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8 Attorneys for Defendant  
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10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA, ) No. CR 03-95-WBS  
15 )  
Plaintiff, )  
16 )  
v. ) DEFENDANT AMR MOHSEN'S FINAL  
17 ) PROPOSED JURY INSTRUCTIONS  
AMR MOHSEN and ALY MOHSEN, ) (PHASE TWO)  
18 )  
Defendants. ) Date: March 13, 2006  
19 ) Time: 8:30 a.m.  
Hon. William B. Shubb

20 In light of the Court's comments and the government's proposed jury instructions,  
21 defendant Amr Mohsen, through his attorneys Bruce Locke and John Balazs, hereby proposes the  
22 following jury instructions for phase two of the trial. These instructions are similar to the  
23 government's proposed instructions, except with the following important differences: (1) a lack of  
24 entrapment is added as an element to each charged offense as the court suggested; (2) the parties  
25 have presented substantially different descriptions of inducement and "strongly corroborative  
26 circumstances;" and (3) the parties have proposed different factors as relevant for the jury's  
27 determination of predisposition, with the defense proposing a version which lists the defendant's  
28 reluctance to commit the crime as the most important factor while the government proposes a

1 version that does not list the defendant's reluctance as a factor at all.

2 DATED: March 9, 2006

3 Respectfully submitted,

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5 /s/ John Balazs  
6 BRUCE LOCKE  
7 JOHN BALAZS

8 Attorneys for Defendant  
9 AMR MOHSEN

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INSTRUCTION NO. \_\_\_\_\_

The defendant Amr Mohsen is charged in Count 21 of the indictment with attempting to commit witness tampering in violation of 18 U.S.C. § 1512(b)(1). In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant intended to commit witness tampering, that is, to use intimidation, to use threats, or to corruptly persuade other persons with intent to influence, delay, and prevent the testimony of those persons in an official proceeding; and

Second, the defendant did something which was a substantial step toward committing the crime of witness tampering, with all of you agreeing as to what constituted the substantial step.

Third, the defendant was not entrapped into committing the crime.

Mere preparation is not a substantial step toward the commission of witness tampering.

An “official proceeding” includes this trial, any other trial or hearing conducted before a federal district court or magistrate judge in this case, or any proceeding before a federal grand jury in this case. The government need not prove that the testimony at issue be admissible in evidence in the official proceeding.

INSTRUCTION NO. \_\_\_\_\_

The defendant Amr Mohsen is charged in count 22 with solicitation to commit a crime of violence in violation of 18 U.S.C. § 373. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant solicited, commanded, induced, or otherwise tried to persuade another person to commit the crime of arson, namely, the use of fire to burn a witness' car in order to influence, delay or prevent the testimony of that witness in the case of *United States v. Amr Mohsen*, CR 03-0095;

Second, the defendant intended that another person commit or cause to be committed the crime of arson of the car of witness David Moore; and

Third, the defendant's actions occurred under circumstances that were strongly corroborative of that intent.

Fourth, the defendant was not entrapped into committing the crime.

INSTRUCTION NO. \_\_\_\_\_

The defendant Amr Mohsen is charged in count 23 with solicitation to commit a crime of violence in violation of 18 U.S.C. § 373. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant solicited, commanded, induced, or otherwise tried to persuade another person to commit the crime of murder of a federal judge in order to prevent that judge from performing his official duties in the case of *United States v. Amr Mohsen*, CR 03-0095;

Second, the defendant intended that the other person commit or cause to be committed the murder of the federal judge; and

Third, the defendant's actions occurred under circumstances strongly corroborative of that intent.

Fourth, the defendant was not entrapped into committing the crime.

INSTRUCTION NO. \_\_\_\_

“Circumstances strongly corroborative of intent” may include, but are not limited to: (1) offering or promising payment or some other benefit to the person solicited if he would commit the offense; (2) threatening harm or some other detriment to the person solicited if he would not commit the offense; (3) repeatedly soliciting the offense; (4) holding forth at length in soliciting the commission of the offense, or making express protestations of seriousness in soliciting the commission of the offense; (5) believing or being aware that the person solicited had previously committed similar offenses; and (6) acquiring weapons, tools or information suited for use by the person solicited in commission of the offense, or making other apparent preparations for the commission of the offense by the person solicited.

The surrounding circumstances in general must indicate that the defendant was serious that the person he solicited actually commit the crime or cause it to be carried out.

*United States v. Hale*, 2004 U.S. Dist. Lexis 23317 (N.D. Il 2004) (instruction given); *United States v. Gabriel*, 810 F.2d 627, 635 (7th Cir. 1987); *United States v. McNeill*, 887 F.2d 448, 450 (3d Cir. 1989); *United States v. Buckalew*, 674 F. Supp. 940 (D. Me 1987);

INSTRUCTION NO. \_\_\_\_\_

The government has the burden of proving beyond a reasonable doubt that the defendant was not entrapped. The government must prove either of the following:

First, that the defendant was predisposed to commit the crime before being contacted by a government agent, or

Second, that the defendant was not induced by the government agent to commit the crime.

Where a person, independent of and before government contact, is predisposed to commit the crime, it is not entrapment if a government agent merely provides an opportunity to commit the crime.

The following factors are relevant in your determination whether the defendant was predisposed to commit the crime before being approached by the government agent:

1. the character of the defendant;
2. who first suggested the criminal activity;
3. whether the defendant engaged in the activity for profit;
4. whether the defendant demonstrated reluctance; and
5. the nature of the government's inducement.

*United States v. Skarie*, 971 F.2d 317, 320 (9th Cir. 1992). Of these factors, the most important is whether the demonstrated reluctance which was overcome by the government's inducement. *Id.*

Inducement is conduct by a government agent that creates a substantial risk that a person who was not predisposed to commit crimes of the same or similar nature as the charged crime would nevertheless commit the charged crime, including persuasion, fraudulent representations, threats, coercive tactics, harassment, promises or rewards, or pleas based on need, sympathy, or friendship. *United States v. Manarite*, 44 F.3d 1407, 1418 (9th Cir. 1995); *United States v. Garza-Juarez*, 992 F.2d 896, 909 (9th Cir. 1992); *United States v. Hollingsworth*, 27 F.3d 1196, 1203 (7th Cir. 1994).

Mere suggestions or the offering of an opportunity to commit a crime is not conduct amounting to inducement.

INSTRUCTION NO. \_\_\_\_\_

In this case, Manuel Primas became a government agent on May 19, 2004. Any conduct between Manuel Primas and the defendant that occurred before May 19, 2004 cannot be attributed to the government as an inducement to the defendant to commit a crime, but such conduct may be relevant in considering whether Mr. Primas induced the defendant to commit the charged crime after May 19, 2004.

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