

JURY INSTRUCTIONS:

**United States of America v. David Alcantara
(14-021M)**

I intend to give you a copy of these instructions for use in the jury room, so please simply listen and do not worry about note taking.

Introduction

Ladies and gentlemen, you are the trier of facts. You alone must determine what the facts are in this particular case. It is my duty to instruct you on the law applicable to this case. You must consider the instructions as a whole. You should not choose one part and disregard another. You must accept and apply the law as I give it to you in its entirety, and this is true whether you personally agree with the law or not. It would be a violation of the oath you took as jurors to base a decision on any version of the law other than that contained in my instructions, just as it would be a violation of that oath to return a decision upon anything but the evidence in this case. It is not up to you to decide what the law is or should be. Your duty is to apply the law as I explain it to you.

Presumption of Innocence

As I told you at the start of this trial, Mr. Alcantara is presumed to be innocent of the accusations against him.

It is a fundamental principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until his guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the most important substance.

The presumption of innocence alone may be sufficient to raise a reasonable doubt and to require the acquittal of a defendant. This means that even if all the evidence introduced at a trial

is against the defendant, you must still acquit if you have a reasonable doubt about whether that evidence establishes guilt. The defendant before you, Mr. Alcantara, has the benefit of that presumption, and you are not to convict him of a particular charge unless you are persuaded of his guilt of that charge beyond a reasonable doubt. Each charge carries its own presumption of innocence and even if you find the evidence has overcome that presumption on one charge, you must still apply it to the other charges unless and until the evidence persuades you otherwise.

The “presumption of innocence unless and until proven guilty” means that the burden of proof is always on the government to satisfy you that Mr. Alcantara is guilty beyond a reasonable doubt of the crime with which he is charged. This burden never shifts to Mr. Alcantara. It is always the government’s burden to prove each of the elements of the crimes charged beyond a reasonable doubt by the evidence and the reasonable inferences to be drawn from that evidence. Mr. Alcantara has the right to rely upon the failure or inability of the government to establish beyond a reasonable doubt any essential element of a crime charged against him.

If, after fair and impartial consideration of all the evidence, you have a reasonable doubt as to Mr. Alcantara’s guilt of a particular crime, it is your duty to acquit him of that crime. On the other hand, if after fair and impartial consideration of all the evidence, you are satisfied beyond a reasonable doubt of Mr. Alcantara’s guilt of a particular crime, you should vote to convict him.

Defendant’s Constitutional Right to Choose Whether to Testify

It is not up to Mr. Alcantara to prove that he is innocent. Under our system of law, any defendant has a perfect right to say to the government, “You have the burden of proving your

case against me beyond a reasonable doubt. I do not have to say a word.” You must determine whether the government has proved its case against Mr. Alcantara based solely on the testimony of the witnesses who testified and the exhibits that were introduced.

Mr. Alcantara had the absolute right not to testify. You may not infer from his choice not to testify anything about his guilt or innocence. There are many, many factors that go into a defendant’s decision about whether to testify and you are not to speculate about that choice.

The Government as a Party

The mere fact that this case is brought in the name of the United States of America does not entitle the prosecution to any greater consideration than that accorded to Mr. Alcantara. By the same token, it does not mean that the prosecution is entitled to any less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

Proof of All Elements

I will shortly explain the offenses with which Mr. Alcantara is charged and the elements the government must prove in order to establish that Mr. Alcantara is guilty of any of the eleven offenses charged.

In order for the government to prove Mr. Alcantara guilty of an offense, it must convince you, beyond a reasonable doubt, that it has proven each and every element of that offense. Possibilities or even probabilities are not sufficient.

If the government fails to prove any one or more elements of an offense beyond a reasonable doubt, then you must find Mr. Alcantara not guilty of that particular offense.

On the other hand, if you are convinced, beyond a reasonable doubt, that all elements of an offense with which Mr. Alcantara has been charged have been proven to you beyond a reasonable doubt, then you should find him guilty of that offense.

Reasonable Doubt

As I have said, the burden is upon the government to prove beyond a reasonable doubt that Mr. Alcantara is guilty with respect to each charge made against him. It is a strict and heavy burden, but it does not mean that Mr. Alcantara's guilt must be proven beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning Mr. Alcantara's guilt.

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Reasonable doubt exists when, after weighing and considering all the evidence, using reason and common sense, jurors cannot say that they have a settled conviction of the truth of the charge

Of course, Mr. Alcantara should not be convicted on suspicion or conjecture. If, for example, you view the evidence in the case as reasonably permitting either of two conclusions — one that Mr. Alcantara is guilty as charged, the other that Mr. Alcantara is not guilty — then you must find Mr. Alcantara not guilty.

It is not sufficient for the government to establish a probability, even a strong one, that a fact charged is more likely to be true than not true. That is not enough to meet the burden of proof beyond a reasonable doubt. On the other hand, there are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every conceivable doubt, but it requires proof that overcomes every reasonable doubt.

Concluding my instructions on the burden, then, I instruct you that what the government must do to meet its heavy burden is to establish the truth of each part of each offense charged by proof that convinces you and leaves you with no reasonable doubt, and thus satisfies you that you can, consistently with your oath as jurors, base your verdict upon it. If you so find as to a particular charge against Mr. Alcantara, you will return a verdict of guilty on that charge. If, on the other hand, you think there is a reasonable doubt about whether Mr. Alcantara is guilty of a particular offense, then you must give Mr. Alcantara the benefit of the doubt and find Mr. Alcantara not guilty of that offense.

Consider Each Count Separately

The indictment in this case charges Mr. Alcantara with ten separate counts – Counts 1 through 4, and Counts 6 through 11. There is no Count 5, and there are no other charges before you. You must consider each of the ten counts separately. The fact that you find Mr. Alcantara guilty or not guilty on one count does not mean that you should find him guilty or not guilty on any other count.

“On or About”

When I explain the charges in detail, you will hear that the government alleges certain offenses were committed “on or about” or “in or about” certain dates. The proof need not establish with certainty the exact date of an alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

Overview of the Indictment

I am going to describe each charge for you, then tell you the elements of each offense, then define some terms for you. The ten charges against Mr. Alcantara were charged in an indictment, which is simply the description of the charges against the defendant. An indictment is not evidence. An indictment is an appropriate method for the government to use in order to assert charges against an individual, but an indictment is just a piece of paper that sets forth the charges. It has no value as evidence. It is not proof of anything. Mr. Alcantara is here on a clean slate.

In Count I, Mr. Alcantara is accused of Conspiracy to Commit Bank Fraud, in violation of 18 U.S.C. §1349, specifically that he conspired with named and unnamed persons to defraud Citizens Bank and Bank of America by means of engaging in a scheme to defraud or by making false statements to obtain money.

In Counts 2 through 4 and 6 through 10, Mr. Alcantara is accused of Aggravated Identity Theft, in violation of 18 U.S.C. §1028(A). Each Count specifies a different false identification allegedly used.

In Count 11, Mr. Alcantara is accused of Conspiracy to Pass Counterfeit Money, in violation of 18 U.S.C. §472.

The Law Relevant to the Charges

I will now turn to a discussion of the law applicable to each Count.

COUNT ONE: Conspiracy to Commit Bank Fraud

There are four parts of this charge. I will define each term for you. First, there must be a conspiracy. Second, there must be an “object” of the conspiracy, and in this charge that object is alleged to be bank fraud. Third, Mr. Alcantara must have willfully joined in the conspiracy. And fourth and finally, the government must prove that at least one of the conspirators committed an “overt act” during the period of the conspiracy in order to further the purpose of the conspiracy.

Each of these parts must be proven beyond a reasonable doubt.

I will define the terms we use and explain the meaning of each of these parts.

A. CONSPIRACY

A conspiracy is an agreement between two or more persons to do a specific act. An agreement can be spoken or unspoken. It need not be a formal agreement or plan in which everyone involved sat down together and worked out all the details. But the government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the crime. There must have been a “meeting of the minds.” Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests does not alone establish proof of the existence of a conspiracy, but you may consider such factors in deciding whether there was an agreement.

When there is a conspiracy to commit a particular crime, the conspiracy is separate from the commission of the crime that was its purpose. The conspiracy itself is unlawful, and in this case, the conspiracy itself is charged as the crime. Mr. Alcantara is not charged with the offense of bank fraud. The government does not have to prove that a conspiracy succeeded or that its

object was achieved. The crime of conspiracy is complete with the agreement to commit the underlying purpose.

A conspiracy to commit bank fraud is what was alleged in the indictment and that is the only conspiracy you may find, if you find one at all.

B. OBJECT OF THE CONSPIRACY

The Indictment charges that Mr. Alcantara and others conspired to commit bank fraud. I will define bank fraud for you, because one of the elements of the conspiracy charge is that the conspirators had a shared purpose to commit that particular crime.

The elements of bank fraud are the following:

First, that the financial institutions, alleged in this case to be Citizens Bank and the Bank of America, were federally insured or were federal reserve banks or members of the federal reserve system;

Second, that Mr. Alcantara engaged in a scheme, substantially as charged in the indictment, to defraud or that he made false statements or misrepresentations to obtain money from Citizens Bank and/or Bank of America. Engaging in a scheme to defraud and making false statements or misrepresentations to obtain money are different ways of committing bank fraud and you must be unanimous as to which, if either, you find beyond a reasonable doubt.

- A scheme includes any plan or pattern or course of action.
- “Defraud” means depriving someone of something of value by deception or cheating.

- A scheme to defraud is ordinarily accompanied by a desire or purpose to bring about a gain or benefit to one's self or some other person or by a desire or purpose to cause loss to some person.
- "False statements" means assertions that concern a material aspect of the matter in question, that were known to be untrue when made or made with reckless indifference to their truth, *and* that were made with the intent to defraud.
- To act with "intent to defraud" means to act with the specific intent to deceive or cheat. Thus, if Mr. Alcantara acted in good faith, he cannot have acted with the intent to deceive.

Finally with respect to proving bank fraud, the government must prove that Mr. Alcantara acted knowingly. "Knowingly" means acting voluntarily and intentionally, and not because of mistake or accident.

The government does not have to prove that bank fraud was actually committed, or that the financial institutions suffered a financial loss or that Mr. Alcantara secured a financial gain.

C. PARTICIPATION IN THE CONSPIRACY

The third part of the conspiracy charge is that Mr. Alcantara willfully joined in the conspiracy. A person may be guilty of conspiracy if he was part of the conspiracy at its inception or if he joined the conspiracy after it began.

To act "willfully" means to act voluntarily and intelligently and with the specific intent to commit bank fraud. In this case, the government must prove beyond a reasonable doubt that Mr. Alcantara had two different specific intents before you can conclude he willfully joined the conspiracy: an intent to agree and an intent that bank fraud be committed.

A person who acts in ignorance, accident, or mistake does not act ‘willfully.’ A person who is merely present at the scene of a crime is not guilty, but you may consider presence as one factor among others in determining guilt.

A person’s intent may be determined from direct evidence of their words and behavior, or it may be inferred from the surrounding circumstances.

You have heard evidence of the conduct and words of persons other than Mr. Alcantara. Proof that Mr. Alcantara willfully joined in the conspiracy must be proven by evidence of his own words and/or actions.

You must determine whether Mr. Alcantara participated in a conspiracy by considering only his own conduct and statements. A person is not responsible for the acts and statements of others unless and until it is already determined – through his own acts and statements – that he was a member of a conspirator with the person or persons who did the acts or made the statements.

A person may be part of a conspiracy without playing a major role, so long as he participated in it.

D. OVERT ACT

The final thing that the government must prove – in addition to the fact of a conspiracy, the object of the conspiracy, and Mr. Alcantara’s participation in the conspiracy – is that one or more “overt acts” were committed.

An overt act is any act knowingly committed by a conspirator in an effort to accomplish some purpose of the conspiracy.

The Indictment lists for you a series of acts that it alleges were committed in furtherance of the conspiracy to commit bank fraud. Those acts are alleged in numbered Paragraphs 6 through 8, 11 through 13, 15 through 22, and 24.

The government must prove beyond a reasonable doubt that one or more co-conspirators committed at least one of those acts in furtherance of the same conspiracy that Mr. Alcantara was a member of, and you must agree unanimously on at least one overt act.

E. RECAP

Let me recap for you the elements of conspiracy:

- That an agreement, a mutual understanding, existed;
- That the purpose of the agreement was to commit bank fraud;
- That Mr. Alcantara voluntarily and willfully joined the conspiracy; and
- That Mr. Alcantara or a member of the conspiracy committed at least one of the overt acts alleged.

The government must prove each of these beyond a reasonable doubt. Furthermore, there must be unanimity with respect to the particular purpose of bank fraud and the specific overt act or acts.

COUNTS TWO THROUGH FOUR AND SIX THROUGH TEN:
AGGRAVATED IDENTITY THEFT

It is against federal law to steal someone's identity. Counts 2 through 4 and 6 through 10 charge eight instances of identity theft. In this case, the government has charged that Mr. Alcantara committed identity theft in relation to a conspiracy to commit bank fraud.

The following are the elements of Aggravated Identity Theft:

The first element is that Mr. Alcantara committed the crime of conspiracy to commit bank fraud.

Second, that during the course of that conspiracy, and in relation to that conspiracy, Mr. Alcantara knowingly transferred, possessed, or used without legal authority the means of identification described in the indictment.

Third, that the means of identification identified in the Indictment belonged to another person.

Fourth, that Mr. Alcantara knew that the means of identification identified in the Indictment belonged to another person.

Let me now define these terms:

“Means of identification” includes an individual’s name, social security number, date of birth, and bank account number.

The Indictment, on pages 7 through 8, contains a chart of the “means of identification” alleged in each of Counts Two through Four and Six through Ten. Each alleged identity – signified by initials – that Mr. Alcantara is alleged to have fraudulently used is linked to a certain means of identification.

This is a situation in which even though the Indictment is not evidence, as I’ve told you several times, you may use the Indictment to determine which means of identification the government has charged and therefore must prove beyond a reasonable doubt.

Aiding and Abetting

The Indictment charges that in addition to committing acts of his own that make him guilty of aggravated identity theft, Mr. Alcantara aided and abetted others in the commission of the crimes charged in Counts Two through Four and Six through Ten.

To “aid and abet” means to intentionally help someone else commit the charged crime. To establish aiding and abetting, the government must prove beyond a reasonable doubt:

First, that someone else committed the charged crime; and

Second, that Mr. Alcantara consciously shared the other person’s knowledge of the underlying crime, intended to help him or her, and took part in the endeavor, seeking to make it succeed.

A defendant need not perform the underlying act, be present when it is performed, or be aware of the details of its execution 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 sufficient to establish aiding and abetting. But you may consider these among other factors.

You can find Mr. Alcantara guilty of Counts Two through Four and Six through Ten if you find beyond a reasonable doubt that he aided and abetted the commission of aggravated identity theft.

Acts of Co-Conspirators

The government does not have to prove that Mr. Alcantara personally committed the acts alleged as aggravated identity theft. Assuming that you have found Mr. Alcantara guilty of conspiracy to commit bank fraud, you may attribute to him acts committed by a co-conspirator *if*

the following conditions are found by you as to each act so attributed. I remind you that you must consider Counts Two through Four and Six through Ten individually:

First, that *someone* committed the particular offense charged in that Count.

Second, that the person who committed the offense was a member of the conspiracy that Mr. Alcantara was part of.

Third, that the offense charged in that particular Count must have been committed by Mr. Alcantara's co-conspirator to further bank fraud, which was the alleged purpose of the conspiracy.

Fourth, that at the time the offense was committed by the co-conspirator, Mr. Alcantara was still a member of the conspiracy and had not withdrawn from it.

Finally, that it was reasonably foreseeable to Mr. Alcantara that someone in the conspiracy might commit the offense of identity theft. A person in a conspiracy is not responsible for the acts of co-conspirators unless those acts were reasonably foreseeable as part of the particular conspiracy engaged in.

So, to recap, you may find Mr. Alcantara guilty of identity theft if you find, beyond a reasonable doubt,

- that he personally committed each of the elements of the offense as I defined it for you – possessing and knowingly using the identification of another person in connection with the crime of bank fraud.

OR,

- that a member of the conspiracy he belonged to committed the elements of identity theft, that identity theft was committed to further the bank fraud, and that commission of identity theft was a reasonably foreseeable part of the conspiracy.

COUNT ELEVEN: CONSPIRACY TO PASS COUNTERFEIT CURRENCY

Count 11 charges that Mr. Alcantara knowingly, willfully, and unlawfully conspired to pass counterfeit funds, with the intent to defraud.

The elements of conspiring to pass counterfeit currency that the government must prove beyond a reasonable doubt are as follows:

First, that a conspiracy existed between two or more people to pass counterfeit currency. I have previously instructed you that a conspiracy is an agreement between two or more people who share a common understanding;

Second, that the purpose of the conspiracy was to pass counterfeit currency. Currency is counterfeit if it is calculated to deceive an honest, sensible and unsuspecting person using the observation and care ordinarily used when dealing with a person believed to be honest;

Third, that Mr. Alcantara willfully joined in that conspiracy. “Willfully” means to act voluntarily and intelligently and with the specific intent to pass counterfeit funds.

Fourth, to act with “intent to defraud” means to act with the specific intent to deceive or cheat. Thus, if Mr. Alcantara acted in good faith, he cannot have acted with intent to deceive.

Fifth, that one or more co-conspirators committed an “overt act” to further the purpose of the conspiracy.

In this Count, the government has alleged two overt acts. It needs to prove beyond a reasonable doubt that at least one of them occurred, and you must all agree on one or both in order to find Mr. Alcantara guilty. The overt acts are similar and each allege that Mr. Alcantara provided individuals identified as Natasha Rodriguez and Jose Santos with counterfeit funds. One overt act alleges that on February 17, 2010, Mr. Alcantara instructed Natasha Rodriguez and Jose Santos to exchange the counterfeit currency for cellphones at a T-mobile store in Pawtucket, Rhode Island. The other overt act alleges that on February 23, 2010, Mr. Alcantara drove

Natasha Rodriguez and Jose Santos to a mall in Farmington, Connecticut for the purpose of passing the counterfeit currency.

Method of Assessing Evidence

Now that you know what it is that the government must prove and the standard of proof to be applied, the next question is how do you determine whether the government has proven any or all of the charges beyond a reasonable doubt?

Obviously, you must make your determination solely from the evidence properly before you and from all reasonable and legitimate inferences to be drawn from that evidence.

The evidence that is properly before you consists of:

1. The testimony of the witnesses; and
2. The exhibits that I have admitted into evidence.
3. Stipulations that the parties agreed to.

A stipulation means simply that the government and the defendant accept the truth of a particular proposition or fact. Since there is no disagreement, there is no need for evidence apart from the stipulation. You must accept the stipulation as fact to be given whatever weight you choose.

From that evidence, you may draw whatever conclusions are reasonable under the circumstances.

The evidence that is properly before you does not include:

1. The Indictment. Again, I remind you the indictment has no value as evidence.
2. Comments or statements by the attorneys;
3. Documents, photographs or other items which may have been referred to but have not been admitted into evidence; or

4. Anything you may have heard or seen outside of this courtroom regarding the events in question or the participants in this case.
5. Anything I have instructed you to disregard.

Witnesses - Credibility - General Factors

As to the testimony of witnesses, your principal task is to determine the credibility of the witnesses and the weight you will give to the testimony of each.

In making that determination, there are a number of factors that you may consider:

1. The opportunity or lack of opportunity the witness had to acquire knowledge of the facts about which the witness testified. In other words, was the witness in a position to have accurately perceived the facts that the witness related to you.
2. The reliability or unreliability of the witness's memory. In other words, did the witness have a clear recollection of what happened or was the witness's memory uncertain or unclear.
3. The witness's appearance on the stand. Did the witness appear to be a person who was telling the truth, or did it appear that the witness was slanting things one way or another either consciously or unconsciously.
4. The probability or improbability of the witness's testimony. Did what the witness say sound reasonable or plausible or did it appear to be unlikely or impossible.
5. Whether the witness had anything to gain or lose from the outcome of this case. In other words, was the witness impartial or did the witness have some stake in the outcome or some reason to favor one side or the other.

Other Witnesses

During this trial, you have heard testimony from at least one witness who claims to have specialized knowledge in a technical field. Because of their specialized knowledge, they are permitted to express opinions that may be helpful to you in determining the facts.

You may accept or reject such testimony. In weighing the testimony, you should consider the factors that generally bear upon the credibility of a witness as well as the witness's education and experience, the soundness of the reasons given for the opinion and all the other evidence in the case.

Remember that you alone decide how much of a witness's testimony to believe, and how much weight it should be given.

Caution as to Cooperating Accomplice

You have heard the testimony of Jonathan Fana, Minerva Laboy, Yoryis Luciano, Todd Quinter, Natasha Rodriguez and Jose Santos, who participated in the crimes Mr. Alcantara is charged with, and who gave evidence under agreements with the government.

Some people in this position are truthful when testifying. Still, you should consider the testimony of these individuals with particular caution. They may have had reason to make up stories or exaggerate what others did because they wanted to help themselves.

Government Agents

The fact that a witness may be employed by a government or law enforcement agency does not, by itself, mean that you should give that witness's testimony any greater or any lesser

weight simply because of that fact. You should assess the credibility and testimony of such a witness by applying the same factors as you would with respect to any other witness.

Witnesses - Number - Weight of Testimony

In evaluating the testimonial evidence, remember that you are not required to believe something to be a fact simply because a witness has stated it to be a fact and no one has contradicted what that witness said. If, in the light of all of the evidence, you believe that the witness is mistaken or has testified falsely or that he or she is proposing something that is inherently impossible or unworthy of belief, you may disregard that witness's testimony even in the absence of any contradictory evidence. You must decide which witnesses to believe and which facts are true. To do this, you must look at all the evidence, drawing upon your common sense and personal experience.

Just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the greater number of witnesses. Once again, it is the credibility or quality of the testimony that determines where the weight of the evidence lies.

Use of Tapes and Transcripts

You heard conversations that were recorded. In order to help you, I allowed you to have a transcript to read along as the tape was played. The transcript is merely to help you understand what is said on the tape. If you believe at any point that the transcript says something different from what you heard on the tape, remember it is the tape that is the evidence, not the transcript. Any time there is a variation between the tape and the transcript, you must be guided solely by what you heard on the tape and not by what you see in the transcript.

Exhibits

In addition to assessing the credibility of the witnesses and the weight to be given to their testimony, you should also evaluate the exhibits that you will have with you in the jury room. Examine them and consider them carefully.

However, bear in mind that merely because an exhibit has been admitted into evidence does not mean that you are required to accept it at face value. Like the testimony of a witness, the significance of an exhibit or the weight you attach to it will depend upon your evaluation of that exhibit in light of all the facts and circumstances of the case.

Direct and Circumstantial Evidence/Inferences

As I mentioned previously, you may consider only the evidence that is properly before you. However, that does not mean that, in determining the facts, you are limited to the statements of the witnesses or the contents of the exhibits.

In reaching your conclusions, you are permitted to draw, from facts that you find have been proven, such reasonable inferences as seem justified in the light of your experience. Inferences are deductions or conclusions that reason and common sense lead you to draw from facts, which have been established by the evidence in the case.

Such evidence is sometimes called circumstantial evidence. To put it another way, a fact may be proved either by direct evidence or by circumstantial evidence. Direct evidence includes such things as the testimony of an eyewitness who personally observed the fact in question or a photograph or document showing the actual thing described.

Circumstantial evidence consists of proof of a series of facts or circumstances from which the existence or nonexistence of another fact may be reasonably inferred. In simple terms, circumstantial evidence are facts that you figure out from knowing other facts. For example, if you go to bed on a clear and dry night, and you awake to find that the pavement outside is wet, you may infer that it rained during the night even though you did not see the rain actually fall. In that example, you used the facts of a dry pavement when you went to sleep and a wet pavement when you awoke to figure out that it had rained.

The law makes no distinction between direct and circumstantial evidence concerning the weight to be given each. That means that whether you saw the rain fall or you figured out that it must have rained does not make any difference if you have concluded by one method or the other that it actually rained. It is for you to decide how much weight to give any evidence. However, the law does require that any fact required to convict Mr. Alcantara be proven beyond a reasonable doubt.

Conduct of Court – General

As I have said before, it is up to you to determine the facts in this case. You should not interpret anything I have said or done during this trial as expressing an opinion on my part as to what the facts in this case are. I have not intended to express any such opinion and you should not be concerned about what my opinions might be regarding the facts. That is a matter for you to decide.

Objections by Counsel

During this trial, there have been occasions when the attorneys have objected to a question that was asked of a witness. You should not penalize an attorney, or more importantly, his client, for objecting. It is the attorney's right and duty to protect the client's interests by objecting to what the attorney may believe is evidence that does not satisfy the requirements of the rules of evidence.

If I sustained the objection, it is important that you not speculate about what the answer to the objected-to question might have been. By sustaining the objection, the Court has determined that the evidence should not be considered by you.

Bias and Prejudice

Your verdict must be based solely upon the evidence developed at trial or the lack of evidence. Neither bias in favor of any person or cause, prejudice against any person or cause, nor sympathy of any kind should be permitted to influence you in the course of your deliberations. You may not consider any personal feelings you may have about the race, religion, national origin, sex or age of Mr. Alcantara or any witness. It would be equally improper for you to allow any feelings you might have about the nature of the crimes charged to interfere with your decision-making process.

All that Mr. Alcantara and the government are entitled to, or, for that matter expect, is a verdict based upon your fair, scrupulous and conscientious examination of the evidence before you and your application of the law as I have explained it to you.

Punishment

The question of possible punishment of Mr. Alcantara is of no concern to the jury and should not, in any sense, enter into or influence your deliberations.

Under your oath as jurors, you cannot allow a consideration of the punishment that may be imposed upon Mr. Alcantara, if he is convicted, to influence your verdict in any way, or in any sense, enter into your deliberations

Verdict - Unanimity Required

In order to return a verdict in this case, all twelve of you must agree as to what that verdict will be. You cannot return a verdict of either guilty or not guilty with respect to any charge against Mr. Alcantara unless your decision is unanimous.

Therefore, there are two things that you should keep in mind during the course of your deliberations.

On the one hand, you should listen carefully as to what your fellow jurors have to say and should be open minded enough to change your opinion if you become convinced that it was incorrect.

On the other hand, you must recognize that each of you has an individual responsibility to vote for the verdict that you believe is the correct one based on the evidence that has been presented and the law as I have explained it. Accordingly, you should have the courage to stick to your opinion even though some or all of the other jurors may disagree as long as you have listened to their views with an open mind.

Foreperson and Duty to Deliberate

Juror # _____, will be the foreperson. She will preside over the deliberations and speak for you here in court.

You will discuss the case with your fellow jurors to reach agreement if you can do so. Remember, your verdict must be unanimous, meaning all of you must agree. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Communications with the Court

If it becomes necessary during your deliberations to communicate with me, you may send a note through Court Security Officer Palumbo, signed by the foreperson. No member of the jury should ever attempt to contact me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

Return of Verdict

The Court has prepared a verdict form for you. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign it and date it, and advise the Court Security Officer that you are ready to return to the courtroom to deliver a verdict.

Copy of Instructions

I have instructed you on the law that governs your deliberations. I will send into the jury room a written copy of my instructions.