

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

v.

NEERAJ JINDAL (1)

JOHN RODGERS (2)

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No. 4:20-CR-358
JUDGE MAZZANT

JOINT PROPOSED JURY INSTRUCTIONS

The United States, Defendant Neeraj Jindal, and Defendant John Rodgers respectfully submit joint proposed jury instructions pursuant to the Court's Pretrial Order (Dkt. #52).

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JOINT PROPOSED JURY INSTRUCTION NO. 1:
NOTE TAKING BY JURORS

If you would like to take notes during the trial, you may do so. On the other hand, you are not required to take notes if you prefer not to do so. Each of you should make your own decision about this.

If you decide to take notes, be careful not to get so involved in the note-taking that you become distracted from the ongoing proceedings. Your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you do not take notes, you should rely upon your own independent recollection of the proceedings and you should not be unduly influenced by the notes of other jurors.

Notes are not entitled to any greater weight than the memory or impression of each juror as to what the testimony may have been. Whether you take notes or not, each of you must form and express your own opinion as to the facts of the case.

You will note that we do have an official court reporter making a record of the trial; however, we will not have typewritten transcripts of this record available for your use in reaching a decision in this case.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.02 (Alternative B) (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 2:
INTRODUCTION TO FINAL INSTRUCTIONS

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give you some general instructions which apply in every case, for example, instructions about the burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case, and finally I will explain to you the procedures you should follow in your deliberations.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.03 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 3:
DUTY TO FOLLOW INSTRUCTIONS

You, as jurors, are the judges of the facts. But in determining what actually happened—that is, in reaching your decision as to the facts—it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors, and they have the right to expect nothing less.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.04 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 4:
PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

The indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendants are presumed by the law to be innocent. The defendants begin with a clean slate. The law does not require the defendants to prove their innocence or produce any evidence at all [and no inference whatever may be drawn from the election of a defendant not to testify].¹

The government has the burden of proving the defendants guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendants. While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendants' guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendants' guilt.

A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in making the most important decisions of your own affairs.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.05 (2019).

¹ Bracketed material to be deleted if both defendants testify.

JOINT PROPOSED JURY INSTRUCTION NO. 5:
EVIDENCE—EXCLUDING WHAT IS NOT EVIDENCE

As I told you earlier, it is your duty to determine the facts. To do so, you must consider only the evidence presented during the trial. Evidence is the sworn testimony of the witnesses, including stipulations, and the exhibits. The questions, statements, objections, and arguments made by the lawyers are not evidence.

The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

During the trial I sustained objections to certain questions and exhibits. You must disregard those questions and exhibits entirely. Do not speculate as to what the witness would have said if permitted to answer the question or as to the contents of an exhibit. Also, certain testimony or other evidence has been ordered removed from the record and you have been instructed to disregard this evidence. Do not consider any testimony or other evidence which has been removed from your consideration in reaching your decision. Your verdict must be based solely on the legally admissible evidence and testimony.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in this case. Except for the instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own verdict.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.06 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 6:
EVIDENCE—INFERENCES—DIRECT AND CIRCUMSTANTIAL

In considering the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence.

Do not be concerned about whether evidence is “direct evidence” or “circumstantial evidence.” You should consider and weigh all of the evidence that was presented to you.

“Direct evidence” is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. “Circumstantial evidence” is proof of a chain of events and circumstances indicating that something is or is not a fact.

The law makes no distinction between the weights to be given either direct or circumstantial evidence. But the law requires that you, after weighing all of the evidence, whether direct or circumstantial, be convinced of the guilt of the defendant beyond a reasonable doubt before you can find him guilty.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.08, Alternative B (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 7:
CREDIBILITY OF WITNESSES

I remind you that it is your job to decide whether the government has proved the guilt of the defendants beyond a reasonable doubt. In doing so, you must consider all of the evidence.

This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to the witness’s testimony. An important part of your job will be making judgments about the testimony of the witnesses [including the defendant(s)]² who testified in this case. You should decide whether you believe all, some part, or none of what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions: Did the witness impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he or she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness’s testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

[The testimony of the defendant(s) should be weighed, and his/their credibility evaluated in the same way as that of any other witness.]³

Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say. In making up your mind and reaching a

² Bracketed material to be deleted if neither defendant testifies.

³ Bracketed material to be deleted if neither defendant testifies.

verdict, do not make any decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side on that point. You will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.09 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 8:
CHARACTER EVIDENCE⁴

Where a defendant has offered evidence of good general reputation for truth and veracity, honesty and integrity, or character as a law-abiding citizen, you should consider such evidence along with all the other evidence in the case.

Evidence of a defendant's character, inconsistent with those traits of character ordinarily involved in the commission of the crime charged, may give rise to a reasonable doubt, since you may think it improbable that a person of good character with respect to those traits would commit such a crime.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.10 (2019).

⁴ This instruction to be deleted if no party offers character evidence.

JOINT PROPOSED JURY INSTRUCTION NO. 9:
IMPEACHMENT BY PRIOR INCONSISTENCIES

The testimony of a witness may be discredited by showing that the witness testified falsely, or by evidence that at some other time the witness said or did something, or failed to say or do something, which is inconsistent with the testimony the witness gave at this trial.

Earlier statements of a witness were not admitted in evidence to prove that the contents of those statements are true. You may not consider the earlier statements to prove that the content of an earlier statement is true; you may only use earlier statements to determine whether you think the earlier statements are consistent or inconsistent with the trial testimony of the witness and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.11 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 10:
EXPERT OPINION TESTIMONY⁵

During the trial you heard the testimony of [*name of expert*] who expressed opinions concerning [*subject matter of testimony*]. If scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified by knowledge, skill, experience, training, or education may testify and state an opinion concerning such matters.

Merely because such a witness has expressed an opinion does not mean, however, that you must accept this opinion. You should judge such testimony like any other testimony. You may accept it or reject it and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, and all other evidence in the case.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.18 (2019).

⁵ This instruction to be deleted if no party offers expert opinion testimony.

JOINT PROPOSED JURY INSTRUCTION NO. 11:
IN OR AROUND AND ON OR ABOUT

You will note that the indictment charges that the offenses were committed in or around a specified date range or on or about a specific date. The government does not have to prove that the crimes were committed in that exact date range, or on that exact date, so long as the government proves beyond a reasonable doubt that:

1. As to Count 1, the defendants knowingly joined a conspiracy that existed for a period reasonably near March 2017 through August 2017, the date range stated in the indictment;
2. As to Count 2, the defendants knowingly joined a conspiracy that existed for a period reasonably near April 2017 through October 2017, the date range stated in the indictment, and one or both of the defendants committed at least one of the overt acts described in the indictment on a date reasonably near the date stated in the indictment for that overt act;
3. As to Count 3, Defendant Jindal committed the crime on a date or in a date range reasonably near April 2017 through October 2017, the date range stated in the indictment; and
4. As to Count 4, Defendant Rodgers committed the crime on a date or in a date range reasonably near April 2017 through October 2017, the date range stated in the indictment.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.19 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 12:
VENUE—CONSPIRACY

The events presented at trial happened in various places. There is no requirement that the entire conspiracy take place in the Eastern District of Texas, but in order for you to return a guilty verdict, the government must prove by a preponderance of the evidence that either the agreement or an overt act took place in this district, even if the defendant never set foot in the district. An overt act is an act performed to affect the object of a conspiracy, although it remains separate and distinct from the conspiracy itself. Though the overt act need not be of criminal nature, it must be done in furtherance of the object of the conspiracy.

Unlike the other elements of the offense, this is a fact that the government has to prove only by a preponderance of the evidence. This means the government has to convince you only that it is more likely than not that part of the conspiracy took place in the Eastern District of Texas. All other elements of the offense must be proved beyond a reasonable doubt. You are instructed that Denton County is located in the Eastern District of Texas.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.20(2019).

JOINT PROPOSED JURY INSTRUCTION NO. 13:
CAUTION—PUNISHMENT

If a defendant is found guilty, it will be my duty to decide what the punishment will be. You should not be concerned with punishment in any way. It should not enter your consideration or discussion.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.22 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 14:
MULTIPLE DEFENDANTS—MULTIPLE COUNTS

A separate crime is charged against one or both of the defendants in each count of the indictment. Each count, and the evidence pertaining to it, should be considered separately. The case of each defendant should be considered separately and individually. The fact that you may find one or both of the accused guilty or not guilty of any of the crimes charged should not control your verdict as to any other crime or the other defendant. You must give separate consideration to the evidence as to each defendant.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.25 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 15:
DUTY TO DELIBERATE

To reach a verdict, whether it is guilty or not guilty, all of you must agree. Your verdict must be unanimous on each count of the indictment.

It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. Do not let any bias, sympathy, or prejudice that you may feel toward one side or the other influence your decision in any way. In particular, do not let racial, ethnic, national origin, or other bias influence your decision in any way. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges—judges of the facts. Your duty is to decide whether the government has proved the defendants guilty beyond a reasonable doubt.

When you go to the jury room, the first thing that you should do is select one of your number as your foreperson, who will help to guide your deliberations and will speak for you here in the courtroom.

A verdict form has been prepared for your convenience.⁶ The verdict form contains six questions, asking for your unanimous verdict as to each count charged against each defendant. Questions one and two ask for your unanimous verdict as to Count One against each defendant; questions three and four ask for your unanimous verdict as to Count Two against each defendant;

⁶ The Fifth Circuit's Pattern Jury Instructions (Criminal Cases) here reserve space for the Court to "[e]xplain [the] verdict form." Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.26 (2019).

question five asks for your unanimous verdict as to Count Three against defendant Neeraj Jindal; and question six asks for your unanimous verdict as to Count Four against defendant John Rodgers.

The foreperson will write the unanimous answer of the jury in the space provided for each count of the indictment, either guilty or not guilty. At the conclusion of your deliberations, the foreperson should date and sign the verdict.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the court security officer. I will either reply in writing or bring you back into the court to answer your message.

Bear in mind that you are never to reveal to any person, not even to the court, how the jury stands, numerically or otherwise, on any count of the indictment, until after you have reached a unanimous verdict.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.26 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 16:
SUMMARIES AND CHARTS NOT RECEIVED IN EVIDENCE

Certain charts and summaries have been shown to you solely as an aid to help explain the facts disclosed by evidence (testimony, records, and other documents) in the case. These charts and summaries are not admitted evidence or proof of any facts. You should determine the facts from the evidence that has been admitted.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.50 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 17:
SUMMARIES AND CHARTS RECEIVED IN EVIDENCE PURSUANT TO FEDERAL
RULE OF EVIDENCE 1006

Certain charts and summaries of other records have been received into evidence. They should be considered like any other evidence in the case. You should give them only such weight as you think they deserve.

The charts and summaries include inferences or conclusions drawn from the records underlying them. It is up to you to determine if these inferences or conclusions are accurate.

The underlying records are the best evidence of what occurred.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.51 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 18:
SUMMARY WITNESS TESTIMONY AND CHARTS BASED ON OTHER EVIDENCE

Summary testimony by a witness and charts or summaries prepared or relied upon by the witness have been received into evidence for the purpose of explaining facts disclosed by testimony and exhibits which are also in evidence in this case. If you find that such summary testimony and charts correctly reflect the other evidence in the case, you may rely upon them. But if and to the extent that you find they are not in truth summaries of the evidence in the case, you are to disregard them. The best evidence of what occurred are the underlying records themselves.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.52 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 19:
STIPULATIONS⁷

The parties have agreed to certain facts that have been stated to you. Those facts are now conclusively established.

Manual of Model Criminal Jury Instructions for the District Courts of the Ninth Circuit, No. 2.3 (2022).

⁷ This instruction to be deleted if the parties have not agreed to any stipulations.

JOINT PROPOSED JURY INSTRUCTION NO. 20:
MULTIPLE CONSPIRACIES

You must determine whether the conspiracy charged in the indictment existed, and, if it did, whether the defendant was a member of it. If you find that the conspiracy charged did not exist, then you must return a not guilty verdict, even though you find that some other conspiracy existed. If you find that a defendant was not a member of the conspiracy charged in the indictment, then you must find that defendant not guilty, even though that defendant may have been a member of some other conspiracy.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 2.16 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 21:
UNANIMITY OF THEORY

You have been instructed that your verdict, whether it is guilty or not guilty, must be unanimous. The following instruction applies to the unanimity requirement as to Count Two.

Count Two of the indictment accuses the defendants of committing the crime of conspiracy to commit an offense against the laws of the United States in three different ways.

The first is that the defendants knowingly and willfully conspired to corruptly influence, obstruct, impede, or endeavor to influence, obstruct, or impede the due and proper administration of the law under which a pending proceeding, specifically the 2017 Federal Trade Commission investigation, was being had before a department or agency of the United States, specifically the Federal Trade Commission.

The second is that the defendants knowingly and willfully conspired to knowingly and willfully make a materially false, fictitious, or fraudulent statement or representation in a matter within the jurisdiction of the executive branch of the Government of the United States, specifically the 2017 Federal Trade Commission investigation.

The third is that the defendants knowingly and willfully conspired to knowingly and willfully make or use a false writing or document knowing the same to contain a materially false, fictitious, or fraudulent statement or entry in a matter within the jurisdiction of the executive branch of the Government of the United States, specifically the 2017 Federal Trade Commission investigation.

The government does not have to prove all of these for you to return a guilty verdict on this charge. Proof beyond a reasonable doubt on one is enough. But in order to return a guilty verdict, all of you must agree that the same one has been proved. All of you must agree that the government proved beyond a reasonable doubt that the defendants knowingly and willfully

conspired to corruptly influence, obstruct, impede, or endeavor to influence, obstruct, or impede the due and proper administration of the law under which a pending proceeding, specifically the 2017 Federal Trade Commission investigation, was being had before a department or agency of the United States, specifically the Federal Trade Commission; or, all of you must agree that the government proved beyond a reasonable doubt that the defendants knowingly and willfully conspired to knowingly and willfully make a materially false, fictitious, or fraudulent statement or representation in a matter within the jurisdiction of the executive branch of the Government of the United States, specifically a Federal Trade Commission investigation; or, all of you must agree that the government proved beyond a reasonable doubt that the defendants knowingly and willfully conspired to knowingly and willfully make or use a false writing or document knowing the same to contain a materially false, fictitious, or fraudulent statement or entry in a matter within the jurisdiction of the executive branch of the Government of the United States, specifically a Federal Trade Commission investigation.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 1.27 (2019).

JOINT PROPOSED JURY INSTRUCTION NO. 22:
ELEMENTS OF SUBSTANTIVE OFFENSE (18 U.S.C. § 1001(a)(2)) FOR COUNT TWO

To assist you in determining whether the government has proved beyond a reasonable doubt that the defendants are guilty of the crime charged in Count Two, you are advised that Title 18, United States Code, Section 1001, makes it a crime for anyone to knowingly and willfully make a false or fraudulent statement in any matter within the jurisdiction of the executive, legislative, or judicial branch of the government of the United States.

The elements of this crime are:

First: That the defendant made a false statement to the Federal Trade Commission regarding a matter within its jurisdiction;

Second: That the defendant made the statement knowing that it was false;

Third: That the statement was material; and

Fourth: That the defendant made the false statement willfully for the purpose of misleading the Federal Trade Commission.

A statement is material if it has a natural tendency to influence, or is capable of influencing, a decision of the Federal Trade Commission.

It is not necessary to show that the Federal Trade Commission was in fact misled.

Keep in mind that Count Two of the indictment charges a conspiracy to violate 18 U.S.C. § 1001(a)(2) and not that a violation of 18 U.S.C. § 1001(a)(2) was committed. The essence of the crime of conspiracy is the agreement rather than the commission of the underlying substantive crime. Conspiring to commit a crime is an offense separate and distinct from the crime which may be the object of the conspiracy.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 2.45 (2019); *United States v. Nims*, 524 F.2d 123, 126 (5th Cir. 1975).

JOINT PROPOSED JURY INSTRUCTION NO. 23:
ELEMENTS OF SUBSTANTIVE OFFENSE (18 U.S.C. § 1001(a)(3)) FOR COUNT TWO

To assist you in determining whether the government has proved beyond a reasonable doubt that the defendants are guilty of the crime charged in Count Two, you are advised that Title 18, United States Code, Section 1001, makes it a crime for anyone to knowingly and willfully make a false or fraudulent statement in any matter within the jurisdiction of the executive, legislative, or judicial branch of the government of the United States.

The elements of this crime are:

First: That the defendant made or used any false writing or document in the Federal Trade Commission investigation regarding a matter within the Federal Trade Commission's jurisdiction;

Second: That the defendant knew the same contained a false, fictitious, or fraudulent statement or entry;

Third: That the false, fictitious, or fraudulent statement or entry was material; and

Fourth: That the defendant made the false statement willfully for the purpose of misleading the Federal Trade Commission.

A statement is material if it has a natural tendency to influence, or is capable of influencing, a decision of the Federal Trade Commission.

It is not necessary to show that the Federal Trade Commission was in fact misled.

Keep in mind that Count Two of the indictment charges a conspiracy to violate 18 U.S.C. § 1001(a)(3) and not that a violation of 18 U.S.C. § 1001(a)(3) was committed. The essence of the crime of conspiracy is the agreement rather than the commission of the underlying substantive crime. Conspiring to commit a crime is an offense separate and distinct from the crime which may be the object of the conspiracy.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 2.45 (2019); *United States v. Nims*, 524 F.2d 123, 126 (5th Cir. 1975).

JOINT PROPOSED JURY INSTRUCTION NO. 24:
ELEMENTS OF SUBSTANTIVE OFFENSE (18 U.S.C. § 1505) FOR COUNT TWO

To assist you in determining whether the government has proved beyond a reasonable doubt that the defendants are guilty of the crime charged in Count Two, you are advised that 18 U.S.C. § 1505 makes it a crime for anyone to corruptly influence, obstruct, or impede or endeavor to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States. The elements of this crime are:

First: That there was a proceeding pending before any department or agency of the United States;

Second: That the defendant knew of the pending⁸ proceeding;

Third: That the defendant influenced, obstructed, impeded, or endeavored to influence, obstruct, or impede the due and proper administration of the law in that proceeding; and

Fourth: That the defendant's acts were done "corruptly," that is, the defendant acted with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.

It is not necessary to show that the defendant was successful in achieving the forbidden objective, only that the defendant corruptly tried to achieve it in a manner which the defendant knew was likely to influence, obstruct, or impede the due and proper administration of the law due to the natural and probable effect of the defendant's actions.

⁸ Text that appears at this point in the Fifth Circuit's Pattern Jury Instructions has been deleted. See Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 2.63A (2019) ("That the defendant knew of the pending *judicial* proceeding" (emphasis added)).

Keep in mind that Count Two of the indictment charges a conspiracy to violate 18 U.S.C. § 1505 and not that a violation of 18 U.S.C. § 1505 was committed. The essence of the crime of conspiracy is the agreement rather than the commission of the underlying substantive crime. Conspiring to commit a crime is an offense separate and distinct from the crime which may be the object of the conspiracy.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 2.63a (2019) (modified to account for differences between 18 U.S.C. § 1503(a) and 18 U.S.C. § 1505); 18 U.S.C. §§ 1505, 1515(b).

JOINT PROPOSED JURY INSTRUCTION NO. 25:
AIDING AND ABETTING

As I explained above, in Counts Three and Four, the defendants are also charged with committing the crime by a second means—by aiding and abetting each other in corruptly endeavoring to influence, obstruct, and impede the FTC investigation. If you find that the government has proved beyond a reasonable doubt that a defendant committed the crime by this means, you must return a guilty verdict on Count Three or Count Four against that defendant.

The guilt of a defendant in a criminal case may be established without proof that the defendant personally did every act constituting the offense alleged. The law recognizes that, ordinarily, anything a person can do for himself may also be accomplished by him through the direction of another person as his agent, or by acting in concert with, or under the direction of another person or persons in a joint effort or enterprise.

If another person is acting under the direction of the defendant or if the defendant joins another person and performs acts with the intent to commit a crime, then the law holds the defendant responsible for the acts and conduct of such other persons just as though the defendant had committed the acts or engaged in such conduct.

Before any defendant may be held criminally responsible for the acts of others, it is necessary that the accused deliberately associate himself in some way with the crime and participate in it with the intent to bring about the crime.⁹

In other words, you may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was

⁹ Text that appears at this point in the Fifth Circuit’s Pattern Jury Instructions has been deleted. *See Pattern Jury Instructions (Criminal Cases)*, United States Court of Appeals for the Fifth Circuit, No. 2.04 (2019) (“Mere presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish that a defendant either directed or aided and abetted the crime unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.”).

committed by some person or persons, and that the defendant voluntarily participated in its commission with the intent to violate the law.

For you to find a defendant guilty of aiding and abetting the other defendant under Count Three and/or Count Four, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the offense of corruptly endeavoring to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States was committed by the other defendant;

Second: That the defendant associated with the criminal venture;

Third: That the defendant purposefully participated in the criminal venture; and

Fourth: That the defendant sought by action to make that venture successful.

“To associate with the criminal venture” means that the defendant shared the criminal intent of the principal. This element cannot be established if the defendant had no knowledge of the principal’s criminal venture.

“To participate in the criminal venture” means that the defendant engaged in some affirmative conduct designed to aid the venture or assist the principal of the crime.

Pattern Jury Instructions (Criminal Cases), United States Court of Appeals for the Fifth Circuit, No. 2.04 (2019).

Dated: March 28, 2022

Respectfully submitted,

/s/ Matthew W. Lunder

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2022, I electronically served a true and correct copy of this document on Defendants' counsel of record by means of the Court's CM-ECF system.

/s/Matthew W. Lunder
Matthew W. Lunder

CERTIFICATE OF CONFERENCE

I hereby certify that on March 28, 2022, I conferred with counsel for Defendant Jindal and counsel for Defendant Rodgers regarding these joint proposed jury instructions, and counsel indicated their agreement.

/s/ Matthew W. Lunder
Matthew W. Lunder