IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. CR-18-227-SLP**
	)	
JOSEPH MALDONADO-PASSAGE,	)	
	)	
Defendant.	)	

DEFENDANT'S REQUESTED JURY INSTRUCTIONS

Joseph Maldonado-Passage, through counsel, submits his requested jury instructions with proposed verdict form. The requested instructions are submitted in conformity with LCrR30.1. Counsel requests permission to file supplemental requested jury instructions should evidence be developed during the trial warranting further instruction.

Respectfully submitted,

s/ William P. Earley
WILLIAM P. EARLEY

KYLE WACKENHEIM
Assistant Federal Public Defenders
Suite 109, 215 Dean A. McGee Avenue
Oklahoma City, Oklahoma 73102
Telephone: (405) 609-5930 Telefacsimile: (405) 609-5932
COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2019, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic filing to the following ECF registrants: Amanda Green and Charles Brown, Assistant United States Attorneys, counsel for Plaintiff.

I hereby certify that on this 5th day of March, 2019, I submitted the appended Defendant's Requested Jury Instructions, in WordPerfect format, to the Clerk via the mailbox designated in the ECF Policies and Procedures Manual for the assigned Judge.

s/ William P. Earley
WILLIAM P. EARLEY

DEFENDANT'S REQUESTED
INSTRUCTION NO. 1

INTRODUCTION TO FINAL INSTRUCTIONS

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges, you are the other. I am the judge of the law. You, as jurors, are the judges of the facts. I presided over the trial and decided what evidence was 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.

In explaining the rules of law you must follow, first, I will give you some general instructions which apply in every criminal case – for example, instructions about burden of proof and insights that may help you to judge the believability of witnesses. Then, I will give you some specific rules of law that apply to this particular case. Finally, I will explain the procedures you should follow in your deliberations, and the possible verdicts you may return. These instructions will be given to you for use in the jury room, so you do not need to take notes.[1]

[1] *Tenth Circuit Pattern Instructions* (2011) §1.03

DEFENDANT'S REQUESTED INSTRUCTION NO. 2

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, AND REASONABLE DOUBT

The law provides that the defendant, Joseph Maldonado-Passage, is presumed innocent of each charge alleged. The presumption of innocence alone is sufficient to require you to return a verdict of not guilty. To overcome the presumption of innocence, the government has the burden of proving Mr. Maldonado-Passage guilty beyond a reasonable doubt of each charge alleged. The law does not require a defendant to prove his innocence or to produce any evidence at all. If the government fails to prove Mr. Maldonado-Passage guilty beyond a reasonable doubt, you must find him not guilty.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are few things we know with absolute certainty and, in criminal cases, the law does not require proof that overcomes every possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A reasonable doubt is a doubt based on reason and common sense after careful and impartial consideration of all the evidence in the case. If, based on your consideration of the evidence, you are firmly convinced Mr. Maldonado-Passage is guilty of one or more of the crimes charged you must find him guilty. If on the other hand, you do not believe the government has proved Mr. Maldonado-Passage guilty beyond a reasonable doubt, you must give him the benefit of the doubt and find him not guilty.[2]

---

[2] *Tenth Circuit Pattern Instructions* (2011) §1.05 (modified for facts of case).

DEFENDANT'S REQUESTED INSTRUCTION NO. 3

EVIDENCE

There are, generally speaking, two types of evidence from which a jury may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness; the other is indirect or circumstantial evidence, that is, the proof of a chain of facts which point to the existence or non-existence of certain other facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence. The law simply requires that you find the facts in accord with all the evidence in the case, both direct and circumstantial.

While you must consider only the evidence in this case, you are permitted to draw reasonable inferences from the testimony and exhibits, inferences you feel are justified in the light of common experience. An inference is a conclusion that reason and common sense may lead you to draw from facts which have been proved.

By permitting such reasonable inferences, 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 testimony and evidence in this case.[3]

---

[3] *Tenth Circuit Pattern Instructions* (2011) § 1.07 (modified).

DEFENDANT'S REQUESTED INSTRUCTION NO. 4

CONSIDER ONLY CRIME CHARGED

You are here to decide whether the government has proved beyond a reasonable doubt that Mr. Maldonado-Passage is guilty of the crimes charged. Mr. Maldonado-Passage is not on trial for any act, conduct, or crime not charged in the Superseding Indictment.[4] I remind you that the Superseding Indictment is simply the formal method used by the government to accuse a defendant of a crime. It is not evidence of any kind against the defendant.[5] The fact that a Superseding Indictment has been returned, standing alone, is insufficient to overcome the presumption of innocence that applies to Mr. Maldonado-Passage.

---

[4] *Tenth Circuit Pattern Instructions* (2011) § 1.19.

[5] 1A K. O'Malley, J. Grenig & W. Lee, *Federal Jury Practice and Instructions - Criminal* (5th Ed. 2000) § 13.04 (modified).

DEFENDANT'S REQUESTED INSTRUCTION NO. 5

CREDIBILITY OF WITNESSES

I remind you it is your job to decide whether the government has proved the guilt of the defendant 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 who testified in this case. You should think about the testimony of each witness you have heard and decide whether you believe all or any part of what each witness 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 in this 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?

When weighing the conflicting testimony, you should consider whether the discrepancy has to do with a material fact or with an unimportant detail. You should keep in mind that innocent misrecollection—like failure of recollection—is not uncommon.

[*The testimony of the defendant should be weighed and his credibility evaluated in the same way as that of any other witness.*]

[*Mr. Maldonado-Passage did not testify. I remind you, you cannot consider his decision not to testify as evidence of guilt. I want you to clearly understand that the Constitution of the United States grants to a defendant the right to remain silent. That means the right not to testify or to call any witnesses. This Constitutional right is very carefully guarded. You should understand that no presumption of guilt may be raised and no inference of any kind may be drawn from the fact a defendant does not take the witness stand and testify.*]

In reaching a conclusion on a particular point, or ultimately in reaching a verdict in this case, do not make any decisions simply because there were more witnesses on one side than on the other.[6]

---

[6] *Tenth Circuit Pattern Instructions* (2011) § 1.08 (*italicized text indicates alternative instructions based on Mr. Maldonado-Passage's decision concerning his Fifth Amendment rights.*).

DEFENDANT'S REQUESTED
INSTRUCTION NO. 6

IMPEACHMENT BY PRIOR INCONSISTENCIES

You have heard the testimony of [witness or witnesses' name(s)]. You have also heard that, before this trial, he or she made a statement that may be different from his or her testimony in court. This earlier statement was brought to your attention only to help you decide how believable his or her testimony in this trial was. You cannot use it as proof of anything else. You can only use it as one way of evaluating his or her testimony in court.[7]

[7] *Tenth Circuit Pattern Instructions* (2011) § 1.10

DEFENDANT'S REQUESTED
INSTRUCTION NO. 7

IMPEACHMENT BY PRIOR CONVICTION (Witness Other Than Defendant)

The testimony of a witness may be discredited or impeached by showing that the witness previously has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years or of a crime of dishonesty or false statement. A prior conviction does not mean that a witness is not qualified to testify, but is merely one circumstance that you may consider in determining the credibility of the witness. You may decide how much weight to give any prior felony conviction or any prior crime of dishonesty that was used to impeach a witness.[8]

[8] *Tenth Circuit Pattern Instructions* (2011) § 1.12.

DEFENDANT'S REQUESTED INSTRUCTION NO. 8

WITNESS'S USE OF ADDICTIVE DRUGS

The testimony of a drug and/or alcohol abuser must be examined and weighed by the jury with greater caution than the testimony of a witness who does not abuse drugs and/or alcohol. [Witness or witnesses' name(s)] may be considered to be an abuser of drugs and/or alcohol. You must determine whether the testimony of that witness has been affected by the use of drugs and/or alcohol of the need for drugs and/or alcohol.[9]

[9] *Tenth Circuit Pattern Instructions* (2011) § 1.16 (modified to include alcohol).

DEFENDANT'S REQUESTED INSTRUCTION NO. 9

OPINION WITNESS

In some cases, such as this one, scientific, technical, or other specialized knowledge may assist the jury in understanding the evidence or in determining a fact in issue. A witness who has knowledge, skill, experience, training or education, may testify and state an opinion concerning such matters.

You are not required to accept such an opinion. You should consider opinion testimony just as you consider other testimony in this trial. Give opinion testimony as much weight as you think it deserves, considering the education and experience of the witness, the soundness of the reasons given for the opinion, and other evidence in the trial.[10]

[10] *Tenth Circuit Pattern Instructions* (2011) § 1.17 (modified)

DEFENDANT'S REQUESTED INSTRUCTION NO. 10

ACCOMPLICE—INFORMANT—IMMUNITY

Accomplice

An accomplice is someone who joined with another person in committing a crime, voluntarily and with common intent. The testimony of an accomplice may be received in evidence and considered by you, even though it is not supported by other evidence. You may decide how much weight it should have.

You are to keep in mind, however, that accomplice testimony should be received with caution and considered with great care. You should not convict a defendant based on the unsupported testimony of an alleged accomplice, unless you believe the unsupported testimony beyond a reasonable doubt.

Informant

An informant is someone who provides evidence against someone else for a personal reason or advantage. The testimony of an informant alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilt, even though not corroborated or supported by other evidence. You must examine and weigh an informant's testimony with greater care than the testimony of an ordinary witness. You must determine whether the informant's testimony has been affected by self-interest, by an agreement he has with the government, by his own interest in the outcome of the case, or by prejudice against the defendant.

You should not convict a defendant based on the unsupported testimony of an informant, unless you believe the unsupported testimony beyond a reasonable doubt.

Immunity

A person may testify under a grant of immunity (an agreement with the government). His or her testimony alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilt even though it is not corroborated or supported by other evidence. You should consider testimony given under a grant of immunity with greater care and caution than the testimony of an ordinary witness. You should consider whether testimony under a grant of immunity has been a affected by the witness's own interest, the government's agreement, the witness's interest in the outcome of the case, or by prejudice against the defendant.

On the other hand, you should also consider that an immunized witness can be prosecuted for perjury for making a false statement. After considering these things, you may give testimony given under a grant of immunity such weight as you feel it deserves.

You should not convict a defendant based on the unsupported testimony of an immunized witness, unless you believe the unsupported testimony beyond a reasonable doubt.[11]

[11] *Tenth Circuit Pattern Instructions* (2011) § 1.14 (modified)

DEFENDANT'S REQUESTED INSTRUCTION NO. 11

IDENTIFICATION TESTIMONY

The government must prove, beyond a reasonable doubt, that the offenses charged in this case were actually committed and that it was the defendant who committed them. Thus, the identification of the defendant as the person who committed the offenses charged is a necessary and important part of the government's case. You should evaluate the credibility of any witness making an identification in the same manner as you would any other witness. You should also consider at least the following questions:

Did the witness have the ability and an adequate opportunity to observe the person who committed the offenses charged? You should consider, in this regard, such matters as the length of time the witness had to observe the person in question, the lighting conditions at that time, the prevailing visibility, the distance between the witness and the person observed, and whether the witness had known or observed the person before.

Is the testimony about an identification made after the commission of the crimes the product of the witness's own recollection? In this regard, you should consider very carefully the circumstances under which the later identification was made, including the manner in which the defendant was presented to the witness for identification and the length of time that elapsed between the crimes and the witness's subsequent identification.

If, after examining all of the testimony and evidence in this case, you have a reasonable doubt as to the identity of the defendant as the person who committed the offenses

charged, you must find the defendant not guilty.[12]

[12] *Tenth Circuit Pattern Instructions* (2011) § 1.29.

DEFENDANT'S REQUESTED INSTRUCTION NO. 12

COUNTS ARE SEPARATE CRIMES

You are instructed that a separate crime or offense is charged in each count of the Superseding Indictment. Each crime or offense as charged and the evidence applicable thereto, should be considered separately, and a verdict of guilty or not guilty as to each count or offense should likewise be considered separately. Of course, some evidence may pertain to more than one count.

The fact that you may find the defendant guilty or not guilty as to the crime or offense charged in one count should not control your verdict with reference to any other count.[13]

[13] 12.12 Devitt, Blackmar, Wolff & O'Malley, Federal Jury Practice & Instructions (4th Ed. 1992).

DEFENDANT'S REQUESTED INSTRUCTION NO. 13

THE SUPERSEDING INDICTMENT

An indictment is but a formal method used by the government to accuse a defendant of a crime. It is not evidence of any kind against a defendant and does not create any presumption or inference of guilt. A defendant is presumed to be innocent of the crimes charged. Even though this Superseding Indictment has been returned against defendant, he began this trial with absolutely no evidence against him.

Defendant has entered a plea of "not guilty" to the charges made by the government, placing the burden on the government to establish the accusations made beyond a reasonable doubt.[14]

[14] *United States v. Mackay*, 491 F.2d 616 (10th Cir. 1973), *cert. denied*, 416 U.S. 972 (1974).

DEFENDANT'S REQUESTED
INSTRUCTION NO. 14

THE CRIMES CHARGED - COUNTS 1 and 2

Counts 1 and 2 of the Superseding Indictment charge the defendant with using facilities of interstate commerce in the commission of murder-for hire, a violation of Title 18, United States Code, §1958(a). This law makes it a crime for any person to travel in or cause another to travel in interstate or foreign commerce, or use or cause another to use the mail or any facility of interstate or foreign commerce, with intent that a murder be committed in violation of the laws of any State or the United States.[15]

[15] 18 U.S.C. §1958(a) (modified)

DEFENDANT'S REQUESTED
INSTRUCTION NO. 15

ELEMENTS OF THE OFFENSE OF USE OF INTERSTATE FACILITIES IN THE COMMISSION OF MURDER-FOR-HIRE

In order to prove that the defendant used interstate facilities in the commission of murder for hire, the government must establish beyond a reasonable doubt each of the following elements of the offense.

First: That the defendant traveled or caused someone else to travel interstate or used or caused someone else to use an interstate facility;

Second: that this travel or use of an interstate facility was done with the intent that a murder be committed in violation of the laws of any State or United States; and

Third: that the murder in question was intended to be committed as consideration for the receipt of anything of value.[16]

[16] L. Sand, *3 Modern Federal Practice Instructions*, Instr. No. 60-13 (2008).

DEFENDANT'S REQUESTED
INSTRUCTION NO. 16

FIRST ELEMENT - INTERSTATE TRAVEL
OR THE USE OF AN INTERSTATE FACILITY

The first element the government must prove beyond a reasonable doubt is that the defendant traveled, caused someone else to travel interstate, used or caused someone else to use an interstate facility.

Interstate travel is simply travel between one state and any other state. An interstate facility is a means of communication that crosses state lines in the course of commerce. For example, using the internet or making a telephone call constitute the use of a facility of interstate commerce regardless of whether the particular communication which is alleged actually crossed a state line. An interstate facility is any vehicle or instrument that crosses state lines in the course of commerce. For example, making a telephone call from one state to another is the use of an interstate facility. The interstate travel or use of an interstate facility must have occurred concurrently with the intent to commit a murder as consideration for the receipt of anything of value. It need not have been the only reason, or even the principal reason, for the interstate travel or use of an interstate facility as long as it was one of the reasons for the travel or use of a facility.[17]

[17] L. Sand, *3 Modern Federal Practice Instructions*, Instr. No. 60-15 (2008) (modified).

DEFENDANT'S REQUESTED
INSTRUCTION NO. 17

SECOND ELEMENT - INTENT THAT MURDER BE COMMITTED

The second element the government must establish beyond a reasonable doubt is that the travel or use of an interstate facility was done with the intent that a murder be committed in violation of the laws of any State or the United States. The government does not have to prove that the murder was committed or even that it was attempted. It must prove that the travel was done with the intent to further or facilitate the commission of the murder.

You are thus being asked to look into the defendant's mind and ask what was the defendant's purpose in using interstate facilities or causing another to travel interstate or use interstate facilities. You may determine the defendant's intent from all the evidence that has been placed before you, including the statements of the defendant and his conduct before and after the travel or use of the facilities.[18]

[18] L. Sand, *3 Modern Federal Practice Instructions*, Instr. No. 60-16 (2008) (modified).

DEFENDANT'S REQUESTED INSTRUCTION NO. 18

THIRD ELEMENT - MURDER TO BE COMMITTED AS CONSIDERATION FOR ANYTHING OF VALUE

The third element that the government must establish beyond a reasonable doubt is that the murder in question was intended to be committed as consideration for the receipt of anything of value. This requires that the government prove that there was a mutual agreement or understanding that something of value would be exchanged for committing the murder. The mutual agreement or understanding must be sufficiently definite so that the amounts to be paid and the persons to be murdered are identified.

To find a mutual agreement or understanding, each person must promise or do what the other person asks for. If each person simply asks for a promise from the other person, and both persons give promises to each other, there is a mutual agreement or understanding. However, if either person asks for some act such as the payment of money from the other person in addition to a promise, and the other person does not act, there is no mutual agreement or understanding.

"Anything of value" means money, negotiable instruments, or anything else the primary significance of which is economic advantage.[19]

---

[19] L. Sand, *3 Modern Federal Practice Instructions*, Instr. No. 60-17 (2008) (modified); *see also United States v. Wicklund*, 114 F.3d 151, 152-154 (10th Cir. 1997) ("the government must prove an agreement or mutual understanding supported by consideration in the traditional sense of bargained for exchange"); *Homestead Golf Club, Inc., v. Pride Stables*, 224 F.3d 1195, 1200-1202 (10th Cir. 2000) (a condition precedent to the enforcement of any contract is that there by a meeting of the minds of the parties, which must be spelled out, either expressly or impliedly, with sufficient definiteness to be enforced;

United States v. Chong, 419 F.3d 1076, 1082 (9th Cir. 2005) (the element of the offense is not established in the absence of a clear agreement to exchange something of value for the commission of a murder); *United States v. Ritter*, 989 F.2d 318, 321 (9th Cir. 1993) (tentative and ambiguous language cannot support the finding that the parties made a contract); *Heuser v. Kephart*, 215 F.3d 1186, 1190 (10th Cir. 2000) (under §71 of the Restatement (Second) of Contracts, "to constitute consideration, a performance or a return promise must be bargained for."); *Restatement (Second) of Contracts*, §71(1) ("To constitute consideration, a performance or a return promise must be bargained for.").

DEFENDANT'S REQUESTED
INSTRUCTION NO. 19

MURDER - DEFINED

The law makes it a crime to unlawfully kill a human being with malice aforethought. To kill "with malice aforethought" means either to kill another person deliberately and intentionally, or to act with callous and wanton disregard for human life. To find malice aforethought, you need not be convinced that the defendant hated the person killed, or felt ill will toward the victim at the time.

You should consider all the facts and circumstances preceding and surrounding any intended killing, which tend to shed light upon the condition of the defendant's mind, before and at the time of the intended killing.[20]

[20] *Tenth Circuit Pattern Instructions* (2011) §2.52. (modified).

DEFENDANT'S REQUESTED
INSTRUCTION NO. 20

VENUE

In addition to the foregoing elements of the offense of using facilities of interstate commerce in the commission of murder-for-hire, you must consider whether any act in furtherance of the crime occurred within the Western District of Oklahoma. You are instructed that the Western District of Oklahoma encompasses Garvin County, Oklahoma.

In this regard, the government must prove that the travel or telephone call involving the defendant as charged in Counts 1 and 2 of the Superseding Indictment, began in, went through or ended in Western District of Oklahoma. If you find that the government has failed to prove that any such act in furtherance of the crime occurred within this district, or if you have a reasonable doubt on this issue, then you must acquit.[21]

[21] L. Sand, *3 Modern Federal Practice Instructions*, Instr. No. 3-11 (2008) (modified).

DEFENDANT'S REQUESTED
INSTRUCTION NO. 21

THE CRIMES CHARGED - COUNTS 3 through 7

Counts 3 through 7 of the Superseding Indictment charge the defendant with violations of the Endangered Species Act, Title 16, United States Code, §1538(a)(1) and §1540(b)(1). In relevant part, the law provides, "[w]ith respect to any endangered species . . . it is unlawful for any person . . . to – (B) . . . take any such [endangered] species within the United States . . . . . Any person who knowingly violates [16 U.S.C. § 1538(a)(1)]" shall be guilty of an offense against the United States.[22]

[22] 16 U.S.C. §§ 1538(a)(1) and 1540(b)(1)

DEFENDANT'S REQUESTED
INSTRUCTION NO. 22

ELEMENTS OF THE OFFENSES CHARGED IN COUNTS 3 THROUGH 7

For you to find the defendant guilty of the offenses charged in Counts 3 through 7 of the Superseding Indictment, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

First: That the defendant did knowingly take within the United States a Tiger, (Panthera tigris);

Second: That the animal taken is in fact a Tiger (Panthera tigris); and

Third: That the defendant took the animal in question unlawfully, that is, without permission from the United States Department of the Interior.

You are further instructed as to Counts 3 through 7 that the Tiger (Panthera Tigris) is listed by the United States as an endangered species under the Endangered Species Act.

An act, such as a "take" charged in Counts 3 through 7, is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the defendant's works, act, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly. You may, but are not required to infer that the defendant acted knowingly if you find that the defendant knew that the animal he took was a Tiger (Panthera Tigris).

You also may infer that a defendant acted knowingly if you find beyond a reasonable doubt that the defendant was aware of high probability that the animal taken was a Tiger (Panthera Tigris) and that the defendant deliberately avoided learning the truth. The element

of knowledge may be inferred if the defendant deliberately closed his or her eyes to what would otherwise have been obvious to him or her.

You may not find that the defendant acted knowingly, however, if you find that the defendant actually believed that the animal taken was not a Tiger (Panthera Tigris). A showing of negligence, mistake, or carelessness is not sufficient to support a finding of knowledge.

You are further instructed that the term "knowingly" does not require the government to prove that the defendant knew that the animal in question was protected under federal law. Furthermore, you are instructed that the use of the term "knowingly" does not mean that the government is required to prove that the defendant knew that the act he "knowingly" committed constituted a violation of law. In other words, the government isn't required to show that the defendant knew his conduct was illegal or unlawful.

The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, capture, or collect. [The term "harm" as used in the definition of "take" means an act which actually kills or injures a Tiger (Panthera tigris). The term "harass" means an intentional or negligent act or omission that which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patters which include, but are not limited to, breeding, feeding, or sheltering.]

The Endangered Species Act, in relevant part, allows a person to take an endangered species within the United States only when that person has a valid permit to do so issued by the Department of the Interior, United States Fish and Wildlife Service. This permit is

commonly referred to as an Endangered Species Act Permit. A person who has such a valid permit only has permission from the Department of the Interior to take that endangered species within the United States described in the permit and then only in accordance with the terms of the permit.

If you find from the evidence that a diligent search of the official records maintained by the Department of the Interior, United States Fish and Wildlife Service failed to disclose any valid Endangered Species Act permit issued to allow the defendant to take the endangered species in question, then you may, but are not required to infer that no such permit was issued to the defendant.[23]

---

[23] 16 U.S.C. §§ 1538(a)(1)(D), 1540; and United States Department of Justice policy following *United States v. McKittrick*, 142 F.3d 1170 (9th Cir. 1998).

DEFENDANT'S REQUESTED INSTRUCTION NO. 23

THE CRIMES CHARGED IN COUNTS 8 THROUGH 11

The defendant is charged in Counts 8 through 11 with violations of the Endangered Species Act, in violation of Title 16, United States Code, §1538(a)(1)(F). This law makes it unlawful, with respect to any endangered species of fish or wildlife listed pursuant to §1533 of this title, to- (F) sell or offer for sale in interstate or foreign commerce any such species.[24]

[24] 16 U.S.C. §1538(a)(1)(F)

DEFENDANT'S REQUESTED
INSTRUCTION NO. 24

ELEMENTS OF THE OFFENSE CHARGED IN COUNT 8

For you to find the defendant guilty of the offense charged in Count 8 of the Superseding Indictment, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: The defendant did knowingly and unlawfully offer for sale in interstate commerce the animals described in Count 8;

Second: That the animals described in Count 8 were listed as an endangered species by the Secretary of the Interior;

DEFENDANT'S REQUESTED
INSTRUCTION NO. 25

ELEMENTS OF THE OFFENSES CHARGED IN COUNTS 9 through 11

For you to find the defendant guilty of the offenses charged in Counts 9 through 11 of the Superseding Indictment, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: The defendant knowingly and unlawfully sold in interstate commerce the animals described in Counts 9 through 11;

Second: That the animals described in Counts 9 through 11 were listed as an endangered species by the Secretary of the Interior.[25]

[25] 16 U.S.C. § 1538(a)(1)(F)

DEFENDANT'S REQUESTED
INSTRUCTION NO. 26

THE CRIMES CHARGED IN COUNTS 12 THROUGH 21

The defendant is charged in Counts 12 through 21 of the Superseding Indictment with violations of the Lacey Act, Title 16, United States Code, §3372 and §3373. This law makes it unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be- (2) transported in interstate or foreign commerce.

DEFENDANT'S REQUESTED INSTRUCTION NO. 27

ELEMENTS OF THE OFFENSES CHARGED IN COUNTS 12 through 20

In order for the defendant to be found guilty of the Lacey Act violations in charged in Counts 12 through 20 of the Superseding Indictment, the government must prove each of the following elements beyond a reasonable doubt:

First: The defendant knowingly made, submitted, and caused to be made and submitted, a false record, account, label for, and a false identification of the wildlife as described in Counts 12 through 20 of the Superseding Indictment;

Second: the wildlife described in Counts 12 through 20 of the Superseding Indictment were transported in interstate commerce;

Third: the defendant's making and submission of a false record, account, label for, and a false identification involved wildlife with a market value greater than $350;

Fourth: the defendant's false record must involve a material fact.

Knowingly means that the act was done voluntarily and intentionally, and not because of mistake or accident. Although knowledge on the part of the defendant cannot be established merely by demonstrating that the defendant was negligent, careless, or foolish, knowledge can be inferred if the defendant deliberately blinded himself to the existence of a fact. Knowledge can be inferred if the defendant was aware of a high probability of the existence of the false record in each count, unless the defendant did not actually believe the

false record in each count.

A material fact is one having a natural tendency to influence, or being capable of influencing, the decision of the reader to which it is intended.[26]

[26] 16 U.S.C. §§ 3372(d)(2), 3373(d)(3); Adapted from Ninth Circuit Pattern Jury Instruction 9.14; Order, *United States v. Kokesh*, 2013 WL 6001052 (N.D. Fla. Nov. 12, 2013); *Kungys v. United States*, 485 U.S. 759, 770 (1998).

DEFENDANT'S REQUESTED INSTRUCTION NO. 28

ELEMENTS OF THE OFFENSE CHARGED IN COUNT 21

In order for the defendant to be found guilty of the Lacey Act violation charged in Count 21 of the Superseding Indictment, the government must prove each of the following elements beyond a reasonable doubt:

First: The defendant knowingly made, submitted, and caused to be made and submitted, a false record, account, label for, and a false identification of the wildlife as described in Count 21 of the Superseding Indictment;

Second: the wildlife described in Count 21 of the Superseding Indictment was transported in interstate commerce;

Third: the defendant's making and submission of a false record, account, label for, and a false identification involved wildlife with a market value greater than $350;

Fourth: the defendant's false record must involve a material fact.

Knowingly means that the act was done voluntarily and intentionally, and not because of mistake or accident. Although knowledge on the part of the defendant cannot be established merely by demonstrating that the defendant was negligent, careless, or foolish, knowledge can be inferred if the defendant deliberately blinded himself to the existence of a fact. Knowledge can be inferred if the defendant was aware of a high probability of the existence of the false record in each count, unless the defendant did not actually believe the

false record in each count.

A material fact is one having a natural tendency to influence, or being capable of influencing, the decision of the reader to which it is intended.[27]

[27] 16 U.S.C. §§ 3372(d)(2), 3373(d)(3); Adapted from Ninth Circuit Pattern Jury Instruction 9.14; Order, *United States v. Kokesh*, 2013 WL 6001052 (N.D. Fla. Nov. 12, 2013); *Kungys v. United States*, 485 U.S. 759, 770 (1998).

DEFENDANT'S REQUESTED INSTRUCTION NO. 29

AID AND ABET - 18 U.S.C. § 2(a)

Each count of the Superseding Indictment also charges a violation of Title 18, United States Code, §2, which provides that: "Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

This law makes it a crime to intentionally help someone else commit a crime. To find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: Someone else committed the charged crime, and

Second: the defendant intentionally associated himself in some way with the crime and intentionally participated in it as he would in something he wished to bring about. This means that the government must prove that the defendant consciously shared the other person's knowledge of the underlying criminal act and intended to help him or her.

The defendant need not perform the underlying criminal act, be present when it is performed, or be aware of the details of its commission to be guilty of aiding and abetting. But a general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of a crime and knowledge that a crime is being committed are also not suffcient to establish aiding and abetting.[28]

---

[28] *Tenth Circuit Pattern Instructions* (2011) §2.06.

DEFENDANT'S REQUESTED
INSTRUCTION NO. 30

PUNISHMENT

If you find Mr. Maldonado-Passage guilty of one or more of the charges in the Superseding Indictment, it will be my duty to decide what the punishment will be. You should not discuss nor consider the possible punishment in any way while deciding your verdict.[29]

[29] *Tenth Circuit Pattern Instructions* (2011) § 1.20 (modified to facts of case).

DEFENDANT'S REQUESTED
INSTRUCTION NO. 31

DUTY TO DELIBERATE—VERDICT FORM

In a moment the bailiff will escort you to the jury room and provide each of you with a copy of the instructions that I have just read. Any exhibits admitted into evidence will also be placed in the jury room for your review.

When you go to the jury room, you should first select a foreperson, who will help to guide your deliberations and will speak for you here in the courtroom. The second thing you should do is review the instructions. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict must be based, but for your verdict to be valid, you must follow the instructions throughout your deliberations. Remember, you are the judges of the facts, but you are bound by your oath to follow the law stated in the instructions.

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 Superseding Indictment. Your deliberations will be secret. You will never have to explain your verdict to anyone. Remember at all times, you are judges—judges of the facts. You must decide whether the government has proved the defendant guilty beyond a reasonable doubt.

A verdict form has been prepared for your convenience. The verdict form refers to each count of the Superseding Indictment. The verdict form provides you with two options: "Not Guilty" and "Guilty" for each crime charged. You will record your verdict by checking

either "Not Guilty" or "Guilty" as to each count and the foreperson will sign and date the verdict form.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the bailiff. I will either reply in writing or bring you back into the court to respond to your message. Under no circumstances should you reveal to me the numerical division of the jury.[30]

[30] *Tenth Circuit Pattern Instructions* (2011) §1.23 (modified).

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CR-18-227-SLP
	)	
JOSEPH MALDONADO-PASSAGE,	)	
	)	
Defendant.	)	

VERDICT

We, the jury, duly impaneled and sworn in the above case find as to the defendant, Joseph Maldonado-Passage, the following:

Count 1 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 2 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 3 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 4 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 5 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 6 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 7 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 8 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 9 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 10 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 11 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 12 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 13 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 14 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 15 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 16 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 17 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 18 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 19 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 20 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

Count 21 of the Superseding Indictment

- ☐ Not Guilty
- ☐ Guilty

_____ _____

Foreperson Date