

MS. LOU: I'm sorry. Again, I just answered [*sic*] a yes-or-no question.

THE COURT: No, no. There's no cutting off the witness while he's speaking.

MS. LOU: I apologize, Your Honor.

THE COURT: Continue.

THE WITNESS: I'm trying to think of Armani because he was the biggest one that I did business with. I can't recall exactly. I can't pinpoint it.

But, yeah, I could say that everybody had their own motive and I know what I was going up against and you guys -- this has been going on for two years and I gave you my proffer statement and you produced 10 million documents against me and I'm still here.

MS. LOU: Your Honor, no further questions.

THE COURT: Okay.

Redirect, if any.

REDIRECT EXAMINATION

By Ms. Solano:

Q. Good morning, Raheel.

A. Good morning, Jamie.

Q. Just to be clear, Raheel, you and I have not spoken about

your testimony since you were in front of this jury last week; right?

A. Yes. That's correct.

THE COURT: Is there an objection?

MS. LOU: No, Your Honor. I'm sorry. I was reaching.

THE COURT: Continue.

BY MS. SOLANO:

Q. I believe the last question you said you didn't remember about Armani.

Did you and Armani work on the Navtek software together?

A. Yes.

Q. And how extensively?

A. Well, I mean, it was tailored to him so as much as we needed to talk to him to get all his input and guidance. I mean, he wasn't working day to day building it, but whenever we needed more input, he would always give it to us.

Q. How often did that happen?

A. Maybe every week almost.

Q. And at the time that you were arrested, you were charged with an Anti-Kickback Statute charge; is that your understanding?

A. Yes.

Q. That was the same when you proffered with all of the people from the U.S. Government?

A. Yes.

Q. And, Raheel, I think you mentioned you received a lot of discovery through the course of this case; is that right?

A. Tons, tons. I don't even know how much. It's like terabytes.

Q. Did you come to learn things through reviewing that discovery that you didn't know in the time period of 2017 to 2019?

A. Yes, of course.

Q. Ms. Lou asked you -- there were questions about you not speaking to Mr. Fusco and a subpoena.

Do you remember those questions?

A. Yes.

Q. A subpoena asks you to do something; is that right?

A. Yes.

Q. You have to respond to the subpoena?

A. Yes.

MS. LOU: Objection.

THE COURT: Basis.

MS. LOU: Assumes facts not in evidence.

THE COURT: Overruled.

BY MS. SOLANO:

Q. And so at the time when you're having this conversation with Mr. Fusco, you knew he was going to have to do something in response to that subpoena; is that fair?

A. Yes.

Q. Raheel, you were asked about RediDoc.

At the time you were working with RediDoc, did you think the doctors were actually contacting patients?

A. Yes.

Q. You were asked last week about some of the software and processes that you put in place over time.

A. Yes.

Q. Elite also had software and processes in place; right?

A. Yes. Almost all of them -- almost all of the same.

Q. Just so everyone is clear, Elite had software and then Navtek was software?

A. Yes, because Elite was -- we were trying to do a management company at first and then realized it wasn't really gonna be feasible, but we already implemented all these processes; so after talking to Armani's attorney, we figured starting the entity from scratch that was just software was the best way to go.

Q. Raheel, last week you were shown an org chart.

Do you remember that?

A. Yes.

Q. Do you recall reviewing that org chart before it was submitted to Medicare?

A. No, I don't recall -- I don't remember any of those documents, really. It was just, like, telling me to sign.

Q. Did you have any firsthand knowledge of if that document was even sent to Medicare?

A. No. I don't know if it was even -- if they even required that to be sent. I don't know if it was for that or Pam created it for some other reason. I don't know.

Q. Raheel, is there anything else you want to tell the jury?

A. Yes. I truly did everything I could to be compliant. Being up here, I admitted that I was violating an Anti-Kickback Statute for some time and I was trying my best to be compliant.

I even wanted to get out of the industry and Armani encouraged me to do the software. I wasn't even thinking about profits once we got to Navtek. I was trying to spoil my team because -- to try to work hard. I was really embracing Navtek.

It was all about processes and really -- I really thought what we were doing was good. I mean, we were really trying to ensure that patients wanted these things and they were high quality.

Like, all the criteria. If you just saw all the rules we put in place, like we were really -- the chargebacks we earned, an analysis said that it went from 40 percent to 4 percent, and we blocked over $50 million of prescriptions to go through the DME.

So I never understood that any of this could be fraud

and that's why I'm up here, fighting for my life.

MS. SOLANO: No further questions.

THE COURT: Okay. Further cross-examination, if any?

MS. LOU: Just very briefly, Your Honor.

RECROSS-EXAMINATION

By Ms. Lou:

Q. I want to clarify one thing.

While you were developing the software, you continued to sell doctors' orders on a per-brace basis; right?

A. I know we switched to flat fee with Nick, and I can't remember really February, March. It's -- it's in my proffer, too.

Q. But on Friday, you testified that you started developing the software as early as April of 2018; right?

A. The initial phase of trying to get analytics down and processes down.

Q. And the software developing ramped up more fulsomely in the fall of 2018; right?

A. Yes, after I met with Armani.

Q. And during that time -- in the spring of 2018, summer of 2018, fall of 2019 -- you continued in the DME business and continued -- excuse me -- withdrawn.

You continued in the DME business during that time; right?

A. Yes, but I didn't just always know what was wrong. I was

learning more and more, and I was relying on guidance from maybe the wrong people.

Q. Wasn't it your testimony on Friday that, as of April 2018, you knew that what you were doing was illegal?

A. As of April 2018, I knew that the structure with Prudent was not right, was, yeah, illegal. That's why we switched. Instead of doing marketing ourselves and having a DME and billing Medicare ourselves, we transitioned to being a broker so we weren't a marketer and we weren't a DME either.

Q. But wasn't one of the things that you understood to be illegal was selling doctors' orders in exchange for money that was paid on a per-brace basis?

A. Not exactly at that point. I think we were -- that's what we were trying to strive for and that's why I hired all these expensive consultants and analytics teams to try to get that down and people committed, and eventually I realized that it wasn't even feasible.

Q. In that time that you were trying to do it, you still continued to run the business in the way that you had been; right? Selling doctors' orders on a per-brace basis.

MS. SOLANO: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: Well, the marketers would front us the leads, so I wasn't really buying them and the DMEs were fronting us the cash, though. They weren't really just buying

them either.

But, yeah, I mean, I admit that it was wrong. I mean, I'm seeing it now, especially with the AKS, but I never knew that this could have anything to do with fraud. I never, never had that understanding, ever.

MS. LOU: No further questions, Your Honor.

THE COURT: Okay. Any redirect?

MS. SOLANO: No, Your Honor.

THE COURT: Mr. Naviwala, you're excused. You can go back to your spot.

(The witness is excused.)

THE COURT: Ms. Solano?

MS. SOLANO: Thank you, Your Honor. I just need to read out a revised stipulation quickly.

THE COURT: Do you want to do it from there so it's more easily heard?

MS. SOLANO: Thank you, Your Honor.

With Your Honor's permission, I'll just read the revised portion and note for the record that the revised stipulation one will be what we're offering to the --

THE COURT: I think that works.

MS. SOLANO: Paragraph 3, Stipulation 1.

(Reading:)

If called to testify, an FBI special agent would testify to having interviewed Frank Pringle

over the phone on January 2nd, 2024.

THE COURT: Okay. Thank you.

MS. SOLANO: The defense rests.

THE COURT: Is there anything further from the United States?

MS. LOU: No, Your Honor.

THE COURT: So the United States rests?

MS. LOU: Yes, Your Honor.

THE COURT: We'll talk at sidebar in a minute.

Let me just tell you where we are in the process.

There are four things left to do in terms of what I set out for you in the beginning. The last of them is your verdict, and just before that is your deliberations, and just before that is arguments from the United States in its main summation, and then from the defendant in his main summation.

And then, you'll remember, that the United States gets an extra rebuttal summation because it has the burden of proof. Then before that are my legal instructions to you.

Now, if you look around at the legal tables, you'll notice that from each side there's a missing lawyer. The reason there's a missing lawyer is I have been working with the lawyers this morning, and at other times we have been here, to put together the legal instructions. And they're being finally stitched together, just kind of in terms of the final changes that I've made to them so that they're all put

together.

The legal instructions are a little strange. They're not going to be me talking to you. They're gonna be me reading to you.

The reason I'm gonna be reading them to you is that they're the same from courthouse to courthouse, from judge to judge. The law is bigger than this room. It's bigger than me. It's standard. It's the same law that applies in every similar case.

So they're gonna finish putting together those -- they're really just collating at this point. They're gonna finish putting it together. When they're back, while you're on a break, what I'll do is I'll have it here and when you come back, I'll read it to you.

Before we get to that, there's one limiting instruction that I'm also going to read to you that I want to give you, and then I just have that in front of me so I'll read it to you right now. Okay?

Here is the limiting instruction:

You have heard testimony from certain witnesses during this trial about their understanding of the various rules and requirements of Medicare. That testimony, other than from Stephen Quindoza, who is a witness from toward the beginning of the trial, was introduced for a limited purpose.

The limited purpose was explaining those witnesses'

understanding of the rules and requirements, not to prove the truth of what those rules and requirements were. You're not permitted to infer anything about the content of Medicare rules and regulations from what those witnesses said.

As you know, the Medicare rules and regulations in place in one year may have been different from the ones that were in place in another year.

Stephen Quindoza, who I mentioned a moment ago, he's different. He testified directly about various statutes and regulations related to Medicare.

Among those was 42 CFR -- that means Code of Federal Regulations -- Section 410.38, which is called "Durable Medical Equipment, Scope and Conditions," and that's the regulation that sets out the circumstances under which Medicare Part B, which Mr. Quindoza testified about as well, pays for durable medical equipment, which we all know from this trial is known as DME.

This regulation was admitted into evidence and it was admitted as Defense Exhibit 9068.

I instruct you that 42 CFR Section 410.38 -- that's the code of federal regulation we've been talking about -- was the Medicare regulation applicable to the reimbursement of durable medical equipment from 2017 through to 2019.

During his direct examination, Mr. Quindoza testified, at one point that, under that regulation, a doctor cannot make

a determination of medical necessity for DME in the absence of an in-person visit or a valid telehealth visit. That testimony was inaccurate as applied to the DME that's at issue in this case.

Under 42 CFR 410.38, the regulations we have just now mentioned a couple times, the requirement that a doctor have an in-person visit or a valid telehealth visit before prescribing applied to only certain types of DME and did not apply to the particular braces at issue in this case.

I instruct you to disregard entirely and completely any suggestion from Mr. Quindoza that, as to the braces at issue here, a medical necessity determination could be made only based on an in-person visit with a treating physician or a valid telehealth visit with a treating physician. Put that out of your mind in your deliberations. Don't rely on it.

So that's one little instruction. All of my instructions are equally important.

What we're gonna do now is we're gonna take a short break. The break is gonna be long enough for me to get the collated papers back, just to look through them a final time myself and make sure they reflect the law that I have set down and I've asked the parties to collate, as I said, for me.

And then when that's done, what's gonna happen is we're gonna ask you to come back, I'll communicate with you through my courtroom deputy as always, and I will read you those

instructions. They can take a long time.

As I said at the outset, it's not a memory game. When you go back to deliberate, I'm going to send back with you a few copies of the instructions so you can have them. Some people process things a little better from hearing, some through looking, so I'm going to read them, but you'll also have copies in there.

At the close of those instructions, as I mentioned, we will hear the arguments from the lawyers; and at the close of that, you will get the case; and after that, we'll get your verdict.

So let's all please rise for the jury as they take their recess.

(Jury leaves the courtroom at 12:12 p.m.)

(Whereupon, the following proceedings were held outside the presence of the jury:)

THE COURT: The jurors have left, the door is closed. Let's all be seated.

Ms. Solano, you have an application?

MS. SOLANO: Yes, Your Honor. We would reiterate our Rule 29 motion with respect to all counts. I believe that there's insufficient evidence beyond a reasonable doubt.

There is no evidence that there was one large conspiracy. Instead, there was evidence of multiple conspiracies with no interdependence amongst the different

business owners and across the different business units.

There was also insufficiency of evidence with intent to defraud, and insufficient evidence of not medically necessary, insufficient evidence regarding an intent to defraud, and we believe there was insufficient evidence to support venue for the substantive charges; and in addition, Your Honor, we would say that venue over the AKS counts, there's a constitutional venue deficiency.

THE COURT: Okay.

For the United States, your preference is as before, for me to reserve on this decision pending the jury's verdict?

MR. SPECHT: Yes, Your Honor.

THE COURT: Ms. Solano, I assume there's no objection to my doing that?

MS. SOLANO: No objection.

THE COURT: I will reserve decision.

Ms. Lou, anything else?

MS. LOU: I wanted to give you an update, Your Honor, on the status of the jury instructions. They have been finalized. I understand two copies have successfully made its way out of the printer. We're just waiting on a third.

THE COURT: My courtroom deputy will grab them when they're here and I'll take a look at them for a few minutes.

If you all please could take a look at them. I understand there's a frantic process at the end of pulling

them together, but it's worth spending an extra five minutes for both parties to read them through and make sure that the work that the two lawyers have done together, one from each side outside of the room working together on this, so it seems obvious that what I'm going to get is fine, but it's worth spending those extra five minutes, and then I'll come out and we'll read them.

Anything else?

MS. LOU: No, Your Honor.

THE COURT: Ms. Solano, for yourself?

MS. SOLANO: No, Your Honor.

THE COURT: We'll see each other soon. Thank you.

THE DEPUTY CLERK: All rise.

(Recess taken.)

(Whereupon, the following proceedings were held outside the presence of the jury:)

THE DEPUTY CLERK: All rise.

THE COURT: Let's have a seat, please. I understand there's an issue with what's been passed to me.

What's the issue?

MR. WEBMAN: So we previewed this with you this morning, Your Honor. We didn't fully carry it out when we went back together, which is that in between the version that I sent to Your Honor that we reviewed together on Friday and this morning there were other changes that had been agreed to,

but when Ms. Brown submitted her proposed instruction, that version was based on the version I submitted to Your Honor on Friday, so it was missing some of the changes that were already agreed to.

Then when we were organizing everything, we lost sight of that. We are right now working to find what those things are.

THE COURT: Okay. Sounds good. First, do it as quickly as humanly can.

Second of all, I need to see those changes. So however you're doing it, it has to be in a way that I can look at them and -- look at them.

MR. WEBMAN: Your Honor, I'm doing it right now in track changes here. I'll print you that version. Once Your Honor has signed off on everything, I'll clean it up.

THE COURT: How long is that going to take?

MS. SOLANO: Just so I understand, you're taking the document that you guys filed with the Court last night. Right?

THE COURT: I understand what's being said. Let me restate it.

MS. SOLANO: Okay.

THE COURT: On Friday, a document was filed that was the subject of a very long conversation. Then over the weekend apparently the parties came to further tweaks on that.

And to compare a document that was provided last night by the defense and was the subject of today's discussion compared last night's, that is to say February 23rd's, jury instructions as filed by the defendant to the February 21st jury instructions as filed by the United States.

Because of that, there are some agreed-upon changes over the weekend that it was both parties' intention to reflect in the final jury instructions but did not make it through.

What Mr. Webman has indicated is that the parties are now acting quickly to get that in front of me so I can pass off on the incremental changes.

Do I have that right, Mr. Webman?

MR. WEBMAN: Absolutely, Your Honor.

THE COURT: Ms. Solano, good?

MS. SOLANO: Yes, Your Honor.

THE COURT: I will come back as soon as you are ready for me to look at any track changes.

How long do we think that will be?

MR. WEBMAN: I'm afraid to promise something without --

THE COURT: And yet, and yet, and yet, what's our best guess?

MR. WEBMAN: I would love for it to be a half hour, Your Honor.

THE COURT: Half hour is a lot of time.

MR. WEBMAN: We're hustling.

THE COURT: How big are these changes?

MR. WEBMAN: I want to be sure we're not doing many iterations of this. I want to be very careful with it.

THE COURT: Me too. We have a lot of human beings who are waiting.

MR. WEBMAN: I understand, Your Honor.

THE COURT: Half hour is a little too much time for a task this straightforward. Between Friday and Sunday night I can't imagine these are so many changes, so let's be as fast as we really can.

MR. WEBMAN: Absolutely.

THE COURT: I will come back to look at a track changes document the second you all have it. Thank you all.

(The following proceedings were held in open court outside the presence of the jury:)

THE COURT: Have a seat, everyone. Have a seat. We're back on the record.

I have just come out. The assistant United States attorneys are largely present, the defendant is present, his attorneys are all present.

So I have just been passed a hard copy document.

Is that the document that reflects all of the parties agreed-upon changes, Mr. Webman?

MR. WEBMAN: From the Government's perspective, yes.

THE COURT: Okay.

MS. SOLANO: Yes.

THE COURT: I'm just gonna look through it for a minute.

(Brief pause.)

THE COURT: What is at page 34? It looks like a brand new request or is that just an artifact of that?

(Off-the-record discussion.)

THE COURT: Page 34, request 22.

MR. WEBMAN: Your Honor, that was just -- the parties agreed that it made sense to move up the single multiple conspiracies --

THE COURT: It's just moved to a different spot.

MR. WEBMAN: Yes.

THE COURT: Okay. Thanks.

(Brief pause.)

THE COURT: We can get the jury. We're ready to roll.

Mr. Webman, I'm gonna direct you, please, to file today the document that's been passed up to me that we have been discussing here in the last three minutes so that there is a record of what we have been talking about.

MR. WEBMAN: Absolutely, Your Honor.

THE COURT: And then after that, to file a separate document with a one-sentence cover letter that explains what it is that accepts these changes and changes the word

"request" to the word "instruction" throughout.

MR. WEBMAN: Two other questions, Your Honor. For that final, one is, I know it's the defendant's preference and I think the Government agrees to taking out the legal references.

THE COURT: Sorry, of course. A hundred percent of course. My apologies. I should have said that.

MR. WEBMAN: So with the version that's clean that changes request to instruct -- instruction.

One other thing, I noticed a typographical error as I was reading through just now. The places where it says "renumeration" it should say "remuneration."

THE COURT: I think that's it. In the removal -- folks, let's take this down. I'm doing the jury instruction. Thank you.

When we have -- you're removing the below the header legal points, also remove the word "Pinkerton liability" from the heading. It's also a legal concept that has no place in it.

MS. SOLANO: I don't have any applications. I just want to make sure that the record is clear. The entirety of the requested relief in my motion in limine, you have elected to deny.

THE COURT: Which motion in limine?

MS. SOLANO: The application regarding the arguments

involving any of the --

THE COURT: I think the record is what it is. I mean, are you saying there are any open motions, in your judgment?

MS. SOLANO: I don't. I'm just trying to make clear that there's not some open motion carried through this. It's my understanding that it was resolved by Your Honor's ruling this morning.

THE COURT: You think there's a motion you've made that I haven't spoken to and ruled on?

MS. SOLANO: No, Your Honor. That's all I'm trying to make clear.

THE COURT: How would you characterize the motion in limine you're just mentioning now?

MS. SOLANO: It was a motion in limine to preclude the Government from proceeding forward with the theory of medical necessity and/or any reliance on standards or regulations involving Medicare.

THE COURT: The motion in limine was denied -- was addressed and has been ruled upon. Calling it denied or not, the motion in limine was addressed and ruled upon, and it was addressed in part because the United States made certain strong representations about what would not come up in the closing and there was curative instructions.

And so the motion was, after all of those things, there was very little, if anything, even left of the motion.

The first part of your sentence -- whatever is left of that motion is denied, but the first part of your sentence suggested that you moved in limine to prevent the United States from arguing -- you moved in limine to prevent the United States arguing from lack of medical necessity. I don't think you argued that.

MS. SOLANO: I stand by whatever are in the papers, Your Honor. I just wanted to clarify. My understanding is consistent with everything you're saying, Your Honor.

THE COURT: All right. So I think we can move on.

The motion as to arguing from violations of rules and regs has been addressed in part by the United States' representations, in part by the limiting instructions that have been given.

If there's anything left of those, I denied it based in part as I described, on a close reading of the jury record including other evidence and also of the opening. I don't think this case was argued in a certain way. It came in a certain way as to Mr. Quindoza but not in a way that was otherwise meaningful let alone -- that was otherwise meaningful.

I didn't hear a motion that was separate from that as to preventing the United States from arguing that there is a lack of medical necessity here, but I would have denied that of course.

Anything else?

MS. SOLANO: The defendant is requesting that the words of the limiting instruction that you gave the jury on the regs, that that be printed and included with the rest of the instructions. It's my understanding the Government has no objection.

THE COURT: That makes sense to me. We should do that.

MS. SOLANO: Thank you, Your Honor.

THE COURT: Anything else?

MS. SOLANO: No.

THE COURT: We should get the jury.

THE DEPUTY CLERK: All rise.

(Jury enters the courtroom at 1:46 p.m.)

(Whereupon, the following proceedings were held in the presence of the jury:)

THE COURT: Let's all please have a seat. Members of the jury are back. That took a little longer than we expected. I'm sorry that it did but it sometimes happens.

As I told you, I'm going to be reading the jury instructions and explained to you before why. I just want to say it again.

Part of the integrity of our system is that the law is bigger than any courtroom, any judge, any courthouse, and so there are standardized parts of the law. We want to make sure we're giving you the standard instructions that juries hear

when cases that raise these particular issues, that charge these particular counts come up.

I don't drink during the day, I don't mean drink -- I don't drink coffee or water when we're sitting together because I want to be sympathetic to all of you because you are sitting there, but I have water this time. I have water because this is a whole lot of reading and it's a whole lot of listening as well, but I hope you'll forgive me in advance when I take a sip of water.

Again, just to remind you, not a memory trick. When you go back to deliberate, you'll have multiple copies.

So here is where we are:

You have seen and heard all of the evidence, and you're soon gonna hear the arguments from the lawyers, and I'm gonna tell you about the instructions on the law.

You have two duties as a jury. The first is to decide the facts from the evidence that you have heard and that you've seen in court during this trial. That is your job, it is entirely your job alone. I don't play any part in finding the facts.

And as part of that, it's important for you to understand that you shouldn't take anything that I've said or done during the trial as indicating, as suggesting anything about what the -- what I think the evidence is, what I think the facts should be drawn from the evidence is, or what your

verdict should be. That's not my role and you shouldn't take anything at all from how you've seen me.

The second duty you have is to apply the law that I give you to the facts and what I'm gonna do now is I'm gonna explain that law to you that's gonna guide your decision.

You have to apply the instructions that I'm going to give you carefully and entirely faithfully. Each of these instructions is important, and you have to apply all of them. You cannot substitute -- as we talked about from the beginning, you can't substitute or follow your own ideas or notions or opinions about what the law is or ought to be. You have to apply the law as I give it to you, whether you agree with a piece of it or all of it or not.

Whatever your verdict is, it's going to have to be unanimous. All of you are going to have to agree on it or there's just going to be no verdict.

In the jury room, the jurors are going to discuss the case amongst themselves, but ultimately each juror has to make up his or her own mind. That's a responsibility that every juror has and it's a responsibility nobody can avoid.

During your deliberations, you can't communicate with or provide any information to anyone about anything about the case, and you can't use, during your deliberations, any electronic device like a phone or the Internet or anything like that.

You can't communicate to anyone about this case. You can't talk to anyone about this case. You can't, of course, do research about the case until you're done with your deliberations, you've come back in with your verdict, and I have accepted it.

In other words, the same rules we have talked about from the beginning continue to apply. You just can't talk to anyone at all about the case except, once you're in the jury room, you can talk to each other. You can't talk to anyone else and you can't communicate about that case with anyone outside. You can only discuss the case with other jurors and in the jury room so that you're all doing it together.

As I said, you can't do any investigation. You've known that from the very beginning of the case and you know the reasons for this: it's because you all have seen the same evidence, you all have seen the same witnesses, and you've all -- shortly will have heard all the same legal instructions and lawyers' arguments, and no one else but you-all will have done all those things.

You have to perform your duties fairly and impartially. That means not allowing sympathy or prejudice or fear or what you perceive public opinion might be to influence you, and you of course cannot be and will not be influenced by a person's race or gender or color or religion or national ancestry or ethnicity or anything like that; not occupation, not position

in life, none of it. You can't do it and you won't do it.

Okay. You have to make your decision here based on only the evidence that you saw and heard. Suspicions, rumors, guts, anything else that you have seen or heard outside of the courtroom, don't let it influence your decision here.

Here is the evidence and I think you all know this very well, but I want to say it. The evidence here is the testimony of the witnesses from that box when they were sworn; things that I have admitted as exhibits, virtually all of that here is documents, but there are some other things, as well, like the paper bag, the Kohl's bag that had some things. And then any facts or testimony that was stipulated, there was a little bit of that at the end of the case, you'll recall.

What's not evidence? Everything else. The indictment, which you'll see, is not evidence; the arguments from the lawyers is not evidence; their questions are not evidence; the statements that sometimes are built into questions are not evidence.

Questions that I might have asked wouldn't be evidence, but I don't know if I asked any questions here. Maybe I did once or twice, but that's not evidence, either.

Objections from the lawyers are not evidence. Any testimony that I told you to -- that I granted a motion to strike on, that I told you to disregard, none of that is evidence, either. And anything you've seen or heard outside

of the courtroom is not evidence.

If you look at the transcript, if there's something I have struck, you'll see a gap in what you get, and that's just because you're looking at the evidence and not things that are not evidence.

In weighing the evidence, you're gonna use your common sense. You're gonna consider the evidence in light of your everyday experience with people, with events, with anything that -- with people and events, and you're gonna give it the weight that you think it deserves.

If your experience, if your common sense, if your intent to focus here tells you that certain evidence reasonably leads to a certain conclusion, you can reach that conclusion.

As I told you way back when, it's the Rules of Evidence that control what can be admitted into evidence and, during a trial, you saw lawyers objecting and me speaking about moments when they thought the evidence was offered was not allowed and I made a ruling on that.

As you know, those objections are just the lawyers asking me to decide what evidence should come in, and those objections and my responses to them are, of course, not evidence.

Don't be influenced by the fact that an objection was made and don't be influenced by my rulings. There's a few

times inevitably when I said some things to explain why I was giving a ruling. That is completely 100 percent not evidence, not to be considered. That's just me, in a shorthand way, for transparency for the lawyers and also so that they can plan how they will want to go, saying something to them, it's not evidence, don't consider it, whatsoever.

When I have overruled an objection and something was admitted, a piece of evidence was admitted like an exhibit, you treat it like any other piece of evidence, whether it was objected to on the way in or not.

And when I allowed something in for a limited purpose -- there have been a couple times -- you have to consider the evidence only for that limited purpose that I told you was the relevant one.

Flip side of all this is when I sustained an objection and a question was answered or an exhibit was not received into evidence, don't think about or guess what would the witness have said about that. Don't think about or guess what was that exhibit. Don't do that.

What's evidence is what the witnesses say, the exhibits that were actually admitted, and the stipulations, but put out of your mind any guesses based on objected-to questions or objected-to pieces of evidence.

A couple of times what happened here is a witness answered before a lawyer objected or before I ruled on the

objection. That happened a couple times. And I sustained the objection. And when that happened, you have to disregard the answer that was given in your mind. That happened only a couple times here.

There was a few times, as I mentioned a moment ago, when I granted a motion to strike something, that means to take something out of the record, and you have to put that out of your mind in thinking about the case. You just have to disregard it entirely.

Sometimes the lawyers have said, and they are about to also in their summations, point you to evidence that they think is especially important that they want you to focus on, but what the lawyers say about the evidence is not the evidence.

The evidence is the evidence itself. It's your recollection of the evidence that controls. It's your interpretation of the evidence that controls your decision in this case. And I just want to remind you that, please don't take anything I've said in the course of our proceedings here as any indication, any indication of what I think you should do, what your verdict should be, what facts you should find. You should completely and entirely disregard anything you perceived along those lines.

I just want to remind you a little bit about something we talked about way back when, because it's sometimes a source

of confusion. It's about direct versus circumstantial evidence. And I just want to say you can use both direct and circumstantial evidence in reaching your verdict.

Direct evidence is just evidence which, if believed, directly proves a fact. An example of direct evidence, it's straightforward. A witness says that he or she saw something from their own eyes, they heard something from their own ears, they perceived something from their own senses.

Direct evidence is something that directly proves a fact and the witness testifies about what they directly saw or heard.

Circumstantial evidence is evidence that indirectly proves a fact. It's evidence that proves a fact from which you can reasonably find or infer or conclude that some other fact is true, and you have to find that in a reasonable way.

What's a reasonable inference? It's just a deduction or conclusion that reason, experience, common sense, lead you to make from the facts. A reasonable inference, it's not a suspicion or a guess; it's a reasoned, logical decision that finds the existence of another fact based on one.

The classic example, and I don't remember if I shared this with you right at the beginning, but the classic example that's used in courthouses all over the United States is if you hear thunder outside and then someone walks in and they're holding an umbrella and the umbrella is wet, you could opt to

infer from that that it's raining outside.

You heard thunder, you saw the wet umbrella, that kind of thing. You wouldn't need to, but you could. If you saw it raining, you'd say that's direct evidence of rain. If you infer that it was raining from the sound of the thunder and seeing the umbrella, that would be circumstantial evidence. Bottom line is you can rely here on circumstantial evidence and you can rely here on direct evidence. It's your call.

Sometimes different inferences can be derived, pulled from the same set of facts. One side may ask you to pull a certain inference out of a certain set of facts. The other side may ask you to choose another. But the bottom line is it is for you and you all alone to decide what reasonable inferences you want to make based on the evidence, based on your experience, based on reason, and logic, and common sense.

You should consider all the evidence before you at trial whether it's direct or circumstantial. The law makes no distinction between the weight you should give one category versus another. The weight you should give is really and fully and completely up to you to decide.

Next, there was certain testimony from certain witnesses about their understanding of various rules and requirements of Medicare. That testimony, as I mentioned before a little more fully, other than from Stephen Quindoza, who was introduced for a limited purpose, the limited purpose

was explaining those witnesses' understanding of the rule and requirements, not to prove the truth of what those rules and requirements were, and you have to follow that limited purpose for which the evidence was given.

Although the United States has to prove a defendant in this case and in any case guilty beyond a reasonable doubt, it is not a requirement to present all possible evidence related to the case. It's not required to produce all possible witnesses who might have some knowledge about the facts of the case.

In addition, as I have explained to you before from the outset, the defendant is not required to present any evidence or to produce any witnesses at all.

Next, the defendant, Mr. Naviwala, as you know, he has pleaded not guilty to the offenses charged and he is presumed to be innocent. He started the trial with a clean slate, with no evidence against him. That presumption is going to stay with Mr. Naviwala unless and until the United States has presented evidence that overcomes that presumption by convincing you that the defendant is guilty of the offenses charged beyond a reasonable doubt.

The presumption of innocence requires that you find the defendant not guilty unless you are satisfied that the United States has proved his guilt beyond a reasonable doubt.

That presumption of innocence means that the defendant

has no burden, he has no obligation to present any evidence at all or to prove that he is not guilty. The burden, the obligation, is on the United States to prove that the defendant is guilty, and that burden stays with the United States throughout this trial, including now.

In order for you to find the defendant guilty of the offenses charged, as I mentioned, the United States has to prove in a way that convinces you that he is guilty beyond a reasonable doubt, and that means the United States has to prove each and every element of the offenses charged beyond a reasonable doubt, each element of each count.

The defendant can't be convicted based on suspicion, or on conjecture, but only based on evidence proving guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. It does not mean proof to a mathematical certainty. Possible doubts or doubts based on conjecture, speculation, hunch, those are not reasonable doubts.

A reasonable doubt is a fair doubt based on reason, logic, common sense, or experience. It's a doubt that an ordinary, reasonable person has after carefully weighing all of the evidence, and it is a doubt that would cause that ordinary, reasonable person to hesitate to act in manners of importance in their own life.

It can arise from the evidence of reasonable doubt, it can arise from a lack of evidence, or it can arise from the nature of the evidence.

If having heard all of the evidence, you're convinced that the United States proved each and every element of an offense charged against the defendant beyond a reasonable doubt, then you should return a verdict of guilty for that offense.

On the flip side, if you have a reasonable doubt about one or more elements of an offense charged against the defendant, then you have to return a verdict of not guilty for that particular offense.

Now, the defendant is charged here, as you know, with more than one offense and each offense is a separate count in the superseding indictment, which we'll talk about soon.

The number of offenses charged is not evidence of guilt. Nothing in that indictment is evidence of guilt and that should not influence your decision here in any way whatsoever. You have to separately consider the evidence that relates to each offense, and you have to return a separate verdict for each offense as to each count.

For each offense charged, for each count charged, you have to decide whether the United States has proved beyond a reasonable doubt that the defendant is guilty of that particular count.

Your decision on one count, guilty or not guilty, should not influence your decision on any of the other offenses charged, any of the other counts. Those are all to be considered separately one from the next.

A related point is that the defendant is not on trial for any act, any conduct, anything other than what is charged in that indictment, so you should only find the defendant guilty of a count in the indictment if you believe that the United States has proved each essential element of that count beyond a reasonable doubt. He is not on trial for anything other than the counts in the indictment.

I just want to -- because we have used the term a bunch of times just talk about for half a moment about what an indictment is.

An indictment is just an informal way in our system of specifying the exact crimes that the defendant is accused of committing. It's simply a description of the charges against him. It's an accusation.

A description of the charge is an accusation. Those things are not evidence and you cannot give -- you cannot give any weight to the fact that the defendant was indicted in making the decision that you-all are charged with making here.

I'm gonna get now a little more toward some of the law that's gonna apply here in particular. I just want to tell you before we get to it, some of this is a little hard to

follow especially. And it's hard to follow because, as a structure, there may be a charge and it has a few elements, and the instructions follow that structure more or less.

Structure is a little hard to hear, it's a bit easier to see. So it will be a bit clearer to you I suspect when you see it in the jury room but I'm going to do it verbally now.

All of the offenses that the defendant is charged with, all of them require that the United States prove that he acted knowingly with respect to certain elements, at least.

What does knowingly mean? It means that the United States has to prove beyond a reasonable doubt that the defendant was conscious and aware of the nature of his actions and of the surrounding facts and circumstances as specified in the definition of the offense charged, which we're gonna get to soon.

If you find that the defendant made an agreement, for example, accidentally or mistakenly, or as the result of simple negligence, then the United States has failed to prove that he acted knowingly, and you have to return a verdict of not guilty.

In deciding whether the defendant acted knowingly in his mind, you must -- you may consider evidence about what the defendant said or did or failed to do, how the defendant acted or failed to act, and all of the other facts and circumstances shown by the evidence that may prove or may help you infer

what was in the defendant's mind at that time.

So that's knowingly.

Now, certain offenses that are charged in the indictment, they require that the United States prove the defendant acted intentionally, sometimes phrased with intent, same thing. Intentionally, with intent, with respect to certain elements of those offenses.

Counts 1 and 5, which you'll hear about more soon, require that the defendant acted intentionally. This means that for each of Count 1 and Count 5, the United States has to prove beyond a reasonable doubt that it was the defendant's conscious desire or purpose to join together -- these are conspiracy offenses -- that it was the defendant's conscious desire or purpose to join together with at least one other conspirator to achieve the conspiracy's objective, or that, two, the defendant knew that he was joining with at least one other conspirator to achieve the conspiracy's objective.

In deciding whether the defendant acted intentionally or with intent at the moments when that becomes relevant, you can consider the same things: Evidence about what he said, what he did, what he failed to do, how he acted, how he didn't act, and all the other facts and circumstances shown by the evidence that may prove, in your judgment, what was in the defendant's mind at that time.

Count 1, as you'll learn, also requires that you find

the defendant acted with intent to defraud.

To act with intent to defraud means to act knowingly, the term we talked about a moment ago, and with the intention -- a term we talked about a minute ago -- with the intention or the purpose to deceive or to cheat.

So we have talked a little bit about knowingly, we have talked about intent and intentionally. We have talked about intent to defraud. That's because these are terms that are gonna come up again over and over again. Here is another one like that. It's willfully.

Certain offenses charged in the indictment require the United States to prove that the defendant acted willfully with respect to certain elements of those crimes. This means the United States has to prove beyond a reasonable doubt that the defendant knew that his conduct was unlawful and intends to do something that the law forbids. That is, to find that the defendant acted willfully, you have to find that the evidence presented at trial proved beyond a reasonable doubt that the defendant acted with purpose to disobey or disregard the law.

The United States does not have to prove that the defendant had any evil motive or bad purpose other than the purpose to disobey or disregard the law, nor does the Government -- nor does the Government have to prove that the defendant knew of the existence and meaning of the federal statute making his conduct criminal.

Over and over again we're gonna talk about the word "Medicare" in the course of these instructions. And when I refer to Medicare, I'm going to be referring to three different things all together for convenience.

One is Medicare, one is TRICARE, and one is CHAMPVA. Those are programs that you've heard testimony about. I'm going to refer to those three collectively as Medicare just to make things a little easier.

I want to get to the next concept here. These will all get laced through.

To find the defendant guilty of healthcare and wire fraud conspiracy as those are charged in Count 1 and the healthcare fraud that is charged in Counts 2 and 3 and 4, you have to find that the United States proved beyond a reasonable doubt that the defendant knew fraudulent claims were being submitted to Medicare.

To find the defendant guilty of conspiring to violate the Anti-Kickback Statute that's charged in Count 5, and with conspiring -- let me slow down -- conspiring to violate the Anti-Kickback Statute, Count 5, or violating the Anti-Kickback Statute itself, Counts 6, 7, and 8, for that you have to find that the United States proved beyond a reasonable doubt that the defendant knew he was soliciting and receiving kickbacks and bribes for referring Medicare beneficiaries to durable medical equipment, DME supply companies, for DME.

In this case there's a question about whether the defendant knew that fraudulent claims were being submitted to Medicare, or he was soliciting, receiving kickbacks and bribes for referring Medicare beneficiaries to DME companies for DME. That's one of the debates between the parties.

When, as in this case, knowledge of a particular fact or circumstances is an essential part of the offense charged, the United States may prove that the defendant knew of that fact or circumstance if the evidence proves beyond a reasonable doubt that the defendant deliberately closed his eyes to what would otherwise have been obvious to him.

No one can avoid responsibility for a crime by deliberately ignoring what's obvious. Thus, you may find that the defendant knew that the fraudulent claims were being submitted to Medicare based on evidence which proves that, one, the defendant himself actually, subjectively believed that there was a high probability that this fact or circumstance existed; and

Two, that the defendant consciously used deliberate efforts to avoid knowing about the existence of this fact and circumstance.

Similarly, you can find that the defendant knew he was soliciting and receiving kickbacks and bribes for referring Medicare beneficiaries to DME companies for DME based on evidence which proves that, one, the defendant himself

actually, subjectively believed that there was a high probability that this fact or circumstance existed; and

Two, that the defendant consciously used deliberate efforts to avoid knowing about the existence of this fact and circumstance.

You may not find that the defendant knew that fraudulent claims were being submitted to Medicare, or he was soliciting or receiving kickbacks and bribes for referring Medicare beneficiaries to DME companies for DME if you find that the defendant actually believed that the respective fact or circumstance did not exist.

Also, you may not find the defendant knew fraudulent claims were being submitted to Medicare, or he was soliciting and receiving kickbacks and bribes for referring Medicare beneficiaries to DME companies for DME if you find only that the defendant consciously disregarded the risk that the respective fact or circumstance existed, or that the defendant should have known that the respective fact or circumstance existed, or that a reasonable person would have known of a high probability that the fact or circumstance existed.

It is not enough the defendant may have been reckless or stupid or foolish or may have acted out of inadvertence or accident.

Those are a lot of big words, a lot of sentences with multiple clauses in them. I think when you slow down and read

the instructions in general, it will be easier to follow.

With respect to Counts 1 to 4, you need to find that the defendant himself actually, subjectively believed there was a high probability that fraudulent claims were being submitted to Medicare and other federal and private health care benefit programs, consciously used deliberate efforts to avoid knowing about it, and did not actually believe it did not exist.

With respect to Counts 5 through 8, you must find that the defendant himself actually, subjectively believed there was a high probability that he was soliciting and receiving kickbacks and bribes for referring Medicare beneficiaries to DME companies for DME, consciously used deliberate efforts to avoid knowing about it, and did not actually believe that it did not exist.

For the last little bit, I've been talking only about willful blindness. That is one of the instructions here. Now we're going to move on from that. It's the kind of break in things that's much easier to see on the page than it is verbally.

Next thing up is motive. Motive is not an element of the offenses with which the defendant is charged. Proof of a bad motive is not required to convict. Proof of bad motive alone does not establish the defendant is guilty, just like proof of a good motive alone does not establish that the

defendant is not guilty. Evidence of his motive, however, may help you to determine the defendant's intent.

Intent and motive are simply different concepts. Motive is what prompts a person to act; it's what impels a person forward. Intent refers only to the state of mind with which a particular act is done.

So examples: Personal advancement, desire for financial gain, those are motives of a lot of human conduct. But those motives can prompt, can push one person to intentionally do something that's perfectly acceptable while prompting another person to intentionally do an act that is a crime.

Motive and intent are separate things. Motive is not an element, but various kinds of intent are, and you'll see them as we get further in. Knowingly, willfully, those sort of things. Those are intent.

Next up is the following -- and this is going on for a short, little bit.

The offenses charged in the indictment, they require proof that the defendant acted knowingly, intentionally, willfully, and with intent to defraud. Those are all pieces of intent. Not motive, but intent.

If you find that the defendant acted in good faith, that would be a complete defense, because good faith on the part of the defendant would be inconsistent with him acting

willfully or with intent to defraud.

A person acts in good faith when he or she has an honestly held belief, opinion, or understanding that the alleged acts were not unlawful, even though that belief or opinion or understanding turns out to be inaccurate or incorrect.

So in this case, if the defendant made an honest mistake or had an honest misunderstanding about the legality of the alleged acts, then he did not act willfully or with the intent to defraud.

The defendant does not have the burden of proving good faith. Good faith is a defense. It exists because it's just inconsistent with the requirement of the offenses charged, that the defendant acted willfully or with the intent to defraud.

As I have told you, it's the United States' burden to prove beyond a reasonable doubt each element of the offense, including the required mental state elements. In deciding whether the United States has proved that the defendant acted willfully or with intent to defraud or, instead, whether he acted in good faith, you should consider all the evidence, as you should on everything, anything that may bear, in your judgment, on his state of mind.

If you find from the evidence that he acted in good faith, as I have defined it, or if you find for any other

reason that the United States has not proved beyond a reasonable doubt that he acted willfully or with intent to defraud, you have to find him, the defendant, not guilty of the offense at issue that you're considering.

Here's another general concept that matters throughout. You cannot infer that the defendant is guilty of participating in criminal conduct merely, solely from the fact that he worked or did business with other people who were guilty of wrongdoing. Mere association by a defendant with someone else does not make the -- with a conspirator does not make the defendant a member of the conspiracy, even if he knows of the existence of a conspiracy.

So everything I have talked to you about until now, those are the kind of general things that suffuse the instructions I'm going to start giving you now as to particular counts.

We're going to start off with Count 1.

Count 1, I have mentioned it a couple times. Count 1 is a conspiracy that is alleged to have two objects. We'll talk about what that means soon. Those objects are to commit health care fraud and to commit wire fraud.

Count 1 of the indictment charges that from in or around February of 2017, through in or around April 2019, in the District of New Jersey -- the District of New Jersey and the State of New Jersey cover the same territory -- and

elsewhere, the defendant knowingly and intentionally conspired and agreed with Aaron Williamsky, Nadia Levit, Charles Burruss, Armani Adams, Kenneth Pitter, and others to commit certain offenses, namely, one, to commit health care fraud; and two, to commit wire fraud.

It is a federal crime for two or more persons to agree or conspire to commit any offense against the United States, even if they never actually achieve their objective. A conspiracy is a kind of criminal partnership.

In order for you to find the defendant guilty of conspiracy to commit health care fraud or wire fraud, you have to find that the United States proved beyond a reasonable doubt each of the following three elements:

The first element: Two or more people agreed to commit health care or wire fraud, as the indictment charged;

Second: The defendant was a party to or member of that agreement; and

Third, the defendant joined that agreement or conspiracy knowing of its objective to commit health care fraud or wire fraud and intending to join together with at least one other alleged co-conspirator to achieve that objective. That is, the defendant and at least one other alleged co-conspirator shared a unity of purpose and the intent to achieve a common goal or objective to commit health care fraud or wire fraud.

I'm going to explain each of those three elements in a little more detail now. Of the three elements, here is the first element:

The first element of the crime of conspiracy, as I just mentioned, that's the existence of an agreement. The United States has to prove beyond a reasonable doubt that two or more people knowingly and intentionally -- see how these words are coming back, knowingly and intentionally -- arrived at a mutual understanding or agreement, either spoken or unspoken, to work together to achieve the overall objective of the conspiracy.

Now, the United States does not have to prove the existence of a formal or written agreement or an expressed oral agreement spelling out the details of the understanding. The United States also does not have to prove that all of the members of the conspiracy directly met or discussed between themselves their unlawful objectives or somehow agreed to all the details or agreed to what the means were by which the objectives were to be accomplished.

The United States is not even required to prove that all members of the alleged conspiracy were named or that all members of the conspiracy are even known. What the United States has to prove beyond a reasonable doubt is that two or more persons in some way in the matter arrived at some type of agreement, mutual understanding, or meeting of the

minds to try to accomplish a common and unlawful objective.

You can consider, as with everything, direct and circumstantial evidence in deciding whether the United States has proved beyond a reasonable doubt that an agreement or mutual understanding existed.

You may find the existence of a conspiracy based on reasonable inferences that you draw from actions and statements of the alleged members of the conspiracy, from the circumstances surrounding the scheme, and from evidence of related facts and circumstances which prove, in your judgment, that the activities that participants in a criminal venture couldn't have been carried out except as the result of a preconceived agreement, scheme, or understanding together.

Let's move on.

So the next piece is that, if you find that a criminal agreement or a partnership or a conspiracy existed, then in order to find the defendant guilty of conspiracy, you also have to find that the United States proved beyond a reasonable doubt that the defendant knowingly and intentionally joined that agreement, joined that conspiracy during its existence.

The United States must prove that the defendant knew the goals or objectives of the agreement or conspiracy and voluntarily joined it during its existence intending to achieve the common goals or objectives and to work together with the other alleged co-conspirators towards those goals or

objectives.

The United States doesn't have to prove that the defendant knew everything about the conspiracy or that he knew everyone involved in it, or that he was a member from the beginning. The United States also does not have to prove the defendant played a major role or a substantial part in the conspiracy.

You may consider both direct evidence and circumstantial evidence in deciding whether the defendant joined the conspiracy, knew of its criminal objectives, and intended to further those objectives.

Evidence which shows that the defendant only knew about the conspiracy, only kept bad company by associating with members of the conspiracy or was only present when the conspiracy was discussed or a crime was committed, that's not sufficient to prove that the defendant was a member of the conspiracy, even if the defendant approves of what was happening or didn't object to it.

Likewise, evidence showing the defendant may have done something that happened to help the conspiracy does not necessarily prove that he joined the conspiracy. You may, however, consider all of the evidence, including this evidence, in deciding whether the United States proved beyond a reasonable doubt that the defendant joined the conspiracy.

We're still inside of Count 1, okay, which is the

conspiracy. This count, Count 1, charges that the defendant and the other alleged co-conspirators were all members of one single conspiracy to commit health care fraud or wire fraud.

Count 5 of the indictment charges that defendant and the other alleged co-conspirators were all members of one single conspiracy to violate the Anti-Kickback Statute.

The defendant has argued that the conspiracy alleged in Count 1 in the indictment was really, if anything, two or more separate conspiracies. He has also argued that the conspiracy alleged in Count 5 of the indictment was really again, if anything, two or more separate conspiracies. Whether a single conspiracy or multiple conspiracies exist, that is a question for you-all to decide. That's a question of fact.

In order to find the defendant guilty of the Count 1 conspiracy or the Count 5 conspiracy, both of which were charged in the indictment, you have to find that the United States proved beyond a reasonable doubt that the defendant was a member of that conspiracy.

If the United States failed to prove that the defendant was a member of the conspiracy charged in Count 1 or the conspiracy charged in Count 5, then you have to find the defendant not guilty of Count 1 or Count 5, even if you find that there are multiple conspiracies and the defendant was a member of a separate conspiracy other than the one that is charged in the indictment.

But proof that the defendant was a member of some other conspiracy would not prevent you from also finding him guilty of the conspiracy charged in Count 1 or Count 5, if you find the United States proved beyond a reasonable doubt that he was a member of that conspiracy, the one that was charged.

In deciding whether there was one single conspiracy or more than one conspiracy, you should concentrate on the nature of the agreement that's proved by the evidence as you see it.

To prove a single conspiracy, the United States has to prove beyond a reasonable doubt that each of the alleged members or conspirators agreed to participate in what he knew or what he should have known was a single group activity directed toward a common objective. The United States must prove that there was a single agreement on an overall objective.

Multiple conspiracies are separate agreements operating independent of each other, but a finding of a master conspiracy that includes other sub-schemes does not constitute a finding of multiple unrelated conspiracies.

A single conspiracy may exist when there is a continuing core agreement that attracts different members at different times and which involves different subgroups committing acts in furtherance of an overall objective.

In determining whether a series of events constitutes a single conspiracy or separate and unrelated conspiracies, you

should consider whether there was a common goal among the alleged co-conspirators; whether there existed common or similar methods; whether and to what extent alleged participants overlapped in their various dealings; whether and to what extent the activities of the alleged co-conspirators were related interdependent; how helpful each alleged co-conspirator's contributions were or were not to the goals of the others; and whether the scheme contemplated a continuing objective that would not be achieved without the ongoing cooperation of the conspirators.

A single conspiracy may exist even if all the members did not know each other, or never sat down together, or did not know what roles all the other members would play. A single conspiracy may exist even if different members joined at different times or the membership of the conspiracy changed over time.

Similarly, there may be a single conspiracy even though there were different sub-groups operating in different places or many acts or transactions committed over a long period of time.

You can consider these things in deciding there was one single conspiracy or more than one conspiracy, but they are not necessarily controlling. What is controlling is whether the United States has proved beyond a reasonable doubt that there was one overall agreement on a common objective as to a

given count.

I want to talk to you about -- we're still talking about conspiracy. I want to talk to you about the mental states associated with a conspiracy.

In order to find the defendant guilty of conspiracy, you have to find that the United States proved beyond a reasonable doubt that the defendant joined the conspiracy knowing of its objective and intending to help further or achieve that objective.

That is the United States must prove one, two, and three.

One, that the defendant knew of the objective or goal of the conspiracy.

Two, that the defendant joined the conspiracy intending to help further or achieve that goal; and

Three, that the defendant and at least one other alleged conspirator shared a unity of purpose toward that objective or goal.

You can consider both direct evidence and circumstantial evidence as we discussed, including the defendant's words or conduct or any other facts and circumstances that you deem relevant from the evidence in deciding whether defendant had the required knowledge and intent. For example, evidence that the defendant derived some benefit from the conspiracy or had some stake in the

achievement of the conspiracy's objectives might tend to show that he had the required intent or purpose that the conspiracy's objectives be achieved.

Now, the United States -- we just talked about the conspiracy's objectives being achieved, but note: The United States is not required to prove that any of the members of a conspiracy were successful in achieving any or all of the objectives of the conspiracy.

You can find the defendant guilty of conspiracy if you find that the United States proved beyond a reasonable doubt the elements I have explained, even if you find that the United States did not prove that any of the conspirators actually committed any other offense against the United States.

Conspiracy is a criminal offense that is separate from the offenses that were the objects of the conspiracy. Conspiracy can be complete, it can be finished, it can be committed without the commission of those other offenses.

Now, evidence has been admitted here that certain people who are alleged to be co-conspirators of the defendant did or said certain things. The acts or statements of any member of a conspiracy are treated as the acts or statements of all members of the conspiracy if these acts or statements were performed or spoken during the existence of that conspiracy and to further its objectives.

Therefore, you can consider as evidence against the defendant any acts done or statements made by any members of the conspiracy during the existence of and to further the objective of the conspiracy.

You may consider those acts and statements, even if they were done and made outside the defendant's presence and without his knowledge. As with all the evidence presented in this case, it is for you to decide whether you believe this evidence and how much weight to give it.

The next thing is the length of time for which there is a conspiracy. A conspiracy ends when the objectives of a conspiracy have been achieved or when all members of the conspiracy have walked away from it, they have withdrawn from it.

However, a conspiracy may be a continuing conspiracy. If it is, it lasted until there is some affirmative showing that it has ended or that all of its members have withdrawn.

A conspiracy may be a continuing one if the agreement includes an understanding that the conspiracy will continue over time, and also a conspiracy may have a continuing purpose or objective and therefore can be a continuing conspiracy.

I want to just share with you something about unanimity. This is the kind of thing that's probably a little easier to say on the page, but I'll say it to you out loud.

Count 1 of the indictment, it charges the defendant

with a conspiracy to commit wire fraud or health care fraud and it alleges two separate schemes or plans to obtain money or property by means of several different false or fraudulent pretenses, representations, or promises.

Now, the United States is not required to prove all of the schemes or plans to defraud or all of the false or fraudulent pretenses, representations, or promises that are alleged.

However, you all have to agree with each of the other jurors that the same scheme or plan and the same means of false or fraudulent pretenses, representations, or promises alleged in Count 1 was in fact employed by Mr. Naviwala.

The jury need not unanimously agree on each scheme or plan, but in order to convict, has to unanimously agree upon at least one such scheme or plan as a scheme or plan that was knowingly used by the defendant.

Similarly, the United States is not required to prove all of the means or methods alleged in Count 1 of the indictment. Each juror must agree with each of the other jurors, however, that the same means or methods alleged in Count 1 of the indictment was in fact engaged in or employed by the defendant in committing the crime charged in Count 1 of the indictment.

The jury doesn't have to unanimously agree on each mean or method, but in order to convict, you must unanimously agree

upon at least one such means or methods as the one engaged in by the defendant.

Unless the United States has proven the same means or methods to each of you beyond a reasonable doubt, you have to acquit the defendant of the crime charged in Count 1.

Unless each of you agrees that the United States has proved the same scheme or plan to defraud beyond a reasonable doubt, you have to find the defendant not guilty of the conspiracy count charged in Count 1 of the indictment.

All of that is especially relevant because that conspiracy in Count 1, as you've heard, it has two alleged objectives. One is health care fraud and one is wire fraud.

Now we move on to health care fraud. This is about Counts 2 and 3 and 4. Count 1 was the conspiracy we talked about, one of the alleged objects of that conspiracy was health care fraud. Now I'm gonna talk about Count 2 and Count 3 and 4, health care fraud itself.

Those three counts charge the defendant with violations of federal law which is health care fraud in three different counts.

In order to find the defendant guilty of this offense, the offense of health care fraud, you have to find that the United States proved the following three elements beyond a reasonable doubt as to a given count.

First, the defendant knowingly devised or participated

in a scheme to defraud or to obtain by means of false or fraudulent pretenses or representations or promises any of the money or property owned by or under the custody or control of the victim entity in connection with the delivery of or payment for healthcare benefits, items, or services. That's the first element.

The second element is the defendant acted willfully and with the intent to defraud.

I defined those terms for you before.

Third, that the victim was a public or private plan or contract, affecting commerce, under which medical benefits, medical items, or medical services, were provided to any individual.

Now, a quick definition of what a health care benefit program is. I'm going to read to you from the statute.

It's: Any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service, is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service, for which payment may be made under the plan or contract.

A little backtracking, but it's helpful to have here again. The United States must prove beyond a reasonable doubt that the defendant acted willfully and with the intent to defraud a health care benefit program.

I've already told you before what it means to act willfully, and to act with intent to defraud, I've told you about that before also. It means to act knowingly and with the intention or the purpose to deceive or cheat.

In considering whether the defendant acted with an intent to defraud, you can consider, among other things, whether he acted with a desire or purpose to bring about some gain or benefit to himself or someone else at the expense of the health care benefit program or with the desire or purpose to cause some loss to the health care benefit program.

Next thing you heard me mention as part of these instructions is affecting interstate commerce. So the United States has to prove beyond a reasonable doubt that the health benefit plan or contract affected or could have affected interstate commerce.

Affecting interstate commerce, it means any action which in any way interferes with or changes or alters the movement or transportation or flow of goods, merchandise, money, or other property in commerce, between or among different states. And the effect can be minimal.

To prove health care fraud, the United States has to prove beyond a reasonable doubt that the defendant knowingly and willfully made a misrepresentation, or knowingly and willfully caused someone else to make a misrepresentation in connection with the delivery of or payment for health care

benefits, health care items, or health care services.

A little piece here I'm going to ask the parties to take note of because it seems like it may be a little mistake but we'll come back to that.

Next. Counts Two through Four of the superseding indictment allege that the claims to Medicare were false because they were not medically necessary.

Count 1 alleges that one of the reasons that the claims were false was because, as I said, they were not medically necessary.

That got a little jumbled.

Counts 2 through 4 say that the claims to Medicare were false because they were not medically necessary.

Count 1 -- that's the conspiracy count -- it alleges that one of the reasons that the claims were false was the same thing: again, not medically necessary.

In order for you to find that a claim was false because it was not medically necessary, you have to find that the United States proved beyond a reasonable doubt that a claim that the prescription was medically necessary was false. To prove that the claim was false, the United States must prove that the prescription was not medically necessary. I'm sorry. The United States must prove that the prescription was not medically necessary. That term was not defined by any Medicare regulation.

I am instructing you that making a false statement and the mental states associated with making a false statement, they're separate things. The element of falsity and the element of mental state are not the same thing.

Therefore, the United States must prove that the claim of medical necessity was false, and also that the claim was made willfully and with an intent to defraud, as I have defined those terms.

Now we're going to jump back. We just talked about health care fraud. That is Counts 2 and 3 and 4. Remember, it's also an object allegedly of the Count 1 conspiracy. The other alleged object of the Count 1 conspiracy is wire fraud. I'm going to talk about that now.

One of the objects, as I just mentioned, of the Count 1 conspiracy is that defendant conspired to commit wire fraud, again a violation of federal law.

In order to find the defendant guilty of this offense, you have to find that the United States proved each of the following three elements beyond a reasonable doubt:

First, the defendant knowingly devised a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations, or promises, or willfully participated in such a scheme with knowledge of its fraudulent nature;

Second, that the defendant acted with the intent to

defraud;

Third, that in advancing, furthering, or carrying out the scheme, the defendant transmitted any writing, signal, or sound by means of a wire, radio, or television communication in interstate commerce, or caused the transmission of any writing, signal, or sound of some kind by means of a wire, radio, or television communication in interstate commerce.

We'll talk about each of those little pieces.

The first element of wire fraud is that the defendant knowingly devised or willfully participated in a scheme to defraud the victims of money or property by materially false or fraudulent pretenses, representations, or promises.

A scheme is just a plan for accomplishing an object.

Fraud. Fraud is a general term which embraces all of the various means by which one person can gain an advantage over another by false representations, by suppression of the truth, or by deliberate disregard for the truth.

Putting them together, a scheme to defraud is any plan, device, or course of action to deprive another person of money or property by means of false or fraudulent pretenses, representations, or promises, reasonably calculated to deceive people of average prudence.

In this case, the indictment alleges that the scheme to defraud was carried out by making false or fraudulent statements, false or fraudulent representations, or false and

fraudulent claims. The representations which the Government charges were made as part of a scheme to defraud, those are set out in the indictment.

The United States is not required to prove every misrepresentation charged in the indictment. It is sufficient if the United States proves beyond a reasonable doubt that one or more of the alleged material misrepresentations were made in furtherance of the alleged scheme to defraud.

But you cannot convict the defendant of wire fraud unless all of you agree as to at least one of the material representations.

A statement, representation, claim, or document is false if it is untrue when made, and if the person making the statement or representation or claim or document or causing it to be made knew it was untrue at the time it was made. A representation or statement is fraudulent if it was falsely made with intention to deceive.

In addition, deceitful statements of half truths or the concealment of material facts or the expression of an opinion not honestly entertained may constitute false or fraudulent statements. The arrangement of the words or the circumstances in which they are used may convey false or deceptive appearance. The deception may not be premised upon spoken or written words alone. If there is deception, the manner in which it is accomplished is immaterial.

The false or fraudulent representation or failure to disclose something has to 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 their representation or statement in making a decision.

A misrepresentation is not material unless it goes to the essence of the parties' bargain.

This means that if you find that a particular statement of fact was false, you must determine whether that statement was one that a reasonable person might have considered important in making his or her decision, and whether it went to the very essence of the parties' bargain. The same principle applies to fraudulent half-truths or omissions of material facts.

In order to establish a scheme to defraud, the United States has to also prove that the alleged scheme contemplated depriving another person of money or property. But the United States is not required to prove the defendant originated that scheme to defraud.

Furthermore, it is not necessary that the United States prove the defendant actually realized any gain from the scheme or that any intended victim actually suffered any loss. But the United States has to show that the intent of the scheme was to defraud and to deceive a victim out of money or

property.

If you find that the United States has proved beyond a reasonable doubt that the scheme to defraud charged in the indictment did exist and the defendant knowingly devised or participated in the scheme charged in the indictment, you should then consider the next and second element.

Here is what that second element is. Remember, there is Count 1 of the conspiracy and this is the second objective, that's wire fraud. Here is the second element of wire fraud. You can tell that's a little easier to see in writing.

The second element the United States must prove beyond a reasonable doubt is that the defendant acted with a specific intent to defraud.

To act with an intent to defraud means to act knowingly and with the intention or the purpose to deceive or to cheat.

In considering whether the defendant acted with an intent to defraud, you may consider, among other things, whether the defendant acted with desire or purpose to bring about some gain or benefit to himself or someone else or with a desire or purpose to cause some loss to someone.

Now the third element of wire fraud. The third element the United States must prove beyond a reasonable doubt is that in advancing, furthering, or carrying out the scheme, the defendant transmitted -- and here is a list of things -- a writing or signal or sound by means of a wire, radio, or

television communication in interstate commerce, or caused the transmission of a writing, signal, or sound of some kind by means of a wire, radio, or television communication in interstate commerce.

That phrase that's built into what I just said, "transmits by means of wire, radio, or television communication in interstate commerce" means to send from one state to another by means of telegraph or telephone lines or by means of radio or television.

The phrase includes a telephone conversation by a person in one state with a person in another state, or electronic signals sent from one state to another, such as by fax or by a financial wire. The use of the Internet to send a message, like an e-mail, or to communicate with a website, that can also constitute a wire transmission in interstate commerce.

The United States is not required to prove that the defendant actually used a wire communication in interstate commerce or that the defendant even intended anything be transmitted in interstate commerce by means of a wire, radio, or television communication to further, to advance, or to carry out the scheme or plan to defraud.

But the United States must prove beyond a reasonable doubt that a transmission by a wire, radio, or television communication facility in interstate commerce was, in fact,

used in some manner to further or to advance or to carry out the scheme to defraud.

The United States must also prove either that the defendant used wire, radio, or television communication in interstate commerce, or the defendant knew that use of the wire, radio, or television communication in interstate commerce would follow in the ordinary course of business events, or that the defendant should reasonably have anticipated that wire, radio, or television communication in interstate commerce would be used.

It's not necessary that the information transmitted by these means was itself false or fraudulent or contained any false or fraudulent pretense, representation, or promise, or contained any request for money or thing of value.

But the United States must prove beyond a reasonable doubt the use of the wire, radio, or television communication in interstate commerce further or advanced or indeed carried out in some way the scheme.

So we have talked a little bit about the word "materiality." The United States must prove beyond a reasonable doubt that the misrepresentation question was material. A fact or a matter is material if it has a natural tendency to influence or be capable of influencing the decision of the decision-maker to whom that misrepresentation was addressed.

In this case here, the relevant decision-makers are Medicare and TRICARE and CHAMPVA, which together I'm going to refer to as much as I can as Medicare.

In determining whether a fact is or is not material to Medicare, you should consider whether the decision-maker -- Medicare -- would have made the same decision if it would have known that fact. If the decision-maker here, Medicare, would have made the same decision if it knew a particular fact, that is evidence that the fact is not material.

If the decision-maker regularly makes similar decisions despite actual knowledge that certain factual statements were made to it, that is evidence that the statements are not material.

We are now going to talk about Count 5, which is a conspiracy to violate the Anti-Kickback Statute.

Count 5 of the superseding indictment charges that from in or around February of 2017, through in or around April 2019, in the District of New Jersey -- again, that's just the same as the State of New Jersey -- and elsewhere, the defendant knowingly and intentionally conspired and agreed with others to commit offenses against the United States.

I'm just gonna read to you A and B from the indictment.

A: To knowingly and willfully solicit and receive remuneration, directly or indirectly, overtly and covertly, in cash and in kind, that is kickbacks and bribes in return for

referring an individual to a person for the furnishing and arranging for the furnishing of any item and service, for which payment may be made, in whole or in part, under a federal health care program, namely Medicare.

And B: To knowingly and willfully offer and pay remuneration, directly and indirectly, covertly and overtly, in cash and in kind, that is, kickbacks and bribes to any person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item and service which payment may be made, in whole or in part, under a federal health care program, namely Medicare.

That is just from the indictment.

Count 5 also charges that to further the objectives of the conspiracy, at least one member of the conspiracy committed or caused the commission of at least one overt act as alleged in the superseding indictment.

As I have already instructed you, it is a federal crime for two or more persons to conspire or agree to commit any offense against the United States, even if they never actually achieve their objective. As I said before, conspiracy is fundamentally a kind of criminal partnership.

In order for you to find the defendant guilty of conspiracy to commit any offense against the United States, even if he never actually achieves his objective, you have to find that the United States proved beyond a reasonable doubt

the following four elements:

Here they go.

First, two or more people agreed to commit an offense against the United States and in this case of Count 5 to violate the Anti-Kickback Statute. I'm going to explain to you the elements of that Anti-Kickback Statute soon.

The second of the elements, that the defendant was a party to or a member of that agreement.

Third, that the defendant joined in that agreement or conspiracy knowing of its object to commit an offense against the United States, and intending to join together with at least one other conspirator to achieve that objective. That is, that the defendant and at least one other alleged conspirator shared a unity of purpose and the intent to achieve a common goal or objective to commit an offense against the United States.

Fourth, at some time during the existence of the agreement or conspiracy, at least one of the members of the conspiracy performed an overt act in order to further the objective of the agreement.

I'm going to explain these to you in more detail in a moment.

Now, I've already told you, though, about three elements of this crime of conspiracy -- the existence of an agreement, membership in the agreement, and the mental states

of the people involved in the conspiracy -- when I instructed you on the elements of the conspiracy that was in Count 1, that was the conspiracy to commit health care fraud and wire fraud. Those same instructions on those topics are applicable to the first three elements of Count 5.

Now, with regard to the fourth element of the Count 5 conspiracy, that is about the commission of overt acts, the United States has to prove beyond a reasonable doubt that during the existence of the conspiracy, at least one member of the conspiracy performed at least one of the overt acts described in the superseding indictment for the purpose of furthering or helping to achieve the object injunctive of the conspiracy.

The superseding indictment alleges certain overt acts pertaining to Count 5.

The Government does not have to prove that all of these acts were committed or that any of these acts were themselves illegal. Also, the United States does not have to prove the defendant personally committed himself any of the overt acts.

The United States has to prove beyond a reasonable doubt that at least one member of the conspiracy committed at least one of the overt acts alleged in the indictment and committed it during the time the conspiracy existed for the purpose of furthering or helping to achieve the objective of the conspiracy, and you have to unanimously agree on the overt

act that was committed.

As I have already instructed you, to find the defendant guilty of conspiracy to commit an offense against the United States, the first element of the offense requires you to find that two or more people agreed to commit an offense against the United States. And with respect to the Count 5 conspiracy that the United States alleges, the allegation is the defendant committed an offense against the United States by violating the Anti-Kickback Statute.

That's the object of the Count 5 conspiracy so I'm going to tell you a little bit about the elements of that Anti-Kickback Statute offense.

Now, as I said, one of the objects of this -- the object of the Count 5 conspiracy is a violation of the Anti-Kickback Statute by soliciting or receiving kickbacks in connection with the federal health care program payments. That underlying crime of soliciting or receiving kickbacks in connection with federal health care program payments has the following five elements:

First, that the defendant solicited or received a kickback or a bribe.

Second, that the remuneration was solicited or received for the purpose of inducing the purchase of an item or service.

Third, that the item was one for which payment was or

might be made, in whole or in part, under a federal health care program.

Fourth, that the defendant acted knowingly and willfully -- you've heard those terms -- when soliciting or receiving the remuneration.

And fifth, that the remuneration was provided to a decision-maker who could influence healthcare decisions on behalf of patients.

Remuneration may be solicited or received directly or indirectly, overtly or covertly, in the open or secretly. Remuneration may be cash or in kind remuneration.

The other object of the conspiracy to commit an offense against the United States is a violation of the Anti-Kickback Statute by paying kickbacks in connection with federal health care program payments. The crime of paying kickbacks in connection with federal health care program payments has the following four elements:

First, the defendant paid or offered to pay to a decision-maker who made medical decisions on behalf of payments any remuneration, including any kickback, bribe, or rebate.

Second, that the remuneration was paid or offered to a decision-maker for the purpose of inducing the furnishing or arranging for the furnishing of any item or service.

Third, that the item or service was one for which

payment was or might be made, in whole or in part, under a federal health care program.

And, fourth, that the defendant acted knowingly and willfully when paying or offering to pay the remuneration.

Now, that's Count 5. That's the conspiracy.

Now I want to talk about Counts 6 through 8. Those charge the defendant with committing violations of the Anti-Kickback Statute itself.

The crime of soliciting or receiving kickbacks in connection with federal health care program payments is the following five elements.

First, the defendant solicited or received a kickback or bribe.

Second, that the remuneration was solicited or received for the purpose of inducing the purchase of an item or service.

Third, the item was one for which payment was or might be made, in whole or in part, under a federal health care program.

Fourth, that the defendant acted knowingly and willfully when soliciting or receiving the remuneration; and

Fifth, that the remuneration was provided to a decision-maker who could influence healthcare decisions on behalf of patients.

As before, remuneration can be solicited or received,

directly or indirectly, overtly or covertly, and remuneration can be in cash or in kind.

I'm gonna walk through the various elements of what we have just talked about.

The first element is the United States has to prove beyond a reasonable doubt that the defendant knowingly and willfully paid or received remuneration.

I already told you about the definitions of knowingly and willfully when I instructed you before on mental states at the top and those same definitions are applicable here.

Remuneration means something of value in whatever form. Remuneration can be paid in cash or kind such as through giving property. Remuneration includes the payment of a kickback or bribe.

Remuneration can be offered, paid, solicited, or received overtly and openly or covertly and secretly. Remuneration may be offered to pay directly to the recipient or offered to be paid indirectly through another.

Now, in Count 5 through 8 I used that term "to induce." I want to tell you what that means. You'll see it when you look back at the page.

To induce as that term is used in the instructions for Counts 5, 6, 7, and 8, that means to attempt to gain influence over the reason or judgment of a person improperly or corruptly.

The United States must prove beyond a reasonable doubt that a remuneration, a kickback, or bribe, as that term is defined in these instructions, was paid improperly or corruptly or explicitly as a quid pro quo in return for a decision by a decision-maker.

In order to sustain its burden of proof for the crime charged in Counts 5, 6, 7, and 8 of the indictment, the United States must prove beyond a reasonable doubt that the primary or material purpose of the remuneration, kickback, or bribe, was the improper or corrupt inducement, not that this was for some incidental or minor purpose.

It is not unlawful to hope or expect or believe that purchases would result from the payment of remuneration to a customer that was designed for other purposes. The expectation of profit or creation of a favorable business relationship does not violate the statute charged in the indictment.

We're on to the third element of the Anti-Kickback Statute. That's that the items or services for which remuneration was paid or received were paid for, in whole or in part, by a federal health care program.

The term "federal health care program," that means any plan or program that provides health benefits, whether directly or indirectly, through insurance or otherwise, which is funded directly, in whole or in part, by the United States

government.

A violation of the Anti-Kickback Statute does not require proof that money or funds used to pay the kickback or remuneration came from federal funds or that the United States lost any money as a result of the alleged misconduct. Similarly, it is not necessary to show the illegal payments increased costs to the Government.

Okay. Now, under the Medicare statute in effect at the time of the alleged events, an item was required to be medically necessary to be reimbursable by Medicare. Medicare regulations did not define the term "medical necessity."

During the trial, you'll recall there was some testimony about Medicare's audit rules, civil penalties, and other guidelines. A violation of those rules, civil penalties, and other guidelines, is not in and of itself a crime and it does not necessarily mean that a crime has been committed.

A defendant cannot be convicted of a crime -- cannot be convicted of a crime merely for breaching these types of audit rules, civil penalties, or other guidelines.

In deciding whether the United States has met its burden of proof regarding the elements of the charged crimes, you have to decide if the United States has proved that the defendant had certain states of mind at the time of the charged crimes.

We have been talking about that throughout, things like knowingly and willfully.

Often, the state of mind with which a person acts at a given time simply can't be proved directly because you can't read another person's mind and tell what that person is thinking.

But the defendant's respective states of mind can be proved indirectly from the surrounding circumstances. Thus, to determine a state of mind such as what he intended or knew at a particular moment, you can consider evidence about what he said or did or failed to do, how the defendant acted and all the other facts and circumstances shown by the evidence that may prove what was in his mind at the time.

It is entirely up to you to decide what that evidence presented during this trial proves, or fails to prove, about his state of mind.

You can also consider the natural and probable results or consequences of any acts that the defendant normally did and whether it's reasonable to conclude that the defendant intended those results or consequences. You can find, but you're not required to find, that the defendant knew and intended the natural and probable consequences or results of acts he knowingly did.

This means that if you find an ordinary person in the defendant's situation would have naturally realized that

certain consequences would result from his actions, then you may find, but, again, you're not required to find, that the defendant did know and did intend that those consequences would result from his actions.

That is entirely up to you to decide as the finders of facts. You are the jurors in the case and you are the finders of facts.

Now, not the conspiracy counts but the non-conspiracy counts which lawyers call substantive counts, those are Counts 2, 3, and 4, and Counts 6, 7, and 8. Those also charge aiding and abetting in addition to the substantive charges of health care fraud and violation -- I'm sorry -- charge aiding and abetting in addition to the substantive charges of health care fraud and violations of the Anti-Kickback Statute.

A person can be guilty of an offense because he personally committed the offenses himself or because he aided and abetted another person in committing the offense.

A person who has aided and abetted another person in committing an offense is often called an accomplice. The person whom the accomplice aids and abets, that person is called the principal.

In order to find a defendant guilty of health care fraud or a violation of the Anti-Kickback Statute because he aided and abetted another in committing those offenses, you have to find that the United States proved beyond a reasonable

doubt each of four requirements:

First, that another person committed the offense charged by committing each of the elements of that offense, as I have explained those elements to you in these instructions. That person need not have been charged with or found guilty of the offense, however, as long as you find the United States proved beyond a reasonable doubt that he committed the offense.

Second, that the defendant knew that the offense charged was going to be committed or was being committed by the other person;

Third, that the defendant knowingly did some act for the purpose of aiding, assisting, soliciting, facilitating, or encouraging that person in committing the specific offense charged and with the intent that the other person commit that specific offense; and

Fourth, that the defendant performed at least one act in furtherance of the offense charged.

In deciding whether the defendant had the required knowledge and intent to satisfy the requirements of aiding and abetting, you have to consider both -- you may consider -- excuse me -- both direct and circumstantial evidence, including the defendant's words and actions and other facts and circumstances.

However, evidence that the defendant merely associated

with other persons involved in a criminal venture or was merely present or was merely a knowing spectator during the commission of an offense is not enough to find the defendant guilty as an aider and abbetor.

If the evidence shows that the defendant knew the offense was being committed or was about to be committed but does not also show beyond a reasonable doubt that it was the defendant's intent and purpose to aid, assist, encourage, facilitate, or otherwise associate himself with the offense, you must not find the defendant guilty of that offense as an aider and abettor.

The United States must prove beyond a reasonable doubt that the defendant in some way participated in the offense committed by the other person as something the defendant wished to bring about and to make succeed.

To show that the defendant performed an act in furtherance of the offense charged, to satisfy the fourth requirement of aiding and abetting, the United States needs to show some affirmative participation by the defendant which at least encouraged another person to commit the offense. That is, you have to find that the defendant's act or acts did in some way aid, assist, facilitate, encourage that other person to commit the offense.

The defendant's act or acts need not further aid, facilitate every part or phase or element of the offense

charged. It is enough if the defendant's act or acts further aid, assist, facilitate, or encourage only one or some part or parts or phases or elements of the offense. Also, the defendant's acts need not themselves be against the law.

Now, sticking with Count 2, 3, and 4, not the conspiracy counts, and also Counts 6, 7, and 8, again not the conspiracy counts, those are the ones that are the substantive allegations.

As to these, the United States may prove a defendant guilty of these offenses by proving that he personally committed them. The United States may also prove the defendant guilty of these offenses based on the legal rule that each member of a conspiracy is responsible for crimes and other acts committed by the other members, as long as those crimes and acts were committed to help further or to help achieve the objective of the conspiracy and were reasonably foreseeable to the defendant as a necessary or natural consequence of the agreement.

In other words, under certain circumstances, the act of one conspirator may be treated as the act of all. This means that all the conspirators may be convicted of a crime committed by any one or more of them, even though they did not all personally participate in that crime themselves.

In order for you to find the defendant guilty of health care fraud or violating the Anti-Kickback Statute based on

this legal rule, you must find that the United States proved beyond a reasonable doubt each of the following four requirements:

First, the defendant was a member of one or both of the conspiracies charged in the superseding indictment.

Second, while the defendant was still a member of the conspiracy or conspiracies, one or more of the other members of the conspiracy or conspiracies committed the offenses charged in Counts 2 through 4 or Counts 6 through 8 by committing each of the elements of the offenses, as I've explained them to you here. However, the other member of the conspiracy or conspiracies need not have been found guilty of or even charged with the offenses, as long as you find that the United States proved beyond a reasonable doubt that the other member committed the offenses.

Third, the other member of the conspiracy or conspiracies committed these offenses within the scope of the unlawful agreement and to help further or achieve the objectives of the conspiracy or conspiracies; and

Fourth, these offenses were reasonably foreseeable to or reasonably anticipated by the defendant as a necessary or natural consequence of the unlawful agreement.

The United States does not have to prove that the defendant specifically agreed or knew that these offenses would be committed. However, the United States must prove

that the offenses were reasonably foreseeable to the defendant, as a member of the conspiracy or conspiracies, and within the scope of the agreement as he understood it.

You can't draw any inference -- favorable, unfavorable, no inference -- toward the United States or the defendant on trial from the fact that certain persons are not named as defendants in the indictment or are not here. The fact that these persons are not on trial has to play no part in your deliberations.

It should be of no concern to you, and you shouldn't speculate as to the reason why somebody may or may not be here on trial. That person's absence shouldn't influence your verdict with respect to the defendant on trial here. You have to base your verdict as to the defendant solely on the evidence against him.

During trial, there was testimony that lawyers, sometimes with assistance from others, have interviewed some witnesses who testified in order to prepare them for trial. No adverse inference should be drawn from that. Indeed, both parties -- both parties -- had a right, a duty, and obligation to conduct those interviews and prepare this case fully as thoroughly as they could. They might have been derelict in the performance of their duties if they did not question the witnesses as the investigation progressed and during their preparation for this trial.

A couple times the United States and the defendant have agreed that the facts set forth in a stipulation are true. You should, therefore, treat these facts as having been proved. You are not required to do so since you are the sole judge of the facts.

You will note that the superseding indictment charges that the offenses were committed on or about a certain date. The United States does not have to prove with certainty the exact date of the alleged offenses. It is sufficient if the United States proves beyond a reasonable doubt that the offenses charged were committed on a date reasonably near those dates alleged.

Now, you're gonna see that the word "and" is used between certain charging words in the indictment. For example, Count 1 of the indictment says that the object of the conspiracy was for the defendant to commit health care fraud and to commit wire fraud. Count 5, similarly, it says the object of the conspiracy was for the defendant to knowingly and willfully solicit and receive remuneration and to knowingly and willfully offer and pay remuneration.

But even though the word "and" appears in the superseding indictment in this way, the United States does not have to prove that the defendant did both things. It's enough for the United States to prove that the defendant did one of the things charged in a particular count.

In other words, you should treat the word "and" as it appears in the indictment as if it is the word "or." Treat "and" as if it is "or."

For example, in Count 1, it is enough for the United States to prove either that the defendant did conspire to commit health care fraud or that he committed wire fraud. Similarly, it is enough for the United States to prove either that the defendant conspired to knowingly, willfully solicit and receive remuneration, or that he knowingly and willfully offered and paid remuneration.

An important exception to this rule is the portion of counts that charge that the defendant acted with certain mental states like knowingly and intentionally. In those instances, knowingly and intentionally, you have to find that each of the required elements exist in order to find the defendant guilty on that particular count.

So when it comes to mental states "and" means "and"; it doesn't mean "or."

Now, the United States presented certain charts and summaries in order to help explain information that was admitted as evidence in this case. The charts and summaries are not themselves evidence or proof of any facts. It's the underlying evidence that you have to consider. If the charts and summaries do not correctly reflect the evidence in the case, you should disregard them and determine the facts from

the underlying evidence.

In deciding what the facts are, you have to decide what testimony you believe and what testimony you do not believe. You are the sole judges of the credibility of the witnesses.

Credibility refers to whether a witness is worthy of belief. Was the witness truthful? Was the witness's testimony accurate? You may believe everything a witness says or only a part of it or none of it.

You can decide whether to believe a witness based on his or her behavior and manner of testifying, the explanations and information the witness gave, and all the other evidence in the case, just as you would in any important matter when you're trying to decide if a person is truthful, straightforward, and accurate in their recollection.

In deciding questions of credibility, you use your common sense, your good judgment, your experience, and your assessment of all the evidence in the case.

In deciding who to believe, what to believe, here are some factors you might want to potentially consider:

The opportunity and ability the witness had to see or hear and know the things about which they're testifying.

The quality of the witness's knowledge, understanding, and memory.

The witness's behavior, appearance, manner while they were testifying.

Whether the witness has an interest in the outcome of the case or any motive or bias or prejudice.

Any relation the witness may have with a party in the case and any effect the verdict or proceedings may have on the witness.

Whether the witness said or wrote anything before trial that was different than the witness's testimony in court.

Whether the witness's testimony was consistent or inconsistent with other evidence that you believe.

And any other factors that bear on whether the witness should be believed in your judgment.

Inconsistencies or discrepancies in a witness's testimony or between the testimony of different witnesses may or may not cause you to disbelieve a witness's testimony. Two or more people witnessing an event can simply see it or hear it a bit differently.

Mistaken recollection, like failure to recall, that's a common human experience. In weighing the effect of an inconsistency, you should also consider whether it was about a matter of real importance or an insignificant detail.

You should also consider whether the inconsistency was innocent or intentional. You are not required to accept testimony even if the testimony was not contradicted and the witness was not impeached.

You may decide that the witness is not worthy of belief

because of the witness's bearing and demeanor, or because the inherent improbability of the testimony, or for any other reason that is sufficient in your judgment.

After making your own judgment about the believability of the witness, you can then attach to that witness's testimony the importance or the weight that you think it deserves.

The weight of the evidence to prove a fact does not necessarily depend on the number of witnesses who testified or the quality *[sic]* of evidence that was presented. What is more important than numbers or quantity is how believable the witnesses were and how much you think their testimony deserves.

Now, you've heard here the testimony of a law enforcement officer, at least one. The fact that a witness is employed as a law enforcement officer does not mean that his or her testimony -- and you have heard more than one -- does not mean that his or her testimony necessarily deserves more or less consideration or greater or lesser weight than that of any other witness.

You have to decide, after reviewing all the evidence, whether you believe the particular testimony of a law enforcement witness and how much weight, if any, you think it deserves.

You've heard evidence that certain individuals are

alleged co-conspirators and have entered into a plea agreement. In the case of Armani Adams and Shannon Haas and David Laughlin and Nadia Levit and Kareem Memon and Kenneth Pitter all are -- have a cooperating non-prosecution agreement with the Government.

Their testimony was received in evidence and it can be considered by you. The United States is permitted to present the testimony of someone who has reached a plea bargain or is entering into a cooperating non-prosecution agreement with the United States in exchange for his or her testimony. You should consider the testimony of such a witness with great care and caution.

In evaluating the witness's testimony, you should consider this factor along with the factors that I have brought up just a moment ago. Whether or not the witness's testimony may have been influenced by the agreements he or she entered into with the United States is for you to determine. You may give the witness's testimony such weight as you think it deserves.

You must not consider a witness's guilty plea or cooperating non-prosecution agreement as evidence of the defendant's guilt. An individual's decision to plead guilty or enter into a non-prosecution agreement is a personal decision about his or her own guilt.

Such evidence is offered only for one or more of the

following circumstances:

To allow you to assess the credibility of the witness; to eliminate any concern that the defendant has been singled out for prosecution; and

to explain how the witness came to possess detailed firsthand knowledge of the events about which they testified.

You may consider the witness's guilty plea and non-prosecution agreement only for those purposes.

There was some testimony I want to mention to you. The testimony of someone who abuses narcotics must be examined and weighed by the jury with greater care than the testimony of the witness who does not. The jury must determine whether the testimony of someone who abuses narcotics has been affected by the drug use or the need for drugs.

You have heard the testimony of certain witnesses. You have also heard that before this trial some of them made statements that may be different from their testimony made here.

It's up to you to determine whether those statements were made and whether they were different from the witness's testimony here.

These are statements that were brought to your attention to help you decide whether to believe the witness's testimony here at trial. You can't use that as proof of the truth of what the witness may have said in earlier statements.

You can only use it as one way of evaluating the witness's testimony here from the witness box.

You heard evidence that certain witnesses previously were convicted of crimes punishable by more than one year in jail. You can consider this evidence, along with other pertinent evidence in deciding whether or not to believe these witnesses and how much weight to give their testimony.

If you believe that a witness knowingly testified falsely concerning any important matter, you may distrust the witness's testimony concerning other matters. You can reject all of the testimony or you can accept such parts of the testimony that you believe are true and give it as much weight as you think it deserves.

As to the defendant's testimony, you should examine and evaluate it just as you would the testimony of any witness.

Finally, the superseding indictment alleges that some act in furtherance of each of the offenses occurred here in the District of New Jersey, which means the State of New Jersey. There's no requirement that all aspects of each of the offenses charged or that the entire conspiracy took place here in the District of New Jersey. But for you to return a guilty verdict, the Government must convince you that for each count, some meaningful act in furtherance of the crimes charged took place here in the District of New Jersey; that is, as to the conspiracies in Counts 1 and 5.

In addition to that, as to Counts 2, 3, and 4, the meaningful act in furtherance of those counts must have been causing the delivery of DME into New Jersey. Durable medical equipment.

As to Counts 6, 7, and 8, the meaningful act in furtherance of those counts must have been either causing the delivery of DME into New Jersey or receiving a payment into New Jersey or the signing of a doctor's order in New Jersey.

Unlike the elements of the charged offenses that I have described so far, this set of facts as to the connection to New Jersey, as I have just described to you, only has to be proved by a preponderance of the evidence. This means the United States only has to convince you that it's more likely than not that these acts took place here.

Remember that the United States must prove all of the elements of the crimes charged beyond a reasonable doubt.

Here is where I'm planning to stop. The time is 3:17. We can either get started with the first summation. We'll have to stop at some point and pick it up back on Thursday morning, or you could take a bathroom break and we can come back in, or we can call it a day.

I want to ask the jury how they want to proceed.

Do you want to get started with the summation now, do you want to take a break, or do you want to end the day and pick it up on Thursday morning? I'm going to ask you for a

show of hands.

Who wants to just get started right now?

We have a bunch of people who want to do that.

Anybody want to just call it right now? I have a couple people who want to call it. I think there's a little bit of out-voting.

Of the people who want to call it, do you need a bathroom break now? Does anyone else in the courtroom need a bathroom break?

Okay. We're gonna take a bathroom break and we will come back. It's now 3:18. We will come back and be ready to start at 3:30. We will begin the summation, and then we'll call it at exactly four o'clock.

Let's all rise and we'll get back on at 3:30.

(The jury exits the courtroom at 3:18 p.m.)

(Whereupon, the following proceedings were held outside the presence of the jury:)

THE COURT: The door is shut. The jury has left. Let's all please be seated briefly.

Any issues with respect to the jury instructions as delivered that's been brought to my attention from the United States?

MR. WEBMAN: No, Your Honor.

MS. SOLANO: No, Your Honor. I note that what you noted, the sentence about implicit process, so the Government

and I both read -- it comes from the *Jones* case, and I re-read the *Jones* case and we have no objection to it not being read.

THE COURT: That's what I figured. I felt that as it was happening and decided not to. Nothing else?

MS. SOLANO: No, Your Honor.

THE COURT: So we will come back and be ready to start at 3:30. Thank you all.

(Recess taken.)

THE COURTROOM DEPUTY: All rise.

(Whereupon, the following proceedings were held outside the presence of the jury:)

MR. WEBMAN: As Your Honor was reading, I think in addition to the one point that we talked about before, there were one or two other places where Your Honor made changes on the fly.

There was the one stray reference to controlled substances obviously, and then there were a few other things like referring to the defendant as "the defendant" rather than Mr. Naviwala which was in there, and referring to the Government as "The United States." I think in many places you referred to the superseding indictment as just the indictment.

Would you like me to re-file with those things fixed or just send them back to the jury as is?

THE COURT: You should send it back to the jury with the removal of the things we talked about, which is to say the

legal citations both below the footnotes and the heading in one particular place.

You should change the headings that say request no. 1, 2, 3, to instruction 1, 2, 3, and otherwise those are the things we discussed. Nothing else should be changed from what the parties agreed to.

There is one exception. The one exception is the controlled substance thing has to come out. Everyone knows that's a mistake and that is obviously just a potentially odd wildcard. I assume the defendant sees everything exactly as I just said it.

MS. SOLANO: Of course, Your Honor.

THE COURT: Let's get the jury out. I think they're ready.

THE DEPUTY CLERK: All rise.

(Jury enters the courtroom at 3:34 p.m.)

(Whereupon, the following proceedings were held in the presence of the jury:)

THE COURT: Members of the jury, we're back. Please have a seat.

We're on to the next stage of the trial which is the summations from the lawyers, and it's over to the United States for the beginning of its summation.

I'm gonna cut Mr. Specht -- I'm going to cut him off unceremoniously at 3:59 so we can get everyone home at

four o'clock.

Just a reminder, no court tomorrow, no court Wednesday. We'll be back here with Mr. Specht resuming on Thursday morning at 9:00.

CLOSING ARGUMENT

MR. SPECHT: Thank you, Your Honor.

If I could request that the screen also be made visible to the jury.

This case is about greed and deception. The defendant used multiple companies, The Prudent Group, Elite Healthcare Solutions, and Parra Health, to commit crimes.

The defendant and his co-conspirators treated signing prescriptions like commodities to be sold at volume; signed prescriptions for braces people didn't need, people didn't want.

The defendant has admitted to committing crimes. FBI Special Agent Katie Latrenta explained that the defendant was charged with a crime, got a lawyer, voluntarily met with the FBI, admitted to violating the law.

And here in this courtroom the defendant took the stand, and when he was confronted with documentary evidence, he had no choice but to admit committing crimes, no choice but to admit treating the prescriptions like commodities to get him kickbacks.

Medicare and other health insurance is a trust-based

system. It has to be. There are so many transactions processed every day. The defendant abused that trust to make more than $10 million.

The goal was clear: to fraudulently get money from health insurance by health care fraud, hide the fraud so it could continue.

Why hide their conduct? The defendant and his co-conspirators knew it was illegal. The defendant and his co-conspirators hid their conduct when they signed sham contracts, created sham invoices, used and paid telemedicine doctors to sign prescriptions, even when the doctor didn't know the patient; hadn't spoken to the patient, couldn't determine if the patient needed a brace; when they edited recordings of phone calls sent to telemedicine doctors.

And when the scheme started to unravel, the defendant spoke to John Fusco, one of his owners on paper. What did the defendant say? "Don't rat me out."

You sat in this courtroom for several weeks. You have seen e-mails, text messages, contracts, invoices. You have listened to audio recordings of patients and telemarketers, and you've heard testimony from people who participated in the fraud, and you've seen the beneficiaries.

You saw Diane DiPalma and the braces that she received at her house in New Jersey. She talked about them here in this courtroom.

Today, and on Thursday, we'll talk about how all of the evidence fits together; how it shows beyond a reasonable doubt the defendant is guilty of each and every crime that he is charged with.

Before we get into the details, let's talk for a moment about the big picture. The evidence that you have seen, the evidence that you have heard, it shows that health insurance pays a lot of money. That includes paying a lot of money for things like orthotic braces, back braces, knee braces.

The defendant and his partners understood that health insurance only paid for braces in certain circumstances where it was appropriate, and the defendant and his partners got lists of patient information and had telemarketers convince the patients they wanted a brace. Again, you heard multiple of those phone calls during this trial.

And then the defendant and his partners at The Prudent Group or at Elite Healthcare Solutions edited some of the recordings of the telemarketer calls, sent those edited phone calls to telemedicine doctors who were paid to write a prescription for one or three or five or nine braces for a patient.

The defendant didn't go into a patient's real doctor. The defendant went to doctors associated with telemedicine companies like Ken Pitter's Telemedex, David Laughlin's RediDoc, where the doctors could be fooled by the phone calls

that were edited, where the doctors were just expected to sign a prescription, where the doctors didn't have to even speak to a patient, didn't even have to listen to that recorded phone call.

Shannon Haas herself, who was one of those doctors, explained how she just clicked through the patient file to sign a prescription for a patient. And then the defendant arranged for those prescriptions to get billed to health insurance through DME companies.

He controlled at least one DME company. You have heard about Parra Health. And the defendant kept some of the very best prescriptions for his company Parra Health to bill.

The best prescriptions being ones for the most expensive braces, like back braces, or ones that avoided strict, private insurance companies.

And other prescriptions, the ones that didn't get billed to Parra Health, the defendant sold them. Sold them to Armani Adams, sold them to Ken Pitter, sold them to Nadia Levit; and then Adams, Pitter, or Levit, could use their DME companies to bill health insurance.

You've seen the e-mails where the defendant sells prescriptions. You've seen the wires where he gets paid. The defendant knew those DME companies would bill Medicare and other health insurance for braces based on those prescriptions that he sold. That was the whole plan. That was how he made

money.

For his role in the scheme, the defendant was charged in an eight-count indictment. The eight counts fall into basically four categories.

First category: Conspiracy to commit health care fraud and wire fraud. The defendant agreed with other people to lie to get money from health insurance, including Medicare.

Second category: health care fraud related to three specific patients: Diane DiPalma, Joanne Frantantoni, and Frank Pringle. The defendant called health insurance to pay for braces for these three patients, all of who lived in New Jersey, even though these braces weren't necessary.

Third category: Conspiracy to violate the Anti-Kickback Statute. The defendant agreed to sell prescriptions to Ken Pitter or Armani Adams or Nadia Levit in exchange for money.

And the fourth category: Illegal kickbacks related to three specific payments. The defendant caused Armani Adams to pay him three separate payments of $200,000 each in exchange for selling patient information.

Let's talk for a moment about the defendant's testimony. As the Judge explained, the defendant has no burden in this case, has the right not to testify; but here in this case, the defendant chose to testify and his testimony, his credibility are to be weighed like you weigh the testimony

and credibility of other witnesses.

Your job is to assess how his credibility stacks up by studying his demeanor, evaluating how his testimony fits in with the testimony of other witnesses and with the documents.

Here, the defendant took the stand, admitted to his role in an illegal kickback scheme, which relates to the counts charged in Counts 5, 6, 7, and 8.

The defendant sold prescriptions like they were commodities. But the defendant has also tried to erase himself from the narrative as to the fraud scheme charged in Counts 1, 2, 3, and 4.

He testified that there were other people running the show; that he thought the telemedicine doctors were doing legitimate doctor-patient consultations.

Consider the defendant's testimony against that of his criminal partners -- Ken Pitter, Armani Adams, David Laughlin, Kareem Memon, Nadia Levit -- witnesses who testified about their role in the conspiracy, about knowing they were violating the law, persisting because they made a lot of money.

These people came to court and they testified to committing crimes with the defendant, and they explained that they got a cooperation agreement with the Government that requires them to testify honestly. They told you if they aren't honest, they could lose their cooperation agreement,

could get in trouble.

These witnesses all agreed on one thing: the defendant committed crimes with each of them. But the defendant would have you believe that these men and women are lying, each of them. That he is the one telling the truth.

The defendant, the person who is on trial here who has by far the most to lose, use your common sense. That just doesn't add up, doesn't make sense. It is the defendant, and not all those other people, who took the stand and lied.

The testimony of all those other witnesses is corroborated by e-mails and by text messages, including those from the defendant himself, showing that he's managing people in this scheme; he is making demands of telemedicine companies; he's setting up fake owners; he's earning millions of dollars.

Ask yourself: Why go through such efforts to use fake owners, to use fake invoices? It's because the defendant knew he was committing crimes because he is guilty of those crimes.

It is the United States' burden to prove each and every element of the charges presented to you beyond a reasonable doubt, and we welcome that burden, which is the same standard applied in every criminal case across the country.

You have heard evidence in this case, and we won't be able to review it all. Over the next few minutes, and again on Thursday, I am going to walk through the evidence as to

each and every count to demonstrate there is only one verdict consistent with the evidence in this case, consistent with your common sense, consistent with the defendant's own statements, and that is a verdict of guilty on all counts.

Of course, the only person who can tell you what the law is is the Judge. If anything I say deviates from anything that the Judge has said, of course it's what the Judge says that matters.

Let's talk about Count 1. Count 1 charges the defendant with conspiracy, so does Count 5, and we'll talk about that a little bit more later. A conspiracy is just two or more people who agree to do something unlawful.

As the Judge has instructed, the United States doesn't have to prove a written or a formal agreement. You can find a conspiracy existed based even on circumstantial evidence that there is a mutual understanding between two or more people.

The United States does not have to prove all members of the conspiracy directly met or even knew each other. The important thing is the common and the unlawful goal.

So, for example, you can conclude that the defendant didn't meet Dr. Shannon Haas, the telemedicine doctor who testified, but the defendant knew telemedicine doctors like Dr. Haas existed and were part of the conspiracy. The defendant and Dr. Haas and others shared the same goal: getting money from insurance.

As to Count 1, the illegal conduct is health care fraud and wire fraud, and the United States has to show that the defendant entered into an agreement with one other person as to healthcare fraud and wire fraud. But the evidence has shown that the defendant entered into an agreement with multiple people to commit health care fraud and to commit wire fraud as part of their shared goal to get money.

There has been substantial evidence of a criminal partnership and a relationship in this case between the defendant and others to commit health care fraud and wire fraud. The defendant sent patient information to David Laughlin at RediDoc and Ken Pitter at Telemedex to get prescriptions patients didn't need.

The defendant sold prescriptions to DME companies, including Nadia Levit's DME companies here in New Jersey, all while knowing what the DME companies promised not to bill Medicare for prescriptions acquired through kickbacks.

The defendant worked with his business partner, Kareem Memon, to get those leads, to get telemedicine doctors to sign prescriptions, and to sell prescriptions. Testimony tells that story. And the testimony is corroborated by invoices, by contracts, by e-mails and text messages.

Health care fraud and wire fraud require that the defendant participated in a scheme to defraud, that he intended to defraud. A primary difference between the two

statutes is that, for health care fraud, the victim needs to be a health insurer; and for wire fraud, the defendant needs to send or cause someone to send an interstate communication or a wire.

Those last two points aren't reasonably in dispute. As to the health care fraud, the victim of the defendant's crime was a health insurer. Actually, multiple health insurers.

You have seen the checks from Medicare. You have seen checks from TRICARE. You have seen the list of patients that specified their insurance carrier.

As to the wire fraud, you've seen wire reports showing that Armani Adams and his company sent wire payments to the defendant's companies. Robert Amenta, a witness from the Federal Reserve Board, testified that each of those wires, like every wire in the Federal Reserve Fedwire system, travels in interstate commerce.

Those are elements that have been met.

We'll focus for now on the defendant's intent to defraud. You have heard testimony from several witnesses that they agreed with the defendant to commit fraud, meaning they were all focused on the same goal of getting money by submitting claims to insurance for orthopedic brace prescriptions without regard to medical necessity.

First and foremost, the defendant signed Medicare documents. His signature appeared on multiple Medicare forms

going back to 2017. He agreed to "not knowingly cause to be presented a false or fraudulent claim for payment by Medicare," and he acknowledged Medicare's payments were conditioned on compliance with, among other things, the federal Anti-Kickback Statute.

Despite these requirements, the defendant schemed to defraud Medicare out of money, and that scheme can be seen in false statements.

For example, here is a Parra Health organizational chart submitted to Medicare that lists the defendant as an office manager, but he's not an office manager. He is just listed as an office manager to conceal his role from Medicare.

The defendant admitted that during his testimony:

(Reading:)

And it says that you're an office manager but you said that you controlled the business and you really -- you and Kareem were the ones that were running things; right?

Yes.

But that's not reflected on this organization chart; right?

That's correct.

The defendant's intent to defraud can also be seen by his payments to the telemedicine doctors to rubber-stamp fraudulent prescriptions without talking to patients.

How did the defendant use telemedicine doctors in the fraud? Well, for one thing he sent the telemedicine doctors' orders with the doctors' notes already filled out and the specific braces pre-selected.

Here you see the defendant submitting patient information about Sadie Wilson to RediDoc. RediDoc is the telemedicine company David Laughlin testified about.

What does the defendant send to RediDoc? A prefilled prescription for an ankle brace. The defendant is sending the doctor the type of brace, specific product code, even the shoe size.

Shouldn't it be the other way around, the doctor and not a telemarketer selecting a patient's brace type?

The materials that are sent to RediDoc include objective notes from a treating physician, a doctor's order from a treating physician, but there is no treating physician. There is no physician at all. This information is going to the doctor.

You may also recall the audio file associated with this patient.

(Audio played.)

MR. SPECHT: This telemarketer doesn't even get Sadie Wilson on the phone. The telemarketer gets Sadie Wilson's granddaughter. That's the audio file that the defendant sends to RediDoc for a prescription with a pre-written doctor's

order from a treating physician that says that the benefit of the brace has been explained to Sadie, a claim not supported by the audio file.

David Laughlin, the COO of RediDoc testified about these documents. (Reading:)

Was this text written by a doctor?

No.

Did a doctor send this to RediDoc?

No.

Who sent this to RediDoc?

A marketer.

And do you know who the marketer is for this particular one?

Raheel.

Is this form based on a template?

Yes.

The defendant is sending pre-filled prescriptions to RediDoc hoping that a doctor just rubber-stamps the prescription. Of course, as you've seen, doctors do exactly that.

Again from the testimony of David Laughlin. (Reading:)

What percentage of RediDoc consultations resulted in a signed prescription from a doctor?

Over 99 percent.

What percentage of RediDoc consultations

resulted in a signed prescription without the doctor speaking to the patient?

Equivalent. Over 99 percent.

Did the defendant ever complain when a doctor didn't sign a prescription?

Yes.

This is why the defendant worked with RediDoc. RediDoc doctors just signed prescriptions ASAP. How could they sign so quickly? They didn't talk to the patient. And to be sure, RediDoc had a system that prompted doctors to check boxes saying that they did certain things, but the doctors didn't do that.

Again, David Laughlin. (Reading:)

But did you understand whether they in fact did the things that they checked the box for?

Did I, in fact, know that they did? I knew that they didn't.

Based on the volume and the turnaround time of prescriptions getting signed, could the doctors have always taken all those steps?

It's mathematically impossible and everyone knew that.

This testimony from David Laughlin, it's corroborated, for example, by the testimony of Shannon Haas, a doctor who worked for RediDoc, who signed thousands of prescriptions.

According to Dr. Shannon Haas. (Reading:)

When you signed the orders, did you speak to the patients before you signed them? Again, I'm just talking about RediDoc.

No, ma'am.

Did you have a doctor-patient relationship with the RediDoc patients?

No, ma'am.

Why do you say that?

Because I didn't see them, evaluate them, speak with them.

Can you please explain in a few sentences what you did to violate the law.

In signing the orders, I made false statements.

How would you know which brace to prescribe?

They would be pre-populated.

RediDoc doctors just described the braces, people like the defendant picked. That was their job. The defendant paid for telemedicine, the defendant called the shots.

THE COURT: Mr. Specht, I'm going to stop you right there. It's 3:59. We're with gonna pick it up Thursday morning at nine o'clock with Mr. Specht's continuation of his address.

All rise for the jury.

(Jury leaves the courtroom at 4:00 p.m.).

(Whereupon, the following proceedings were held outside the presence of the jury:)

THE COURT: The jury has departed, the door is closed. Let's sit down, please, very quickly.

One other thing. Mr. Webman, while we were discussing before Mr. Specht began, I think also the *Jones* line should be removed because the parties have agreed that that shouldn't have been in there.

Okay by the United States?

MR. WEBMAN: That's what we'll do, Your Honor.

THE COURT: Ms. Solano, for the defendant.

MS. SOLANO: Is that okay or do I have something -- an application?

THE COURT: Is that okay?

MS. SOLANO: That's okay, yes.

THE COURT: It sounds like you have an application.

MS. SOLANO: Yes, Your Honor. I believe that the Government made the mis -- made the representation this morning that it would not use the term "treating physician."

I heard it at least three times, and in light of that, we renew our application that a limiting instruction or a curative instruction, rather, be provided specific to treating physician.

That was the subject of Quindoza's testimony. I was concerned about it. They opened on it and then Mr. Specht,

notwithstanding the representation, said it at least three times already.

THE COURT: Mr. Specht.

MR. SPECHT: Your Honor, I think here the Government's reading from an exhibit. We're not referencing a regulation or a statute. To the extent we're referring to something that's admitted into evidence, I don't believe that creates the issue underlying the defense concern.

THE COURT: I'm not sure you were reading from the exhibit.

MR. SPECHT: If I may, I think there's a slide where it says doctor's order from a treating physician. There wasn't someone in that capacity. If that was misleading, I apologize for that. The goal here --

THE COURT: Can you pop back to the slide for a second? Is that doable?

(Brief pause.)

THE COURT: This is the slide that's Government Exhibit 2216d.

Is that what we're looking at? Is this the right one?

MR. SPECHT: Yes, Your Honor. I think there's the two --

THE COURT: I saw that. I think there was an additional reference.

MR. SPECHT: I think in talking about this I may have

said that there wasn't a treating physician, just to mirror the language that's there that was sent to RediDoc.

THE COURT: I'm not sure why that implicates the concern. Look, here is the problem -- Mr. Specht, I think the difficulty is this: Whether it implicates the concern or not, Ms. Solano is right that there was an unencumbered representation made today about not using that phrase.

And so at least as a formal matter this steps on the toe of that representation and puts everyone in a complicated spot.

Aside from formalism, the difficulty, Ms. Solano, in terms of any kind of application or a limiting instruction or anything of the kind is that Mr. Specht has this right. This is admitted into evidence. There's no suggestion here that treating physician is key to some term in the Medicare rules and regs or any kind of policy statement or anything of the kind.

The purpose for which this is being put before the jury is exactly what we spoke about earlier today, which is the United States is not trying to strengthen or yeast up its case by pointing to regs, even though it may have been able to make its case stronger by doing that.

Instead, it's simply arguing from a lie, in it's telling, and it's arguing from a lie by saying this says the sky was blue and the sky is not blue. This says there was a

treating physician. There was no treating physician.

It's not relevant that the word "treating" was used. It's simply to show that the negation is what the evidence in the United States' telling shows.

So while I agree that as a formal matter the United States did not hew to the representation it made this morning, as a substantive matter, we're not even remotely in the zone that relates to the various limiting instructions that we discussed this morning and that were the subject of the limiting instruction I gave.

Is there another reference, Ms. Solano, that you want to bring to my attention?

MS. SOLANO: I'm trying to find it, but I'm having technical difficulties. Can I have the evening to look at it and then --

THE COURT: Of course --

MS. SOLANO: -- if there is something I think needs to be addressed, I'll raise it first thing.

THE COURT: Of course.

Anything else?

MS. SOLANO: Not from the defense, Your Honor.

THE COURT: From the United States?

MS. LOU: No, Your Honor.

THE COURT: We will see each other ready to start nine o'clock on Thursday morning. Thank you all.

(Which were all the proceedings held in the above-entitled matter on said date.)

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FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE

I, **Lisa A. Larsen, RPR, RMR, CRR, FCRR**, Official Court Reporter of the United States District Court for the District of New Jersey, do hereby certify that the foregoing proceedings are a true and accurate transcript from the record of proceedings in the above-entitled matter.

/S/Lisa A. Larsen, RPR, RMR, CRR, FCRR
Official U.S. District Court Reporter ~
District of New Jersey

DATED this February 24, 2025